First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Acting Chairman*

No. 1

Complete Proceedings on Bill S-5,

intituled:

"An Act to amend the Canadian Overseas Telecommunication Corporation Act".

THURSDAY, OCTOBER 3rd, 1968

WITNESSES:

Canadian Overseas Telecommunication Corporation: D. F. Bowie, President and General Manager; G. M. Waterhouse, Vice-President, Finance.

Department of Transport (Post Office:communications): F. G. Nixon, Director, Government Telecommunications Policy and Administration Bureau; J. R. Marchand, Chief, International Policy Division, Government Telecommunications Policy and Administration Bureau.

REPORT OF THE COMMITTEE

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

28957—1

THE STANDING COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Acting Chairman*

The Honourable Senators

Aird,
Aseltine,
Beaubien (*Provencher*),
Bourget,
Burchill,
Connolly (*Ottawa West*),
Connolly (*Halifax North*),
Croll,
Davey,
Desruisseaux,
Dessureault,
Farris,
Fournier (*Madawaska-Restigouche*),
Gélinas,
Gouin,
Haig,
Hayden,
Hays,
Hollett,
Isnor,
Kickham,
Kinley,
Kinnear,
Lang,
Lefrançois,
Leonard,
Macdonald (*Cape Breton*),
McDonald,
McElman,
McGrand,
Méthot,
Molson,
Paterson,
Pearson,
Phillips (*Prince*),
Quart,
Rattenbury,
Roebuck,
Smith (*Queens-Shelburne*),
Thompson,
Thorvaldson,
Welch,
Willis—(43).

Ex officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

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

"Pursuant to Order, the Honourable Senator Langlois, moved, seconded by the Honourable Senator Boucher, that the Bill S-5, intituled: "An Act to amend the Canadian Overseas Telecommunication Corporation 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 Langlois moved, seconded by the Honourable Senator Boucher, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

28957—1½

MINUTES OF PROCEEDINGS

THURSDAY, October 3rd, 1968.
(1)

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

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

Present: The Honourable Senators Thorvaldson (*Acting Chairman*), Burchill, Desruisseaux, Flynn, Fournier (*Madawaska-Restigouche*), Hayden, Isnor, Kinley, Kinnear, Lefrançois, Macdonald (*Cape Breton*), McDonald (*Moosomin*), McElman, McGrand, Molson, Pearson, Rattenbury and Smith (*Queens-Shelburne*).—(18)

Present, but not of the Committee: The Honourable Senator Langlois.

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

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

Bill S-5, "An Act to amend the Canadian Overseas Telecommunication Corporation Act", was read and considered clause by clause.

The following witnesses were heard:

Canadian Overseas Telecommunication Corporation:

D. F. Bowie, President and General Manager.

G. M. Waterhouse, Vice-President, Finance.

Department of Transport (Post Office: communications):

F. G. Nixon, Director, Government Telecommunications Policy and Administration Bureau.

J. R. Marchand, Chief, International Policy Division Government Telecommunications Policy and Administration Bureau.

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

At 10.35 a.m. the Committee adjourned.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, October 3rd, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill S-5, intituled: "An Act to amend the Canadian Overseas Telecommunication Corporation Act", has in obedience to the order of reference of October 1st, 1968, examined the said Bill and now reports the same without amendment.

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

All which is respectfully submitted.

Gunnar S. Thorvaldson,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Ottawa, Thursday, October 3, 1968.

The Standing Committee on Transport and Communications, to which was referred Bill S-5, to amend the Canadian Overseas Telecommunication Corporation Act, met this day at 9.30 a.m. to give consideration to the bill.

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

Senator McDonald: Honourable senators, I would like to nominate Senator Thorvaldson as Acting Chairman.

Senator Molson: I will second the motion.

The Clerk of the Committee: It has been moved by Senator McDonald, and seconded by Senator Molson, that Senator Thorvaldson be the Acting Chairman of the committee. Is it agreed?

Hon. Senators: Agreed.

Senator Gunnar S. Thorvaldson (Acting Chairman) in the Chair.

The Acting Chairman: We have before us this morning Bill S-5, an act to amend the Canadian Overseas Telecommunications Corporation Act. May we have the usual motion to print?

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

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

The Acting Chairman: Honourable senators, our witnesses this morning are from the Canadian Overseas Telecommunications Corporation, Mr. D. F. Bowie, President and General Manager, Mr. G. M. Waterhouse, Vice-President of Finance; and from the Department of Transport (Post Office: Communications) Mr. F. G. Nixon, Director, Government Telecommunications Policy and Administration Bureau, and Mr. J. R. Marchand, Chief of International Policy Division, Government Telecommunications Policy and Administration Bureau.

I should say, at the outset, that the Canadian Overseas Telecommunications Corporation has now been taken over by the Post Office Department and it is no longer a division of the Department of Transport.

Senator Flynn: What do you mean, Mr. Chairman? Is it under the authority of the Postmaster General?

The Acting Chairman: Yes, it is under the authority of the Postmaster General, the Hon. Mr. Kierans.

Senator Smith (Queens-Shelburne): What you really mean is that the crown corporation will report to Parliament through the Postmaster General, who will be the new minister of communications.

The Acting Chairman: That is right. Is it your wish that we hear Mr. Bowie, the President and General Manager of the corporation.

Hon. Senators: Agreed.

Mr. D. F. Bowie, President and General Manager, Canadian Overseas Telecommunications Corporation: Thank you, Mr. Chairman. This bill was produced for two good reasons. The first is self-explanatory, with respect to the removal of the wording which permitted the corporation to operate services between the mainland of Canada and Newfoundland. At the time the corporation was established in 1950, or when the bill was first written in 1949, the status of Newfoundland was different from what it is today. Up to that time, the

Canadian Marconi Company had been operating service between Newfoundland and the mainland. When the corporation expropriated the assets of the Canadian Marconi Company, which was located at Drummondville and Yamachiche, it was quite impossible to segregate one small piece of equipment from the whole of the overseas operation of Marconi and consequently we took over the radio facilities which Marconi was operating between Newfoundland and the mainland.

This continued, and in the intervening years C.O.T.C. introduced many new facilities and improved the service with Newfoundland. But we had felt that as Newfoundland had become the tenth province, it was better that C.O.T.C. should get out of this operation and restrict itself strictly to overseas services. After a year or two of negotiations we reached agreement with the Canadian National Telegraphs—the Canadian National Telecommunications—to lease facilities which we had built in the meantime and to permit the Canadian National to undertake the operation between Newfoundland and the mainland.

Therefore, there is no need for the C.O.T.C. Act to provide for the corporation to give this service. That is the reason for the first and second of these amendments.

The third one, which has to do with the amount of money that we can spend without authority of the Governor in Council, is I think a very important one. When the C.O.T.C. Act was written in 1949-50, we were permitted to spend up to $50,000 without the necessity of getting an order in council. With the corporation in the very small field in which it was working in those days, and the limited facilities we had, and the small revenue which we were getting, this seemed to be fairly reasonable. We have worked under that control during the last eighteen years. I think most people will readily agree that in this day and age one cannot buy much equipment in the electronics field for $50,000.

The securing of an order in council involves considerable clerical work. There has to be a board meeting to authorize the president to request an order in council; there is the submission which goes to the minister, 25 copies of which go to the Treasury Board. We feel that that particular clause has rather outlived its usefulness and that the board of directors of C.O.T.C. should be given power to authorize expenditures of larger amounts than $50,000 without the necessity of bothering the minister and the Treasury Board, and we would like to see this amount substantially increased. Our board of directors are all wise businessmen and they keep their finger on the pulse. It seems reasonable, I suggest, that they should be given the necessary authority to authorize expenditures for a larger amount than is at present provided.

Senator Hayden: Do you contemplate in clause 3 of the bill that there will be a regulation fixing maximum amounts or will you have to go to the Governor in Council each time for a regulation?

Mr. Bowie: We would expect that a regulation would be made fixing the maximum amount for the time being, which could be subject to change if conditions change.

Senator Hayden: You must have some idea in mind as to what that maximum amount should be at this time.

Mr. Bowie: We are thinking in terms of half a million dollars.

Senator Hayden: Would you agree that it is preferable to have a maximum amount than to have authority in the Governor in Council by regulation which can be varied from time to time? Is not this in the nature of legislation rather than administration?

Mr. Bowie: I am perhaps a little out of my depth in this one, sir. I believe this may be attributed to Government policy, but it does seem to me as a layman, if I may say so, that we should do this, rather than have any necessity to change the act, if we want to change the amount of money that the directors are authorized to spend.

Senator Hayden: On the other hand, the Senate, and even some Members of the Commons, might think it wise to know when you have ideas of big expenditures, so that we might have a look at them before you spend them.

Mr. Bowie: That could be true, sir.

Senator McDonald: What are your revenues today, compared to ten years ago, Mr. Bowie?

Mr. Bowie: Our current revenues are running in the neighbourhood of $26 million to $27 million. I have the figures here somewhere, but I can tell you off the cuff that the C.O.T.C. revenues, in its first year, were somewhere in the neighbourhood of $800,000.

Senator Flynn: Are you speaking of profit or revenue?

Mr. Bowie: Revenue.

Senator McDonald: That was in 1950?

Mr. Bowie: Yes.

Senator McDonald: Have you the figure for 1960 so that we would have some idea of the growth?

Mr. Bowie: May I refer to Mr. Waterhouse?

The Acting Chairman: Honourable senators, Mr. G. M. Waterhouse is Vice-President, Finance, of the Canadian Overseas Telecommunications Corporation.

Mr. Bowie: I am sorry, but it seems that we do not have the individual revenue figures for each of the years. I could give you the revenues for 1962, if this would do? We have those figures in the annual report.

Senator McDonald: Yes.

Mr. Bowie: In 1962 the revenues were slightly short of $9.5 million. In 1968, for the year ending March 31, 1968, they were just short of $25 million; and this year they are running well over $26 million.

Senator McDonald: Your net profits in 1962 were $1.7 million compared to $4 million in 1968.

Mr. Bowie: That is correct.

Senator McDonald: Is that attributable to an extension of services, an increase of revenues or is it otherwise accounted for?

Mr. Bowie: It is attributable to a lot of things, really, such as the extension of services and, of course, vastly increased demand. The introduction of telex service has been one of the outstanding features; that, together with the introduction of good quality telephone service in 1956, and our increased capacity, has provided a trememdous growth in telephone revenues. I might say that in 1961 we cut the telephone rates between Canada and Britain by 25 per cent.

Senator Rattenbury: As the service is being used increasingly, do you anticipate further reductions?

Mr. Bowie: Yes, we do.

Senator Kinley: Have you made a profit?

Mr. Bowie: Yes, we made $4 million in the last fiscal year. We also paid an almost similar amount in income tax, and we pay the Government $2.5 million on interest charges.

Senator Molson: What is the rate?

Mr. Bowie: It is a varying rate, according to whatever the current rate is at the time we make a loan.

Senator Hayden: Do you mean the current rate on treasury bills or the going rate on the market?

Mr. Bowie: It is on the treasury bills.

Senator Kinley: How is your board constituted? You are a crown company, I presume.

Mr. Bowie: Yes.

Senator Kinley: How do you appoint your directors?

Mr. Bowie: They are appointed by the Government.

Senator Kinley: For what period of time?

Mr. Bowie: They normally have a three-year term.

Senator Kinley: Have you any international relations with the United States? You must have, because telecommunication is an international thing.

Mr. Bowie: Yes. We work in very close conjunction with the American communications carriers. In fact, we help each other out in times of trouble. But C.O.T.C. does not actually do normal communications business between Canada and the United States. This is done by the Bell Company and the Trans Canada Telephone System and the Railway Telecommunications Carriers.

Senator Kinley: I remember when the communication cables were being laid off the coast of Nova Scotia. I believe both Americans and Canadians were in on that. They were trying to make sure it would be safe for the fisheries industry. The manager of nautical operations was there. I seemed that those communication cables were very valuable.

Mr. Bowie: They are certainly very valuable, and we have in some cases joint ownership in cables with the Americans. This has been done in order not to duplicate unnecessarily facilities at the time. We felt that we were putting in adequate facilities that would last for many, many years. But the communications explosion proved those estimates to be quite wrong. At the present time we are actively concerned with an organization

called Intelsat, which is the International Satellite Organization. The corporation has an ownership in that group. More and more we are using satellite circuits for communications across the North Atlantic.

Senator Smith (Queens-Shelburne): I have a supplementary question on the same point, Mr. Chairman. Since this first satellite station has been in commercial operation, have you had any indication whether it is going to be profitable? Is it profitable now in view of the volume of work that is going through that station?

Mr. Bowie: Well, it will be profitable. There is no question about that. At the moment, it is actually a little difficult to cost it in such a form as to answer yes or no as to whether it is running a profit at the present time. But it is performing an extremely useful function for us, because the cable capacity we have existing is insufficient, and therefore at the present time all the growth is going on to the satellite system. Growth being what it is in the telephone field, it is going up 15 to 18 per cent per annum. So it will not be very long before the earth station and satellite operation will be a completely profitable one.

Senator Smith (Queens-Shelburne): I suppose that is the obvious reason why you are now extending the capabilities of that particular station. I know something about it because it happens to be in my own area in Nova Scotia.

Mr. Bowie: In this field it is rather essential to try to keep ahead of the game, rather than behind it. But it is difficult because any forecasts that we have been able to make in the past have proved rather wrong, in that we have not made adequate provisions. But we are doing our best to do so now.

Senator Hayden: It does not do to get yesterday's message tomorrow.

Mr. Bowie: No.

Senator McDonald: Do you have any projection of your capital investments over the next five or ten years?

Mr. Bowie: I do, sir, yes. We have just been asked to provide this information, as a matter of fact. So we have as accurate a forecast as possible for the next five years.

In the year 1969 to 1970 we expect to spend $13.3 million; in 1970-71, $15.4 million; 1971-72, $23.9 million; 1972-73, $20.3 million; and in 1973-74, we come back to earth, having only $8.6 million.

Senator McDonald: These are capital expenditures?

Mr. Bowie: Yes.

Senator McDonald: Have you any projected profits for the same period?

Mr. Bowie: No, sir. I would hazard a guess that they will be going up.

Senator Rattenbury: Is there any pooling of assets with the corporation by any private communications firms?

Mr. Bowie: In Canada?

Senator Rattenbury: Yes.

Mr. Bowie: No, sir.

Senator Molson: Mr. Chairman, coming back to clause 3, I take it that the authority the president is speaking about is in the nature of capital amounts as in subclause (2) (a): "under any agreement or lease," or (2) (b): "real or personal property...".

I take it that when he says that the company is thinking of asking for authority in terms of half a million dollars this is dealing with capital items and that, in the normal course of business, they act like a normal corporation and have no absurd or unreasonable limitations.

Mr. Bowie: This is true, sir. We are talking here in terms of capital expenditures and we do have no unreasonable limitations apart from this existing one which we feel is now unreasonable.

Senator Molson: Talking about a sum of the nature of half a million dollars, that is the first of forecast commitments such as you have just set forth for a good many millions of dollars each year.

Mr. Bowie: Yes.

Senator Molson: So that you will be going for authority on a good many occasions?

Mr. Bowie: We shall be, yes. I think it might be useful to add that the corporation can never go very far off the track because anything we do has a slightly international connotation and you can be quite certain that one of the first things I have to do is to make sure that my minister agrees with the sort of thing we are thinking about. So that one

really has a considerable amount of government blessing on what we do before we do it.

Senator Flynn: Mr. Chairman, presently subsection (2) reads—

> "Unless the approval of the Governor in Council is first obtained, the Corporation shall not..."

I was wondering if the witness would agree that presently the Governor in Council could by order in council prescribe or adopt regulations prescribing higher limits than those which are contained in subparagraphs (a), (b) and (c) of the subsection as it now reads. In other words, is it absolutely necessary that we have this amendment? It seems to me that the Governor in Council could give you generally higher authority than is provided in the act.

Mr. Bowie: Well, I must respond to that by making a very simple statement. I am not a lawyer so I could not interpret that myself. I must say that the experience has been that the Treasury Board and the Auditor General are very insistent in every case so I would expect that they would have looked at this from that angle.

Senator Flynn: I have a second point. Has the corporation compared the authority which was given or which will be given under regulations by the Governor in Council with the authority granted to other crown corporations like C.N.R., for instance, or C.B.C.? Have you a special regime here?

Mr. Bowie: No, we did not compare.

Senator Flynn: I was wondering whether we should not spell out the authority which the corporation should have rather than leave it to the fancy of the Governor in Council. After all, the Governor in Council may change his mind and could by changing the regulation take away all practical authority from the board.

Mr. Bowie: They could, yes, but one would hope that they would not take such a retrograde step.

Senator Flynn: Am I correct in suggesting that the C.N.R. only has to obtain the approval of its annual budget from the Governor in Council?

Mr. Bowie: I am afraid I don't know the answer to that one.

The Acting Chairman: Senator Flynn, I wonder if it would be helpful if I read subsection (2) of section 8 which is affected by clause 3 of the bill. It reads this way:

> "(2) Unless the approval of the Governor in Council is first obtained, the Corporation shall not
>
> (a) enter into an agreement involving any expenditure in excess of fifty thousand dollars;"

That is the wording of the present limitation.

Senator Burchill: I would like to ask about the fixing of rates. Are you the sole authority for the fixing of rates?

Mr. Bowie: We do have that authority, yes.

Senator Burchill: You are not subject to any public utility commission or anything like that?

Mr. Bowie: No.

Senator Burchill: You fix your own rates?

Mr. Bowie: Yes.

Senator Burchill: You are outlining a large capital expenditure for the future and that money must earn certain returns.

Mr. Bowie: Yes.

Senator Burchill: And you fix your rates, I presume, based on your business experience. How is that done? Is it done by your directors?

Mr. Bowie: No. There is another very important factor concerned with the fixing of rates and it is that in the international field you only work half the system. You have a foreign country which operates the distant end, and your rates have to be fixed or you have to agree your rates with them so that they make enough money to suit themselves, and we for our part have our end of the operation also and we have to make an adequate return. This is sometimes very difficult. I hope I do not have to go too far into a piece of unknown currency called the gold franc which is the basis of settlement of all international accounts. Since Canada with a lot of other countries went off the gold standard in 1931 the relationship between our currency and the mythical gold franc has been reduced. Actually our rates for a telegram from here to France are considerably lower than the rates for a telegram from France to Canada. This comes about because when the

French franc was devalued in 1931, they raised their charges against the public. We kept ours here as they were. That means from time to time this gives rise to some international controversy. Perhaps it shows other countries up in a poor light by comparison with what we in Britain and a few other countries did which was to maintain the rates at a lower level.

Senator Smith (Queens-Shelburne): I want to ask a question about relationships between the old Department of Transport and your corporation. At the time of the building of the station in Mill Village, am I correct in assuming that the Department of Transport financed that and arranged for its construction? And that being so, what is your position between the Government and the contractor?

Mr. Bowie: We had no direct dealings with the contractors at all. This was done by the Department of Transport. We are at the present time using the station pending the completion of the one which is now under construction, and I think I should add that we had to put in certain equipment to make it operational from a commercial point of view as distinct from the original intention which was research and experimentation. But for actual commercial operations we had to add quite a substantial amount of extra equipment.

Senator Smith (Queens-Shelburne): Well, then, has the title been turned over? Does the ownership still reside with the Department of Transport?

Mr. Bowie: The ownership still resides with the Department of Transport.

Senator Smith (Queens-Shelburne): Is there any lease in this arrangement between the corporation and the department for their use of the facilities?

Mr. Bowie: The answer to that is that I think we do have a dollar; we have an informal dollar arrangement.

Senator Smith (Queens-Shelburne): What I was coming to was this. It would be difficult, perhaps, in the future, when this is really a profitable enterprise, to determine just how profitable it is, unless this is put on your accounting system as a capital expenditure—but I guess that is not my worry or yours.

Mr. Bowie: I think this is a bridge we will cross later on, sir.

Senator Hayden: Mr. Bowie, have you made any repayments on capital accounts for the borrowing to date?

Mr. Bowie: We certainly have. We have repaid to the Government $16.3 million.

Senator Hayden: Then the moneys in your program for this year and next year are amounts you figure you will spend; they are not necessarily the amounts you will borrow, are they?

Mr. Bowie: This is true, yes, because some of that financing we shall do out of our own profits.

Senator Molson: What is your cash throw-off in the normal year? I have not got your statement. Last year, for example, you had a profit of $4½ million. What was your depreciation and other non-cash items?

Mr. Bowie: The depreciation last year was $5,891,000.

The Acting Chairman: Honourable senators, while we are on these financing aspects, I wonder if I might take the liberty, as I have before me the act, of reading one subsection here. There was a question with regard to the interest rate paid by the corporation to the Governor in Council, and I would refer to section 14, headed "Financing," subsection 3, and I think it would be of interest to know how that is arrived at.

> Interest on the moneys paid to the Corporation under this section shall be paid by the Corporation to the Receiver General of Canada at such times and at such rates as may, from time to time, be fixed by the Governor in Council.

So, when the witness refers to the rate being the treasury bill rate, that is because that is the rate fixed by the Governor in Council.

Go ahead, Mr. Bowie. Would you like to carry on with your presentation after these questions, or were you through?

Mr. Bowie: I think I was really through. There is just one point I might mention, if I may. Under section 8(2)(c) we have to seek an Order in Council for disposing of any equipment that had an original or book value exceeding $5,000. This requires the same amount of paper work and board approvals, and so on.

Senator Hayden: The price might go down in the meantime!

Senator McElman: Mr. Chairman, there are two points I wish to mention. First, I share what appears to be the concern expressed by Senator Hayden regarding the continuing trend of Crown corporations and agencies to overcome the nuisance of coming to Parliament for authorities, and acquiring these by Order in Council. I think it is a very important part of our system, when such agencies or corporations have expanding requirements, which indicate growth in the corporation concerned—as you indicate by your capital requirements of $81.5 million for the next five years, an average of $16.3 million a year, a rather substantial sum of money. This provision provides an opportunity for Parliament to remain fully informed on what is taking place in such corporations; it is very necessary. I simply want to express my concern at this growing trend to circumvent the coming to Parliament for such authority.

You have suggested it is government blessing, but government blessing is quite a different thing from parliamentary blessing, and I think such comments should not be passed without that observation.

My second observation is on the new subsection (2) of section 8 that you have proposed, which includes the words:

> On the recommendation of the Treasury Board, the Governor in Council may, by regulation prescribe limits . .

Should not that be "shall," because there you continue on, in the concluding part of that subsection, by saying:

> . . .and unless the approval of the Governor in Council is first obtained, the Corporation shall not exceed. . .the limits prescribed pursuant to this subsection.

So it can only spend over the limits prescribed with the authority of the Governor in Council. If there are no limits prescribed, then you are scot-free, you can spend to any level, without anybody's authority—that of Parliament or the Governor in Council or the Treasury Board, or anyone.

Should not the first word in the third line be "shall"?

The Acting Chairman: Would you care to comment on that, Mr. Bowie?

Mr. Bowie: Well, I have to say what I said a little earlier, that I am not a lawyer and I did not actually write that. I do see the point you are trying to make, but I am not sure whether that is not the normal language used in this type of thing. I just do not know.

Senator McElman: Well, I am not concerned with the normal language, but with the actual meaning of the words as they are set out. If the Governor in Council "may," he also may not.

Senator Hayden: Mr. Bowie, if we substituted "$500,000" in the present subsection (2) for $50,000, where it occurs, would not that permit very flexible operation, without as much paper work going to the Governor in Council?

Mr. Bowie: I have to give you the simple answer: Yes.

Senator Hayden: It would be more businesslike, would it not?

Mr. Bowie: Yes.

Senator Flynn: Is that the figure you had in mind?

Mr. Bowie: We did have, yes.

Senator Desruisseaux: What are the gross sales?

Mr. Bowie: Almost $25 million.

The Chairman: Are there any other questions of Mr. Bowie, honourable senators? If not, we have other witnesses here: Mr. G. M. Waterhouse, Vice-President, Finance, and two gentlemen from the Department of Transport, Mr. Nixon and Mr. Marchand.

Is there any further evidence members of the committee would like from the company?

Senator McElman: Could I have an answer from our learned counsel on my question?

Mr. E. Russell Hopkins (Law Clerk and Parliamentary Counsel): Senator, there is a perennial difficulty raised by the words "shall" and "may". They have filled the law books for a good many years. I must say that the usual way to confer such authority on the Governor in Council is to use the word "may". Certainly, the Governor in Council will exercise that authority, and it may very well be that, in the context, "may" would be construed as "shall". The cases are innumerable.

Senator Flynn: What if it does not? This is the question put by the senator. If the Governor in Council does not prescribe regulations,

is the corporation free to do whatever it pleases?

Senator Hayden: Not in this language. If he does not then the corporation is frustrated with respect to capital expenditures.

Mr. Bowie, I feel very strongly that there should be some dollar amount stipulated. I feel it is more businesslike, and would be more flexible for you than what is provided. We will see what the Commons does about it, but my own view is that there should be dollar amounts, because this may partake of the nature of legislation rather than administration providing maximum limits on the amount of money that you can spend on capital items. That authority must come from somewhere, and I think Parliament should give it, and it should not be delegated to the Governor in Council to deal with by regulation. However, I do not feel so strongly in this case that I would make any motion or change it.

The Acting Chairman: Honourable senators, are you ready to consider the bill in detail?

Senator Molson: You have a motion.

The Acting Chairman: Mr. Nixon, may we ask you if you have anything to add to what has been said by Mr. Bowie and Mr. Waterhouse? Mr. Nixon is Director of the Government Telecommunications Policy and Administration Bureau.

F. G. Nixon, Director, Government Telecommunications Policy and Administration Bureau, Department of Transport (Post Office: Communications): Thank you, Mr. Chairman. I might only add that in respect to the Government's own departments, the Treasury Board may fix by regulation the limits on expenditure, pursuant to the Financial Administration Act. I can only surmise that the minister felt it would be appropriate to petition Parliament for this same procedure to apply to the corporation.

The Acting Chairman: Thank you, Mr. Nixon.

Senator Macdonald (Cape Breton): I move that we report the bill, Mr. Chairman.

The Acting Chairman: Is there any comment on that, honourable senators? Are you all in favour?

Hon. Senators: Agreed.

Senator Flynn: With some reluctance.

Senator Hayden: Yes, with reservations.

The committee adjourned.

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gaspard Le Blanc, *Chairman*

No. 2

Complete Proceedings on Bill C-109,

Intituled:

An Act respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Whitelaw Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 34 miles to the Bigstone property of Pan-American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson Bay Oil & Gas Company Limited and its associates.

THURSDAY, OCTOBER 17, 1968

WITNESSES:

Canadian National Railways: H. M. Cooper, General Solicitor; L. Maclsaac, Chief of Development; H. Wayland Morey, Engineer.

REPORT OF THE COMMITTEE

EDMOND CLOUTIER, Q.C., B.A., L.Ph.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

No. 2

Complete Proceedings on Bill C-109,

intituled:

An Act respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates.

THURSDAY, OCTOBER 17, 1968

WITNESSES:

Canadian National Railways: G. M. Cooper, General Solicitor; L. MacIsaac, Chief of Development; N. Michaud, Mining Engineer.

REPORT OF THE COMMITTEE

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

28959—1

THE STANDING COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators

Aird,
Aseltine,
Beaubien (*Provencher*),
Bourget,
Burchill,
Connolly (*Ottawa West*),
Connolly (*Halifax North*),
Croll,
Davey,
Desruisseaux,
Dessureault,
Farris,
Fournier (*Madawaska-Restigouche*),
Gélinas,
Gouin,
Haig,
Hayden,
Hays,
Hollett,
Isnor,
Kickham,
Kinley,
Kinnear,
Lang,
Lefrançois,
Leonard,
Macdonald (*Cape Breton*),
McDonald,
McElman,
McGrand,
Méthot,
Molson,
Paterson,
Pearson,
Phillips (*Prince*),
Quart,
Rattenbury,
Roebuck,
Smith (*Queens-Shelburne*),
Sparrow,
Thorvaldson,
Welch,
Willis—(43).

Ex officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, October 15, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Denis, P.C., that the Bill C-109, intituled: "An Act respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates", be read the second time.

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

The Bill was then read the second time.

The Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Denis, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

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

ROBERT FORTIER,
Clerk of the Senate.

28959—1½

REPORT OF THE COMMITTEE

THURSDAY, October 17th, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill C-109, intituled: "An Act respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates", has in obedience to the order of reference of October 15th, 1968, examined the said Bill and now reports the same without amendment.

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

All which is respectfully submitted.

GUNNAR S. THORVALDSON,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, October 17th, 1968.
(2)

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

Present: The Honourable Senators Aird, Bourget, Connolly (*Halifax North*), Dessureault, Flynn, Fournier (*Madawaska-Restigouche*), Hollett, Isnor, Kinley, Kinnear, Lang, Lefrançois, Leonard, Macdonald (*Cape Breton*), McDonald, McElman, Molson, Pearson, Smith (*Queens-Shelburne*), Sparrow and Thorvaldson. (21)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of Honourable Senator Leonard, Honourable Senator Thorvaldson was elected Chairman.

On motion of Honourable Senator Flynn it was *Resolved* to report, recommending that 800 English and 300 French copies of these proceedings be printed.

Bill C-109, "An Act respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates", was considered.

The following witnesses were heard:

Canadian National Railways:

G. M. Cooper, General Solicitor.

L. MacIsaac, Chief of Development.

N. Michaud, Mining Engineer.

Following discussion it was *Resolved* to report the bill without amendment.

At 12.10 p.m. the Committee adjourned to the call of the Chairman.

Attest:

John A. Hinds,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Ottawa, Thursday, October 17, 1968

The Standing Committee on Transport and Communications, to which was referred Bill C-109, respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates, met this day at 11.30 a.m. to give consideration to the bill.

Senator Gunnar S. Thorvaldson (Chairman) in the Chair.

The Chairman: Honourable senators, I want to thank you very sincerely for the honour you have conferred on me by electing me to the office of chairman of this committee. This is an important committee of the Senate, as it deals generally with problems of great importance to the economic development of our country. May I say also that this post has been occupied in the past by men of great ability and distinction. I refer first to Senator D'Arcy Leonard, the most recent chairman of this committee, who has now assumed the chairmanship of another committee for which he has special qualifications. May I also refer to the fact that one of the most distinguished senators of our generation, Senator Hugessen of Montreal, occupied this Chair with distinction to himself and great benefit to the committee, to the Senate and to Canada. Senator Hugessen as you know, has now retired from the Senate but he remains a most distinguished citizen and elder statesman of this country.

Hon. Senators: Hear, hear.

The Chairman: May we have the usual motion to print?

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

The Chairman: We are dealing today with Bill C-109 relating to a construction project of the Canadian National Railway Company. Our witnesses are Mr. G. M. Cooper, General Solicitor of the C.N.R., Mr. L. MacIsaac of the Department of Research and Development, C.N.R., of which he is the Chief of Development. We also have Mr. M. Michaud, who is Mining Engineer engaged with the Department of Research and Development, C.N.R. We also have here from the Department of Transport Mr. Jacques Fortier, Q.C., Counsel for that Department, who has appeared before this committee on many previous occasions in recent years. Is it agreeable, honourable senators, that we should hear from Mr. Cooper first?

Hon. Senators: Agreed.

Mr. G. M. Cooper, General Solicitor, Canadian National Railways: Mr. Chairman, honourable senators, Bill C-109 makes provision for a grant of authority to Canadian National Railway Company to construct and to finance approximately 60 miles of branch line trackage in Alberta lying northwesterly of Edmonton. The branch line will extend from a point near Windfall, Alberta, to the site of a sulphur recovery plant of Pan American Petroleum at Bigstone. That is 51 miles in length. There will also be a connecting spur, nine miles in length, to another such plant at South Kaybob.

There is a map on the easel here to identify the location and I believe each of you has a copy of this in miniature.

Edmonton, which I am sure is well known to everbody in Canada, appears on the map in the lower portion of the right-hand margin.

The Chairman: Honourable senators, may I interrupt for a moment to apologize to Mr. Smith. Mr. Walter Smith is Executive Representative of Canadian National Railways in Ottawa. I am very sorry I failed to recognize him when I was introducing the witnesses and I do so now.

Mr. Cooper: From Edmonton in the lower right hand of this map an existing C.N. line extends in a northwesterly direction. That is the upper of the two lines appearing in this location and extends to Whitecourt and beyond to Windfall, both of which names have been highlighted in yellow. The proposed new trackage is that which is marked bright red and extends westerly from Windfall to Bigstone, which is the location of the plant of Pan American Petroleum, with a spur about nine miles in length extending northerly to South Kaybob, where a similar and larger plant is presently under construction by a syndicate headed by Hudson Bay Oil and Gas. In all, there are 60 miles of trackage. The line will cross the Athabasca River, and there is also a small bridge near Bigstone crossing the Little Smoky River.

This legislation is necessary because the corporate powers of our company do not permit us to embark upon such a construction, being in excess of 20 miles, unless Parliament has legistated in respect of the expenditure of the money. This is the purpose of our being here.

Our predecessors have been here many times in the past on very similar applications, and I can sssure honourable senators that this bill which is before you today, other than the details of location and the dollar amounts, is just the same as previous bills your have considered. For that reason, I have some doubt wheher you want me to review the purpose of the various clauses, but, of course, should you so wish, I will be happy to do so.

The Chairman: Honourable senators, in that regard I think it is a fact that these bills authorizing the building of railways are in standard form. They are really very simple. Most of the clauses deal with the financing provisions, which are standard, and, consequently, unless someone would like to ask questions concerning some of those clauses, I would suggest that it is not necessary to go into detail in regard to them. Is that agreed, honourable senators?

Hon. Senators: Agreed.

Senator Connolly (Halifax North): What is the revenue anticipation from these extra 60 miles?

Mr. Cooper: The annual revenue is in the nature of—

The Chairman: Honourable senators, this question relates perhaps more to Mr. MacIsaac's work, and I was going to suggest that when Mr. Cooper has finished his general presentation you would let me call on Mr. MacIsaac, who is chief of the development branch, and then you would have before you the right person of whom to ask the question. Would that be agreeable?

Hon. Senators: Agreed.

Senator Kinley: This, of course, has been approved by the Pickersgill commission? Do you have to go before them?

Mr. Cooper: The Canadian Transport Commission?

Senator Kinley: Yes. Do you have to go before them?

Mr. Cooper: No. In the case of Canadian National, we come to Parliament through the Governor in Council, and we are not acting under the Railway Act, which would require the recommendation of the Canadian Transport Commission, but because of Canadian National's existence as a Crown corporation our route to Parliament is through the Governor in Council.

Senator Kinley: I see.

Mr. Cooper: The legislation is, of course, sponsored by the appropriate minister in the House of Commons.

Initially, this line is to serve these two major industries at Bigstone and South Kaybob, and in each case the industry is involved in the production of sulphur by recovery from so-called sour natural gas. The sour gas is received at the plant from wells which have been drilled, and by chemical process the sulphur and certain other derivatives, such as liquid petroleum gas, are stripped off, and the stripped gas will be returned to the earth for storage and subsequent use as domestic or industrial natural gas.

We have some hopes, some justifiable hopes, that other such industries will locate in the vicinity of the mine, and as the line passes through a fairly heavily forested area, we anticipate that in due course a lumbering

or a pulpwood development may take place. At the present time the surrounding countryside is very sparsely populated, if at all, and our reliance is on these two industries. For that reason, contractual guarantees have been obtained from the operators of both plants, to ensure that our construction of the line will result in the shipment of adequate tonnages to cover the costs of operation and of maintenance, the interest on our invested capital, the amortization of that capital, and over and above that, a contribution to the general operating results of the Canadian National system.

Senator McDonald: Over what period of time is it to pay off?

Mr. Cooper: The contracts run for 15 years, and all the economics are based on that 15-year period.

Senator McDonald: Is it sufficient to pay back your capital costs?

Mr. Cooper: Yes, the return of the capital.

Senator Pearson: Is there a possibility the sulphur will be shipped out by pipeline shortly?

Mr. Cooper: Not, I would say, from this area by these industries, because they have guaranteed us the major portion of their production, so that we do not anticipate their diverting the traffic from us, because failure in living up to the guaranteed shipments by them would require them to make a payment to us by way of damages in lieu of the traffic.

Senator Bourget: Do they guarantee 75 per cent in the contract?

Mr. Cooper: Yes, 75 per cent of their actual production of sulphur.

Senator Bourget: But you expect to get more than 75 per cent?

Mr. Cooper: We hope to, and we will work to get 100 per cent of the production, but the guarantee is limited, as you say.

Senator Leonard: Are they in the planning or the building stage now?

Mr. Cooper: The plant at Bigstone is already in production. The plant at South Kaybob is expected to come into production, I think, in November this year—that is, within the month. A further development at Kaybob is now in the planning stage, or is now in the early development stage.

Senator Leonard: When will the line come into operation?

Mr. Cooper: If we can get going soon enough, we expect it would take us about a year to build the line, and as soon as we have the line built the traffic is waiting for it.

Senator Fournier (Madawaska-Restigouche): How are they transporting their product now?

Mr. Cooper: The plant at Bigstone is having to truck a certain amount of it to railhead at Windfall, and which is, let us say, the take-off point of the red line on the map.

Senator Fournier (Madawaska-Restigouche): By truck?

Mr. Cooper: Yes, by trucks.

Senator McDonald (Moosomin): Is your company playing any part in the research that is going on with respect to moving that product by pipe line?

Mr. Cooper: We have a share in the—I have forgotten the corporate name of the project, but we have a share in that. We get the information from it, and we participate in the studies.

Senator Isnor: There are two separate organizations, are there not?

Mr. Cooper: Two plants?

Senator Isnor: Yes.

Mr. Cooper: Yes, sir.

Senator Isnor: Are they owned by the same people?

Mr. Cooper: No, sir. In each case there is, perhaps I can say, a multiple ownership under the direction in each case of a single corporation. There is a certain overlap of interests, but for practical operating purposes I think you could say they are separately operated.

Senator Isnor: And what are the names of those two corporations?

Mr. Cooper: At Bigstone the dominant corporation is Pan-American Petroleum Corporation, and at South Kaybob it is Hudson's Bay Oil and Gas Company Limited.

Senator Isnor: And which company have you a contract with?

Mr. Cooper: Both, sir. We have separate contracts with the two corporations.

Senator Isnor: That is what I wanted to find out. And, both of those contracts are for a period of 15 years?

Mr. Cooper: To be very precise, the one at Bigstone is for 15 years, and since the South Kaybob plant will be coming into operation later that contract is for a 14-year term ending at the same time as the 15-year contract.

Senator Isnor: The cost of construction per mile strikes me as being very high. Is that rough country up there?

Mr. Cooper: First, sir, there is a major bridge at the Athabasca which, of course, affects the average cost per mile. The country itself is not mountainous; it is rolling. I think we have a photograph which would give you some impression of it. The soil is not very stable so they cannot do too much cutting. They have to go around and out of the flats which comprise, in part, muskeg country.

Senator Isnor: Am I right in thinking that the cost per mile is higher than the average cost per mile of such construction?

Senator Bourget: It differs very much in different areas of the country. You can take the Trans-Canada Highway, for instance, where in British Columbia a mile cost nearly $2 million, whereas in other parts of the country a mile of road can be built for $150,000 or $200,000. I do not think you can have an average cost. It is very difficult because these costs depend on the condition of the soil, and things like that.

Senator Isnor: That is what I am trying to get at—the conditions. Do you expect to get the investment back over the 15 years?

Mr. Cooper: Yes, sir.

Senator Isnor: But, there is no guarantee?

Mr. Cooper: The traffic which is guaranteed is sufficiently great that the revenue from it will amortize the capital investment.

Senator McDonald (Moosomin): Have you any information as to the supply in both locations? Do you know over what period of years the resource might last? You have a contract for 15 years. What I am trying to get at is...

Mr. Cooper: It depletes, sir. I think it will be pretty well depleted at the end of the 15-year period.

Mr. M. Michaud, Mining Engineer, Department of Research and Development, Canadian National Railway: There will be another five years of operation at South Kaybob, but always on a diminishing basis. The actual sulphur production is quite high in the first years, and then it diminishes each year thereafter, and it may go on beyond 1982 for another five years.

Senator Bourget: This bill gives the C.N.R. a power to apply to the Minister of Finance for a loan. In the circumstances will the C.N.R. have to apply for funds, or can the C.N.R. out of its own funds do this work?

Mr. Cooper: At this time I think I would have to say that our plans are based upon borrowing the money, but that must recognize, firstly, that we will not have time to spend money on it in 1968, and, secondly, our capital budget for 1969 is neither fully prepared nor approved. So, for 1969 we have two indefinite things. One is what our capital expenditure program will be, and the other is what will be our source of available funds. So, at the present time we must say that we are planning to borrow the money but the future will tell whether we need to or not. Over the past five or eight years we have not borrowed for capital projects, but whether our expenditure program will force us to come back for loans, or go to the public for loans, is uncertain.

Senator Bourget: What is the interest rate charged on such a loan?

Mr. Cooper: I believe that the interest rate—which, of course, is set from time to time at the time of any borrowing—depends on the yields then prevailing for Government borrowings for a like duration at that time, to which a fraction of a point is added.

The Chairman: Mr. Cooper, would you like to go into some detail with respect to the financing sections, namely, sections 4, 5, 6, and 7?

Senator Pearson: Could I ask a question first, Mr. Chairman? If these two groups get a guarantee on freight rates from the company—I remember a somewhat similar situation at Esterhazy in respect of which we sanctioned the building of a spur line. The Esterhazy people are now putting in trucks to haul potash into the United States because there was a complaint that the rates were going up.

Mr. Cooper: I do not think, senator, that that branch line at Esterhazy required legislation on the part of the C.N.R. However, the competitive position with respect to potash and sulphur is very different. The market now and the foreseeable market for sulphur is such that no problem is expected.

Senator Pearson: We thought the same about potash when it started.

Mr. Cooper: Well, I believe they then cut the price on potash. When the potash plants were built they undoubtedly based their economics on the then prevailing freight rates, and I do not believe the freight rates have changed significantly. But, they started price cutting.

Senator Macdonald (Cape Breton): Mr. Chairman, I have one question.

You mentioned, Mr. Cooper, that you have a guarantee to carry 75 per cent of their production. Is there any guarantee of a minimum production by the companies?

Mr. Cooper: Yes, there is, senator. There is a guaranteed tonnage, and any shortfall of shipments in relation to that tonnage guarantee requires the payment of damages.

Senator Kinley: Are they likely to have much competition in the market for sulphur?

Mr. Cooper: Do they have much problem in marketing it?

Senator Kinley: Yes.

Mr. Cooper: I believe not. I believe the sulphur market on a worldwide basis is extremely good, and that the international programs for assisting under developed countries are creating a need for sulphur.

Senator Kinley: Where is the market now that you expect to invade?

Mr. Cooper: Canada has a fair share of the international market. Can you give us the percentage, Mr. Michaud?

Mr. Michaud: Out of 2.3 million tons produced in 1967 some 385,000 tons were used in Canada itself. The remainder was divided about evenly in shipments offshore and to the United States. The worldwide demand for fertilizers makes it such that the rise in sulphur is some 8 per cent annually.

Senator Kinley: Is there an American market for this?

Mr. Cooper: There is an American market, about one-third. One-third may be said to be offshore and the remainder is currently Canadian. There is a greater market in outlying districts in conjunction with potash for fertilizers.

Senator Aird: A partial answer to the question is that the worldwide position is really controlled by two very large companies. That is the market with which they are competing.

The Chairman: Perhaps Mr. Cooper will supplement the answer, because I observe that he has some figures which I think are of great interest to the committee.

Mr. Cooper: In 1967 the sulphur production in Canada was 2,320,000 long tons, of which to offshore markets—which would be the Far East, Japan, China, India, Australia—947,000 long tons were sold. We entered the United States market with 827,000 long tons. The remainder, about 385,000 tons, was sold in Canada.

The Chairman: Because of the great development occurring there, I am sure you would like to hear from Mr. MacIsaac, the chief of the development branch of the railways. Perhaps he would make a brief statement to the committee.

Mr. L. MacIsaac, Chief of Development, Canadian National Railways: I cannot add too much to what Mr. Cooper has already said. This line is now being built to serve two companies, one of which is coming into production by the end of November and the other of which is in production now. This whole area is very rich in gas, and we believe that in the next few years other companies will come into production there which will make this railway line a very worthwhile investment. As Mr. Cooper said, the Hudson's Bay Oil and Gas Company are doubling the plant we are talking about, and there are indications that other companies will undertake further developments in the area. We therefore look to a substantial volume of traffic over this line in the next few years.

Senator Kinley: You start with the captive traffic of these two companies.

Senator McDonald: Will this be a unit train operation?

Mr. MacIsaac: It could be eventually as volume demands. The arrangements now are that sulphur traffic can move in 10 car lots, 20

car lots and 50 car lots, at rates scaled accordingly.

Senator McDonald: What happens to the product when it gets to Edmonton? Where does the producing company export from to the United States?

Mr. McIsaac: Through several border points.

Senator McDonald: And overseas?

Mr. McIsaac: Overseas through Vancouver.

Mr. Cooper: If I may supplement that, I think that perhaps at the moment it would be impracticable for unit train operation because some of the product may be shipped in solid form and some in molten form, which requires two destinations, and your train consist would be forever changing.

Senator McDonald: For the overseas market is this sulphur stored at Vancouver? Are there storage facilities there? Where do they store the sulphur?

Mr. McIsaac: Dry sulphur is stored at the plant site.

Senator McDonald: Is this a seasonal market or is the market more or less over the 12 months of the year?

Mr. MacIsaac: I think it is over the 12 months of the year.

The Chairman: Does anyone desire Mr. Cooper to explain the sections in detail?

Senator Smith (Queens-Shelburne): These are standard sections.

The Chairman: They are in standard form. Are you prepared to report the bill?

Hon. Senators: Agreed.

The committee adjourned.

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

No. 3

Complete Proceedings on Bill C-116,
intituled:

An Act to amend the Post Office Act.

WEDNESDAY, OCTOBER 30, 1968

WITNESSES:

The Honourable Eric Kierans, Postmaster General; Mr. Paul Faguy, Deputy Postmaster General; Mr. Pageau, Director, Postal Rates and Classification Branch, Post Office Department.

REPORTS OF THE COMMITTEE

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

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

No. 3

Complete Proceedings on Bill C-116,
intituled:
An Act to amend the Post Office Act.

WEDNESDAY, OCTOBER 30, 1968

WITNESSES:

The Honourable Eric Kierans, Postmaster General. Mr. Paul Faguy, Deputy Postmaster General. Mr. Pageau, Director, Postal Rates and Classification Branch, Post Office Department.

REPORTS OF THE COMMITTEE

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

28961—1

THE STANDING COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators

Aird,
Aseltine,
Beaubien (*Provencher*),
Bourget,
Burchill,
Connolly (*Ottawa West*),
Connolly (*Halifax North*),
Croll,
Davey,
Desruisseaux,
Dessureault,
Farris,
Fournier (*Madawaska-Restigouche*),
Gélinas,
Gouin,
Haig,
Hayden,
Hays,
Hollett,
Isnor,
Kickham,
Kinley,
Kinnear,
Lang,
Lefrançois,
Leonard,
Macdonald (*Cape Breton*),
McDonald,
McElman,
McGrand,
Méthot,
Molson,
Paterson,
Pearson,
Phillips (*Prince*),
Quart,
Rattenbury,
Roebuck,
Smith (*Queens-Shelburne*),
Sparrow,
Thorvaldson,
Welch,
Willis—(43).

Ex officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 30, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Cameron, for second reading of the Bill C-116, intituled: 'An Act to amend the Post Office 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 Langlois moved, seconded by the Honourable Senator Dessureault, that the Bill be referred to the Standing Committee on Transport and Communications.

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

ROBERT FORTIER,
Clerk of the Senate.

28961—1½

MINUTES OF PROCEEDINGS

Wednesday, October 30th, 1968.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 8.00 p.m.

Present: The Honourable Senators Thorvaldson (*Chairman*), Aird, Aseltine, Burchill, Davey, Desruisseaux, Dessureault, Flynn, Fournier (*Madawaska-Restigouche*), Gouin, Haig, Hollett, Kickham, Kinley, Leonard, Martin, McDonald, Molson, Pearson, Quart, Rattenbury, Smith (*Queens-Shelburne*) and Sparrow–(23).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-116, An Act to amend the Post Office Act, was considered.

The following witnesses were heard:

The Hon. Eric Kierans, Postmaster General.

Mr. Paul Faguy, Deputy Postmaster General.

Mr. Pageau, Director, Postal Rates and Classification Branch, Post Office Department.

On motion of the Honourable Senator Pearson it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

On motion of the Honourable Senator Burchill it was *Resolved* to report the Bill without amendment.

At 9.15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds,
Clerk of the Committee.

REPORT OF THE COMMITTEE

Wednesday, October 30th, 1968

The Standing Committee on Transport and Communications to which was referred the Bill C-116, intituled: "An Act to amend the Post Office Act", has in obedience to the order of reference of October 30th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

GUNNAR S. THORVALDSON,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Ottawa, Wednesday, October 30, 1968.

The Standing Committee on Transport and Communications, to which was referred Bill C-116, to amend the Post Office Act, met this day at 8 p.m. to give consideration to the bill.

Senator Gunnar S. Thorvaldson (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are meeting this evening to consider Bill C-116, to amend the Post Office Act. This bill has come to us, having been passed by the other place. It received second reading in the Senate this afternoon and is before this committee now. May we have the usual motion to print?

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

The Chairman: Honourable senators, we are very pleased to have with us this evening the Honourable Eric Kierans, Postmaster General. We also have Mr. Paul Faguy, Deputy Postmaster General, and Mr. F. Pageau, Director of Postal Rates and Classification Branch.

Mr. Kierans, we are very delighted to have you, sir. It might be a timesaver if we indicate to you the challenges this bill had on second reading in the Senate, before you make a statement to the committee.

The Honourable Mr. Desruisseaux spoke on this bill yesterday and made some critical observations. Senator Grattan O'Leary made some critical comments this afternoon. It might be appropriate if these gentlemen would indicate to you what the challenges generally were, so as to define the problem.

L'honorable M. Desruisseaux: Monsieur le président, monsieur le ministre des Postes, il m'est un peu embarrassant de vous faire venir pour étudier cette partie du projet de loi qui concerne, dans la province de Québec particulièrement, et au Canada, les petits journaux.

J'ai proposé devant le Sénat que, avant d'approuver le projet de loi de la majoration des tarifs postaux, le Sénat devrait étudier les effets qu'auront ces nouveaux tarifs sur les petits journaux.

La Chambre a été saisie, un peu soudainement, par ce projet de loi, et j'ai cru bon de faire un plaidoyer pour la survie d'un bon nombre de nos petits journaux.

J'ai été moi-même pendant 12 ans dans le journalisme ayant publié un journal de langue française et un journal de langue anglaise. Je ne veux pas, toutefois, entrer dans les détails de l'opération d'un journal, mais, je crois qu'il serait utile de considérer plusieurs points de vue, lesquels je pense ont déjà été émis et même peut-être discutés dans l'autre Chambre, mais auxquels je voudrais ajouter quelque chose.

Je voudrais citer le sort d'un journal qui m'est particulièrement cher, le journal de langue anglaise de la région de Sherbrooke. J'ai cité au Sénat que, dans le cas du *Sherbrooke Daily Record*, la situation qui lui serait faite deviendrait difficile et peut-être intenable. Ce journal a une circulation de 8,856 copies, et le nombre de copies qui circulent par la poste est de 6,357 copies; ceci peut varier quelque peu avec les chiffres du ministère, dépendant de la date exacte où on les a pris.

L'honorable Eric William Kierans, Ministre des Postes: Je n'ai pas trouvé de grande différence.

Le sénateur Desruisseaux: Mais, cela comprend 72 pour cent de la circulation. Je crois inutile de vous indiquer que les Cantons de l'Est sont tout de même

dans un rayon de 100 milles–75 milles à peu près. La plupart des exemplaires de ce journal de langue anglaise, dans ce territoire, sont livrés à des cultivateurs, dans les campagnes. Il y en a très peu qui sont dirigés à des gens qui ont les moyens de payer un prix plus considérable que celui qu'ils payent actuellement.

De plus, j'ai représenté que ceci amènerait des difficultés, et ce n'est pas sans connaissance de cause, parce que j'ai eu moi-même à faire de la sollicitation d'abonnements qui ont atteint le chiffre de 10,000 lorsque j'étais à *La Tribune.* Or, je me rends compte que la situation qui existe pour le *Record* de Sherbrooke peut exister également pour *L'Évangéline,* pour *L'Action* de Québec–cela peut varier, naturellement–mais, c'est une situation qui peut compromettre l'avenir des journaux dans la province de Québec. Ces journaux ruraux, je crois qu'ils sont nécessaires pour l'information régionale, et qu'ils sont essentiels au progrès de la région; à moins de penser à étendre la circulation de ces journaux, nous courons sûrement le risque de produire des effets que personne ici ne désire.

Je comprends la sollicitude, comme je comprends l'anxiété du ministère des Postes de vouloir combler un déficit tel qu'il a, mais je me rends compte qu'il y a, dans le rapport financier, pour la matière de seconde classe, pour l'année 1969-70, je constate, dis-je, que le montant des recettes a été de $9 millions sur un total de 327 millions, ou à peu près–j'extraie ces chiffres du rapport. Or, je me rends compte aussi que, aux États-Unis, on a abordé d'une manière toute différente le problème des petits journaux.

The Chairman: Senator Desruisseaux, I wonder If you can frame your remarks in a question.

Senator Desruisseaux: I am coming to the point of the tariff that I mentioned along the lines of the tariffs that they have in the United States for small newspapers. In the first 150 miles they have a special tariff; beyond that they have another tariff. I would like to point out the differences.

The Chairman: Senator, I really would prefer it if you could frame your statement in a question to which the minister could reply to.

Senator Desruisseaux: I will be glad to. I would like to ask the following question: why would it not be possible to use the same system as they use in the United States, where the tariff is determined by radius and by zone? If we compare the two we can see that there is a difference. In the United States they pay 1.3 cents per pound. In the next zone, 150 miles, they pay 4.6 cents on advertising content and 3 cents on news. The proposed rate in Canada is 5 cents on news and 15 cents on advertising.

My question is why cannot this great increase be made in such a way that we can meet at least the tariffs in the United States? Another point is that all these increases are going to be put into effect within 18 months, and, if they are, the small papers will find themselves in a predicament. They will not be able to change their own subscriptions to people.

The Chairman: Honourable Mr. Minister, I thought perhaps it would save time if the Honourable Grattan O'Leary were to ask his question of you now. It is possible that his question may overlap with that of Senator Desruisseaux to a certain extent. Consequently, you may be able to answer them both at the same time. Are you agreeable to that?

Hon. Mr. Kierans: Certainly. You are throwing me to the lions right at the start, though.

The Chairman: Senator O'Leary, would you mind asking your question?

Senator O'Leary (Carleton): I have just a brief question. Last week, sir, in the other place, as we call it, you said that there had been great pressure put upon you by public opinion and by newspaper publishers to try to see to it that these increases did not come all at once but by stages. You were impressed with this, you said, and you asked your colleague, Mr. McIlraith, to move certain amendments, which he did, and those amendments are here in this bill. But now, with the bill before me, I find that at the bottom of these amendments providing for stages of these developments, there is this:

> (3) Notwithstanding subsection (2), (a) the minimum postage for a piece of mail consisting of one or more Canadian newspapers or Canadian periodicals described in paragraph (a), (b) or (c) of that subsection is two cents;

Hon. Mr. Kierans: That is right.

Senator O'Leary (Carleton): Will you tell me, sir, and the Senate committee, just what that means? I know what some of the publishers think it means. They think it means a doublecross. They were not advised of this when you said you wanted this changed

so that it could be brought in by stages, and Mr. McIlraith moved accordingly. They accepted that. But now you have brought in this bill. What do you mean by "notwithstanding subsection (2)"?

Hon. Mr. Kierans: Well, senator, the post office wants to move to a position where at least it can obtain a minimum for carrying newspapers in the country. That minimum will now be two cents. It has been a third of a cent in the past and it has been even less than that in some cases. It has been a very low rate. We did not stage the two cents. That is what that means. But we did stage the increases in the news content and on the advertising rates. So that that was a considerable–

Senator O'Leary (Carleton): That was a considerable increase.

Hon. Mr. Kierans: But it was also a considerable lengthening out. I remember the particular submission of the ethnic press from most newspapers across the country. They wanted this staged in terms of five years. My argument against that, senator, is quite simply that we recover such a low percentage of our costs. Let us say in such cases, if we recover 30 per cent of our costs and increase it by 50 per cent a year, well, that is an increase of 15 per cent net. But our costs have been going up at the rate of 25 per cent. You never catch up. I can assure you that they are not going to go up at a rate of 25 per cent next year. But under such circumstances they never catch up with the losses. The ethnic press in their particular submission pointed out that they thought a fair lengthening out might be a period of 18 months, because most newspapers have subscriptions of three years. If a newspaper wants to give away its paper by selling a seven-year subscription for $5 plus an atlas, or something like that, I do not think we have to give them special consideration. Normal subscription might be three years. Now half of three years is 18 months, and if one person has one month to go in his subscription to *Le Devoir* and another person has 35 months to go in his subscription, that makes an 18 months' average.

Senator O'Leary (Carleton): When these amendments were moved by Mr. McIlraith, did you explain to the house at that time that the two cents would go into effect immediately?

Hon. Mr. Kierans: No, the problem was that nobody in the Opposition asked me that kind of question that you are asking me now.

Senator O'Leary (Carleton): That will show you how smart the Senate is.

Hon. Mr. Kierans: When I introduced the amendments nobody in the Opposition even asked me what the effect would be on the overall bill. They did not ask me about the financial effects. And you can hardly expect me, senator, to volunteer information like that.

Senator O'Leary (Carleton): Well, you have a good looking Irish face, and I cannot understand why you would not explain it at the time. People have been saying to me, and even as late as today, that while this is an important measure they did not have the time to deal with this fact.

Hon. Mr. Kierans: They had the time, but they didn't do it. I was entranced with the way they were making comparison between myself and C. D. Howe, and speaking of arrogance and the pipe line debate and prophesying that the party was going to disappear next year.

Senator O'Leary (Carleton): Do I take it then that you think concealment was a good thing?

Hon. Mr. Kierans: It wasn't concealed. When you present a bill and you go into committee you expect the members of the Opposition to give it a going over. Let us say that you have got closer to the heart of the matter here.

The Chairman: If you will excuse me a moment, Senator O'Leary, I notice that the Honourable the Leader of the Senate is present. Senator Martin, would you like to ask any questions of the Minister?

Senator Martin: No, Mr. Chairman, as a member of the Government I strongly support this bill.

The Chairman: Senator Flynn, have you any questions?

Senator Flynn: I am satisfied for the moment if we get the answers to the questions already posed.

The Chairman: Senator O'Leary, I am sorry I interrupted you. You have not finished your questions.

Senator O'Leary (Carleton): Senator Langlois did an excellent job in introducing this bill in the Senate–and I am not saying this because he is a fellow Gaspésian–but he made the statement that over the past 10 years the Post Office or the Government of Canada or the

taxpayers had paid $300 million into the coffers of Canadian publishers. Now, I happen to be a publisher, or I was one, and I never saw any of that money. Do you really say paid $300 million to the publishers?

Hon. Mr. Kierans: To the second-class publishing industry.

Senator O'Leary (Carleton): That is not what he said.

Hon. Mr. Kierans: Well, I want to correct a statement which I made in response to some questions. I said the publishing industry, meaning by that everybody in the second class; I didn't mean newspaper publishers.

Senator O'Leary (Carleton): That is something else. This appeared in *Hansard*. It was said that $300 million was paid to these large newspaper barons, of which I don't happen to be one. Surely this is nonsense.

Hon. Mr. Kierans: This is second class. The amounts paid by the people of Canada to second-class publishers alone, and this includes publishers of all kinds of newspapers and magazines, resulted in a deficit amounting to $300 million over 10 years.

Senator O'Leary (Carleton): Would you not say then that the $300 million did not go to the publishers, but in the case of newspapers it went to subscribers?

Hon. Mr. Kierans: We could have an argument on that all right. Let me say quite frankly that I am not speaking of large city newspapers and I am not speaking of your newspaper, but, as you are aware, the economics of the publishing industry is such that the weekly newspapers and a great many rural papers have not really been looking for a return from subscriptions?

Senator O'Leary (Carleton): They look for a loss.

Hon. Mr. Kierans: In many cases they give it away. I can give many exemples of papers, some owned by Liberals, that are most critical of this bill. A very large newspaper, for example, may send out people looking for subscriptions. They may have to hire professional people for this purpose, and they tell them, "You can sell our newspaper for $5 a year for seven years and on that $5 we expect nothing. You yourselves will get 10 per cent of that $5 and the other 90 per cent will go to the people who call at the various doors." Now, I don't think this is quite right.

I also have in mind the problems of handling one particular newspaper in western Canada which sells almost 23 million copies a year in all kinds of weather conditions—hail, rain, sleet and snow. This costs money, and when you consider that it can cost as much as $112,000 you realize you are subsidizing somebody, even if the publishers pass it on.

Senator O'Leary (Carleton): But you were giving the impression to the public that this money went into the hands of the publishers, and you are now taxing the poor rural subscriber.

Hon. Mr. Kierans: We could have presented a bill to the public for $1,600,000. Instead we presented a bill for $100,000 and we absorb a deficit of $1½ million.

Senator O'Leary (Carleton): Well, we got none of that money, I assure you, and we lost money on every mail order we got.

The Chairman: Senator Langlois introduced the bill in the Senate and reference was made to a statement of his by Senator O'Leary (Carleton). I wonder if he would like to reply.

Senator Langlois: I want to set the record straight. What I said yesterday, and it is reported at page 371 of *Senate Debates*, is this:

> Over the past ten years alone the Canadian public has disbursed a total of approximately $300 million to publishers by way of a subsidy on second-class mail rates, . . .

And this includes all publications.

Hon. Mr. Kierans: That's right. The senator did not make the same mistake I made. But I happen to have said, and Senator O'Leary is right on this, one time when I was interviewed by reporters "to newspaper publishers," which would be wrong.

Senator O'Leary (Carleton): I am sure the minister knows very well that the newspapers lose money on these mail subscriptions. We subsidize the rural subscriber because we think he is entitled to information. We think he is entitled to the news of the world, and we sell our papers at $17 a year to such subscribers while the same paper sells in cities at $24 a year. If these new rates go into effect, sooner or later we will have to ask these people for at least $30 a year, and that is prohibitive. How can you justify denying these people the opportunity to receive a newspaper, a

principle which has been accepted since Confederation?

Hon. Mr. Kierans: I don't think we are going to deny them.

Senator O'Leary (Carleton): Well, they cannot afford it.

Hon. Mr. Kierans: Instead of raising it $10 a year, it can be raised $5; they will want to keep that subscription because of the advertising revenue.

Senator O'Leary (Carleton): We don't want to keep it. That is wrong.

Hon. Mr. Kierans: This is one of the bedrock principles on which we have worked. I am in favour if this is the way the people decide they should subsidize or give grants to cover transportation costs to the newspapers, particularly the five or six that Senator Desruisseaux has mentioned, but I don't think this subsidy should be hidden or mingled with postal rates. We are trying to run a service. We want to be paid for the service and the people who run the Post Office want to be paid. During the last year people have come to realize how important the postal service is. The employees feel they are no longer going to subsidize the Post Office by the low wages and salaries they have been getting. There is a question of pride and morale involved in the Post Office service and it is desirable to improve these. People are beginning to realize that the Post Office is a $400 million business. Supposing we were to balance the budget, I would be perfectly agreeable to support a movement in the house by the Secretary of State, Mr. Pelletier. It may be in the form of grants to the Council of Arts or to the CBC and in turn we could have an application of certain newspapers whose services are very costly, in areas such as rural areas; but then the people would know what these subsidies are, how much they are, and to whom they are going. Now, nobody knows.

Senator O'Leary (Carleton): You are a master of parliamentary debate and you are doing very well. Nevertheless the impression has been given abroad that this loss to the post office is due to newspapers. I asked the question of Mr. Langlois last evening: by what criteria do you arrive at your conclusion that you are losing so much by the carriage of newspapers? In fact, you have given us a table of figures. How do I know those figures are all right?

Senator Langlois: I answered that today.

Senator O'Leary (Carleton): But it was not the answer I expected of you, sir.

The Chairman: Order! Senator Prowse has a question.

Senator Prowse: I have two questions. The first is somewhat the same as Senator O'Leary's. I am very intrigued by the fact that you have the costs of operating the Post Office broken down into different categories of mail. How did you do it?

Hon. Mr. Kierans: This is quite easy. We handle almost five billion pieces of mail. I have given you figures, but this is a four-year study, following the Glassco Commission, which said that each class of mail should pay the cost of the service rendered. This was done by some of my officers here in the Post Office and it was also done by Touché, Ross & Sons outside the Post Office. They took the cost of transportation, overhead, rural route delivery, and these were affixed to each piece of mail.

I may tell Senator Prowse it was done very fairly from the point of view of the second-class mail. Aside from the actual freight of transporting large magazines and so on, they share all letter costs of the department on an item basis. In other words, a first-class letter bears the same overhead and the same delivery and certain other costs as the Toronto *Star* or the Ottawa *Journal.* If someone wanted to be really nasty he could say: "This newspaper is nearly a pound in weight whereas this first-class letter is only a fraction of an ounce therefore, more should be paid on the newspaper." But we did not do that. These costs are fair. I give you my firm belief in the fairness of them.

Senator Prowse: I am not suggesting that it was unfair or improper, but I was rather interested in how the costs were broken down. City newspapers are delivered directly by truck or by newspaper boys, but what about the service in a smaller community? I appreciate that you can calculate the number of hours officials are working, and I can see how you can base a country rate between point "A" and point "B", but how do you calculate in your costs the postmaster's time who must be there the full twelve hours?

Hon. Mr. Kierans: This is part of the general overhead administrative cost. The number of pieces of mail that go through that post office bear their proportion of the general office administration.

Senator Prowse: In other words, in effect it is a bookkeeper's arbitrary assessment of costs?

Hon. Mr. Kierans: You know that the cost is there because you are paying "X" number of dollars. Therefore, you apportion that "X" number of dollars to the number of pieces of mail that you handle.

Senator Prowse: Let me put it to you in another way. Supposing that all newspapers or a certain class of mail ceased to be shipped, would you reduce your postal costs by the amount shown as the cost of handling second class mail?

Hon. Mr. Kierans: There are two ways of replying to that, senator. One of the honourable members in the Opposition said that what was wrong with the Post Office is that it should get out and sell. I can tell you that when you are getting less than a cent for an item that costs 7 cents to handle, you had better not get out and sell too much, because you are going to lose more and more.

As to the second part of the question, that is probing deeper. You are suggesting that we would lose $112,000, and this is a net loss in cash. This is applying the principle that first-class mail, because we have a monopoly on this and have to deliver it to every home in Canada, should therefore bear all the burden of the overhead costs, indirect costs, and that all other sorts of mail are marginal to it because we are calling at your home anyway and therefore we may as well deliver the Winnipeg *Free Press* or the Calgary *Albertan* while we deliver the Bell Telephone bill.

We do not accept this principle, neither did Glassco or anyone else. All classes of mail are part of the function of the Post Office, to deliver that mail, and should bear a proportion of the cost. We have marginal operations. There are some things that are not essential to the Post Office, such as the Post Office Savings Bank, which you could justify if you could bring in more money from the operation than you paid out on it. The same applies to the postal money orders, which is a marginal service. But the mail you cannot justify.

It could be done in a different way. I could have done nothing about second-class mail and have put the first-class mail up to 7 cents, and we would have had approximately the same profit picture. Or we could have changed the third-class mail, but we left it alone. We said we are going to recover on second-class mail, because this has been the basis on which Canada was founded–communications, the railways, from coast to coast, the iron link, and so on. They were the two links. The newspapers were the printed word but nowadays it is not the only means of communication. The news of this committee meeting tonight in Ottawa could appear on television or radio at 11 p.m. tonight and not be in the newspapers tomorrow morning and still 90 per cent of the people of Canada would know the result of this meeting.

Senator Prowse: We received a financial statement showing these postal adjustments. On page 12 in the second-last column it gives particulars of second-class mail for 1967-68, and shows daily newspapers at $1,632,333.

Then there is *Reader's Digest* and *Time* Magazine, the total deficit for the two will be $1,522,097. In other words, the Post Office is going to subsidize *Reader's Digest* and *Time* by reducing the carrying part of their costs to approximately the same figure, within $100,000 of what they are going to give for subsidy of the daily newspapers in Canada.

Hon. Mr. Kierans: We deliberately put the figures of *Reader's Digest* and *Time* Magazine in there, knowing the interest that members of the house and of the Senate have in that. *Time* Magazine and *Reader's Digest* are paying exactly the proportion of the cost that we are attempting to recover from the magazine industry as a whole. *Time* and *Reader's Digest* are not being singled out in any way, and this is in line with the O'Leary Commission. They are being singled out because of the definition of Canadian publications that are in there. They are not being discriminated against within their class.

Actually, it turns out that the 31.7 and 34.3 which the two magazines are paying comes exactly to 33 per cent, which the magazine part is paying. I cannot tell you right now whether *McLean's* is above or below that 33 per cent, but all of these rates, as they affect a particular magazine, depend on its format, size, publication, weight and such things. So some cost a little less and some a little more. They are not considered in the same class as daily newspapers. The problems of the magazine industry are considerably different. The kind of competition they have is not the kind of competition the daily newspaper faces. You cannot say that in Ottawa the Ottawa *Journal* and the Ottawa *Citizen* have a monopoly. Between the two, they share a common market but that market is not being hit at by the flood of American magazines, and though there may be fierce competition between the two it is of a different order. So the newspapers are not subsidizing *Reader's Digest* and *Time Magazine.* But the Canadian people are subsidizing the magazine industry to the extent of 67 per cent, and they are going to be subsidizing the newspaper industry to the extent of a little over 27 per cent, and of course the weekly newspapers to the extent of something around 87 per cent. But these are different costs and you cannot compare

the competition of the daily newspaper with that of *Time* or *Reader's Digest.*

Senator Prowse: Where do you calculate the newspapers would get the necessary additional income from to meet additional costs of business?

Hon. Mr. Kierans: With the exception of the six or seven cases Senator Desruisseaux mentioned–there are about six, three French-speaking newspapers in particular, the Sherbrooke *Daily Record* and two or three other English-speaking newspapers which will be hard hit–the majority, although there are exceptions, can cover it by reason of subscription rates, although not completely. Let us take the Winnipeg *Free Press.* If it has a total circulation of about 115,000, of which 3,000 go to rural readers, it can spread; instead of raising the Winnipeg *Free Press* subscription rate by, $20 or $25, it may be raised $5 or $8 and part of it is subsidized by the rest, if it considers it worth while to keep the 3,000 people. Looking at the rural areas, we went very far in maintaining the subsidy to weekly newspapers, as you can see, and also in giving back the rural routes to them.

Senator Argue: I have two or three questions centered around the effect of this legislation on rural weekly farm publications in Western Canada, such as the *Free Press Weekly* and *Western Producer,* but I should be quite happy to confine my questions to the *Western Producer,* which is farmer-owned and farmer-distributed. I would think the vast majority go into mail boxes in hamlets and villages where farmers come in and pick them up; there is no rural door to door delivery to any extent. I would like to know what this means to those papers.

Hon. Mr. Kierans: I have the figures here for the *Western Producer* which I can give. Shall I start off with, for example, *Farm and Country?*

Senator Argue: I just know about the *Western Producer* and the *Free Press Weekly* which go into the majority of farm homes.

Hon. Mr. Kierans: I will give two examples. Take *Farm and Country;* they came to see me, or they sent their lawyers to see me. It has a circulation of 118,500, of which 117,159 are mailed. Our cost of carrying that 19 times a year throughout the West was $150,000. This is not unreasonable for something like 2 ½ million copies. Do you know what we got from that $150,000? We got $3,489. The increase as it will affect them–they are not affected by the amendment, or very slightly–will be to $44,984, which means they go from $3,500 to $45,000, which is a tremendous increase. I agree that it is still less than one-third of our cost.

This is how that paper operates. It has a nominal subscription price of $1.50, but the lawyers admitted to me themselves that 98 per cent to 99 per cent is sold at 25 cents a year, not $1.50. The net effect of the increase in postal rates, great as they were–what we are changing here is the economics of weekly newspapers–is for them to change that 25 cent a year subscription to 60 cents. Are 19 issues of *Farm and Country* worth 60 cents or not? The *Western Producer* is the same thing. It costs us $162,000 out of $168,000 that we carried. Their nominal subscription rate was $1.50. I am not quite sure of my figures here, how much of that was free. A lot of them sell to co-operatives at bulk rates.

Senator Argue: I do not think they do in farming areas.

Hon. Mr. Kierans: Let us leave that one on aside. Take $1.50; they have to go up 73 cents a year, that is all.

Senator Argue: I just want to be clear about the 1 1/2 cents per issue. That is the total after the full three year period, etc. Is the total effect of this legislation to add 1 1/2 cents per issue for the *Western Producer?*

Hon. Mr. Kierans: Exactly. All I want to say is this. If you have been paying $1.50, is it worth $2.25 a year? Has a paper any right to say what they are selling is not worth $2.25 a year? These things can get translated into fantastic percentages. For example, $3,000 going up to $44,000 is 1,000 per cent. We had no business doing it at $3,000 in the first place. If we take that $3,000 and increase that by only 50 per cent it should be $1,500 more, and my cost would have gone up at best 10 per cent of $150,000, which is $15,000. Every minute we sit here talking, living and breathing we know we are getting worse in the hole. This has been the basic problem.

Senator Argue: This is not as bad from my point of view as I thought it might be. I would think the farmers can go to 73 cents per year if they need to. I think the Saskatchewan Wheat Pool that owns the *Western Producer* can go to 73 cents if it had to. Did you receive, Mr. Minister, any representations opposed to this legislation from the *Western Producer,* the Canadian Federation of Agriculture or the Saskatchewan Wheat Pool?

Hon. Mr. Kierans: The *Western Producer,* no; I do not think they sent anybody in. No, they did not.

Senator Argue: Did the Canadian Federation? It is the kind of thing that would suggest itself to me. Did they come and make some representations, in writing, verbally or otherwise, saying this would have an adverse effect on farm publications in this country?

Hon. Mr. Kierans: The strongest representations in that regard–even the *Farm and Country* when they came in were quite willing to discuss it–came from the *Free Press Weekly.*

Senator Argue: I ask this because there is quite a stinging editorial against what you have done in the *Western Producer,* I believe of september 19, making a great complaint. This does not impress itself on me nearly as much if the complaint of the newspaper was not directly forwarded to you, or made by somebody coming here, or at least getting on the telephone.

The next thing I would like to know is whether Charles Gibbings, President of the Saskatchewan Wheat Pool, or anybody else on their behalf, made any representations opposing what has been done? I think this is exceedingly important. If the owners of the newspaper and the editors have not made formal representations, I think we are just whistling.

Hon. Mr. Kierans: I know Charlie Gibbings, but I never heard from him at all.

Senator Argue: Nor anyone else from the Saskatchewan Wheat Pool that you can recollect?

Hon. Mr. Kierans: Not that I can recollect, no.

Senator O'Leary (Carleton): The *Free Press Weekly* has been mentioned. In the other house, and I think in our house, it has been suggested that all these are very wealthy people. I happen to know that the Winnipeg *Free Press Weekly* last year made no money. I am sure many of you are also aware that the *Family Herald and Weekly Star,* an old and very respected paper, went out of business. What will happen to other papers like that? What will happen to the small rural weeklies? What will happen to the religious press? I am concerned with the religious press. What will happen to that? They depend entirely on mail deliveries.

You have made a case for your increase. You have said that percentages do not mean anything because you start from a low figure, and I think that is true. You say it is good business to run the Post Office at a profit, or nearly a profit, and wipe out the deficit. Would you say that running the Post Office at a profit was more important to the national life than the newspapers which may be destroyed by this legislation?

Hon. Mr. Kierans: To answer the first part of your question I am going to quote:

> In the main, farm papers are faced with more fundamental problems than those of foreign competition in its various forms. Their very raisons d'être are threatened by the decline in rural population and the urbanization of those who remain–due largely to the impact of TV, radio and other media. The tastes, habits and desires of the rural family are coming more and more into line with those of the urban family and the communications media are becoming common to both. Furthermore, with the increasing ease of travel, there is a growing shift in the shopping habits of the rural family. They are gravitating more and more toward the city, even for their weekly food requirements.

Now, that was Senator O'Leary (Carleton) in the O'Leary Report. What I want to say to you, senator, is that I agree with you thoroughly that the problems of the rural press are much more fundamental than the subsidies of the post office. I agree that something has got to be done here, but they are television; they are changing habits; they are radio; they are changing interests; they are the growing urbanization of this country.

Although I am sorry that the *Family Herald* went out, one thing I am very glad about is that it went out two or three months before this bill came in, because there isn't a newspaper that will go out from now on that I will not be blamed for. The fact is, however, that they have been going out at the rate of 50 a year.

Senator O'Leary (Carleton): Surely, a gentleman of your intelligence is not going to compare what is called electronic journalism with real journalism? You might as well speak of electronic poetry. There is no such thing as electronic journalism; and yet your Government is paying $140 million a year in subsidies. What have you to say about that? May I ask one more question, and I will be finished with you? You spoke a moment ago about *Time* magazine. I am not blaming you too much, because you inherited this problem, but did you in this legislation regard *Time* magazine as a Canadian magazine?

Hon. Mr. Kierans: It is not so defined, but let me say what I did not regard it as. I do not feel that discrimination against *Time* magazine or *Reader's Digest* is going to solve the problems of the magazine industry.

Senator O'Leary (Carleton): I am not so sure I agree with you. I brought in a Royal Commission report, as you know. I don't know where it is now, but somebody once said that if Moses had been a Royal Commissioner the Israelites would still be in Egypt. So I am very philosophical about it. I imagine that is what happened to my report.

When you say that *Time* is a Canadian magazine, you are contradicting Mr. Henry Luce, who, under oath in this very building, said that *Time* magazine was not a Canadian magazine. I hope you talked to your colleagues about that, sir.

Hon. Mr. Kierans: It is so defined now. It has come out of that classification. To answer your question about the CBC, the argument can go both ways. I am not convinced of it either way, but it is not an argument for me to maintain losses in the post office because the CBC has losses.

Senator O'Leary (Carleton): I read your article the other night. I thought it was very logical and good, but it does not answer my question.

Hon. Mr. Kierans: But the point is that I am quite willing that somebody should provide the same kind of assistance, financially, to the publishing industry, if both houses deem it wise and good and in the interest of the Canadian people. I do not accept that this kind of assistance should be intermingled with postal rates. Let us make in both houses, the Senate and the House of Commons, a common decision to create a council that will provide subsidies to help certain parts of the publishing industry.

I think most people would generally accept that, because they know where it is going and both houses vote upon it every year.

Senator Desruisseaux: In spite of party lines, Mr. Minister?

Hon. Mr. Kierans: Well, if somebody wants to propose it, I am not arguing against it.

Senator O'Leary (Carleton): I would be the first to fight subsidy for the press. I do not believe in it. But what I object to is the claim made in all these statements that in some way you pay $300 million and you say, "all publishers"; but I think in fairness you should have made a distinction. That is why I asked the question last night, "Have you made a distinction between newspaper carriage and the carriage of other second-class mail?" And I do not think you have.

Hon. Mr. Kierans: All right, senator. I think you will appreciate this, and it never came out before, but one of the fundamental problems in that whole second-class situation is that you can call a lot of people publishers who are not publishers. They are simply called publishers because they are in that classification.

Senator O'Leary (Carleton): You mean that category?

Hon. Mr. Kierans: Yes, for example, CIL, the Royal Bank Monthly Letter and so on. Now, under the new definition, if you notice, over 2,500 of the 5,000 publishers who are presently in there—and this to me is a fundamental change much more so than the financial changes—more than 2,500 of them are being ripped out. They are going into third class where they belong. This is going to change the whole nature of that deficit and we will apportion it very much more clearly between the weeklies and the dailies, and the dailies will not come out badly in this, although the magazines will still come out badly.

Senator Sparrow: Mr. Minister, in discussion in both houses reference has been made to dailies and to weeklies. There appears to me to be a serious problem for bi-weeklies and tri-weeklies in population centres of over 10,000 people. In actual practice they are weekly newspapers in that category. This is the first question: would you explain to us what the effect is on them and if it is as bad as it sounds? And do you feel, from all the representations made to you and the studies that you have made yourself, that in fact you can assure us that no daily, weekly, bi-weekly or tri-weekly newspapers will in fact go bankrupt because of these increases.

Hon. Mr. Kierans: Well, the latter part of your question is hard to answer, senator, because there are papers going bankrupt every day for a whole host of reasons. They can go bankrupt for mismanagement or any number of reasons. There are marginal newspapers today which, without the effect of the postal increases, would go under anyway within the next year. Now, will this accelerate it? I think I would have to admit that this will put more pressure on them, but what I am thinking of is, and this is a global answer,

really, that I, as the Postmaster General, am faced with a certain problem and a certain challenge, namely $99.5 million this year, which is going to be $130 million next year. I am pushing this challenge off. It is distributed among 5,000 people. There are more than that, because it is in the third class, too. I am dividing up that challenge and saying, "Look, you are going to have to face your own particular challenge in adjusting to these new increases. If it is $41,000 for the *Farm and Country*, well, that is a challenge for you to adjust to, but my challenge is $99.5 million. So it is going to demand a good many of these newspapers to do their homework better and pay more attention to the operations of their businesses and so on.

I would like to say that there are various people whom I admire in the newspapers. I admire them all, in fact. I will tell you one thing, though: there are very many ways of getting newspapers across the country. Senator Desruisseaux has mentioned newspapers that have, by tradition, built up a large proportion of their subscription by mail. There are about six or eight of them. He has named at least five of the six or eight, and these are the ones that are going to have to adjust. On the other hand, you will find another newspaper, for example, *Dimanche-matin.* Pour moi, le directeur de *Dimanche-Matin,* c'est un génie! –une distribution de plus de 300,000 par semaine à travers la province de Québec, sans un seul timbre-poste. C'est un surhomme.

Sénateur Desruisseaux: A weekly on Sunday is easier.

Hon. Mr. Kierans: Nevertheless, senator, he closes down that weekly at 11 o'clock on Saturday night after the hockey games, but still the paper goes right across the province, because I have been in Seven Islands, Chicoutimi and all over the province on Sunday morning when the *Dimanche-Matin* was there, and there was not a single letter carrier or a postage stamp involved. These are problems or challenges that the people in the publishing industry are going to have to face up to.

Now, Senator Sparrow, what was the second part of your question?

Senator Sparrow: It had to do with bi-weeklies and tri-weeklies.

Hon. Mr. Kierans: Oh, yes. The definition is that if it is more than a weekly it becomes a daily. We have had too many classifications. We had 10 classifications but we have now got it divided down to three classifications for administrative purposes. If we said "bi-weekly," then we would find that it would move to a tri-weekly, and then where would it end? So anything more than a weekly is a bi-weekly. But you cannot say that these papers are losing their zoning privileges. They never had them.

Generally, there are very few complaints from the weekly newspapers. Some of the bi-weeklies and tri-weeklies will be hit roughly the same way as the daily newspaper.

Senator O'Leary (Carleton): Mr. Chairman, it is to be hoped that we can keep this discussion at least at the grade four level. The indication was that if you do not drive the papers into bankruptcy, the legislation might be all right. What kind of nonsense is it to introduce that in a committee like this?

Hon. Mr. Kierans: I did not introduce it.

Senator O'Leary (Carleton): No, and I think your answer was all right.

Senator Davey: I hate to involve myself in what is essentially an Irish civil war. Maybe we should just all sit back and enjoy it. I do not agree with everything that the senator has said this evening, but I must say I am inclined to share his views on *Time* magazine and *Reader's Digest.* I would like to return the discussion to that aspect for a moment or two. *Time* magazine and *Reader's Digest,* for the purposes of this legislation, are being treated exactly the same as if they were both Canadian magazines.

Hon. Mr. Kierans: They are out of the Canadian classification by definition. They do not come under it. They are being treated as magazines.

Senator Davey: If I understood you correctly, I think you said earlier that you would be against discriminating against those magazines. I do not want to put words in your mouth. I am just putting the question. Was this considered at all?

Hon. Mr. Kierans: Oh, yes I think that several things have happened in the last two or three years. I think on a straight examination of the facts you might be able to prove that *Reader's Digest* has been doing a very good job in Canada employing people, publishing here, printing here, developing their record business which is now considerable with exports to many countries in the world. They even sold part of their shares to the public. But to discriminate against them–I

don't think I have the same feeling about discrimination against tariff rates that I have about tariffs in particular. Protecting the Canadian businessman does not necessarily make him a better businessman. He has less challenges to meet. He may be more comfortable and he may be able to play more golf. But whether it is better for him . . .

Senator Davey: Well, so far as the publishing industry is concerned–and I think I could call it an industry–it is surely unique so far as advertising revenue is concerned, and it seems to me at least that this form of discrimination should simply not be there. Quite recently I have reread and restudied Senator O'Leary's (Carleton) report and I must say I think it is an excellent one and I cannot help wondering if in this legislation you could not really have gone further with those particular magazines. You say you did consider this at some stage in formulating your plans, and I certainly am not here to quarrel with the final decision, but I don't feel you have answered my question.

Hon. Mr. Kierans: I think I could answer a little more fully in saying this: I think the problems of the magazine industry are not so much the problems of themselves vis-a-vis *Reader's Digest* and *Time* Magazine but rather a problem of getting a percentage of the advertising dollar vis-a-vis television, radio and the newspapers. It is my understanding that while their situation has not improved that much, they are doing much better as magazines. In other words, I think they had less than two cents of the advertising dollar.

Senator O'Leary (Carleton): I remember when *Reader's Digest* had 40 cents of all magazines, and now it is 60 cents.

Hon. Mr. Kierans: These rates are going to help the magazine industry as an industry because of what we have done in third class, which doesn't fall under this bill. We have brought the third class mail to a break-even point. There is a loss there of $1½ million but there will not be that loss because of savings we are going to introduce next year. What has happened–you as an advertising man will realize this–is that as you hit the direct mail third class with an increase in postage rates, it is a much better percentage point than the increase in the postage rate on *McLean's* or some magazine like that. Therefore, a great many people who are advertising will begin to revise their opinion that newspapers and magazines are better off because they are so greatly subsidized and that this was a good way to reach the public, and they will think that perhaps it is not so good now because the impact on that class is really greater in its overall effect, although the percentages are not as great as on daily newspapers. The industry itself, I think, will do better.

Senator Davey: I am basically in sympathy with the resolution on this whole question of cost and, with all respect to Senator Desruisseaux and Senator O'Leary, it seems to me they skirt the whole question of advertising revenue. Senator Desruisseaux was speaking about the whole question in so far as newspapers would pass on the cost the public and presumably none to the advertisers. That would be the case with some of the figures, but it may be that the cost will be passed on to the advertising.

Hon. Mr. Kierans: That is right.

Senator Davey: At the same time, I think the position of the two magazines in question is dominating and is destroying the magazine industry in Canada from that special position.

Senator Langlois: I wish to ask the following question of the Minister for the purposes of the record–I know the answer because I have been studying the legislation. Mention has been made as to what will happen to religious publications following the new definition for newspapers in the bill. I would like the Minister to tell us what will happen from now on to political publications such as "Liberal Action"?

Hon. Mr. Kierans: Such publications are in the third class. All kinds of things, such as the Royal Bank circular, and religious papers will be in there. The *United Church Observer* is still there; it is a newspaper, an item of general interest; but the United Church Parish bulletin is out of there. It is the same with the *Catholic Register.* It is in there, but the St. Thomas Aquinas bulletin is not.

Senator Davey: "Liberal action" is third class.

Hon. Mr. Kierans: It is going to pay third-class rates–and nobody asked that question on the other side of the house.

Senator Pearson: Mr. Minister, can you tell us if you have any record of the difference in cost between the new transportation systems, by aeroplane and truck, as compared with the old railway service? Do they become a little more expensive?

MR. PAGEAU, DIRECTOR, POSTAL RATES AND CLASSIFICATION BRANCH, POST OFFICE DEPARTMENT: We have saved money since the railway services have been curtailed. The old way was

very costly because the trains left at times which were not suitable and on each occasion there had to be a mail car. We have saved considerably now. In regard to air mail transportation, as the first-class mail volume has increased the rates to Air Canada have been cut down considerably. It has gone down from $1.50 per ton mile to 50 cents.

The Chairman: I am in your hands as to where we go from here in regard to this bill. We have had a good discussion with searching questions and thorough answers. The bill is a comparatively lengthy one of sixteen pages. If there are more questions, of course we will continue with them.

An Hon. Senator: I move that we report the bill.

The Chairman: That is what I was going to ask. Do you want to go through the bill clause by clause?

Hon. Senators: No.

Senator Kinley: I listened to the discussion in the house this afternoon. We all regard Senator O'Leary (Carleton) as a splendid advocate, a man who knows the newspaper business, in which he has grown up. I was a little disappointed when he said that newspapers—the *Globe and Mail,* the *Ottawa Journal* and the *Ottawa Citizen*—and other publications were in debt. I thought he should have mentioned something about advertising. I was in the newspaper business for some years, with a small newspaper. We never made any money on subscriptions, we sent out and got them, but we had to pay more for them than we got in in subscription revenue. However, we made money on the advertising. Nowadays everyone is advertising—the banks, the trust companies, the liquor people, even the Government is advertising. Would many people in the newspaper business come here and say they are in financial trouble?

Senator Langlois: Even the Post Office advertises.

Senator Kinley: Yes, everybody advertises. The newspaper is only a vehicle. They carry the advertising which gives them the money. My experience in the newspaper business was not extensive. I had a political newspaper. I had to pay much of the expense of running elections, and I had so much to do that I sold it to a young fellow who is now doing splendidly with it. I know what he paid for it and I know what he wants for it now, so there must be some money in it somewhere, because his asking price for that business is very high.

The Chairman: Honourable senators, it has been moved by Senator Burchill that we report the bill without amendment. Is it agreed?

Hon. Senators: Agreed.

Hon. Mr. Kierans: Thank you very much, honourable senators. I have enjoyed my session with you. It has been my baptism of fire here.

The committee adjourned.

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Cunnar S. Thorvaldson, *Chairman*

No. 4

Complete Proceedings on Bill C-123,

intituled:

An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 15th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada.

THURSDAY, NOVEMBER 28, 1968

WITNESSES:

Mr. R. T. Vaughan, Vice-President of C.N.R. and Secretary of Air Canada. Mr. J. M. Duncan, Assistant General Counsel, C.N.R. Mr. H. Duncan Laing, Assistant Vice-President of Finance, Air Canada. Mr. D. F. Atkinson, Chief of Budgets and Cost Controls, Air Canada. Mr. W. G. Cleevely, Co-ordinator of Capital Budgets, C.N.R.

REPORT OF THE COMMITTEE

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

2069-1

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

No. 4

Complete Proceedings on Bill C-124,

intituled:

An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada.

THURSDAY, NOVEMBER 28, 1968

WITNESSES:

Mr. R. T. Vaughan, Vice-President of C.N.R. and Secretary of Air Canada. Mr. J. M. Duncan, Assistant General Counsel, C.N.R. Mr. H. Duncan Laing, Assistant Vice-President of Finance, Air Canada. Mr. D. F. Atkinson, Chief of Budgets and Cost Controls, Air Canada. Mr. W. G. Cleevely, Co-ordinator of Capital Budgets, C.N.R.

REPORT OF THE COMMITTEE

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

29219—1

THE STANDING COMMITTEE
ON
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators

Aird,
Aseltine,
Beaubien (*Provencher*),
Bourget,
Burchill,
Connolly (*Ottawa West*),
Connolly (*Halifax North*),
Croll,
Davey,
Desruisseaux,
Dessureault,
Farris,
Fournier (*Madawaska-Restigouche*),
Gélinas,
Gouin,
Haig,
Hayden,
Hays,
Hollett,
Isnor,
Kickham,
Kinley,
Kinnear,
Lang,
Lefrançois,
Leonard,
Macdonald (*Cape Breton*),
McDonald,
McElman,
McGrand,
Méthot,
Molson,
Paterson,
Pearson,
Phillips (*Prince*),
Quart,
Rattenbury,
Roebuck,
Smith (*Queens-Shelburne*),
Sparrow,
Thorvaldson,
Welch,
Willis—(43).

Ex officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Senate, Wednesday, November 20, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Bourget, P.C., that the Bill C-124, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Bourget, P.C, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Chairman.

29219—1½

MINUTES OF PROCEEDINGS

THURSDAY, November 28, 1968.

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

Present: The Honourable Senators Thorvaldson (*Chairman*), Burchill, Desruisseaux, Flynn, Fournier (*Madawaska-Restigouche*), Gouin, Haig, Hays, Hollett, Kinley, Lefrançois, Leonard, Macdonald (*Cape Breton*), McDonald, McElman, McGrand, Méthot, Molson, Pearson, Rattenbury, Smith (*Queens-Shelburne*), Sparrow and Welch. (23)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-124, "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada", was read and considered clause by clause.

On motion duly put, it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

The following witnesses were heard:

Mr. R. T. Vaughan, Vice-President of C.N.R. and Secretary of Air Canada.

Mr. J. M. Duncan, Assistant General Counsel, C.N.R.

Mr. H. Duncan Laing, Assistant Vice-President of Finance, Air Canada.

Mr. D. F. Atkinson, Chief of Budgets and Cost Controls, Air Canada.

Mr. W. G. Cleevely, Co-ordinator of Capital Budgets, C.N.R.

Replies to questions asked by Honourable Senator Hays, to be provided by Air Canada, were ordered to be printed as an appendix to these proceedings.

On motion of the Honourable Senator Leonard, it was *Resolved* to report the Bill without amendment.

At 11.15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

John A. Hinds,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, November 28, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill C-124, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada", has in obedience to the order of reference of November 20th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

GUNNAR S. THORVALDSON,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Ottawa, Thursday, November 28, 1968.

The Standing Committee on Transport and Communications, to which was referred Bill C-124, to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada, met this day at 9.30 a.m. to give consideration to the bill.

Senator Gunnar S. Thorvaldson (Chairman) in the Chair.

The Chairman: Honourable senators, we have before us for consideration the type of bill we have had every year for a long time, namely, Bill C-124, an act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the current year.

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

The Chairman: Honourable senators, we have with us this morning pretty much the same group of gentlemen from Montreal we had with us last year. I remember that last year this meeting was presided over by Senator Leonard, and we are glad to have Senator Leonard here this morning.

On my immediate right is Mr. R. T. Vaughan, Vice-President and Secretary of Canadian National Railways, and Secretary of Air Canada; Mr. J. M. Duncan, Assistant General Counsel of C.N.R.; Mr. W. G. Cleevely, Coordinator of Capital Budgets, C.N.R.; Mr. H. Duncan Laing, Assistant Vice-President of Finance, Air Canada; and Mr. D. F. Atkinson, Chief of Budget and Cost Controls, Air Canada. We also have with us a gentleman we see frequently, and we are glad to see him here, Walter Smith, Executive Representative of C.N.R.

I will ask Mr. Vaughan to make a statement, and then we will hear from some of the other gentlemen.

Mr. R. T. Vaughan (Vice-President and Secretary of Canadian National Railways and Secretary of Air Canada): Thank you, Mr. Chairman, and good morning, senators. May I say again that it is a great pleasure for me and the other officers of the two companies to appear before you and to endeavour to assist you in explanation and deliberation on this important piece of legislation, Bill C-124.

It is a technical piece of legislation which concerns, in the main, the financial arrangements which are required for the two national companies.

With your permission, Mr. Chairman and senators, what I would like to suggest, if it meets with your approval, is, as we have done in the past, that I ask the counsel, Mr. Duncan, to give you a brief explanation of the bill and then, following that, we will take whatever questions you wish.

The Chairman: Thank you, Mr. Vaughan. May we ask Mr. Duncan to speak to the committee?

Mr. J. M. Duncan, Assistant General Counsel, Canadian National Railways: Thank you, Mr. Chairman. Bill C-124, the Canadian National Railways Financing and Guarantee Act, 1968, is the current in a series of annual acts which cover the capital and other financial requirements of Canadian National Railways, and which, in form and principle, change very little from year to year.

Speaking in general terms with respect to what Mr. Vaughan has properly said is a very technical piece of legislation, its purposes might be said to be, firstly, the provision of statutory authority for the making by Canadian National of capital expenditures and commitments during 1968, and the first six

months of 1969; secondly, provisions relating to the sources of money required to meet those expenses; thirdly, provisions with respect to Air Canada borrowings from the Government, or with Government guarantees; and fourthly, the provision of moneys needed to meet any seasonal or annual income deficiencies of Canadian National or of Air Canada.

Because of the technical nature of the bill, and notwithstanding this committee's scrutiny of similar bills on previous occasions, I presume you would wish me to deal with its several clauses in order; and if that be the pleasure of the committee, I would propose to do so at this time.

Section 1 merely designates the short title of the act.

Section 2 sets out convenient definitions which really have not been changed for many years.

Section 3(1) covers Canadian National programs of capital expenditure for 1968 and the first half of 1969. Because of the practical necessity of programming and following through capital projects from one year to the next, and because of the delays that unavoidably occur in the handling of our capital budget and the related legislation, it has been found necessary, and it has been the regular practice, to cover not only the current year's program but also their continuation and projection into the first six months of the following year.

Accordingly, section 3(1)(a) covers the capital expenditures for the year 1968 to an aggregate of $264,400,000.

Subparagraph (b) of the same subsection covers the authority to make capital expenditures for the first six months of 1969 in discharge of obligations which were incurred prior to 1969.

Subparagraph (c) authorizes the new capital commitments prior to July 1, 1969 in respect of obligations that will come in course of payment after 1968.

Senator Leonard: Mr. Chairman might we stop there in order to ask a question?

The Chairman: Yes.

Senator Leonard: How much of paragraph (a) was in a similar clause in last year's bill, and at the same time how much of clause . . .

Mr. Vaughan: I see what you mean, senator. You mean taking section 3(1)(a) and (b) and (c) . . .

Senator Leonard: Yes, what was the amount for the first six months of 1968 in last year's bill. Would you also give the figure for the contracts? Those two figures should have some relationship to the $264 million, should they not?

Mr. Vaughan: It may not necessarily add up to it. In other words, all of paragraph (b) would not necessarily go up in there—only the portion that was used. Similarly, only the portion of (c) that was used and actually committed. . .

Senator Leonard: When you have the figures perhaps you would then give us an explanation as to why they are up or down.

Mr. Vaughan: Yes, I will check that point. I have it now. Looking at last year's bill under (b), there is a total of $80 million in section 3(1) (a), and for Air Canada $55 million.

Senator Leonard: That is $135 million of the $264 million you anticipated a year ago?

Mr. Vaughan: That is right.

Senator Fournier (Madawaska-Restigouche): Could I ask a question? What is included in "road property", roughly speaking?

Mr. Vaughan: Road property, senator, is the railway as you would see it—the right of way, the tracks, the ties, the fastenings, the bridges, the trestles, the ballasting, and all such things that go into the general facility of the railways's basic property.

Senator Fournier (Madawaska-Restigouche): Does that include the C.T.C.

Mr. Vaughan: Yes, that would include C.T.C.—Centralized Traffic Control. That is a method whereby you dispatch trains and regulate the flow of traffic.

Mr. Duncan: Subsection 2 of section 3 authorizes Canadian National to make public borrowings. . .

Senator Hays: Could I ask another question? Have you a breakdown of the °75 million for Air Canada?

Mr. Vaughan: Do you want to know the elements that go into making up that amount?

Senator Hays: Yes.

Mr. Vaughan: Yes, we have that. Perhaps we can proceed while that information is being looked up?

Mr. H. Duncan Laing, Assistant Vice-President of Finance, Air Canada: These amounts are for property and equipment. Shall I round the figures off to the nearest thousand?

Senator Hays: Yes.

Mr. Laing: $150,934,000 for property and equipment; $12,320,000 for additional inventory—materials and supplies; $8,500,000 for investment in an affiliated company, for a grand total of $171,754,000. Then you deduct from that internally generated funds of $73,-754,000, leaving you a net external financing requirement of $98 million, of which the $75 million is a component.

Mr. Vaughan: But he wants to know what is the breakdown of the $75 million. Most of it is for airplanes.

Mr. Laing: Oh, yes.

Mr. Vaughan: If you wish to know how many of each type of airplane, then we can get that information for you.

Senator Desruisseaux: Mr. Chairman, are these planes that are to be delivered shortly to Air Canada?

Mr. Vaughan: I beg your pardon, senator?

Senator Desruisseaux: Is that amount of $75 million for airplanes that are to be delivered in January or so?

Mr. Vaughan: Were the airplanes to be delivered commencing in January?

Senator Desruisseaux: Yes.

Mr. Vaughan: Yes.

Senator Leonard: How many dollars per plane is contained in this figure of $75 million. In other words, what did Air Canada actually spend in 1968 for airplanes?

Mr. Laing: $118 million.

Senator Hays: That was spent for airplanes last year?

Mr. Laing: Yes, for airplanes in 1968.

Senator Leonard: And they were mostly DC-9's?

Mr. Laing: Some DC-8s, but mostly DC-9s.

Senator Hays: How many DC-9s does Air Canada now own?

Mr. Vaughan: As of November 27th, there are 27 DC-9s.

Senator Hays: And those are delivered? Are there some on order?

Mr. Vaughan: There are some more on order, yes, sir.

Senator Hays: Do you know how many more?

Mr. Vaughan: Eleven on order.

Senator Hays: Eleven more?

Mr. Vaughan: Yes.

Senator Hays: DC-8s?

Mr. Vaughan: You want the total now?

Senator Hays: Yes.

Mr. Vaughan: As of November 27 there are 27 DC-8s.

Senator Hays: Of those what are the stretched out ones?

Mr. Vaughan: Of those, seven.

Senator Hays: Seven stretched out?

Mr. Vaughan: Of the long bodies, as they call them.

Senator Hays: And on order?

Mr. Vaughan: Thirteen DC-8s on order.

Senator Hays: Stretched out and others as well, or all stretched out?

Mr. D. F. Atkinson, Chief of Budgets and Cost Controls, Air Canada: Those are all stretched.

Senator Desruisseaux: Would this mean it is the normal procedure to order the planes before being authorized to spend the money?

Mr. Vaughan: No, senator. Perhaps I could go back and give a little explanation of this. I want to assure you, honourable senators, that no money has been expended or committed without the proper order in council or legislative authority. As you will notice, this bill covers an 18-month period. The reason is to cover the budget for the specific calendar year and at the same time enable the company to have a six-month lead-time in order to commit itself to contracts. No money goes forward without Parliament having approved it in the proper sequence. I assure you that is correct.

Senator Hollett: Does the $88 million for road property include the cost of the buses?

Mr. Vaughan: I cannot say whether it comes under that item or under "Equipment".

Senator Hollett: If it is not in that, where is it?

Mr. Vaughan: It would be in "Equipment".

Senator Hollett: Equipment?

Mr. Vaughan: Probably, yes.

Mr. Cleevely: That is right.

Senator Hollett: Could you tell me how many buses and how much the buses cost?

Mr. Vaughan: We have 16 buses. I cannot give you the precise figure. I think they run at about $20,000 a piece.

Senator Hollett: $20,000 a piece?

Mr. Vaughan: I think so, subject to correction. Is that all you wished to know about that?

Senator Hollett: Yes.

Mr. Vaughan: I should like to make another comment about the Newfoundland situation, but perhaps we could leave it right there at the moment.

Senator Hollett: I should be glad to hear it.

Senator Molson: On what additional types of aircraft have there been advance payments?

Mr. Vaughan: Other than the DC-8s and DC-9s?

Senator Molson: Yes.

Mr. Vaughan: We have ordered three Boeing 747's. That is a large aircraft not yet flying, but it will be this month. Air Canada has placed orders for three of those.

Senator Molson: Jumbos?

Mr. Vaughan: Yes, that is the parlance used for it.

Senator Leonard: What is the passenger capacity?

Mr. Vaughan: The passenger capacity of those planes, depending on the configuration, would be approximately 400.

Senator Leonard: How do you handle 400 passengers at any of our airports in Canada with their baggage and so on?

Mr. Vaughan: Air Canada will not obtain delivery of those planes until 1971. As you know, Air Canada neither builds nor designs all the airports and buildings. However, there has been consultation going on within the Department of Transport and Air Canada—in fact all over the world—dealing with this new generation of aircraft coming along. The advantage of large aircraft is not just to carry a big crowd of people; there are certain cost elements and savings involved. This is the reason the technology seems to be advancing towards this end. Also, I suppose you have heard about the supersonics. We are in an air age that has a rapid increase in its technology and improvements. You are right, senator, there will perhaps be congestion at some places, and there is now for that matter. Nevertheless, the company must be progressive and competent. These are the planes of the future and Air Canada is a company of the future.

Senator Molson: I do not think my question was fully answered.

The Chairman: Would you say which part was not answered?

Senator Molson: What other types?

Mr. Vaughan: I mentioned the Boeing 747.

Senator Molson: Yes, but has there been any advance payments on DC-10s, Lockheeds or any other aircraft?

Mr. Vaughan: No, sir.

Senator Molson: None at all?

Mr. Vaughan: No.

Senator Molson: The Concorde?

Mr. Vaughan: We have not ordered Concordes nor SSTs. The SST is a United States supersonic transport and that program is not advancing very quickly at the moment. The Concorde is also a supersonic aircraft which has been designed and is being constructed by Britain and France. That aircraft has not flown yet. Two or three years ago when the production of supersonics seemed to be imminent Air Canada did purchase queue positions, as they are called, but it was not an ordering of the aeroplane, nor had the company fully committed itself to buy the aeroplane. What we did was to obtain a queue position with a down payment of certain moneys, and if these aeroplanes are not produced we recover our money. We have not ordered these aircraft.

Senator Molson: I asked how much money had been advanced on other designs of aircraft than DC-8s and DC-9s.

Mr. Vaughan: You asked me what type first and I tried to answer that. I did not know you wanted the amount. If you wish to have the amount we will get it for you.

Senator Molson: Thank you.

Mr. Vaughan: The ordering of the 747s was for delivery in 1971 and the financial people will get the figure for me in a moment. You want to know how much money we have advanced for the ordering of 747s.

Mr. Laing: Is that at the end of 1967 or up to date?

Mr. Vaughan: Up to date.

The Chairman: Senator Molson, we will come back to that in a moment. We will pass to another question while they are looking for the answer.

Senator Desruisseaux: In section 3(1)(a) under Investments of the companies you have listed another $500,000. What would that be, sir?

Mr. Vaughan: What are those other companies?

Senator Desruisseaux: Are there many of them?

Mr. W. G. Cleevely, Co-ordinator of Capital Budgets, C.N.R.: Two of them we have a 50 per cent interest in—there are two in the United States, Chicago and the Belt Line Chicago, and these are terminal roads. We have 10 per cent interest...

The Chairman: The acoustics in this room are very, very bad. Would you speak slowly, please.

Mr. Vaughan: Perhaps I could explain. The companies involved in this investment are the Toronto Terminal Railway Company which is jointly owned by the Canadian Pacific and Canadian National in Toronto. This is the Union Station on Front Street. That is the Toronto Terminal Railway Company. The other one is the Northern Alberta Railways, and it is jointly owned by Canadian National and Canadian Pacific. The next one is Chicago and Western Indiana Railroad. That is a terminal railway company which many United States companies participate in because of facilitation of traffic in Chicago, and we own 20 per cent of that company, I believe. Therefore, we have an apportionment of any expenditures required. The other one is the Belt Railway Company of Chicago and the total of our participation in these other companies is $500,000.

Senator Desruisseaux: I was hoping that something would be mentioned about the New York situation in the way of a terminal.

Mr. Vaughan: You are speaking now of...

Senator Desruisseaux: The terminal facilities for Air Canada.

Mr. Vaughan: Yes. There is quite a bit of congestion there, as we well recognize. The company operates at Kennedy Airport. You may have noticed that there is new construction going on there and Air Canada is in participation with BOAC and is constructing a new building there under the jurisdiction of the New York Port Authority.

Senator Desruisseaux: Is this in here, sir?

Mr. Vaughan: This would be in Air Canada's capital budget. Perhaps you understand, this legislation is the final piece of legislation that picks up from where we left off last year and implements by statute the particular borrowings that may be required by the two companies.

Senator Hays: Mr. Chairman, probably there are other places where I could obtain this information and I apologize if I have not done my homework properly. I would like to know the number of Vanguards that Air Canada has and the phasing out of these planes, how much they are written off and what your recovery is and whether they are being used for freight purposes.

Mr. Vaughan: We have 23 Vanguard aircraft right now. Those aircraft are going to be written down and will be written down in the very near future.

Senator Leonard: Written off or written down?

Mr. Vaughan: Written down to practically zero.

Mr. Laing: The residual $50,000 each.

Senator Hays: How about the Viscounts? You have on order 11 DC9s and 13 DC8s. When you receive these, will this phase out all the Vanguards and Viscounts as far as passenger traffic is concerned?

Mr. Vaughan: Perhaps we can answer that in a general way. These propeller airplanes will be obsolete in due course, and I am not sure of the particular phasing in 1973-74, as to whether we have any Viscounts in operation then or not. But, in any event, senator, the propeller airplanes, which are the Viscounts and Vanguards, will be phased out of service.

Senator Hays: My question was, you have now about 24 aircraft on order...

Mr. Vaughan: Yes.

Senator Hays: ...that you will be receiving in the very near future, I suppose, and you have 23—and was it 22—about 40 Viscounts and Vanguards?

Mr. Vaughan: Thirty-nine Viscounts and 23 Vanguards.

Senator Hays: Will these be phased out immediately, when the new jet aircraft come in?

Mr. Vaughan: No, not immediately.

Senator Hays: Will any be used for freight, or is it economical to use the Vanguard for freight?

Mr. Vaughan: We are examining right now, within the company, the Vanguard situation, whether, as you suggest, it could be properly used for freight or properly used in any other type of service. We have not reached a definitive conclusion on that yet, but we are examining the very matter you raise.

The Chairman: Gentlemen, may we now come back to Senator Molson's question? I think Mr. Laing was getting the answer to your last question, Senator Molson.

Mr. Vaughan: Senator Molson, on the Boeing 747's we have paid down, to date, $3.1 million. On the U.S. supersonics we have paid certain moneys, approximately $1.3 million, but it is subject to return, so that would be $1.3 million for the U.S. aircraft and $1 million for the Concorde.

Senator Molson: In the case of the Concorde, it could be returned if the order were not proceeded with?

Mr. Vaughan: Yes, sir. I do not have the legal agreements with me, but if the airplanes do not fly we get our money back. This was to protect our future position.

Senator Kinley: Mr. Vaughan, what is the experience with the railway land transportation in the Maritimes in comparison to the whole system? Do they have big losses in the Maritimes, or is it profitable there?

Mr. Vaughan: In our system accounting we do not segregate accounts by provinces but rather by regional groupings, so to speak. I am not certain of the overall situation in the Maritimes. There are certain services down there, as you know, that we operate on behalf of the Government of Canada—for instance, the ferry services between North Sydney and Port aux Basques and Argentia. Similarly, the ferry services on the Northumberland Strait we operate on behalf of the Government of Canada pursuant to certain estimates. Those services are again pursuant to certain terms of Confederation. With regard to those services you will see estimates that come forward in various appropriations, and those services are paid for in accordance with the conditions of entry into the union.

Senator Kinley: Do you mean they are all losing money?

Mr. Vaughan: If you wish to put it that way. I would not put it that way, exactly. These are services which Canada deems it should have. But if you talk to me about whether a ferry service between Point A and Point B is making money, the answer is "No."

Senator Kinley: They are not all losing money?

Mr. Vaughan: None of them are making money!

Senator Kinley: Let us take the Intercolonial Railway, so-called. Does that road pay you?

Mr. Vaughan: The Intercolonial, the I.C.R.?

Senator Kinley: Yes, the I.C.R.

Mr. Vaughan: Well, of course, senator, you have read the history of this as well. It is that the Intercolonial Railway and the route it took back in those days was not regarded as the best route; it took the long loop. But that railway line is carrying a lot of our freight and is a necessary element of our system. However, I do not have the figures broken down into those old segments of the railways.

Senator Kinley: Does the N.T.R. pay? You run it two ways.

Mr. Vaughan: Yes, that is correct.

Senator Kinley: Is that a paying part of your road?

Mr. Vaughan: It depends on which element you want to talk to.

Senator Kinley: I am told it is.

Mr. Vaughan: I would like to know what lies behind the question.

Senator Kinley: I am sorry, I did not hear you.

Mr. Vaughan: I said it would help me if I knew what lies behind your question, because we have overall, in the Canadian National system, a deficit. So, it is very difficult to say that the Maritimes region is making money and the others are not, because that is not in the densely populated part of Canada, and I am speaking mainly of freight now rather than passenger.

Senator Kinley: You have lowered the rates on your trains, *The Scotian, The Ocean Limited*, and so on. Is that a proper thing to do?

Mr. Vaughan: You are speaking of the passenger arrangements?

Senator Kinley: Yes.

The Chairman: Honourable senators, I can see we have a broad subject to discuss...

Senator Kinley: I know, Mr. Chairman, but...

The Chairman: Order!

Senator Kinley: ..but with regard to the railway, this is the only chance we have to talk to them, and we naturally must go far afield.

The Chairman: I must say this, Senator Kinley, that there will be ample opportunity to ask all the questions anyone wants to ask before this committee. If we have to adjourn and carry on for days, we will do so, but I do think that we should continue with the bill.

Senator Kinley: Mr. Chairman...

The Chairman: Order!

Senator Macdonald (Cape Breton): Let him finish, Mr. Chairman.

The Chairman: I am in the hands of the committee.

Senator Kinley: In the lower house there is a special committee to deal with these matters. Here this is the only chance we have to ask questions, when these people are borrowing the money, and if you cannot ask them then, when can you? I do not think you can accuse me of delaying the committee. This is the first time I have spoken in this committee, and nearly everybody has spoken, but I think we are perfectly in order in finding out what the railroad is doing. I only want to find out about this because in the Maritimes it is the big question. I want to find out if the railroads are performing properly or not with regard to the services between Prince Edward Island and New Brunswick, Newfoundland and Nova Scotia, and Nova Scotia and the United States. They are always loaded with passengers and freight, and I cannot see why they should have a loss.

The Chairman: Honourable senators, the chairman is in the hands of the committee. Senator Kinley is quite right. Every member of the committee should have an opportunity to ask all the questions he wishes about the railway and the air line. I think, however, the committee must proceed in such a manner that we can do this in an orderly fashion. Consequently, I would suggest that we ask Mr. Duncan to proceed with his statement, after which the meeting will be open for questions. Is that satisfactory to the committee?

Senator Macdonald: I have one question in relation to the ferry service between North Sydney and Port aux Basques, and it will not take a moment.

The Chairman: If questions are to be continued now, then Senator Kinley has the floor—that is, unless you are willing to wait until after the statement is completed, Senator Kinley.

Senator Kinley: Let me put it in this way: May I have a considered answer by the officials of the railroad to my questions after the meeting adjourns? I will put my questions, and they can be answered afterwards.

Mr. Vaughan: Certainly.

Senator Kinley: My first question is: Is the Maritimes a profitable part of the railway in comparison with other parts of Canada? My second question is: Do the ferries pay, and if they do not pay, why not?

The Chairman: Thank you, senator. We will definitely come back to those questions.

Senator Kinley: You see, Canadian National is concerned now with the sea, the land and the air.

The Chairman: Senator Rattenbury, in the light of our discussion, do you want to proceed with your question now or later?

Senator Rattenbury: No, Mr. Chairman, you have shot me down in flames.

The Chairman: Do you want to proceed, Senator Macdonald?

Senator Macdonald: Yes. Am I correct in my understanding that one of the terms of Union between Newfoundland and Canada is that Canada will provide ferry service to Newfoundland, and the Government has asked the C.N.R. to operate that service. Consequently, any loss sustained is not sustained by the C.N.R., but is covered by a subsidy from the Government of Canada?

Mr. Vaughan: That is correct.

The Chairman: Honourable senators, may I now ask Mr. Duncan to proceed to the conclusion of his remarks, after which the field will be open for any questions you want to ask.

Senator Desruisseaux: I am sorry, Mr. Chairman, but with respect to section 3(1)(b) there is, for instance, in (b) the words:

> to make capital expenditures not exceeding in the aggregate $75,000,000.

This is an unsplit figure, and so is the figure of $90 million in paragraph (c). Is Air Canada's investments sharing in this? Is there an element of investment in this?

Mr. Vaughan: No, there is a further section in the bill—you will see that section 7(1) refers to Air Canada.

The Chairman: Mr. Duncan?

Mr. Duncan: Section 3(2) authorizes Canadian National to make public borrowings in respect of certain specific items in connection with the capital requirements, mainly in respect of advances to Air Canada and in respect to branch line construction, and also for the purpose of repaying to the Minister of Finance any loans which are made by him to Canadian National for either of the above purposes.

Section 3(3) requires that the annual report of Canadian National will record the amounts of any such borrowings.

Consistent with the practice of overlapping annual authorities—this is what Mr. Vaughan was referring to earlier—section 3(4) requires that the capital expenditures authorized to be made for the first six months of 1969 will be included in the current year's portion of the 1969 budget.

Section 3(5) similarly requires amounts to become payable under the capital commitment made pursuant to the authority contained in section 3(1)(c) must be included in the budget for that year in which the payment will become due. Thus, each year's budget will disclose all of the capital expenditures to be made in that year, notwithstanding the fact that some of those expenditures will inevitably relate to commitments authorized and made in previous years.

Section 3(6) limits Canadian National's capital spending authority to the purposes mentioned in section 3, and specifically provides that expenditures made under authority of that portion of the act of 1967—that is, last year's act—which cover the first six months of 1968 will be deemed to be expenditures made under the current year's portion of the 1968 act.

Section 4 also serves a number of purposes which in this case are related to the sources of capital funds. Subsection (1) authorizes and governs the issuance of securities required in the case of any public borrowings under subsection (2) of section 3. Subsection (2) of section 4 requires that certain internally generated funds will be used to meet approved capital expenditures. Subsection (3) fixes at $91 million the amount of the public securities that may be issued for the purposes of this act, or of the portion of the preceding year's act relating to the first six months of 1968.

The figure of $91 million represents the aggregate of the following items: branch lines, $10 million; investment in Air Canada, $75 million, as it appears in section 3(1(a); plus a further $6 million related to branch lines provided for in paragraph (b) of section 3(1). Thus, consistent with subsection (2) of section 3, Canadian National's total borrowings under the authority of the act are limited to $16 million for branch line construction, and $75 million to service capital requirements of Air Canada. All of our other capital requirements of Canadian National are to be met without borrowing.

By section 5 the Government is authorized to guarantee the securities which I have been referring to, and by section 6 procedures are established to govern the custody of the proceeds of such securities, and their application to the intended purposes.

Section 7 has been added to this bill to serve a purpose that had not been previously provided for, namely, the borrowing of . . .

Senator Pearson: Mr. Chairman, could we have some order. I cannot hear.

The Chairman: Yes. Order, please.

Mr. Duncan: Section 7 provides for the borrowing of capital moneys by Air Canada in its own name, either by way of loans out of the Consolidated Revenue Fund or by a guaranteed public issue—that is, bonds and debentures, guaranteed by the Government of Canada. Section 7(4) provides that the aggregate principal amount of all such borrowings is to be fixed at $130 million, except that section 7(5) makes provision for temporary coverage—generally, the short period of time which might occur when both the loans from the Fund and public securities issued to meet such loans would necessarily be outstanding. In other words, there will be an overlapping period.

Subsections (6) and (7) of section 7 govern the custody and application of the proceeds of such guaranteed public issues.

Section 8 provides for the signature and the effect of such guarantees of CN securities or Air Canada debentures which are issued under the act.

Section 9(1) provides in respect of Canadian National for the making of loans out of the Consolidated Revenue Fund as an alternative to public issues. Section 9(2) limits the maximum aggregate principal amount of loans to the $91 million that is provided for in section 4(3). By subsection (3) of section 9 provision is made to regularize any temporary coverage of outstanding amounts which are necessarily incidental to the issuance of public securities to retire government loans.

The remaining few sections of the act are carried forward virtually unchanged, except as to effective dates, from previous Financial and Guarantee Acts and they may not require any more than just a passing mention.

Section 10 permits consolidation of the capital requirements of the constituent companies of the Canadian National system so that, while Canadian National Railway Company occupies the focal point and would be the borrower in respect of any financing, the needs of all the constituent companies of Canadian National Railways may be served. In effect the budget is that of Canadian National Railways and not only of Canadian National Railway Company.

Sections 11 and 12, which are identical in form, deal respectively with the Canadian National and Air Canada, and provide that at any time prior to July 1, 1969, when the earnings of the company or either of them are insufficient to meet the operating requirements, the Minister of Finance may advance moneys to cover the deficiency, subject to repayment to the extent possible.

Sections 13 and 14 continue special financial arrangements originally included in the Canadian National Railways Capital Revision Act, 1952, for a fixed term, which fixed term has since elapsed. For the past several years these provisions have been contained in every Financing and Guarantee Act.

Section 13 would relieve the company of the payment of interest upon a sum of $100 million.

Section 14 provides for the purchase by the Minister of Finance of preference stock in C.N. in an amount equal to three per cent of the system's gross annual earnings. This constitutes another of the sources of funds to meet the capital requirements.

Section 15 is another of the category of special clauses and implements the statutory provision that Parliament will appoint independent auditors to audit the accounts of the C.N. system.

That, Mr. Chairman, concludes my review of the bill.

The Chairman: Thank you, very much, Mr. Duncan. Honourable senators, if it is agreeable to you we will proceed to questions any of you may wish to ask. I would first ask Senator Kinley if he wishes to proceed with his line of questioning.

Senator Kinley: This is capital money. Is any of it used for maintenance?

Mr. Vaughan: Yes. On the road property, for instance, you would have certain moneys required each year for the maintenance of the property. Certain of it would be new track and that would be capitalized; a certain portion of laying the new track would be what you would call an operating expense. In accounting this is the method used. The answer to your question, therefore, is Yes.

Senator Kinley: Is there not a provision limiting the amount you can spend on sidings and branch railways without coming to Parliament?

Mr. Vaughan: I think you may be referring to the length of new branch line that we may build.

Senator Kinley: Yes.

Mr. Vaughan: That used to be six miles. The act was amended and we can now build a branch line up to 20 miles as long as we have the capital authorized. We can proceed with construction of a branch line up to 20 miles without the necessity of a special act of Parliament.

Senator Kinley: In this borrowing for the railroad your deficit is paid from Parliament separate from this altogether, is it not?

Mr. Vaughan: This legislation provides the authority to the Government to pay the deficit of Canadian National yes.

Senator Kinley: The Maritimes are very interested in this question of transport and it is nice to know that this is of benefit to Canada.

Mr. Vaughan: I should like to say that the Maritimes are of benefit to Canada. Senator Kinley, I am a Maritimer from Halifax, down near your home town of Lunenburg, and I have great affection for Nova Scotia, as I know you do.

Senator Kinley: Thank you.

Mr. Vaughan: There should not be any doubt about that.

Senator Kinley: I am all for the railroads, you know, but I like to see good business too.

The Chairman: Senator Rattenbury was next.

Senator Rattenbury: I took the opportunity to speak to one of the witnesses here, Mr. Laing, privately so I have really had my question answered. I did that in order to get on with the proceedings.

Senator Flynn: With regard to the expenditures authorized by section 2, we had Mr. Vaughan's assurance that no money was spent without proper authority having first been obtained. I should like him to be more explicit about the procedure, because I see that the national system is authorized to make capital expenditures not exceeding $264 million in the current year, 1968. We are now in December, and I suppose most of this sum has already been spent. I should like to have the machinery explained.

Mr. Vaughan: The procedure is that the Canadian National Railway Company and Air Canada about this time of each year would go through the process of preparing its capital budgets for next year. This is what we are doing right now at home, preparing the budgets for 1969. When that is done—and there is a lot of discussion about this across the system with the various officers—they go to the board of directors of each company. The boards of directors examine the budgets in detail and once the budgets are reviewed, approved or changed in some manner, they are submitted to the Minister of Transport and the Minister of Finance, pursuant to the Financial Administration Act, section 80, which is not now before you but is on the statute books. The budgets then go forward to the Government, and the officers of the company come to Ottawa and explain in detail to the departmental officers and the ministers what is involved in those budgets. If finally the Government agree with them, the budgets are then submitted to the Governor in Council who will pass an order in council based on what has been approved. The order in council, together with the budgets, is then tabled in Parliament.

The custom in previous years was to accomplish all of this in the spring of the year if we could. Some of that time schedule has been changed. Last spring Parliament was not sitting. Following the tabling of the budgets pursuant to the Financial Administration Act, the budgets are translated if I may phrase it this way, into this piece of legislation which contains certain other things tha we have to do and we cannot get the money until you do pass this legislation. On this specific element of the budget that you refer to in Clause 3(1), most of that money will have been spent by now because we have to proceed with the maintenance of the railway. We do this on the basis of the custom and procedure of the Financial Administration Act and the order in council and the tabling of the budget in Parliament. This particular piece of legislation is required in order for (a) the Canadian National Railways to continue to have the Government purchase preferred stock; (b) to enable the Government to go to the Consolidated Revenue Fund to pay the deficit of Canadian National Railways; (c) it is required in order to provide for the borrowing that are shown here for Air Canada. Therefore, the legislation is very necessary. It is not an after-the-event matter at all I assure you.

Senator Flynn: I understand. Does it make much difference whether the bill is passed,

let us say, today or in two weeks, or if it had been passed two weeks prior?

Mr. Vaughan: You would do me a favour if you passed it today. We do need it because there are certain advances that must come from the Government pursuant to this legislation covering borrowings that Air Canada requires.

Senator Flynn: You mean ten days would make a big difference?

Mr. Vaughan: Yes.

Senator Flynn: I would like to know why. Since you have been authorized by other legal provisions to expend all this money indicated in Clause 3 (1), paragraph (a). What is the risk?

Mr. Vaughan It is the borrowing part. If I may take you ahead a bit, it has nothing to do with Clause 3 (1). If you look further in the explanations that Mr. Duncan was giving and if you look on page 4 of the bill, Clause 4 (3) you will see an amount there of $91 million and that amount provides $75 million for Air Canada, $16 million for Canadian National. There are certain borrowings that Air Canada require from the Government by the end of the year.

Senator Flynn: I was merely asking if passage of the bill took place on December 15, what difference would it make?

Mr. Vaughan: It is very vital to us that its passage not be delayed.

Senator Flynn: The Government should have come up with this bill much prior to this time.

Mr. Vaughan: I ask that you not ask me to comment on what the Government should or should not do. Let me put it this way, to this point in time there is no difficulty because of the non-passage of it. To this point we have experienced no difficulty because of its non-passage.

Senator Flynn: But today it is very urgent?

Mr. Vaughan: But that is a relative term.

Senator Flynn: In relative terms—I accept that.

Senator Hollett: I understand you are speaking for Canadian National. I would like to ask you this question: From where does the Canadian National get the authority to dispense with the railway passenger service in any one province and put in $20,000 buses? Where do they get the authority from? Can they do it with any province, if they want to?

Mr. Vaughan: Senator, let me answer it this way. The Canadian National Railways, by statute, is directed to manage the affairs of the railway company.

Senator Hollett: Quite.

Mr. Vaughan: That, it tries to do in the best interests of Canada. It does that in compliance with all the legislation that exists relative to service.

With regard to your specific question on Newfoundland, there is provision under the National Transportation Act, which this Parliament passed a year ago, which contains now all the relevant sections of the Railway Act and the procedures that the railway company must follow in order to change or abandon a service. This applies to the Canadian Pacific and other railways as well.

In Newfoundland—and you referred to it as a province...

Senator Hollett: It is, I think!

Mr. Vaughan: Yes, it is, but I understood you to ask, do we have authority to abandon all the services in other provinces as well.

The Newfoundland situation was not approached on the basis of a province, but the fact that the railway there was all contained in one geographic location. We proceeded pursuant to the various statutes. There was a public hearing and various hearings before the Railway Committee of the Canadian Transport Commission, at which evidence was taken, and that commission, on the basis of the evidence, gave us permission eventually to abandon the railway passenger service pursuant to certain rules that were laid down in the order. Then we went forward and applied to the Public Utilities Commission in Newfoundland, if that is the correct description of that body, for permission to install a bus service. That is where we got the authority.

Senator Hollett: In other words, you got consent from the Public Utilities Commission in Newfoundland, is that it?

Mr. Vaughan: First of all, we got permission from the Canadian Transport Commission to change the service. Then, in order to put buses on, we went to the provincial body and applied and were granted permission to put the buses on.

Senator Hollett: I understand you lost $980,000 last year in Newfoundland in the rail passenger service. Is that the reason why this change has been made, because you lost $980,000? I think the loss last year of Canadian National was $35 million, or something.

Mr. Vaughan: I can understand your wanting me to discuss this, and I will endeavour to make comments that I feel proper in the light of the circumstances. All the evidence was given to the Commission. The particular figure you have mentioned, $980,000, or $918,000, was the loss for the particular year...

Senator Hollett: 1967?

Mr. Vaughan: Yes, 1967, I believe it was. But you must bear in mind that what prompted us to go forward with that was that there had been, I presume, losses in preceding years.

Senator Hollett: You "presume"?

Mr. Vaughan: Well, I know. There were—I will be definite...

Senator Hollett: Is that not true of all railways across Canada?

Mr. Vaughan: Let me then finish my line of thought here.

Senator Hollett: Yes, surely.

Mr. Vaughan: The company does not wish to go about taking services off or irritating the citizens. This is not our forte in life. We do not do this because of some maliciousness, or anything else like that. The company officers there thought this would provide a better service in Newfoundland, because there had been the Trans-Canada Highway constructed, there was a good road system being built in Newfoundland, and the company officers in looking at this and the time it took the train to go from Port aux Basques around to St. John's, together with the factor of this new highway, thought they could provide a better service, and this is the reason that prompted us to do this.

Senator Hollett: In other words, the people do not have to be consulted in any way?

Mr. Vaughan: "The people"?

Senator Hollett: Yes, the people.

Mr. Vaughan: I did not say the people were not consulted.

Senator Hollett: Were they?

Mr. Vaughan: There was a public hearing.

Senator Hollett: Where?

Mr. Vaughan: In Newfoundland.

Senator Flynn: The Transport Commission?

Mr. Vaughan: Yes.

Senator Flynn: Headed by Mr. Pickersgill.

Mr. Vaughan: No, headed by Mr. David Jones.

Senator Hollett: You would not call that a public hearing, anyway!

Mr. Vaughan: Please do not engage me in other things than this.

Senator Hollett: I am not blaming you at all.

Mr. Vaughan: We went and appeared before the Railway Committee headed by Mr. David Jones.

Did you hear about the storm the other day in the Maritimes?

Senator Hollett: We live in the Atlantic provinces!

Mr. Vaughan: This was a Canadian Press story. If you would not mind my mentioning it, there was a heavy storm down there, and the report reads:

> The snow clogged the Trans-Canada Highway, stopping most traffic, although C.N.R. buses successfully made transfer runs of train passengers between Bishop's Falls and Port aux Basques. The C.N.R. train Caribou, en route to Port aux Basques from St. John's, was halted by a rail washout at Bishop's Falls.

And the Canadian Press story goes on:

> It was a clear victory for the buses over the train.

Senator Hays: Mr. Chairman, I do not need the answers today, but if I could have them in due course I would be very interested—that is, if this information is available and is not privileged.

My questions are these:

How many hours did you keep the DC-8s in the air in the last fiscal year? How many hours did you keep the DC-9s in the air? How does this compare with other airlines—C.P.A. or QANTAS—if this information is available? What is your load factor in order to make a plane pay? How many runs do not pay? What

are these runs? What do you propose to do about it, if they are not paying?

Then I would ask some other information on personnel on the planes:

What are the personnel in DC-8s and DC-9s in relation to other airlines? What would you pay for first-class meals in relationship to other airlines; and are these tendered?

Mr. Vaughan: Yes, senator; we would be glad to undertake to look at all those questions and provide you with information we consider would not interfere with our competitive situation.

(For text of questions and answers, see Appendix "A".)

I would just say that I think Air Canada, in its utilization of aircraft, compares most favourably with other airlines.

Mr. Laing: A great deal depends on the route structure for which the airplanes are used. If you have long hauls you are going to compare very favourably.

Senator Hays: I realize that QANTAS would probably be able to keep a DC-8 or a 707 in the air because they have the longer runs, and so would CPA, but this information would be good to have.

Mr. Vaughan: Sometimes in comparing with other airlines, as Mr. Laing has said, you have to compare apples with apples, rather than apples with oranges, because of the difference.

The Chairman: Thank you. I understand that the answers to these questions will be supplied to the committee, and will be forwarded to Senator Hays.

Senator Rattenbury: And made available to the members of the committee?

The Chairman: Yes, and made available to the members of the committee.

Senator Flynn: Will they form part of the record?

The Chairman: If the committee wishes it, they will form part of the record.

Senator Flynn: Will they be supplied by way of letter, or will they be annexed to the minutes of the meeting?

The Chairman: Does the committee require that these be made an appendix to the record?

Hon. Senators: Agreed.

The Chairman: Was your question supplementary to Senator Hays' question, Senator Leonard, because...

Senator Leonard: No, it will be under a separate heading.

The Chairman: Very well. Senator Burchill?

Senator Burchill: I should like to go back to the railways again, and speak about the operation of Canadian National in so far as the northern part of New Brunswick is concerned. When the officials of the railway last appeared before this committee the president was present and so was Mr. Macdougall, and at that time I complained that the C.N.R. service from Moncton to Ottawa gave a very, very poor connection at Montreal.

The Ocean Limited at that time was routed where it should be routed, around the north shore of New Brunswick, and where it always had been routed from the time it was established.

Senator Fournier (Madawaska-Restigouche): Easy, now.

Senator Burchill: It arrived at Montreal ten to fifteen minutes after the train left from Montreal to Ottawa. So, we sat there in the station for two hours until we could get the next train to Ottawa. When I acquainted the president, Mr. MacMillan, with that fact he was a bit surprised. I have here a great deal of correspondence in respect to this matter. He fixed it very nicely so that the Chaleur which was substituted for the Ocean Limited arrived at 7.30, I think, and the Ottawa train left at 8 o'clock. That gave us a very nice connection. That was fine, and I was very pleased with what Mr. MacMillan did.

Now, according to this winter schedule the whole thing is back again where it was before. The Chaleur arrives in Montreal at 8.30, and the Ottawa train pulls out at 8, and there we are.

The Chairman: Thank you, Senator Burchill.

Senator Burchill: We are back to where we were before. We have no air service. We are dependent upon the C.N.R. Of course, you know how popular you are with the mayors of Newcastle, Bathurst, and Chatham, and so on for robbing us of the Ocean Limited. However, I am not commenting on that,

because the Chaleur gives us wonderful service, but I am concerned about that connection at Montreal.

The Chairman: Senator McElman, have you a question?

Senator Smith (Queens-Shelburne): Do we not get a response to Senator Burchill's question?

The Chairman: You did not ask a question, Senator Burchill. I thought you were making a statement. Is there an answer to this?

Mr. Vaughan: I remember that. It was two years ago when we were here that you raised that matter.

Senator Burchill: It was in the spring of 1967—March 31, 1967.

Mr. Vaughan: In any event, I remember it well, and I remember looking at it. I will endeavour to look at it again. What you are saying is that so far as your travel plans are concerned the service is inconvenient to you. The presumption should not be that everybody coming from your area is going to proceed to Ottawa.

Senator Burchill: That is quite true.

Mr. Vaughan: We endeavour to make proper connections in respect of our trains to the convenience of the passengers, but it is not always possible to have a train arrive at the precise moment that allows you to proceed on another one—to proceed on your journey to Ottawa. This is rather difficult.

There is an earlier train, is there not? The Ocean Limited is ahead of that. In any event, I know it would be inconvenient to you to have to wait. What they try to do with these trains is to give a proper inter-city service. If we held up the departure of the train for Ottawa we lose that market which leaves at 8.10 in the morning and gets here at about 10.15. If the train is waiting on the other then the competitive factor has gone entirely.

Yes, there is a train from the Maritimes that arrives in Montreal to meet that . . .

Senator Burchill: Yes, but it does not go through our territory.

Mr. Vaughan: This is the great problem in operating a service industry. I wish we could please all of the people all of the time.

Senator Burchill: My question is: Why was the time of the Chaleur changed? We were getting along fine.

Mr. Vaughan: Well, I cannot give you an exact answer at this moment, but there were reasons as to traffic and equipment requirements. We changed greatly after 1967. After the heavy traffic flow due to Expo we did make certain changes.

The Chairman: May we leave this subject and proceed, because we have limited time at our disposal. Senator McElman?

Senator McElman: I am very much impressed by the concern of those from the central and western parts of the nation over the DC-8s, and DC-9s, the stretched DC-9s, the 707s, and so on, but, coming from Fredericton, the only occasion upon which I have anything to do with those aircraft is when I hear the westerners talking about them.

Last year when, I believe, Mr. Vaughan was here with the president on a similar bill, I raised the matter of transportation to and from Fredericton, which is the capital of New Brunswick. I pointed out that we had no rail passenger service from either of the railways into that capital city. We had to travel in one direction approximately 27 miles by road to Fredericton Junction to get the C.P.R. train, or 20 miles in the other direction by road to get the C.N. train at McGivney Junction. I expressed the hope that Air Canada would try to give Fredericton the very best possible type of air service in lieu of the lack of rail passenger service. At that time I was told that there were on order a number of DC-9s in respect of which they hoped for early delivery. I thought I had the intimation that one of those early deliveries would be placed on the Fredericton run to alleviate the problem that exists between Montreal and Fredericton. I must have made a wrong assumption, because that never developed. I believe there have been additional deliveries of DC-9 aircraft . . .

The Chairman: What is your question, Senator McElman?

Senator McElman: I am coming to it, Mr. Chairman, if you will give me time.

My question is: Could we not now have some early commitment? I do not ask for it today, but I do ask for an early commitment that this provincial capital will be finally given jet service. I point out that the air strip there is capable of handling DC-9's. Could we not have some improvement in that service very soon?

Mr. Vaughan: Senator, I remember your remarks the last time we were here, and when I returned to Montreal I had the then president of the airline write to you, if I am not mistaken.

Senator McElman: I had a communication.

Mr. Vaughan: I will take note of your remarks and bring it to the attention of the operating and marketing officers of the company again and be in touch with you further.

Senator McElman: Thank you.

Senator Fournier (Madawaska-Restigouche): I am quite happy that the Ocean Limited should arrive in Edmundston at 7.30. We are quite happy with the new schedule. The Ocean Limited travels to Edmundston in the middle of the night, both ways, and we are happy. We are not asking for very much because we understand we cannot have every thing. While we are quite happy that the train should arrive at 7.30, surely you could find one to suit everybody.

Practically every year I have asked for an improvement in the transport service from the station here to the centre of the city. I do not know whether you read my remarks in the Senate last week. The transportation from the station to the city is certainly not what has been promised in this room by Canadian National, the N.C.C., the O.T.C., the City of Ottawa, and so on. Is there any prospect of improvement or is the answer that we must live with conditions as they are today?

Mr. Vaughan: Yes, senator, I did read your remarks about this the other day. I anticipated your question and took the trouble to find out something about it. We have been having difficulties there. As you know, the site is not as convenient as where the station used to be, when all the people had to do was walk across to the Chateau, which was very convenient. Now that the station has been moved we have had some difficulties with the taxi situation.

In any event, earlier this year we decided to dispense with the existing taxi concessionaire. We put out for public tenders for new taxi concessions at both the station and the Chateau Laurier. We wanted to incorporate in that a bus service performed by the taxi concessionaire, dedicated to travel between the station and the hotel. We did get a new taxi concessionaire and the contract for this service was let to Queensway Taxi, and the bus is part of it. Due to delivery requirements the new bus service will not be operating until about mid-December. That is the latest word I have on it. That will be in addition to the taxis. In the meantime the service requirements are being handled, we think fairly satisfactorily, by the Queensway Taxi and the city bus that drops people there.

The matter you raised the other day relates to our train arriving at 10.10 and the Canadian Pacific train arriving at 10.15. The requirements for these two trains alone vary from 50 to 100 taxis daily, and they have been providing these. On November 19, the day to which you referred in your speech in the Senate, the City of Ottawa experienced a severe ice storm which hampered driving to a serious degree. As a result, the taxi dispatcher was just unable to marshal all the cabs required to meet these trains. It was therefore roughly, I guess, half an hour after the arrival of the second train before the last passenger from the first train was able to be moved. I know this can be very irritating to you and we recognize it. Altogether, though, a total of 80 cabs were provided, but with the build up of these services it was not adequate to cope with the delay that ensued. In any event, we are aware of this problem and are trying to correct it.

Senator Fournier (Madawaska-Restigouche): I agree with some of your answers, but I must point out that this does not happen on only one day. Let me give you the example of what happened on Tuesday, two days ago. When I was travelling by taxi from the station to Parliament Hill, every 30 seconds the dispatcher was saying over the air that more cars were needed at the station, so for 15 minutes after the train had arrived there were people waiting for taxis. That was Tuesday of this week. This is happening every day. To get that confirmed you have only to ask those who use these taxis twice a week.

Mr. Vaughan: Well, as I say, senator, we are aware of it and it is a problem. We are going to try to correct it.

Senator Fournier (Madawaska-Restigouche): Will the buses be operated by the taxi people or the C.N.R.?

Mr. Vaughan: By the taxi people.

Senator Fournier (Madawaska-Restigouche): We have a little problem with the buses. In the morning the 8.10 train from Montreal to Ottawa brings the business people here. It arrives at 10.09, but there is a bus

that leaves the station empty at 10 o'clock while the passengers off the train have to wait until 10.30 for the next one. There is no reason why this bus could not wait until the train arrives.

Mr. Vaughan: The new bus will be dedicated to the train service as I explained. The new bus will be operated by the taxi people, not the city transport authority, and will be dedicated to meeting the arrival of the trains. That is the purpose of it.

Senator Fournier (Madawaska-Restigouche): Will its route be between the station and the city?

Mr. Vaughan: The station and the Chateau. It will also leave the Chateau dedicated to the departure of the trains. When we have this in operation I hope it will improve the situation.

Senator Fournier (Madawaska-Restigouche): I hope so too.

Senator Welch: What air service do you have going into Prince Edward Island at the present time?

Mr. Vaughan: There is no Air Canada service to Prince Edward Island. It connects with the now E.P.A., Eastern Provincial Airways, formerly the Maritime Central Airways.

Senator Welch: I take it that going from Ottawa to Prince Edward Island today you would have to change at Moncton?

Mr. Vaughan: If you were flying that is correct.

Senator Welch: Is there any hope of Air Canada going in to Prince Edward Island?

Senator Rattenbury: Heaven forbid! As things are now, if Air Canada goes in there you will really have a shemozzle.

Senator Welch: I understand we have a shemozzle there now.

Mr. Vaughan: There are regional carriers there, private entrepreneurs. You will readily understand that I want to be careful how I answer that question. If I satisfy you, I dissatisfy a host of other people.

Senator Pearson: Coming back to the bill, clause 2 (a) "National Company"—what is the division between the national company and the national system? Which one is in control? Are they the same board on both?

Mr. Vaughan: If you look in clause 2, "Interpretation", you will find:

> (a) 'National company' means the Canadian National Railway Company;
>
> (b) 'National System'...

Mr. Duncan: May I give you almost a legalistic answer, sir. Canadian National Railways is really not a corporate entity. It is a name given by the Canadian National Railways Act, to a group of companies constituting Canadian National Railways. Canadian ational Railway Company is one of those companies.

Senator Pearson: The "system" is the whole picture.

Mr. Duncan: It is Canadian National Railways, whereas the Canadian National Railway Company is one of the constituent companies.

Senator Leonard: I do not know whether Mr. Vaughan is in a position, or wishes to answer this. It does not matter if he does not. I would be interested in knowing the comparison between the net operating position of the railway this year, say, up to October 31 or September 30 compared with previous years.

Mr. Vaughan: Yes. Our deficit for 1967 was $35 million and we had budgeted for 1968, $35 million again. The current financial situation is that we would be on budget, and perhaps better than budget; therefore, we are in a slightly improved position this year over last year.

Senator Leonard: That is what I wanted to know. Thank you.

The other question I had—this is new authority to Air Canada, is it not, to do its own borrowing directly through the public?

Mr. Vaughan: This clause 7 on page 5 of the bill is a new section in the act. It has not been in the act before this. You will see that it gives certain discretions in there which will allow the Governor in Council to authorize or guarantee certain issues by Air Canada. This borrowing could be done in two ways. It could be done directly by Air Canada and not through the C.N.R. through the Government, in which case they work out the arrangements for the debentures and rate of interest. Furthermore, this would provide also, and it has not been decided, the ability for Air Canada to borrow from other than the Government, on the market, with the loans or debentures guaranteed by the Government.

Senator Leonard: The idea really being to take it out from under the wing, as it has been in the past, using the Canadian National Railway Company to do that financing for it.

Mr. Vaughan: In a certain respect. This is a change from before whereas all of the borrowings came through the national company. So that there will not be any misunderstanding I want to add that the matter of future financing requirements of Air Canada is now under examination as between the company and the Government and its financial officers. And, of course, we have a new administration which was elected by the board on Tuesday and this will be a matter which they will direct their attention to. I would rather leave it, that this matter is receiving consideration.

Senator McElman: Mr. Chairman, I would like to draw Mr. Vaughan's attention to a situation of general policy which is causing hardship with respect to some employees in the Atlantic region, and to find out if there is any possibility of a change in this policy, as to whether a hard decision has been reached. It has to do with the proposed lay-off of approximately 20 per cent of the C.N.R. police force across the country.

In an area such as Toronto this lay-off, I understand, will affect people with seniority of only a maximum of about 13 months. In the Atlantic region it is going to affect a fair number of your police with service of up to 10 years and, in one case, a constable with service of 23 years, because of the smallness of the force and the effect it has when you hit the 20 percent mark. As well it relates to the fact that in the lay-off that I believe was made in 1967, at a similar time of year, although many were taken back on in other regions, none was taken back on in the Atlantic region. So, we are getting into people with real seniority in terms of service. Because of the relative hardship involved and the fact that there are in the force approximately 20 men who over the next four or five years will go on retirement, would it be possible to reconsider this decision and, as these men retire, not replace them, but retain these men who have a fair level of service and are about to go on the street—I might say, in an area where there are not too many other employment opportunities?

Mr. Vaughan: Yes, senator, I appreciate your remarks. You understand that I would not know at this moment the detail of what discussions or questions or negotiations are going on relative to that particular work force; but I would like to say that I will be glad to look at it in light of the remarks you make. However, I would not want my remarks to be interpreted by any of the unions, if they hear about this, as an undertaking on my part today to reconsider anything that is in motion; but I will reconsider it in light of your remarks.

The company tries to be a good employer, and we do our best to be, but it is impossible for us to have a static employee levels all the time. We have to change our employee requirements in accordance with the traffic requirements, but there are certain union agreements involved, I presume, with these people you mention. I am not certain what clauses there are in those agreements that refer to severance or notice, or things like this, but on the point you make about long service people, I would like to say I will examine that.

Senator McElman: And you will advise me accordingly?

Mr. Vaughan: Yes. I do not think there have been any notices given yet, if I am correct; and I am not sure of your figure of 20 per cent. That does not ring a bell with me, but obviously you must have some authoritative information. In any event, I will look at it in light of your remarks.

The Chairman: Are there any further questions? Senator Kinley, do you have any more questions?

Senator Leonard: I move that the bill be reported without amendment.

The Chairman: All in favour?

Hon. Senators: Agreed.

The committee adjourned.

APPENDIX "A"

Question 1.

How many hours did you keep the DC-8s in the air in the last fiscal year?

Question 2.

How many hours did you keep the DC-9s in the air? How does this compare with other airlines—CPA or Qantas—if this information is available?

DAILY AIRCRAFT UTILIZATION—
DC-8 & DC-9 AIRCRAFT

	Average Revenue Take-off to Touch-down Hours Per Aircraft per Day—1967	
	DC-8	DC-9
Braniff	9.3	——
Continental ...	——	8.9
Delta	10.4	8.1
Eastern	8.0	5.4
National	10.4	——
Northeast	——	5.8
Pan American.	9.7	——
Trans World ..	——	6.4
United	9.9	——
Average	9.7	6.8
Air Canada	9.8	7.6

	Average Revenue Block-to-Block Hours Per Aircraft per Day—1966	
Latest ICAO Data		
Canadian Pacific	13.8	——
Qantas (B-707 aircraft)	7.3	——
Air Canada ...	9.9	7.0

Note: It will be noted that comparative aircraft utilization data for the year 1967 was determined on a take-off to touch-down basis, while the CPA and Qantas figures for the year 1966, the latest available, were calculated on a block-to-block basis, which, in effect, means ramp to ramp.

Question 3.

What is your load factor in order to make a plane pay?

Break-even Load Factor

The load factor required to break even depends upon the type of aircraft and the route. Unit prices vary to a limited degree by route and unit costs vary extensively by route and by aircraft type.

The two major aircraft types in Air Canada's fleet during 1967 were the DC-8 and the DC-9. Based on their deployment to routes last year, the break-even load factor was:

Standard DC-8 (133 seats)	48%
Long-bodied DC-9 (94 seats)	53%

Additional DC-8 and DC-9 aircraft have been added to the fleets during 1968 and break-even load factors are expected to be lower this year than last.

Question 4.

How many runs don't pay? What are these runs? What do you propose to do about it if they are not paying?

Unprofitable Routes

Air Canada maintains operating revenues and fully allocated costs for a segregation of 30 individual routes comprising its system operation. Based on this breakdown, 10 of the routes during the calendar year 1967 earned operating revenues in excess of fully allocated operating expenses, while 20 did not. However, of the latter 20, there were only 8 whose revenues failed to cover their direct route expenses which consist of direct flying costs, local station operations and district sales expenses. In other words, only 8 routes failed to make a contribution to Company indirect/overhead expenses. These 8 routes were a small proportion of the system, accounting for only 6.8% of the total route revenues. Having regard for Senator Hays' remarks concerning privileged information, Air Canada prefers not to reveal the identity of these routes.

Air Canada is continually taking steps to improve the Corporation's financial results on all routes by introducing more efficient aircraft, deploying them better, planning improved load factors, adjusting fares and rates and cost control generally, including the advantages inherent in more modern and efficient support facilities.

Question 5.

What are the personnel in DC-8s and DC-9s in relation to other airlines?

Crew Complements—DC-8 and DC-9 Aircraft

	Standard DC-8 (133 seats)	Long-bodied DC-8 (198 seats)	DC-9 (94 seats)
Flight Crew			
Pilots—All services	3	3	2
Navigators—Trans-Atlantic & Outer Caribbean Only	1	1	-
Cabin Crew			
Domestic	⅓	⅔	¾
Trans-Atlantic	5	7	-
Southern	6	7	4

On domestic services, an extra crew member may be carried on short-haul flights involving meal or bar service; further, an additional crew member may be carried as traffic circumstances warrant, such as in peak season periods when passenger loads are large, with a greater proportion of mothers and infants.

Air Canada crew complements are in keeping with standards in the industry generally for corresponding aircraft types and services.

Question 6.

What would you pay for First Class meals in relation to other airlines and are these tendered?

Within Canada, the majority of Air Canada's flight meals are purchased from one major supplier on a contract basis. The types of meals purchased are numerous and depend upon the time of day, type of aircraft, nature of the route and the flying time, to mention a few of the principal factors.

Units costs for meal service of any airline are influenced by standards of service, the length of the route and the incidence of flight meals served as dictated by the schedule. There follows a comparison of Air Canada with six U.S. trunk airlines and CPA for 1967:

	Flight Meal Expense Per Revenue Passenger Mile
American	.284¢ Cdn.
Braniff	.192
Delta	.234
Eastern	.227
Northwest	.222
Trans-World ..	.201
Average	.230
Air Canada ...	.227
CPA	.252

Throughout the system, Air Canada has contracts with over two dozen caterers. The compagny welcomes competitive quotations when contracts are being renewed, and, in fact, bids are considered at those locations where competitive catering establishments exist. However, at many major Canadian points, acceptable alternative suppliers who would be in a position to meet the Corporation's demand for quality and volume at competitive costs are at present non-existent.

First Session—Twenty-eighth Parliament

1956

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

No. 1

Complete Proceedings on Bill S-22,

intituled:

An Act to amend the Navigable Waters Protection Act.

THURSDAY, DECEMBER 13, 1956

WITNESSES:

Department of Transport: Jacques Fortier, Q.C., Counsel and Director of Legal Services; J. N. Ballinger, Chief, Aids to Navigation Division.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1956

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

No. 5

Complete Proceedings on Bill S-19,

intituled:

An Act to amend the Navigable Waters Protection Act.

THURSDAY, DECEMBER 19, 1968

WITNESSES:

Department of Transport: Jacques Fortier, Q.C., Counsel and Director of Legal Services. J. N. Ballinger, Chief, Aids to Navigation Division.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

29221—1

THE STANDING COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators

Aird,	Gouin,	McGrand,
Aseltine,	Haig,	Méthot,
Beaubien (*Provencher*),	Hayden,	Molson,
Bourget,	Hays,	Paterson,
Burchill,	Hollett,	Pearson,
Connolly (*Ottawa West*),	Isnor,	Phillips (*Prince*),
Connolly (*Halifax North*),	Kickham,	Quart,
Croll,	Kinley,	Rattenbury,
Davey,	Kinnear,	Roebuck,
Desruisseaux,	Lang,	Smith (*Queens-Shelburne*),
Dessureault,	Lefrançois,	
Farris,	Leonard,	Sparrow,
Fournier (*Madawaska-Restigouche*),	Macdonald (*Cape Breton*),	Thorvaldson,
	McDonald,	Welch,
Gélinas,	McElman,	Willis—(43).

Ex officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Senate, Monday, December 9, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McElman, seconded by the Honourable Senator Michaud, for second reading of the Bill S-19, intituled: "An Act to amend the Navigable Waters Protection Act".

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

The Bill was then read the second time.

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

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

ROBERT FORTIER,
Clerk of the Senate.

29221—1½

REPORT OF THE COMMITTEE

THURSDAY, December 19th, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill S-19, intituled: "An Act to amend the Navigable Waters Protection Act", has in obedience to the order of reference of December 9th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

GUNNAR S. THORVALDSON,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, December 19th, 1968.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.00 a.m.

Present: The Honourable Senators Thorvaldson (*Chairman*), Connolly (*Ottawa West*), Fournier (*Madawaska-Restigouche*), Haig, Lefrançois, Leonard, McDonald, McElman, McGrand and Smith (*Queens-Shelburne*)—(10).

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

Bill S-19, "An Act to amend the Navigable Waters Protection Act", was read and considered.

On motion duly put, it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

The following witnesses were heard:

DEPARTMENT OF TRANSPORT:

Jacques Fortier, Q.C., Counsel and Director of Legal Services.

J. N. Ballinger, Chief, Aids to Navigation Division.

On motion of the Honourable Senator Leonard, it was *Resolved* to report the Bill without amendment.

At 11.00 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

John A. Hinds,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Ottawa, Thursday, December 19, 1968

The Standing Committee on Transport and Communications, to which was referred Bill S-19, to amend the Navigable Waters Protection Act, met this day at 10 a.m. to give consideration to the bill.

Senator Gunnar S. Thorvaldson (*Chairman*) in the Chair.

The Chairman: Honourable senators, may we have the usual motion to print?

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

The Chairman: Honourable senators, we have as witnesses before us this morning an old friend, Mr. Jacques Fortier, Q.C., Counsel and Director of Legal Services, Department of Transport, and also Mr. J. N. Ballinger, Chief, Aids to Navigation Division of the Department.

May we hear from Mr. Fortier?

Mr. Jacques Fortier, Q.C., Counsel and Director of Legal Services, Department of Transport: Mr. Chairman, and honourable senators, Part 1 of the Navigable Waters Protection Act deals with approval required from the Minister of Transport before any work may be constructed in navigable waters. The following amendments are proposed to Part 1. The "minister" would be defined to mean the Minister of Transport. Under an Order in Council that was passed in 1966 the duties of the Minister of Public Works under Part 1 were transferred to the Minister of Transport.

Senator Connolly (Ottawa West): Under the provisions of the Financial Administration Act, I suppose?

Mr. Fortier: Transfer Duties Act.

Senator Connolly (Ottawa West): Transfer Duties Act.

Mr. Fortier: In clause 1 of the bill we would amend the definition of navigable waters for purpose of the act so as to include artificial bodies of water, such as those created by the construction of canals and dams.

Senator Fournier (Madawaska-Restigouche): May I ask a question at this point? How large does a river have to be, to be considered as a navigable water? Is a brook or river of any size considered as navigable water?

Mr. Fortier: The question as to whether any waster is navigable is a question of fact, but as long as even pleasure craft are able to navigate we would consider that water as being navigable.

Senator Fournier (Madawaska-Restigouche): Even a canoe or a small boat?

Mr. Fortier: Yes, sir.

Senator Smith (Queens-Shelburne): That is, all waters?

Senator Connolly (Ottawa West): All waters that you can travel on in boats.

Senator Fournier (Madawaska-Restigouche): All right.

Senator Smith (Queens-Shelburne): This is quite an interesting point. Do you mean to say that if someone builds a sluiceway on a brook in order to run logs down in early spring, your department has control over that type of thing? Perhaps this is a problem which does not arise.

Senator Fournier (Madawaska-Restigouche): It does arise.

Mr. J. N. Ballinger, Chief, Aids to Navigation Division, Department of Transport: Senator, I would say, yes, this is true. The main object of the bill is to protect naviga-

tion. There are areas where people do block off waterways, small and large, and thus cut navigation off. This bill proposes to eliminate this restriction of waterways.

Senator Smith (Queens-Shelburne): Is this kind of problem one which arises?

Mr. Ballinger: An odd time.

Senator Smith (Queens-Shelburne): I know that when you start to define a brook you are in the same situation as when you define navigable waters. You have had some problems in the department, problems that arise out of blockage of brooks, as has been said. People will do nasty things like that. If they insist, have you any alternative except to order a company to remove their damming up of that river or small brook?

Mr. Ballinger: If the company wishes to build a dam that is going to obstruct the brook, under the terms of the Navigable Waters Protection Act they are required to seek approval to so. Part of the terms of the approval are that they must advertise in the local newspapers, to give people who might be affected the opportunity to make their concern known. The department has the responsability of assessing both sides of the situation to determine whether it should be approved or not.

Senator Smith (Queens-Shelburne): Do you ever take any action on your own account—if someone builds an obstruction on a river—unless there has been a public complaint, if they build without a permit and block off a river which is truly navigable in the larger sense?

Mr. Fortier: On that question, such matters were transferred to the Department of Transport.

There is a section now in the act which provides for the minister to authorize the removal of unauthorized works. The Department of Public Works have advised me that, to their knowledge, there has been just one case where it was found necessary to proceed to the removal of unauthorized works.

Senator Smith (Queens-Shelburne): Then it is not appropriate subject for discussion here now.

Senator Leonard: I take it from this clause 1, to insert a new section 1A, that canals have not been previously considered to be navigable waters. Is that correct?

Mr. Fortier: Canals were not previously included in the act. We have a ruling from the Department of Justice that artificial bodies of water did not come under the act.

Senator Leonard: Nor canals?

Mr. Fortier: Nor canals.

Senator Leonard: Now you are bringing in canals and the artificial bodies of water?

Mr. Fortier: Yes.

Senator Leonard: There are, of course, canals that are federal public works?

Mr. Fortier: Yes.

Senator Leonard: Over which the federal Government has jurisdiction. But I presume there are also canals, or even private works, that are provincial or municipal?

Mr. Fortier: The reason canals were not previously included in the act is that the Department of Transport administers all canals, and under the canal regulations we have provisions which require a person who proposes to build a work in a canal to get the approval of the department. But we administer all canals, and I do not believe that actually there would be any canals which would not come under federal jurisdiction.

Senator Leonard: So that canals already have been under federal jurisdiction, under different legislation, but you are bringing them under the Navigable Waters Protection Act, for some particular purpose?

Mr. Fortier: It is because the minister now is the minister for the purposes of Part I. Previously it was the minister of Public Works. The Department of Transport was charged with the administration of canals. We retained in the department under the Minister of Transport the duty to approve of works in canals.

Senator Leonard: Is all jurisdiction over canals being transferred from the Department of Public Works to the Department of Transport?

Mr. Fortier: The Department of Transport always had jurisdiction over canals, it was always in the Department of Transport. The reason we are bringing them in now is that we are bringing now Part I under the Department of Transport.

Senator Connolly (Ottawa West): Arising out of Senator Leonard's question, and possibly out of that by Senator Smith (Queens-Shelburne), what about the situation where a lumber company owns a tract of land on which there is a stretch of water and it dams it up all the time; it does create a sluiceway, but it also creates a portion of water that is not navigable. Would you have jurisdiction in that case?

Mr. Fortier: That would come under the jurisdiction provided by Part I.

Senator Connolly (Ottawa West): Even when on privately owned land?

Mr. Fortier: Oh yes.

Senator Smith (Queens-Shelburne): As a supplementary question, even if that canal had been constructed at some time under another authority which existed in the province, would that apply? I will give a concrete example, so that you will see what I am getting at. Some years ago a canal was built, with the co-operation of the Province of Nova Scotia, to permit the diversion of water from a river into a main stream of the Mersey River in Nova Scotia, which is the biggest river and the source of some power at this time. This canal was also used by a newsprint company to move their pulpwood from these areas. Would you have jurisdiction over a situation like that? If someone protested, could they come to us as well as going to the provincial government?

Mr. Fortier: Under the British North America Act, all canals come under federal legislative jurisdiction.

Senator Smith (Queens-Shelburne): It does not matter who built them?

Senator Hays: What is new in this act that has not been under some other department? Is it just a transfer of duties?

Mr. Fortier: It is not just a transfer of duties. We are also amending certain existing provisions of the act, Part I and Part II. Part II was always under the jurisdiction of the Department of Transport. In connection with amendments to Part I, we are proposing quite a number of amendments.

Senator Hays: My next question is regarding irrigation waters. Do these come under federal jurisdiction, where you are diverting water for irrigation?

Mr. Fortier: I doubt it.

Senator Connolly (Ottawa West): Are any of them navigable, senator?

Senator Hays: They are large enough to be.

Where you are taking water out of a stream and where you have an allowable—I think this is under provincial jurisdiction—and your allowable is more at different times than the gross amount which comes down the stream—I am thinking of water conservation along the eastern slopes of the Rockies—whose jurisdiction is that?

Mr. Fortier: Artificial canals are irrigation canals, and they come under provincial jurisdiction.

Senator Hays: Take an amount of water which can be used from time to time for navigation. If you have an irrigation project out of a small stream and you are allowed to take some certain quantity of water, then you have a situation where you can conceivably dam all of the water. Is this under provincial jurisdiction?

Mr. Fortier: I know it would not come under the jurisdiction of the Department of Transport. As to whether any other federal Goverment department would be involved in the diversion of water from a lake or river to this artificial canal, I do not know. It may be that another department would do it.

Senator Connolly (Ottawa West): It is not under this act?

Mr. Fortier: Not under this act.

The Chairman: Senator Hays was referring to a big scheme of irrigation they have in Alberta, near Calgary.

Senator Hays: We have irrigation projects where they take all the water, if the snow does not melt in the mountains—and it is the very source of all our waters.

Mr. Fortier: I know that in British Columbia irrigation canals such as those you refer to are governed by provincial legislation.

Senator Leonard: Bow River is certainly a navigable river itself; so, at any rate, there would be jurisdiction federally over that.

Senator Hays: And over the mountain waters that may be used.

Senator Leonard: The one word "navigation" would be sufficient. I would think the federal Government would have some jurisdiction over that.

Mr. Fortier: Under clause 3 of the bill we are amending section 4 of the act to provide that the approval for construction of works may be given, subject to conditions, and also to provide that the approval would be void unless the work is commenced within six months and completed within three years and is constructed and maintained in accordance with the terms and conditions of the approval.

This is quite an amendment to the existing provision which just provides for a refusal of approval or an approval. We would like to so amend this section 4.

Senator Smith (Queens-Shelburne): What is the purpose, Mr. Fortier, for putting this in the legislation? Have you had some problems in the past where you have been given permits to do certain things and they have just lain idle for a number of years?

Mr. Ballinger: Yes, this is true, senator.

Senator Smith (Queens-Shelburne): What is the handicap of having them lie dormant for a while?

Mr. Ballinger: Situations can change over the years, and sometimes this causes some embarrassment.

Senator Smith (Queens-Shelburne): Twenty-five years can go by and then you might not want them to build.

Mr. Ballinger: We have one that was approved three years ago which is just starting now. The situation in the area where it is being built has changed somewhat and it is causing some embarrassment.

Senator Smith (Queens-Shelburne): Yes, I can understand that.

Mr. Fortier: The act now provides that works of a value of less than $500 do not require approval. We are amending that provision and we would provide that the only works which are exempted would be those which in the opinion of the minister do not substantially interfere with navigation.

Section 5 of the act now provides for the minister to have authority to order the removal of a work which was not authorized. We would amend this section in order also to authorize the minister to order that a work be not proceeded with, if it interferes substantially with navigation, and also to authorize the minister to approve a work after construction is commenced, if prior to the construction he consented to the work being commenced.

Senator Hays: This gets back again to my first question about irrigation. If you take water out of a river that the federal Government has jurisdiction over, does this not also interfere, then, with provincial jurisdiction in so far as the use of water out of these rivers is concerned?

Mr. Fortier: That is right. The diversion of water for power purposes or for irrigation canals, I am sure, does not come under any of the statutes which the Department of Transport administers, but I do believe, senator, that you are right that that would come under provincial jurisdiction.

Senator Hays: But would there not be a conflict, then, of interest, where you were diverting water for irrigation purposes? For instance, take many of our rivers now in Alberta; under the new spray system of irrigation they are using millions and millions of gallons of water by just putting in a pump. But this river is one that could be used for transport and that sort of thing.

Mr. Fortier: I doubt that it would.

Senator Hays: I think, for example, of India and the Ganges, where they use all of the river before it gets to the sea. The same condition exists in Japan. Thinking in terms of the future of Canada, there quite likely will be a conflict of jurisdiction.

Mr. Fortier: Well, canals come under the Department of Transport and no one can draw water from them without first getting a lease or a permit from the department. But anywhere else, in waters where we do not exercise any proprietary rights, I do not believe that there is any jurisdiction except provincially.

Senator Leonard: Excuse me, would there not be jurisdiction, if the drawing of the water from the navigable river interfered with navigation?

Senator Hays: Down river.

Senator Leonard: Yes, or if it interfered in any way with navigation.

Mr. Fortier: We have never exercised such a jurisdiction, senator.

Senator Hays: But under this new act you will then be in a position to determine how much water comes out of a river. Rivers are made by many tributaries, and I can conceivably see in the not too distant future many of these smaller creeks, and so on, that make it possible for the Saskatchewan dam to be filled, for instance, being completely eliminated of their water.

Mr. Fortier: Of course, this part of the act deals exclusively with construction works in navigable waters. It does not deal with the water itself, or with the amount of water that will pass through a stream or the amount of water that a person may divert from a stream. It deals exclusively with construction works in navigable waters.

Senator Hays: Take the example, for instance, of a small creek; I am in the process of constructing an irrigation scheme where I will be using a third of this creek—and I can see this happening all along the eastern slopes of the Rockies in the not too distant future, because we are very concerned about the amount of water we can use to take land now and increase its productivity from 700 to 1,000 per cent by spray irrigating it. But in each instance we have to construct works on these creeks or rivers, and it is being done.

Senator Connolly (Ottawa West): Are these creeks or rivers now navigable, senator, before you construct anything on them?

Senator Hays: Maybe not at that particular point, but down river they are, and the amount of water you may take out at the top might interfere with the navigability.

Senator Leonard: At some point further down.

Senator Hays: At some point further down, yes. There is no doubt about that.

Senator Connolly (Ottawa West): The down stream rights, then, may be affected by what you do upstream.

Senator Hays: It seems to me that water is one of the big problems in Canada today. In the future, if we have 100 million people in Canada, I just wonder how much water there will be coming from the Arctic and so on. What we are doing now, and the chairman knows this, in so far as irrigation is concerned—the minute you put the Saskatchewan dam in you open up a whole new area in the Palliser triangle, consisting of hundreds and hundreds of square miles.

Senator Connolly (Ottawa West): Just talking about the Saskatchewan dam, once it was in and the lake behind it was created and was filled, then did the overspill actually affect the flow of the quantity of water on the lower part of the river, the downstream part?

Senator Hays: Well, conceivably, there could be enough water used that it would never fill, if there was a series of dams put along the eastern slopes of the Rockies, which there should be, and these would be maintained for irrigation. But I can see a great conflict between jurisdictions between federal Government and the provinces of the future in so far as water is concerned.

Mr. Fortier: Of course, the right to divert the water from a river, from a lake, from a stream, for irrigation purposes or for power purposes—well, the party proposing to do such diversion would have to go to the province. There may be some other federal Government department that would be involved that would have jurisdiction, but I am sure the Department of Transport has none. We are simply concerned with navigation, but it does not extend to exercising any control over water diversions. If it is a canal, we would exercise jurisdiction because canals are our property. If it is within a public harbour the same would apply because public harbours are federal property. Elsewhere, for instance, down the St. Lawrence except for Montreal, Sorel, Quebec and Trois-Rivières, the bed of the river is vested in the province and the water rights are controlled by the province.

Senator Hays: There is no conflict so far as this bill is concerned? I am thinking of the situation of anyone making an application and the province saying "Well, you are using so much water you will do harm to downstream navigation." It does happen at times. And I wonder how many people do we have to write to for permits. This would apply to the use of power as well.

The Chairman: Mr. Fortier, I suppose it is important for this committee in considering this bill to recall the words of the British North America Act in regard to the subject matter, and I think it is contained in section 91 under the heading merely "Navigable Waters".

Mr. Fortier: Under the schedule to the British North America Act they say that canals and the waters connected with canals are the property of the federal Government, and this also applies to public harbours. But there is no other item in respect of water which is vested in the federal Government.

Senator Smith (Queens-Shelburne): Is that true of all the provinces? Are there no exceptions? I am wondering about the background of that statement. I am thinking, for example, of Nova Scotia, my own province, where I am sure it has been the case for many years that if somebody wanted to erect a dam or put up a mill—and this happened years ago more than it does today—they had to acquire water rights from some authority in the province which would permit them to put up a sawmill on that particular river or to build a dam to hold their logs back, and so on. As a matter of fact when this power development to which I made reference a while ago was built 40 years ago, the Nova Scotia Power Commission had to re-acquire those old rights of some of the old mills in that area for the province itself to get control so as to be able to remove all that stuff.

Now, should we have come to the federal Government in the first place? There may be a difference in the history of the thing in that there may be some rights that other provinces did not acquire and this may be a circumstance applying only to the old provinces.

Mr. Fortier: There is one thing: if a party proposes to put a power dam or a mill with a dam across a navigable water, they would need approval of the Minister of Transport. And I would imagine they would have to go to the province for permission to draw water for power purposes or for mill purposes.

Senator Hays: Do you mean the federal Transport people would have to go to the province or the applicant?

The Chairman: I think you are referring to the user in that situation, or the intended user.

Mr. Fortier: The intended user.

Senator Smith (Queens-Shelburne): In the case of some of these rights we are referring to we are going back to the early settlers over 200 years ago. They acquired these rights in one fashion or another, and they were referred to as water rights, and they built these mills and successive owners of the property still retain some water rights which are of some value too.

Senator Hays: In our part of the country it is quite easy for a farmer to spend $50,000 today on an irrigation program, and we have always been led to believe that if you use water for seven years consecutively you have acquired a water right and nobody can take it away from you. If this is not so and if the federal Government have jurisdiction, it would be nice to know this before you start spending this amount of money. I have an irrigation scheme on my own place which we run probably every year so that we are continually running water to preserve that right.

Senator Connolly (Ottawa West): I wonder if this would confuse the issue; I suppose when you refer to the quantity of water that is to be diverted by an irrigation project or for some other purpose and it is only going to affect the province because it is one of the natural resources over which the province has an element of control—now, you say that out of one side of your mouth, but on the other side if you say that by creating the work you either destroy the navigable stream or create a navigable stream, then perhaps this authority comes into play. I think there you have a situation which gives rise to the possibility of conflict. Is that right?

Mr. Ballinger: I do not know whether or not this might be helpful, but I think the federal Government has exclusive rights of control of navigation in Canada and the use of water for navigation purposes.

Senator Connolly (Ottawa West): If navigation is affected in one way or another or if it is created in any way, the authority of the federal Government immediately enters the picture.

Mr. Ballinger: This is correct.

Senator Hays: So that there is a conflict.

Mr. Ballinger: Yes. It must be recognized to some extent.

Senator Leonard: So long as navigation is not interfered with, water is under the control of the province.

Mr. Fortier: In so far as the use of the water would interfere with navigation. So far as the Department of Transport is concerned, I am sure we do not administer any statute

that would deal with that situation. Maybe there is a government department or other federal statutes that would deal with the use of water. But in the Department of Transport we don't know about it.

Senator Fournier (Madawaska-Restigouche): What is the situation so far as international waters are concerned?

Mr. Fortier: That is a matter that comes under international agreement. There was a new treaty of 1909 creating an International Joint Commission which controls international waters and also certain tributaries to the St. Lawrence.

Senator Smith (Queens-Shelburne): Mr. Chairman, may I ask another question? It seems to me that when the department concerned with this general matter was the Department of Public Works, they also had the authority and the power to grant the use of a navigable water, particularly with reference to that area extending from the low water mark out some reasonable distance; and they also had the authority and did have the practice of leasing the right for a man to put a fish plant or pier or privately owned wharf out over and beyond the low water mark. Is the Department of Transport now concerned with that leasing arrangement which has gone on in the past?

Mr. Fortier: We have always controlled the construction of works such as you have referred to in public harbours, because the beds of public harbours are federal property and the Department of Transport administers public harbours. It is the same with canals. The beds of the canals—the Rideau Canal, the Trent Canal, and the others—are federal property and, again, there we would control the erection or the construction of any work on the bed. The bed includes up to high water mark. Elsewhere it would likely be provincial property.

Senator Smith (Queens-Shelburne): The next point is not quite clear to me yet. Am I wrong when I say the Department of Public Works did administer in this area until just recently?

Mr. Fortier: The Department of Public Works is charged with the administration of certain property like government wharves. Then they acquire the site where they build the wharves. They do control the right of persons to put up structures on those sites adjoining or close to wharves they have built. That is still retained in Public Works.

Senator Smith (Queens-Shelburne): But Public Works never dealt in this area with which we are dealing this morning? I thought this kind of thing came over to the Department of Transport in—when was it?

Mr. Fortier: 1966.

Senator Smith (Queens-Shelburne): Yes, 1966.

Mr. Fortier: This is only Part 1 that came to us in 1966, but we have always had the administration of the beds of public harbours and of canals.

Senator Smith (Queens-Shelburne): Maybe somebody who applied for some rights to do certain work had to go to both departments then.

Mr. Fortier: Maybe.

Senator Smith (Queens-Shelburne): It was always a little confusing and, as I recall certain specific cases they took a long time. These are all Nova Scotia references. It also involved opinions from Justice as to what the rights of the province were, and in one particular case somebody who talked to me about it had to get clearance from the province in order to do these things. It was because of that I was wondering what confusion there was with regard to historical rights, which did not exist in British Columbia, for example.

Senator Connolly (Ottawa West): From a practical point of view, Mr. Chairman, I think the transfer to the Department of Transport is a very wise move, because I remember cases where I was involved myself in situations where you had to get a permit under the Navigable Waters Protection Act and were running between the Department of Public Works and the Department of Transport. Now it will all be in the one place. I think this is sensible.

The Chairman: May we ask Mr. Fortier to continue with his submission, honourable senators?

Hon. senators: Agreed.

The Chairman: Anything that has been covered by our discussions, Mr. Fortier, you can use your own discretion on.

Mr. Fortier: Thank you, Mr. Chairman, I will.

Under clause 5 of the bill, we would provide, if as a result of passage of time and changing conditions a work interferes with navigation, that the building, repair or alteration of the work would be treated as a new construction. The approval given under Part 1 would be for a limited time only, but it would be subject to renewal.

Senator Connolly (Ottawa West): What subsection is that?

Mr. Fortier: That is section 8 of the act.

Senator Connolly (Ottawa West): In that case there is no compensation payable? If, for example, approval were given to build a bridge over what is considered to be a navigable water, and due to changing conditions the construction interferes with navigation, in the opinion of the courts, this would be at the expense of the owner of the bridge or wharf, without compensation?

Mr. Ballinger: Yes, that is if, in the opinion of the owner, it had to be rebuilt or repaired.

Senator Connolly (Ottawa West): If in the opinion of the owner?

Mr. Ballinger: Yes, if in the opinion of the owner.

Senator Connolly (Ottawa West): What about the case where the department said that as a result of changing conditions the construction does now interfere with navigation, after having given approval in the first instance? Does it not apply both to the department and the owner? The owner might want to change it and build a bigger wharf. I can understand there he would have to have approval before he did it. But suppose, for the sake of argument, there was a change in the water situation just there, that the department felt interfered with navigation, could you then require the owner to change his structure?

Mr. Ballinger: The proposed amendments allow for a structure to be approved for a given length of time. Normally a bridge is designed with a life expectancy of 70 years. The approval will probably be for 70 years for that bridge, so if at the end of 70 years the owner was thinking about doing some repairs or making changes to that bridge, he would then have to seek a new approval. As far as the owner is concerned, the bridge has now been paid for and it has been written off.

Senator Connolly (Ottawa West): What about a situation where you say that a bridge which was authorized for a 70-year period now interferes with navigation?

Mr. Fortier: Before the life expectancy of the bridge has expired?

Senator Connolly (Ottawa West): Yes.

Mr. Fortier: This just deals with the approval and does not deal with the question of liability. That would be a question to be decided according to the law of the place, as to whether as a result of an order given by the minister to remove the work the owner is entitled to compensation.

Senator Hays: Do you have a list of navigable waters?

Mr. Fortier: No, senator, we do not have.

Senator Hays: In reply to the first question that was asked you said that any water that even a canoe goes on would come under this particular act. So a river where they divert water for pleasure purposes and we have canoes on, and that sort of thing, does that make it navigable?

Mr. Fortier: That would be considered to be navigable, even if capable of just small-craft navigation.

Senator Fournier (Madawaska-Restigouche): Even for an old raft for the kids to play with.

Senator Hays: Then all waters are navigable. If I make a slough and put a little boat on it, it then comes under your jurisdiction. It is navigable water?

Senator Fournier (Madawaska-Restigouche): That is so.

Mr. Ballinger: It could be so.

Senator Hays: I am quite concerned about these jurisdictions.

The Chairman: It is a difficult problem, Senator Hays. Take, for instance, the south end of Lake Winnipeg. We have hundreds of square miles of marshes. In one season the water may be four or five feet deep, and then in low water two or three years later the ground may be showing, but it is still a navigable water. That is one of the problems we have.

Senator Hays: And if someone is taking out water for irrigation purposes you can report them to the Department of Transport under this act, and say that those people are interfering with your right to use a navigable stream, and they must be prohibited from taking water out of there.

The Chairman: Honourable senators, we are under a time limit this morning because this room is required for another purpose at 11 o'clock.

Mr. Fortier: Clause 7 of the bill authorizes the Governor in Council to make regulations prescribing fees for any approval given under Part I.

Those are the amendments to Part I of the act. We come now to Part II which deals with the removal of wrecked vessels from navigable waters.

Clause 9 of the bill contains a new provision, which provides for the removal by the department, and the recovery of the costs thereof, of vessels which are not sunk but which are abandoned, anchored or moored, in a navigable water.

Senator Connolly (Ottawa West): To what clause of the bill are you referring now, Mr. Fortier?

The Chairman: It is on page 5, Senator Connolly, the new section 16A.

Senator Connolly (Ottawa West): Are you thinking of the vessel that has been lying outside of Kingston for a while? What is the name of that vessel?

Mr. Ballinger: The *Incharran.*

Senator Smith (Queens-Shelburne): That is an awful end for a noble ship. Senator Connolly (Ottawa West), being an old navy man, must be very distressed.

Senator Connolly (Ottawa West): The ship was bought by a private owner, and the navy has no further responsibility for it.

Mr. Fortier: Under clause 10 of the bill sections 18 and 19 of the act are repealed, and new sections 18 and 19 are substituted. At present the prohibition is only against the owners or tenants of sawmills from dumping rubbish in navigable waters, and we want to make the section applicable to anyone—to the owners of companies.

Senator Smith (Queens-Shelburne): Mr. Fortier, are you saying that up to now we had no control over the dumping of rubbish from a pulp mill?

Mr. Fortier: It was doubtful because the section named only the owners of some mills, and did not mention anyone else.

Senator Smith (Queens-Shelburne): We seem to have regulations in respect of the operation of a...

Mr. Fortier: The section is quite old, and it may be that it was enacted at a time when there were no pulp mills.

Senator Smith (Queens-Shelburne): How is it that over the years we have been able to insist that the pulp and paper industry should barge its rubbish out to beyond the mouth of the harbour and dump it there? What authority was there for insisting upon that? Perhaps that is provided for in the Fisheries Act.

Mr. Ballinger: Yes, it may be that the Fisheries Act has something in it to that effect.

Senator Smith (Queens-Shelburne): I know that some of these industries in stormy weather do not go out beyond the mouth of the harbour. The fishermen are the ones who complain about this, because this rubbish destroys the lobster grounds. I know that there have been discussions between the company and the Department of Transport, because the local harbour master has been involved in them.

Mr. Fortier: We would extend the act to prohibit the dumping of material and rubbish of any kind in navigable waters where the depth is not less than 20 fathoms.

Senator Smith (Queens-Shelburne): You had better explain to the lanlubbers here how much water that is.

Mr. Fortier: A fathom is six feet.

Senator Smith (Queens-Shelburne): So it means 120 feet of water, which is pretty deep water.

The Chairman: It is a good thing that we have present some gentlemen from the Maritimes.

Senator Smith (Queens-Shelburne): Yes, born on the sea.

Senator Hays: I should like to give you an example of what some of our people do. If a

cow dies they wait until she is good and wormy, and then throw her into a little lagoon that they make. The have to have a boat, and now they will be writing to you asking you to remove the cow because the water is a navigable water.

Senator Smith (Queens-Shelburne): This may not be very interesting or important, but it strikes me that this refers to the depth under which you will not permit the dumping of rubbish. What was the depth specified in the old legislation?

Mr. Ballinger: In the old legislation it was eight fathoms in fresh water, and twelve fathoms in tidal water. It has been increased to 20 fathoms having regard to these large supertankers which draw at least 80 feet, and some of the new ones that are now in operation are drawing 110 or 115 feet.

Senator Smith (Queens-Shelburne): I am wondering what effect these requirements will have on the economics of getting rid of rubbish. Barge-loads of rubbish go out every day from the newsprint company in the harbour I am thinking of, and when you raise that figure to 120 feet you are getting into very deep water.

The Chairman: Honourable senators, I must point out that it is early 11 o'clock, at which time we have to give up this room. Is it your wish to meet again at 2 o'clock?

Senator Smith (Queens-Shelburne): No, let us complete our deliberations.

Mr. Fortier: Mr. Chairman, the remainder of the amendments are minor, and they are consequential on the previous amendments. Amongst them are amendments that increase the penalties for violations of the various provisions.

Senator Fournier (Madawaska-Restigouche): Who collects the money?

Mr. Fortier: The Crown.

Senator McElman: Mr. Chairman, may I ask for the record why there is no prohibition in this bill against so-called deadheads in navigable waters. I am referring to the results of log driving and pulpwood operations which constitute a serious danger to navigation. Many lives are lost each year because of deadheads in the water.

Senator Connolly (Ottawa West): Would not the new section 18 cover that? It reads:

> No person shall throw or deposit or cause, suffer or permit to be thrown or deposited any sawdust, edgings, slabs, bark or like rubbish of any description whatsoever that is liable to interfere with navigation in any water, any part of which is navigable or that flows into any navigable water.

Would not that cover a deadhead?

Mr. Fortier: It would.

Senator McElman: But, a deadhead is not disposed of. This section refers to the refuse of a commercial or industrial operation.

Senator Connolly (Ottawa West): Yes, but I am wondering whether the witness would say that. You see, a deadhead is something that is put into the water for some reason, after which it becomes a deadhead. This section provides that no person shall throw or deposit, or cause, and so on, edgings, slabs, or like rubbish of any description, that is liable to interfere with navigation. I think a deadhead would probably come under that class of clause.

Senator McElman: I think we can get an answer to this here. It is not a deadhead when it is put in the water. There is quite a difference. Why is it left to provincial jurisdiction? I should like to get this on the record.

Mr. Ballinger: I think about the only thing I can say is that if you included floating logs in this act it would be impossible to administer it, because it is such a widespread problem in the country.

Senator McElman: You feel this is best left to provincial jurisdiction?

Mr. Ballinger: At the present moment, yes.

Senator McElman: It has had serious consideration in the department, I take it?

Mr. Ballinger: It has had very serious consideration, not only in the Department of Transport but also in the Department of Public Works when they had this problem to contend with.

Senator McElman: Thank you. I have it for the record and now I can deal with the provincial authority.

The Chairman: Mr. Fortier says he has concluded his submission. Are there any further questions before we report the bill? Do you want to take the bill clause by clause?

Hon. Senators: No.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

No. 6

First Proceedings on Bill S-23,

intituled:

An Act to amend the Canada Shipping Act.

THURSDAY, FEBRUARY 27, 1969

WITNESSES:

Department of Transport: Jacques Fortier, Q.C., Counsel and Director of Legal Services. R. B. MacGillivray, Director, Marine Regulations Branch. *Canadian Chamber of Shipping:* Jean Brisset, Q.C., counsel; Peter N. Miller, insurance executive. *Canadian Maritime Law Association:* A. Stuart Hyndman, Chairman. *Dominion Marine Association:* P. E. Harcomb, General Manager. *Canadian Merchant Service Guild:* Robert F. Cook, President.

THE QUEEN'S PRINTER, OTTAWA, 1969

29223—1

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29223—1

SENATE COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators:

Aseltine	Hollett	Molson
Blois	Isnor	O'Leary (*Antigonish-Guysborough*)
Bourget	Kinley	O'Leary (*Carleton*)
Burchill	Kinnear	Pearson
Connolly (*Halifax North*)	Langlois	Petten
Davey	Lefrançois	Rattenbury
Denis	Macdonald (*Cape Breton*)	Smith (*Queens-Shelburne*)
*Flynn	*Martin	Sparrow
Fournier (*Madawaska-Restigouche*)	McElman	Thorvaldson
Gladstone	McGrand	Welch–(30)
Hayden	Michaud	

*Ex Officio member

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Senate, Tuesday, January 21, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Bourget, P.C., for second reading of the Bill S-23, intituled: An Act to amend the Canada Shipping 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 Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

ROBERT FORTIER,
Clerk of the Senate.

29223–1½

MINUTES OF PROCEEDINGS

Thursday, February 27, 1969.

Pursuant to adjournment and notice the Senate Committee on Transport and Communications met this day at 10:00 a.m.

Present: The Honourable Senators Thorvaldson (*Chairman*), Blois, Connolly, (*Halifax North*), Flynn, Gladstone, Isnor, Kinley, Kinnear, Langlois, Lefrançois, Macdonald (*Cape Breton*), McElman, Pearson, Petten, Rattenbury, Smith (*Queens-Shelburne*), and Sparrow.

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

Bill S-23, "An Act to amend the Canada Shipping Act", was considered.

On motion of the Honourable Senator Blois, it was ordered that 800 English and 300 French copies of these proceedings be printed.

The following witnesses were heard:

Department of Transport: Jacques Fortier, Q.C., Counsel & Director of Legal Services.
R. R. MacGillivray, Director, Marine Regulations Branch.

Canadian Chamber of Shipping: Jean Brisset, Q.C., counsel.
Peter N. Miller, insurance executive.

Canadian Maritime Law Association: A. Stuart Hyndman, Chairman.

Dominion Marine Association: P. R. Hurcomb, General Manager.

Canadian Merchant Service Guild: Robert F. Cook, President.

The following documents were ordered to be printed as appendices:

A. Statement by Peter N. Miller.
B. Statement by John C. J. Shearer.
C. Statement by Jean Brisset, Q.C.
D. Letter from The Shipping Federation of Canada to the Minister of Transport.

At 12:45 p.m. the Committee adjourned until Thursday next, March 6, 1969, at 10:00 a.m.

ATTEST:

John A. Hinds,
Assistant Chief,
Committees Branch.

THE SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Thursday, February 27, 1969.

The Senate Committee on Transport and Communications, to which was referred Bill S-23, to amend the Canada Shipping Act, met this day at 10 a.m. to give consideration to the bill.

Senator Gunnar S. Thorvaldson (*Chairman*) in the Chair.

The Chairman: Honourable senators, I call this meeting to order. We are here to consider Bill S-23, an act to amend the Canada Shipping Act.

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

The Chairman: Honourable senators, we will proceed with a brief statement from Mr. Jacques Fortier, counsel for the Department of Transport.

Mr. Jacques Fortier, Q.C., Counsel and Director of Legal Services, Department of Transport: Mr. Chairman, honourable senators: Bill S-23, to amend the Canada Shipping Act, contains amendments which may be considered to be of a substantial nature and others which are ninor ones.

If we take, first, the amendments which are of a substantial nature, they are the following:

Clause 1 of the bill contains a definition of air cushion vehicles, hovercraft; and clause 27 makes certain provisions of the Canada Shipping Act applicable to air cushion vehicles. Hovercraft were considered to be aircraft and, thus, were subject to the Aeronautics Act. However, recently the Aeronautics Act has been amended to delete hovercraft from the application of the act.

Clause 7 of this bill is a temporary measure which is necessary following the report of the Royal Commission on Pilotage which expressed doubt as to the validity of certain pilotage by-laws made under the Shipping Act. The provision of clause 7 will confirm the validity of these pilotage by-laws and of the pilotage licenses issued under the by-laws, only until such time as the department is prepared to bring down legislation to implement the report of the royal commission. Clause 7 also contains saving provisions in respect of any pending court actions in which the validity of these pilotage by-laws or pilotage licenses are in issue.

Clause 23 of the bill also would authorize the Governor in Council to make regulations for the prevention of the pollution of Canadian waters by chemicals, garbage, sewage and other substances from ships.

Clause 24 would authorize the Minister of Transport to cause the removal, sale, or destruction of vessels wrecked or abandoned whose cargo or fuel is likely to pollute Canadian waters, or to be a danger to marine life, or to damage coastal property. This clause would also authorize the Minister of Transport to recover the cost of such removal, sale, or destruction from the owner of the vessel, or from the person responsible for the wrecking or abandoning of the vessel.

In connection with Clause 24 I would like to point out that under the Navigable Waters Protection Act the minister is authorized to remove and destroy vessels, and cargoes, which cause obstruction to navigation. Clause 24 authorizes the removal of vessels which do not cause obstruction to navigation, but whose cargoes are likely to cause damage.

The other amendments contained in the bill which may be considered to be of a minor nature are the following:

Clause 1 includes a definition of load lines. This definition is necessary for the purpose of another clause in the bill which provides for the implementation of the Load Line Convention of 1966.

Clauses 3 and 4 provide that certificates of competency as masters and mates granted to landed immigrants are no longer valid after they cease to be landed immigrants otherwise than by achieving Canadian citizenship, and it would also permit landed immigrants to receive certificates of competency as masters, mates, and engineers after passing an examination.

Clauses 5 and 6 repeal certain sections of the act which relate to seamen, and which date back to the days of sailing ships. They are provisions for the protection of seamen and they are not longer applicable.

Senator Pearson: Do you mean that the seamen have no need for protection any more?

Mr. Fortier: They have plenty of protection, but these were special provisions for the prevention of imposition on seamen while they were in port. They have not been invoked for years.

Senator Smith: I suggest to the senator that he read these provisions in the act. They are very interesting. They remind me of the history of Nova Scotia.

Mr. Fortier: Clause 10 amends the provisions of the act in respect of radio installation on ships in order to impose on ship operators the requirement to comply with new regulations that the department will be making.

Clause 12 would prescribe which ships are to be fitted with radio telegraph and radio telephone installations while in Canadian waters, and also with very high frequency radio telephone installations where the Department of Transport operates a marine traffic control system.

Clause 25 would give persons investigating accidents on ships the same powers as investigators of shipping casualties, being to summon witnesses, administer oaths, go on board ships and require the production of documents.

Clause 26 would provide for the making of regulations respecting reports of shipping casualties and accidents and deaths on ships.

These are the amendments.

The Chairman: Thank you, Mr. Fortier. Honourable senators, we have with us this morning representatives of various Canadian organizations associated with the shipping industry who desire to be heard on this bill. I should like to put on the record the organizations represented here and the names of some of the individuals who will be appearing before us. I will just say now that we may want to question Mr. Fortier at some time during the meeting, but with your agreement I should like to present these other people to the committee first, then we can hear again from Mr. Fortier if we want to question him later.

These are the organizations and the persons appearing here. For the Canadian Chamber of Shipping we have Mr. Jean Brisset of Montreal, Legal Adviser to the Chamber. Also we have Mr. Peter N. Miller, an insurance executive from London, England, who has come to Canada specifically to appear before this committee concerning clause 24, relating to pollution. For the Canadian Merchant Service Guild we have Mr. Robert F. Cook, the President of that organization. For the Dominion Marine Association we have Mr. P. R. Hurcomb the General Manager. We also have Mr. Stuart Hyndman, Chairman of the Canadian Maritime Law Association. There is also here Mr. Macgillivray, the Director of the Marine Regulations Branch, who is here with Mr. Fortier. There may be some others here who will also appear before us as we go on.

With your permission, I will now ask Mr. Miller from London, England, to appear before us.

Mr. Peter N. Miller, Insurance Executive, London, England: Mr. Chairman, honourable senators, first of all I must thank you for allowing me, a foreigner, to appear before this Senate committee.

The Chairman: We do not consider you a foreigner.

Mr. Miller: That is very kind, sir. I would like, if I may, briefly to say who I am, then hand in two statements for the record, and briefly run through those statements to try to summarize them for you.

I should at once apologize for the absence of a colleague of mine who was due to come as well, Mr. Shearer, who unfortunately could not make the revised date of the meeting.

You may well ask why it is that two rather than one so-called, but certainly not self-styled, insurance experts should wish to appear in front of you. This, Mr. Chairman, is because in the market of the insurance of shipowners' liabilities there are two main parties, two main parts of the market who provide the necessary cover and it is therefore, sir, as an insurance man and an insurance man only that I wish to address myself to certain sections of the bill which you are examining and notably section 24.

The Chairman: There are copies of the briefs available. The briefs will appear in the record in their entirety. Is that agreed?

Hon. Senators: Agreed.

(See Appendixes "A" and "B")

Mr. Miller: Mr. Chairman and honourable senators, Mr. Shearer, my colleague, for whom I speak today and from whom I have full authority so to do is a partner in a firm called Thos. R. Miller and Son (Insurance) Limited, who manage two firms actually called the United Kingdom Mutual Steamship Assurance Association. There is one firm in London and another in Bermuda.

In addition to this association, we represent seven other such associations in London who together are known as the London Group.

In addition to this group we represent the Scandinavian Protection and Indemnity Association in Norway and Sweden.

Now, Mr. Chairman, sir, these associations insure shipowners of many nationalities who own together about 140 million gross registered tons of shipping, which is approximately 70 per cent of the whole world's tonnage and about 80 per cent of the free

world tonnage, so it is, as the major insurers of shipowners' liabilities that we are speaking today.

A brief summarization of what these associations cover would be liability for loss of life and personal injury. They cover a shipowner's liability for damage to cargo and they cover a shipowner's liability to third parties for property damage. They also cover the shipowner's liability for removal of wrecks and *inter alia* and liability for oil pollution.

Attached, sir, to the statement we have handed into the record is a list of all the pollution claims that this very large group has had over the last–between the years 1960 to 1966. I must say at this point that until the case of the *Torrey Canyon* oil pollution, it was a very small part of the whole range of a shipowner's liability. It was not by way of casualty experience, which was an important part. *Torrey Canyon* may have changed all of that, but it was the first and so far the only large case of this kind. Sir, the basis upon which all such insurance is granted to a shipowner is based upon two elements in international maritime law, namely, that fault is the basis of liability and that a shipowner has the right to limit his liability in the absence of privity to a reasonable figure. Now, it is the breach of these two principles in section 24 which make the section, as far as we are concerned, as insurers, something very difficult and indeed I must say impossible as such to insure. Please accept that we as insurers, as commercial men, would not dream of telling you as legislators what you should or should not do. All we are saying is that it is, as it stands, not insurable.

This was a point that we both made to the United States house of representatives in committee a year ago and they accepted what we have to say. I hope that I can put enough evidence in front of you for you too sir and your committee to accept this or not.

Perhaps now I should explain how the group to which I have referred fits in with the rest of the insurance market. The group itself takes a very large proportion of any risk, of any one casualty. But, like any insurer, it protects itself by re-insurance–which is where my particular firm comes in, because it has been my personal duty for many years to arrange the necessary re-insurance of this group.

Each year, we receive instructions to place the maximum amount of re-insurance for shipowners liabilities, in any market of the world. We are not given a limit: we are told to do the maximum that can be done. We then, for two to three months in every year–for the contract is an annual contract, as most such contracts are–negotiate with all the markets in the world to obtain maximum coverage possible. It is for this reason, sir, that I can say to you with absolute certainty that there is no other market to which we can turn to insure the additional liability which section 24, as it stands, imposes upon the shipowner.

Mr. Shearer, sir, goes on to say in his statement that if unlimited liability were imposed on the shipowner by such legislation, it would be uninsurable. The position, as far as our group is concerned, would be that the shipowner would be uninsured as in respect of liabilities in excess of the amount to which the group and its re-insurers could provide insurance coverage. That figure may be between $10 to $15 million–somewhere in that region–but in excess of that figure a shipowner would not be insured; and your bill as it stands places upon the shipowner unlimited liability.

It is possible that subsidiaries of major oil companies might be prepared to take the risk in excess of that–though frankly I doubt it–but what is certain is that no independent borrower could possible accept such additional liability, however remote it may be; and it would be very very difficult for such an owner to trade to your country and, if he did, he would be partially uninsured. If I may repeat–the two points which matter in liability insurance of this kind are that legal liabilities are based on the concept of fault and that the shipowner can limits his liability to a reasonable amount. One can, of course, give an example of unfairness of absolute liability as proposed in the bill. Your ship may properly be at anchor and another ship may collide with it and cause damage. As your bill stands, a person who has acted properly, bears the blame.

So far we have criticized the bill, but I, as an insurer and not somebody who is trying to teach a legislator his job, would like to propose to you, sir, what can be done commercially, Then it is up to you as the legislators to decide what must be done by way of legislation.

In parentheses here, sir, I may say that we regard it as of very great importance that anything you do should be the subject of consultation between yourselves and the United States of America for the very obvious reason of the number of waterways which you share. As you may know, Mr. Shearer and I have given evidence in front of two Congressional committees on this subject. Next Wednesday I am going to give further evidence in front of another committee in Washington on the same subject.

Now, sir, to the proposals which we can put forward to you, you may know that after the *Torrey Canyon* incident the British Government was in, let us put it, an uproar, because of this very grave casualty, but they decided that they would not take unilateral steps in terms of legislation but that they would rather work through the fields of the International Maritime Consultative Organization and the CMI, or Comité Maritime International, about which you will hear more later.

They decided to work through these two traditional channels in order to try to get international agreement as to the sort of legislation which all

countries could agree on as fair and reasonable. It is too early yet to say what suggestions these organizations will make, but recommendations have already been made and, if I may quickly summarize these recommendations, I shall then be able to say that our group can support these recommendations.

Firstly, in place of strict or absolute liability, a reversal of the burden of proof is suggested. That means that the shipowner is always liable for pollution damage caused by oil or other cargo, unless he can affirmatively prove that it was caused without his fault. Secondly, the proposal is for an increase in the limit of liability within the structure of the 1957 Brussels Convention. Thirdly, the recognition of the right of governments to recover the cost of protective measures to prevent or minimize effects of pollution following a spillage as well as clean-up costs. I am talking here chiefly of oil pollution, which is the gravest danger, but your bill does, in my opinion, quite rightly cover other possible pollutions by other possible cargoes.

These recommendations I have just outlined would necessitate substantial changes in the present system of international law, but the protection and indemnity associations and the world markets for whom I speak can support these proposals and we would hope that you might consider, sir, deferring your own legislation until it is known definitely what these internationally-agreed recommendations are.

The associations for whom I speak accept these recommendations because they in turn accept that, as the law stands, the position of governments in regard to oil pollution is simply not satisfactory. At the moment, it is open to grave doubt whether you, as a Government, have the right to recover the costs of cleaning up pollution caused by a ship. We do not know what the English law is. We shall after the *Torrey Canyon* cases are resolved. But the insurance aspects of any legislation are these: Here is a risk which up to now has been a minor one. I will go farther than that: Here is a risk which up to now may not have existed at all, in that a shipowner may not have been liable for this risk. Any legislation that is now passed is going to impose a higher burden upon the shipowner, and the shipowner must turn to his insurers to cover him for that liability. But, as an insurer, sir, I feel sure you will appreciate that it is not my business to refuse a risk when it is offered. Somebody passes legislation; as a result, a shipowner has an additional liability. I am an underwriter, in fact, an underwriter of Lloyds, and it is my business to accept such a risk. What I am saying here today is that with the very best will in the world I cannot accept any more risk beyond certain figures than I have already got. Now there are several reasons for this; you will realize that in any marine casualty there are many elements involved. There is the ship herself; I as an insurer am expected to cover that. There is the cargo; I as an insurer am expected to cover that; and then there are the other liabilities which I as an insurer am expected to cover, for example, loss of life, personal injury, and removal of wreck, all heavy liabilities which must be insured.

Now any legislation on oil pollution is going to impose yet a further burden and I as the broker for this very big group whom I represent here today have had very, very careful consultation with insurance markets all over the world to discover what additional amounts can be insured for this additional liability. From our experience we are certain when we say there are certain figures beyond which we cannot and which the insurance market as it stands cannot go. Those figures are somewhere in the region of a limit of liability overall for oil pollution by itself–an additional liability of between $10 million to $15 million or somewhere between $71 and $100 per gross ton.

It is not that we do not want to insure it. It is simply that we cannot beyond a certain figure.

The Chairman: When you refer to $10 million to $15 million, that would be for one unit, or one ship, or what does it cover?

Mr. Miller: That is a very good point which I should have made more clear. When I say $10 million it applies to each accident, each vessel, which is a most important consideration in a collision. Because we have developed the limitation, it is a most important consideration from the point of view of the underwriter. You will realize that he may have such a claim 20 times during the year.

I do not think I have very much more to say but I will be very pleased to answer any questions which you or any other honourable senator may wish to ask.

Finally, I would like to thank you again for allowing me to give evidence to your committee.

The Chairman: Thank you, Mr. Miller. Are there any questions?

Senator Flynn: Mr. Chairman, are other representations going to be made on the same point by others who are present here?

The Chairman: Yes, there are. Mr. Brisset will be appearing. He is the next witness on the same subject.

Senator Flynn: I was wondering whether it would not be a good idea to hear him and then to ask the questions.

The Chairman: I am in your hands on that, honourable senators. Is that agreeable honourable senators?

Hon. Senators: Agreed.

The Chairman: Thank you very much, Mr. Miller. We may want you back again. In the meantime I will call on Mr. Brisset. Honourable senators, I referred to Mr. Brisset a moment ago as a member of a Montreal legal firm and he is Legal Adviser to the Canadian Chamber of Shipping. Mr. Brisset has a brief to present and he brought some copies with him which are now being distributed to members of the committee.

Mr. Brisset, you can do whichever you like; you can read your submission or you can summarize it.

May I have agreement that in any event Mr. Brisset's total submissions will be printed in the record?

Hon. Senators: Agreed.

(See Appendix "C").

Mr. Jean Brisset, Q.C. Counsel, Canadian Chamber of Shipping and the International Chamber of Shipping: Mr. Chairman, honourable senators: As your Chairman has pointed out, I appear before you on behalf of the Canadian Chamber of Shipping, but I should also point out that I appear on behalf of the International Chamber of Shipping, and on behalf of all these interests I want to thank you for the opportunity given me to appear before you and to comment on this particular clause of Bill S-23, namely, clause 24.

First of all, I should say what the International Chamber of Shipping is. It is an organization which is comprised of the national Shipowners Associations of 19 countries, and the list of these countries is included as an appendix to the brief, which will have been distributed to you. It includes Canada, and one of the constituent members of that association is the Canadian Chamber of Shipping. The Canadian Chamber of Shipping also has a number of constituent members, and I represent here particularly the following: The Shipping Federation of Canada; The Canadian Shipowners Association; the Chamber of Shipping of British Columbia; and The British Columbia Towboat Owners' Association. These associations have a particular interest in the subject which we will be discussing today.

I might describe briefly what the Shipping Federation of Canada is. It is an association of owners and operators of vessels from eastern Canada–that is, the St. Lawrence and eastern Canadian ports. The British Columbia Chamber of Shipping is a similar association on the west coast. I should point out to you that these associations represent, I would say, the great majority of ships and ship owners that carry Canadian overseas trade, both import and export. The first suggestion which these associations want to put before you is that consideration be given to deferring the enactment of section 24, principally because the object of this legislation should, we respectfully submit, be covered by international convention–that is, agreement among the Maritime countries.

I am advised that a similar suggestion was made by the Chamber of Shipping of the United Kingdom in an aide-memoire which was delivered to the Canadian High Commissioner in London and which, no doubt, may be made available to you.

The reasons for deferring enactment of clause 24 have already been broached by Mr. Miller, but they are more fully developed in the brief, of which you will have a copy, of the International Chamber of Shipping, which I was asked to read before you. Since you have copies, I will only summarize what is contained in the brief?

The International Chamber of Shipping wishes to point out to your committee that, first of all, it is fully conscious of the anxiety of coastal states throughout the world at the threat of oil pollution, and understands you would want to pass legislation in this regard, in view of the considerable extent of Canada's coasts.

It points out that in the past it has been instrumental in bringing about improvements in safety measures to prevent accidents at sea. For instance, it has recommended traffic separation schemes, and even though national governments may not have adopted these schemes it has strongly recommended to its members to put them into practice.

The International Chamber of Shipping, as Mr. Miller pointed out, has been supporting the work done by IMCO, The International Maritime Consultative Organization, and the work of the Comité Maritime International to work out a suitable international convention. I must point out to you that Canada is represented on these two bodies, and Canadian representatives have attented the discussions and meetings of both organizations.

In March of this year there is to be an international meeting of the Comité Maritime International in Tokyo at which Canada will have representatives, and I have been advised that there will be an international diplomatic meeting in November in connection with the proposed international convention on this matter of pollution, with which the present legislation is concerned.

There are two conventions under study by these international organizations. The first one has to do with the right of a coastal state, in the event of great and imminent danger of pollution, to take action on the high seas–action would include the destruction of the ship and its cargo. The other convention that is under study has to do with the liability of ship owners for oil pollution. In this proposed convention, as Mr. Miller pointed out, three points are covered. There will not be liability without fault, although the burden of proof will be reversed. There will not be unlimited liability. As the International Chamber of Shipping has indicated in its brief, there are two elements of cost to be considered in the operation of ships in relation to

the particular problem—hull insurance and protective indemnity. This is insurance which, as Mr. Miller explained, protects the ship owners against liability to third parties.

As the organization points out, if the ship is liable to be destroyed with no compensation for no better reason than it may interfere with the enjoyment of a beach, then insurance will be affected. Again, if the ship owner is to be made liable for pollution even though he may be the innocent victim in a collision then, again, the insurance rates will be affected. The Association goes further and says that legislation providing for limited liability might prove to be self-defeating.

Therefore, all of this means that the interests of Canada, as an important trading nation, require that legislation on oil pollution should strike a balance between the government's wish for compensation for oil pollution clearance and its wish to have its cargoes carried at the lowest possible cost. That is the problem facing all nations, and the problem that will be studied at the international meetings.

The Chairman: Where is that international meeting to be held?

Mr. Brisset: The international meeting is usually held in Brussels.

The Chairman: That is to be in March this year.

Mr. Brisset: In November this year. The C. M. I. meeting is to be held in March but in Tokyo.

The Chairman: March this year?

Mr. Brisset: In March this year.

This is a summary of the representations made to you by the International Chamber of Shipping in support of a deferment of clause 24 of the bill. I want now to pass to the recommendations of the associations, particularly the Canadian ones that I represent.

If your Government and your committee are not prepared favourably to consider at this time—until it becomes known that a satisfactory international convention can be adopted—deferment of the legislation, then there are three points on which I should like to comment and make recommendations in connection with the bill as it now is.

We criticize it—and I say this respectfully—because it imposes liability without fault, because it sets no limits on such liability, and because it imposes such a liability on a charterer other than one who is responsible for the navigation or management of the vessel. As Mr. Miller has pointed out, there is now pending before the United States Congress and Senate similar legislation, which was introduced two years ago in a form somewhat similar to yours but which has been changed considerably as it has now been acknowledged that these three points have to be met. In other words, under the present legislation now before their committee there is no liability without fault, although there is a reversal of the burden of proof and there is a limit imposed.

I should point out that the limit imposed under the bill now before the United States legislators in $450 per gross registered ton of the vessel's tonnage or $15 million, whichever is the lesser. Last year, when the bill was reported out of the committee of Congress but not adopted the limit had been reduced to $67 per ton or $5 million, whichever is the lesser. I am reliably informed that it is very likely a reduction will be made in the figures I have quoted to you when the bill is finally reported out of committee. As I think Mr. Miller himself pointed out, I should stress that in view of the considerable international trade between Canada and the United States, particularly in the Great Lakes, it seems to me that there should be uniformity at least in the legislation of both countries.

We have had discussions with your Government, the Department of Transport, as to liability without fault. It has been pointed out to us, for instance, that while the operator of a tanker may not be at fault in an accident, if oil escapes from the tank of the vessel the owner of the tanker is the one who is considered to have created the possibility of such a risk and therefore should bear the consequences. We counter that by saying that the users of that commodity—to us this type of ship is carrying on an essential activity of benefit to the users of that commodity—must assume also through their government a certain proportion of the risk.

On the subject of liability without fault, I must point out to you that there already exists in the Canada Shipping Act provisions relating to expenses of removal of wreck. The act places on the owner of the ship a strict liability for removal of wreck without limit; therefore, that is a precedent for this.

I say to you that the position is not quite the same because past experience—we have had a number of cases—has shown that such a liability has not been and is not likely to be what could be liability for removal of a wreck, coupled with pollution of the shore installations or shorelines of your country. There is a much greater risk involved there.

In order to solve this first problem, I have prepared, although with some anxiety, an amendment to section 495c which I would like to submit for your consideration. As you will see, from the section as it reads today, when the minister has cause to believe that a cargo of a ship in distress is polluting, and so forth, he may cause the vessel to be destroyed or removed and sold. I suggest and respectfully submit this amendment

to you, Mr. Chairman and honourable senators. I think it is important for me to quote from the brief:

> (1) Where the cargo or fuel of a vessel that is in distress, stranded, wrecked, sunk or abandoned
>
> (a) is polluting or is likely to pollute any Canadian waters,
>
> (b) constitutes or is likely to constitute a danger to waterfowl or marine life, or,
>
> (c) is damaging or is likely to damage coastal property or is interfering or is likely to interfere with the enjoyment thereof,

There is no change in (a), (b) and (c).

> the owner of such vessel shall immediately take all the reasonable and appropriate measures to mitigate such pollution, damage or danger, and in default of his so doing, the Minister may take such measures and if necessary may cause the vessel, its cargo or fuel to be destroyed or removed to such place, and sold in such manner, as he may direct.

There are two purposes or advantages to be sought in the draft which I have submitted to you as an amendment.

First, whereas your proposed legislation says that if this event happened the minister will step in and do what is necessary, I say that under the proposed amendment you would allow the owner, that is, the underwriters, to take the necessary major measures to avoid pollution or to clean it up if it has occurred, instead of incurring the risk of having his vessel destroyed or removed and sold. Therefore, I suggest to you that this will be an incentive for those concerned to use all their resources to do what is necessary and possible, with the assistance of the industry, in the case of an oil pollution, for instance.

The second purpose of the amendment is to attain the objective of the plan which is known as TOVALOP. I would like to say a few words about this plan, and in doing so I would quote or summarize what was said by the representative of the American Petroleum Institute before the Subcommittee on Air and Water Pollution of the Committee on Public Works of the United States Senate on February 4th.

He pointed out that the tanker-owning affiliates of certain major oil companies had initiated an international voluntary plan designed to encourage swift action in effecting the removal of oil discharges.

The plan has three objectives—to provide an incentive for the ship owner to act promptly if a spillage occurs to indemnify national governments for the reasonable costs they may incur in containing, preventing, removing pollution; and, thirdly, to assure the availability of funds to meet these objectives.

The full name of TOVALOP, by the way, is Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution.

The owner, under the plan, would either do the necessary to clean up the shore installations or he will reimburse the national government for the expenses incurred by that government for doing this very thing. He will in turn be reimbursed when he incurs those expenses or reimburses the government, by an organization that has been set up on an insurance basis, if you wish, and the extent of his possible recovery under the insurance scheme will be on a basis of a maximum of $100 per gross registered ton of the tanker discharging the oil, or $10 million, whichever is the lesser.

This scheme TOVALOP will be administered by a limited company registered in England, with headquarters in London, International Tanker Owners Pollution Federation Limited. Each tanker owner who becomes a party to TOVALOP will become a member of this federation.

It will start to operate when 50 per cent of the tanker tonnage will have joined, but will cease to operate, I must point out, if within two years, I believe, owners representing 80 per cent of the world's dead-weight tonnage do not become parties to the agreement.

When I refer to tankers, it excludes of course government owned vessels: we are talking only here of vessels outside of government.

I have with me and I will leave with your chairman a copy of the booklet which is now being published giving a full explanation of this scheme as well as the articles of agreement of the two organizations which I have mentioned.

The second point which I want to turn to now is that there should not be liability without negligence and there should be in cases of negligence a limit on liability provided there was no personal fault or privity on behalf of the person concerned. This policy of limitation of liability of shipowner is a policy adopted by all maritime nations, including Canada. Its purpose, as I am sure you know, is to foster maritime commerce as a matter of national interest, a commerce which, I remind you, is vital for Canada and for the continuity of which it depends almost exclusively on foreign ships for its overseas trade.

Canada adhered to the 1957 International Convention on Limitation of Liability of Owners of Vessels and you will find that Canada implemented its adherence by amending the Canada Shipping Act, Article 657 and following articles. It fixes the limit of a shipowner's liability at 1,000 gold francs per ton. Per ton here means per net registered ton plus tonnage of the space for propelling power. It is a bit different from the gross registered ton: it would be somewhat lesser than the gross registered ton.

The associations which I represent feel that this principle of limitation should be preserved in the present legislation and we submit this to you most respectfully. Otherwise one would have in one section of the act limitation of liability for certain claims and then for government expenses no limitation at all.

In this regard, to preserve this principle, I have again with some anxiety taken upon myself to prepare an amendment to Section 495*d* which will read this way:

> All reasonable expenses less proceeds of sale as provided under subsection (2) of section 495*c* . . .

I think this is the intent of the legislation, but the reference may make it clearer . . .

> incurred by . . .

Then (a), (b), (c) are not changed, and I will not read the text . . .

> shall constitute a debt due to Her Majesty by
>
> (d) the person or persons whose negligent act or fault . . .

This is practically the text of subsection (e) with the addition of the word "negligent" . . .

> or whose servants' negligent act or fault caused the distress, stranding, wrecking, sinking or abandoning of the vessel, or the escape or discharge of the cargo or fuel from the vessel.

Then the following clauses are added:

> In case of a collision between two vessels for which liability is apportioned between them, the liability of each vessel for such expenses shall be in the same proportion as that of their respective negligence.
>
> The liability imposed by this section shall be limited to an aggregate amount equivalent to 1,000 gold francs per registered gross ton or the equivalent in Canadian dollars of $5 million (United States), whichever is the lesser, whenever the person applying for such limitation establishes that he comes within the ambit of the dispositions contained in articles 657 to 663 of the Canada Shipping Act.
>
> In any action instituted by Her Majesty under this section, evidence of a discharge of pollutant matter from a vessel shall constitute a *prima facie* case of liability on the part of the owner or demise charterer of such vessel and the burden of rebutting such *prima facie* case shall be upon such owner or demise charterer.

Now what is to be kept in mind in connection with this proposed amendment is the following: If the amount of the limit of liability recommended is in line with that recommended before the Senate Subcommittee on Public Works and Air and Water Pollution of United States early in February of this year. I name in particular the American Institute of Merchant Shipping, the American Maritime Association, the Insurance Brokers Association and the Lake Carriers' Association.

You will notice that in the case of a collision it is to be apportioned, or liability is to be apportioned in the amount to the degree of fault and consequent liability in respect of these expenses of the government in the same proportion, and that is in line with article 648 of the Canada Shipping Act which introduces this principle in our own legislation in pursuance of an international convention to which Canada adhered in 1910. We incorporate the reversal of the burden of proof which is something included in the proposed convention now under study by the IMCO and the Comité Maritime National.

The fourth point which I want to draw to your attention is that in the case of a serious casualty involving pollution, for instance in the case of a collision between two vessels, the vessel at fault or the two vessels if they are both at fault to some degree will have to make available, assuming we are granted the privilege of limiting, to claimants including the Canadian government two limited funds; the first will be, under this legislation, clause 24 of the bill, to provide reimbursement to the Canadian government of the expense that they may have incurred to prevent the pollution or clean up the polluted matter, and the second fund will be to provide compensation for all other claimants other than the government for their expenses, because all other claimants in accordance with the provisions of the Canada Shipping Act and other claimants would include, I should point out, the owners of shore properties or beaches who would be doing their own cleaning up if the government has not done so for them.

To illustrate this, gentlemen, and we will not go into great detail on the figures, let us take the example of a possible collision between a tanker of 120,000 gross tons and an ordinary dry cargo ship of a gross tonnage of 12,000 tons. Here I might point out that 120,000 gross tons for a tanker would mean that this would be one of the largest and would give a dead weight tonnage of about 250,000 tons. In that case the tanker would have to provide to cover government expenses a limited fund of $5 million which is the lesser of the two figures based on the calculations of $71.50 or 1,000 gold francs per ton multiplied by the tonnage. Then the sum the other fund would have to provide would be roughly 100,000 gross tons multiplied by $71.50 which gives a figure of $7,150,000.

Now if there is loss of life or personal injury that fund will have to be increased to $15,015,000 under the same provisions of the Canada Shipping Act to

which I have referred, namely article 657 and following.

In the case of the smaller vessel, the dry cargo ship, to cover government expenses their owners would have to provide a fund of 12,000 tons multiplied by $71.50 which would amount to $858,000 and to cover other claims you would have $715,000, and this would be increased to slightly over a million and a half dollars if there are personal injuries and loss of life.

These are quite important figures, and I am sure in the light of what Mr. Miller has said you will appreciate the impact of these figures on the insurance rates which the shipowners will have to meet.

There is another point which I would like to bring to your attention although I offer no practical or definite recommendation in this regard or as to how the situation could be met. I would like you to consider the problem which would arise in the case of an accident resulting in a pollution of both Canadian and United States waters, which is a possibility which cannot be ignored in the case of ships plying in the St. Lawrence River, the international waters of the St. Lawrence, and on the Great Lakes. If there was no agreement between the two governments of the nature that the International Convention to which I have referred earlier is contemplating, you could find a ship involved in an accident of this kind liable to provide two funds, one to the United States government and one to your government. If you do not accept the principle or limitation of liability you will find that on the United States side the ship is liable up to a certain limit. On the Canadian side the ship is liable without limit. To avoid such a situation the proposed convention provides that if pollution damage occurs in the territory or territorial waters of more than one contracting state and actions are brought in the courts of more than one contracting state, the owner may pay the limitation fund into the courts or other competent authorities of any such state. Once he has done that all claimants must claim from that fund; there is no necessity for that owner to provide another fund in another state.

I would therefore respectfully suggest that if your Government proceeds with the enactment of section 24, at least something should be done to look into the possibility of reaching an agreement with the United States government in order to avoid what I will call the iniquitous results that would follow from dual liability, and especially dual liability with different limits or on different levels.

I have only one further point to take up before you, and I will be very brief on it. If you leave in your legislation this concept of absolute liability–that is liability without fault–we suggest to you that such a liability should not be imposed on a charterer other than a charterer responsible for the navigation or management of the vessel; in other words, such liability should not rest on a voyage charterer or a time charterer. The reason is quite simple. A voyage or time charterer has nothing to do with the operation of a vessel. All a voyage charterer, for example, does is provide cargo to fill the space in the ship, as he would to fill the space in a truck or on a railway car, but he has nothing to do with the navigation of the ship, any more than he would have anything to do with the driving of a railway engine or a truck that may carry his goods.

I may say here that we have been assured–and it is why I will not speak any more on this subject–by the Department of Transport that an amendment would be proposed by the representative of the department to take care of this situation and remove the liability on the time or voyage charterer by defining properly the word "charterer", and also that such liability would be removed from the shoulders of the master of a ship. Although I have no mandate to speak on behalf of masters, I would at least submit it is somewhat unjust to impose on the poor master of a ship, who may have his ship under the conduct of a pilot and may be down below in his quarters, an unlimited liability for pollution damage, to the extent of the figures we have been discussing with you, without any fault on his part.

One of the associations for which I speak today, the British Columbia Towboat Owners Association . . .

The Chairman: I might say here for the record that the members of the Canadian Chamber of Shipping include among its constituents the Shipping Federation of Canada, the Canadian Shipowners' Association, the Chamber of Shipping of British Columbia and the B.C. Towboats Owners' Association.

Mr. Brisset: That is correct, sir.

As I am quite sure you know, there is considerable barge traffic on the west coast. Some of these barges have been built by entrepreneurs who financed the building of the barges, quite often with subsidies provided by the Government. The barges are then let to an operator, who might be a tugowner. This legislation, if it were accepted in its present form, would put on the bargeowner responsibility for the type of expenses we are concerned with, even though in a great many cases the owners of the barges have nothing to do with the operation going on. All the bargeowner has done is really to finance the building of the barge in question. It would therefore be harsh to impose on these owners, it is submitted, an arbitrary responsibility as owner, whether or not they have any control whatsoever over the maintenance, navigation or management of the vessel. They remain owner, of course, simply to protect their financing of the barge in question. We submit that liability then should rest solely on the operator or the charterer of that barge and not on the owner himself.

That concludes my remarks, Mr. Chairman. I should be quite happy to answer questions if there are any questions the committee would like to direct to me at this stage.

The Chairman: Thank you, Mr. Brisset.

Senator Flynn: Do we understand the department is resisting the suggestion to delay the passage of this new principle until after the meetings of the international committees which have been mentioned by Mr. Brisset?

The Chairman: You are referring to the international organizations?

Senator Flynn: Yes.

Senator Langlois: As sponsor of this bill, I think it would be only fair to give the minister responsible for this legislation a chance to have the benefit of the very valuable representations which have been made to us this morning before he is asked to make up his mind about it. I would suggest that consideration of clause 24 be deferred until such time as we have heard from the minister in this respect.

Senator Flynn: What I had in mind was that it appears these representations have already been made to the department and that the department has up to now refused to budge from its present stand. Is that what we are to understand? Maybe Mr. Fortier could answer.

Mr. Brisset: Perhaps I could say this. We did have a meeting with representatives of the Government on February 11, when we explained the points we had in mind. We had not at that time, I must confess, prepared positive amendments; it was merely an informal discussion. If I remember rightly, we were told this would be taken into consideration. I leave the representative of the department to tell you what the position is now.

Senator Kinley: Are there any other representations?

The Chairman: Yes, there are, Senator Kinley. I think we should hear from Mr. Hyndman. Before that, are there any further questions you would like to ask of Mr. Brisset? He will be here anyway to answer questions later.

Senator Flynn: If the department is willing to delay the integration of the section, it would be better to know it now. It is usually not necessary for us to go into all these details and all the briefs before we know where the Government stands. If the Government is going to tell us next week that it accepts to delay the passage of this legislation, as far as section 24 is concerned, very well—otherwise, we would be working for nothing here.

Senator Kinley: Surely we would not pass it until we read it, and it is a problem of time.

Senator Flynn: That is why I want to know where the Government and the department stands on this.

Senator Langlois: I think we should wait until we hear all the representations before we are asked to make up our minds about it.

The Chairman: I think Mr. Macgillivray would like to make a statement on this question but before he does I would suggest to the committee that we must hear these other representatives in any event, like Mr. Hyndman, and Mr. Hurcomb, and Mr. Cook wants to be heard with regard to sections 3 and 4. Is that right—or does Mr. Hurcomb also want to be heard on this point.

Mr. Cook: I want to be heard on this point and on sections 3 and 7.

Senator Isnor: Before the witness retires, his only objections to the bill is clause 24? Otherwise, you are satisfied with the bill?

Mr. Brisset: I should point out that I have another section in regard to which I have been asked by one of the associations, two of the associations concerned whom I am representing here, to make representations. It is section 7. I do not know whether it is in order for me to do so at this time, Mr. Chairman, or whether your committee would like to hear the other witnesses on clauses 23 and 24 which we have discussed. I will be very short, if I am allowed to do it now.

Senator Isnor: Let him finish his presentation.

The Chairman: Yes, I would think the committee is rather anxious to continue as soon as it can with clause 24 and perhaps we might have your representations on it and then, is it agreeable that after that I would call Mr. Hyndman.

Hon. Senators: Agreed.

Senator Smith: I thought you were going to call Mr. Macgillivray.

The Chairman: That is right. Mr. Macgillivray. We will hear him in regard to clause 24.

Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport: Mr. Chairman, one of the honourable senators has asked whether we are prepared to defer clause 24, because if

we were then it would not be necessary to hear the other representations on it.

It is true that on February 11 there was a meeting of departmental officials, myself and others, with Mr. Brisset, Mr. Hyndman, Captain Hurcomb and others, at which they gave us an exposé of their arguments against many or most of the arguments that have been put forward today. We did hear this, we did bring it to the attention of our minister. However I should emphasize that we did not hear all of the arguments that have been put forward today and the minister has not had time to react. It may be possible that he can within a few days or even before this day is out. I am not sure. But I think we should hear the rest of the representations before we are asked to put the case finally to the Government to decide whether they will be prepared to consent to the withdrawal of this provision or part of it.

The Chairman: Thank you Mr. Macgillivray. Does the committee agree with this point of view? I think we have expressed agreement. Thank you very much, Mr. Macgillivray.

I want to suggest now that this bill is a very important one and the committee does not propose to deal with it in quick fashion. Will you proceed, Mr. Brisset?

Mr. Brisset: The other clause which I want to deal with now is clause 7 and more particularly sections 2 and 3 on page 5 of the bill before you.

Mr. Fortier explained to your committee the reasons for this particular clause, namely, to give effect to by-laws of the pilotage authority which might have been found unlawful by the courts, or which the Royal Commission on Pilotage criticized as being outside of the powers of the minister.

That meeting between the Department of Transport and representatives of the associations which I represent here, the associations had agreed to this type of remedial interim legislation, but it set a date for the expiry of the legislation. That date was March 31, 1969 and not December 31, 1969 as you will find in the text of subsection 3.

The industry furthermore urged that if this date was to be extended, namely March 31, 1969, it could only be extended by an order in council tabled before Parliament so that there could be an opportunity of discussing the subject if necessary.

I want to point this out because no doubt inadvertently when the bill had second reading it was mentioned that all those interested had agreed to the date of December 31; and as it reads the clause seems to permit the order in council to extend that date practically at will. I am not saying that it would be done injudiciously but still we submit there is too wide a power given there.

To restate the position which the shipping industry had taken in discussions which extended over a long period of time, I must say that the President of the Fishing Federation wrote to the honourable minister, Mr. Hellyer, on February 20, to restate such position. I would like to table before you, if I am permitted, a copy of that letter, This will conclude my remarks.

The Chairman: Is it agreed that this letter become part of the record?

Hon. Senators: Agreed.

(See Appendix "D")

Senator Langlois: I am sorry if, when I introduced this bill. I misinterpreted the meaning of the members of the Shipping Federation of Canada.

I also was at this meeting of the department officials and members of the Federation of Pilots and I think some others did also mention the fact that only part of the report was before us at the time.

As you know, this report has been composed of five parts and at that time only Part I of the report had been published. Even up to the present day we have only Part II before us.

I mentioned then that we were not to expect the Government to recommend to Parliament consideration of the legislation based on the report which was not properly before us. And I mention at this point, as others did at that point, that since there was no serious objection to my remarks I was under the impression that when this date which was agreed here—that there was no serious objection to a possible extension if the situation remained as it was at that time, and I again repeat that the situation has not changed greatly, but we still have only before us Part I and Part II of this report, and according to my information I do not think the complete report will be before us before the end of the present year, and I do not think that parliament should be asked to consider legislation based on this report before we have the whole Report before us.

The Chairman: You referred to the Canadian Shipping Federation. Did you mean the Canadian Shipping Association?

Senator Langlois: No, the Canadian Shipping Federation.

Mr. Brisset: It is a member of the Canadian Chamber of Shipping.

The Chairman: Have you anything more to add at the present time, Mr. Brisset?

Mr. Brisset: No.

The Chairman: Then may we hear from Mr. Hyndman. As I stated before, Mr. Hyndman is Chairman of the Canadian Maritime Law Association and is from Montreal.

Mr. A. Stuart Hyndman, Chairman, Canadian Maritime Law Association: Thank you, Mr. Chairman. Honourable senators, I think I should begin by saying briefly what the Canadian Maritime Law Association is, and what it does. The Canadian Maritime Law Association is one of 28 national associations affiliated with the Comité Maritime International, which itself was founded in Brussels in 1897. Since that date, namely 1897, the Comité Maritime International or as it is called for short the CMI has been responsible for most of the important international shipping conventions which have been agreed to since that date, and of which Canada is either a party or to which it has adhered in its own domestic legislation. The Canadian Maritime Law Association is a non-governmental legal organization dealing with the formulation of international conventions on merchant shipping and with the unification of international maritime and commercial law and practice. The membership, despite its name, is not composed entirely of lawyers. In fact it is an organization which is quite independent of the Canadian Bar Association. It is composed of representatives of the maritime trade such as shipowners, ship charterers, underwriters, merchants, average adjusters, and a number of lawyers who are directly concerned with this field of practice. I should say that in the final analysis the policy of our association, which of course is Canada-wide, is governed by the constituent members of whom there are ten, and those include the Canadian Board of Marine Underwriters, the Shipping Federation of Canada, the Canadian Bar Association, the Dominion Marine Association, the Canadian Chamber of Shipping, the Association of Average Adjusters of Canada, the Canadian Shipbuilding and Ship Repairing Association, the Shipowners Assurance Management Limited, and the Canadian Exporters Association.

Now when this Bill S-23 was introduced by Senator Langlois and came to our knowledge we were asked to attend a meeting in Ottawa, about which you have heard, on the 11th of February. At the same time just after that meeting I sent a circular to all our members including constituents and associate members describing briefly the nature of the bill with particular reference, of course, to clause 24 which is our and my only concern before this committee today. In so far as it concerns the constituent members and in so far as I did obtain any reaction, the reaction was unanimously against the provisions of the bill in so far as it relates it to absolute liability without fault, and unlimited liability. I need not go into the reasons why this reaction was so much a matter of consensus; these matters have already been thoroughly covered this morning by Mr. Miller and Mr. Brisset. However, I think it is important for you gentlemen to appreciate that this was the view of the constituent members who reacted to the information about this bill.

As I said before, our primary function as the Canadian Maritime Law Association is to assure, in so far as is possible, that there shall be international agreement on matters which concern shipping as a whole in all nations, and of course, although we are not a nation, unfortunately, of shipowners, we are interested in ship operating. All of our cargoes are carried overseas certainly on foreign bottoms and we have naturally a great interest in the Great Lakes and ocean trade through the Dominion Marine Association where we are in fact owners.

So that the provisions contained in this legislation are of direct and immediate concern to this association. You have heard of the forthcoming meeting in Tokyo. I shall be attending that meeting with a delegation of approximately 14 which will include three observers from the Water Transport Committee of the Transportation Committee of the Government of Canada. As you have also been told, one of the most important subjects to be discussed next month in Tokyo is this very question of oil pollution, and what should be the liabilities with respect to oil pollution. Oil pollution certainly is an emotional issue, and I think consequently we should look carefully at any legislation in order to assure that what is being done is based on the logical and practical aspects of the question as well as what may be the emotional ones.

The bill which we have before us is not, of course, designed to prevent pollution; it is a bill which endeavours in certain areas to say what is done after pollution occurs. To attack any legislation dealing with pollution appears as though one is attacking motherhood or apple pie. This is not the case; our association strongly favours any legislation which goes to solve the question of the serious difficulties arising from pollution and which in any way goes to prevent pollution, but we do not consider that unilateral legislation at this stage of the type which you have before you is a practical solution to the question.

Now this question of uniformity of international legislation is of course to be discussed in Tokyo and hopefully at a diplomatic conference in November.

The argument advanced by some sources against deferring our own legislation is that it may be, for example, one year or even two years after November before any international agreement is achieved. Perhaps that is the case. We do not yet know. At least as a result of the forthcoming meetings in Tokyo, and possibly in Brussels in November, there will be a possibility of seeing what is the consensus of international views on the subjects, so that any Canadian legislation, if it has to be done unilaterally, can be done at that stage, namely later on this year, having then full knowledge of what is going to be achieved or what can be achieved internationally. We can then have a reasonable prospect of knowing what is going

to be acceptable both in the underwriting field and internationally.

Apart from the international question on the broad field, I think we should also emphasize, as indeed have earlier speakers this morning, the great importance in this country of having legislation which is, so far as possible, equivalent to that of the United States when we are dealing with international waters. The most seriously influenced areas for North America potentially damageable are the international waterways of the St. Lawrence Seaway, the Great Lakes and the connecting tributaries, such rivers as St. Marys, St. Clair and so on. So far as I can foresee, the situation would be virtually intolerable if on the one hand there is unilateral Canadian legislation which sets no limit to liability and creates an absolute burden regardless of fault, and on the other hand American legislation covering the same water–because obviously water is not subject to a dividing line and is subject to American legislation–which is quite the reverse in these important aspects of limitation of liability and absolute liability.

It is therefore with the utmost respect that I say we should at least defer consideration of section 495d of Part XXIV of this bill. Section 495d is the part dealing with the question of recovery of expenses, whereas section 495c is the part giving the minister the right to take action. I say with respect on behalf of my association, I think the minimum objective we should seek at the present time is for consideration to be given to a deferral of section 495d so that there would be no doubt, even if further legislation takes six months or a year, or more, that the minister does have the right to take action. The only element then remaining in doubt is the question of recovery of costs, which I think deserves very careful study in the light of the American bill S-7 and the forthcoming meetings at Tokyo and Brussels.

The Chairman: Would you care to give the committee your opinion on Mr. Brisset's suggestion concerning the amendment of section 495c? Mr. Brisset, you proposed an amendment to section 495c, did you not?

Mr. Brisset: Yes, Mr. Chairman.

Mr. Hyndman: I have a copy of Mr. Brisset's statement, I have read his proposed amendment and I agree with what Mr. Brisset suggests as to a possible amendment. What I am saying is that at a very minimum, even if we are not in a position to consider re-amending and putting this section into effect, we should defer section 495d but if we do decide that we must go ahead unilaterally in this field, consideration should be given to amending sections 495c and d to correspond with the text suggested by Mr. Brisset. We do not as yet know what international limit is likely to be set. There have been many, many meetings of the international subcommittee on this subject and we do not know yet. It will be a very substantial limit, possibly in the neighbourhood of $10 million, but we do not know. In the meantime, I think it would be unfortunate if we were to go ahead ourselves, make an absolute unlimited liability, and then simply have to re-amend our legislation six months or a year from now if we find there is international consensus which is contrary, as I feel very strongly will be the case on this question of unlimited liability and the burden of proof.

The Chairman: Thank you, Mr. Hyndman. Are there any further questions?

Captain Hurcomb, do you wish to appear now, or is there someone who should precede You?

Mr. P. R. Hurcomb, General Manager, Dominion Marine Association: I will meet your convenience, Mr. Chairman. I should be very happy to appear now.

The Chairman: Then perhaps you would proceed now. As I said before, Captain Hurcomb is General Manager of the Dominion Marine Association. I understand, Capitan Hurcomb, at one time you were judge advocate of the fleet?

Mr. Hurcomb: I was indeed, yes. In spite of that I like to think that I have a certain competence in realistic matters!

Mr. Chairman, honourable senators, as your chairman has said, I represent the Dominion Marine Association, which in turn consists of the owners of the Canadian registered ships trading in the Great Lakes and the St. Lawrence River. These are the only Canadian registered fleets of any substance as far as vessels in the orthodox sense are concerned. Two or three of our ships have an ocean-going capability and do in fact trade in the off season in Europe and elsewhere, but by and large we are inland. We have 23 companies including the four oil companies–Imperial, Texaco, Shell and Gulf (formerly British American). By and large, however, our ships are dry bulk carriers. The largest of these, the 730-footers, carry one million bushels of wheat. They may also carry 30,000 tons of ore. They are very substantial ships. The oil companies have tankers. Several individual companies also have tankers, so we have that interest in this problem as well.

I very much appreciate the opportunity of appearing before you. I will try to avoid duplicating what has been said by speakers who have preceded me, who have expressed their views so eloquently.

I will try to highlight the points which relate particularly, as I see it, to our inland activity, without boring you with repetitions.

The Chairman: May we ask you, Captain, if you generally concur in the statements made to us by Mr. Miller and Mr. Brisset and Mr. Hyndman?

Mr. Hurcomb: I do indeed, sir. As far as Mr. Miller's evidence is concerned this is confirmed with discussions with our own insurance brokers, who confirm what he said, and I am sure what he says is perfectly accurate. In respect of the other two gentlemen's comments, generally I do agree–I may have a reservation, which I shall mention at the end.

First of all, I think we should emphasize, gentlemen, that we talk very much about "oil" pollution but actually section 23 relates to pollution through any source. For example, a cargo of potash which we carry from the Lakehead quite often could make one glorious mess in confined waters if it is dumped or spilled. You realize what would happen if one of our cement carriers–Canada Cement is one of our companies–had an unhappy incident in a bad spot in Montreal harbour.

What I want to get across is that we are not talking about oil alone, but the spilling of cargo of any kind that has a pollutant potential.

Therefore, we are thoroughly concerned with clause 24 of this bill.

We are also concerned because we may be in a position of the negligent party–perhaps colliding with a foreign tanker and causing pollution. We might be involved there as the person at fault. So we can be involved as owners–innocent owners or otherwise–or as the person at fault.

Our companies–our oil companies, particularly–have extended their efforts towards designing measures to prevent and control pollution. I think many of those measures are known. Large amounts of money have been spent in developing methods and devices and chemicals.

The other thing they have done of course is the TOVALOP plan described to you by Mr. Brisset and which I will not repeat. So they have not been just sitting back and waiting for the Government to act.

The point I am going to emphasize first of all is the involvement of international agencies, such as IMCO and the CMI. These have been mentioned. We feel international consensus is vital. We who are engaged in the St. Lawrence and constantly involved with United States and other international traffic in confined waters, we are very conscious of the need of a common approach to a problem of this kind.

As one of the previous speakers mentioned, if something happened in our marvellous and expensive section of the Thousand Islands, any kind of pollution or spilling, it is going to have an impact on both sides, affecting very expensive installations, on shore or otherwise. We should have a common approach, if possible, to the solution vis-à-vis the United States particularly. Therefore, we say, wait please for the discussion at the international organization and watch also, I suggest with great respect, developments that are occuring in the United States today and which have been occurring for some weeks under their Bill S-7.

We respectfully suggest that the best thing, in the interests of everyone, would be a deferral of this section of the bill.

Nevertheless, we should mention specific defects as we see them in the sections as they are. On section 495C, it has been suggested that perhaps that section might be left in, since it simply enables the minister to act. But we feel it is too arbitrary. It gives to the minister absolute power to deal with a vessel that is in distress, stranded, wrecked, sunk or abandoned, and its cargo, without consulting the owner first. This is an arbitrary invasion of normal property rights, I would say.

In the United States, Bill S-7, the Bill places an obligation on the owner or operator of the vessel to remove the pollutant. If he does not take the necessary action–then, and only then, the Government is authorized to step in.

I say that if this section is to be accepted, it should first provide that the minister may order the owner to do the necessary, and then take action if the necessary action is not taken immediately. This is one suggested change we have, Mr. Chairman.

Incidently, subsection (2) of that section emphasizes the arbitrary nature of this legislation in that, having jumped into the situation without consulting the owner or giving the owner a chance to act, the minister may then compound the invasion of private property by selling the vessel and the cargo, again without consulting the owner. Surely the owner should at least have the right to pay the compensation or make some arrangement to pay the compensation, before the ship is sold. This is the arbitrary tone of the whole section that we find most objectionable. So much for section 495C.

Now, in regard to section 495D which is perhaps the more important one. Here again, as I mentioned before, the owner should be given the opportunity to deal with the situation first. He might be in an ideal position to do the necessary and he could probably do it at very much less cost than the Government could do it for. So let us have the owner given the first chance to take action.

Our second point is the one that was emphasized so strongly and so eloquently by previous speakers, that liability should be based on fault. For example a tanker at anchor which is struck through the negligence of some other vessel–to hold the owner of the tanker responsible seems to flout the principles of laws governing maritime affairs as we understand them.

I do not like to keep harping about the United States legislation, Mr. Chairman, because of course we

are very often ahead of them and far more enlightened than they; but it may interest you to know that in the United States bill the owner, to be liable, must be established to be at fault, he must be negligent. They have recognized that.

The third objection is the limitation of liability, which has been thrashed out, I think very fully and very effectively.

Before I mention that, sir, there is one point on this point that liability should be based on fault. Let us say the Crown collects from the innocent party–as it may do, it can collect all the costs from the innocent party, because it is convenient to do so, it could do so–what are the rights then of the innocent party vis-a-vis the party whose negligence caused the accident?

I do not pretend to be the greatest maritime lawyer in the world but I sincerely doubt whether the innocent owner, having been saddled with the full cost, will be able to recover all that cost from the third party at fault–limitation of liability provided for by the Canadian Shipping Act itself may come in. This is a large legal question which I leave to better minds than mine, but it casts further doubt on the profundity of this legislation and further suggests a need for more study. There must be limitation of liability, we say. This has been emphasized by previous speakers. It may interest you to know that although there are some differences in the type of insurance of our ships, I am told the maximum liability for our vessels in this protection and indemnity field is at the rate of $150 per gross registered ton, plus an excess amount of $3,500,000.00. Now, that means our largest ship which is 20,000 tons–you would multiply 20,000 tons by $150 and you would get $3 million to which you would add the excess of $3,500,000.00 in order to find the total maximum coverage, which would be $6,500,000.00. Any increase in that ceiling combined with the factor of liability without fault would send insurance rates skyrocketing. And in our business, as most of you know, the margin of profit is pretty shaky these days.

Senator Isnor: This applies to the St. Lawrence and the Great Lakes?

Mr. Hurcomb: I am speaking ot shipping from the Great Lakes down as far as Les Escoumins.

Senator Isnor: There are lower rates in Halifax.

Mr. Hurcomb: There are ice conditions, and in different conditions different considerations appiy.

Senator Isnor: But there are no ice conditions in Halifax. It is clear.

Senator Flynn: That sounds to me like propaganda.

Mr. Hurcomb: Mr. Chairman, I do not speak of rates because these differ between companies and are a secret matter. I speak only of coverage. It is $6,500,000.00 for the largest ships and varies downward for the smaller ships. I would ask you gentlemen, looking at the St. Lawrence and seeing it in summertime, and looking at it during Expo, with literally thousands of small boats buzzing around in all directions, and I would ask you to think of one of these small boats colliding with a tanker somewhere or other and being subject to unlimited liability. This just highlights what I conceive to be the danger of this.

The next and I think the final specific thing I have to say about this section is that once the minister has stepped in and has taken action then the party against whom he may claim must pay all the costs incurred by the minister. There is no curb on the minister or on his authority to spend money in this respect and charge it to us. We are all aware that governments usually get socked a lot more than private enterprise.

Senator Kinley: He has considerable authority now, has he not?

Mr. Hurcomb: Yes.

Senator Kinley: But we never heard of its being invoked to the full.

Mr. Hurcomb: That may be.

Senator Kinley: He is very careful about his authority in that regard.

Mr. Hurcomb: I would hope so. On the other hand, one must look at the legislation and look at what it could mean.

Senator Kinley: This enlarges his power, does it? These two or three paragraphs enlarge his arbitrary power.

Mr. Hurcomb: It enters a new field entirely in effect and it gives powers in that field.

The Chairman: At this point, Captain Hurcomb, would you care to tell the committee what was the amount of damage or the amount of liability in regard to the *Torrey Canyon*? Are the figures available?

Mr. Hurcomb: I do not think the final figures are available. I just finished reading the recent book *Oil and Water, The Torrey Canyon Disaster*, and I understand the latest figure is something in the neighbourhood of $9 million United States. They are still settling claims. Perhaps Mr. Miller could tell us something about this.

The Chairman: Mr. Miller, would you like to enlighten the committee on this? I am sure many of the members are interested.

Mr. Miller: Yes, indeed. The claims made against the owner of the *Torrey Canyon* by the British and French governments are of course the subject of a great deal of dispute. The way the oil was cleared up was, and this is not just my own opinion, but the opinion of the British parliamentary committee who looked into the matter, hamfisted to say the least. It was done in a very expensive fashion. The claims being put in are obviously very inflated and obviously the subject of considerable dispute. As the parliamentary committee said, nobody in their senses would ever bomb a vessel to try and disperse oil. Be that as it may, the claims so far as we know by the British and French governments are about two million pounds sterling for each government which correspond very closely with the total figure which Captain Hurcomb gives of $9 million United States dollars.

Mr. Hurcomb: Just to follow what I was saying, if the minister has authority to spend as much money as he likes, we would want the same kind of curb that is in the United States legislation, that the minister is entitled to collect only expenses "reasonably" incurred by the government.

Senator Flynn: That was suggested by Mr. Brisset already.

Mr. Hurcomb: Finally on this point we have tried to establish this legislation in its present form as premature. Speaking bluntly we think it is superficial in many respects and requires considerably greater study by the kind of people, and I exclude myself, who talked to you today and who have knowledge of these things. I therefore strongly recommend that there be a deferral at least until next November, and by then, as Mr. Hyndman suggests, we will at least have a consensus.

Now, finally, Mr. Brisset has made specific recommendations for amendments of these two clauses. Glancing at them quickly, as we have been able to do, Mr. Brisset's redrafts seem to be sensible, but I would like to give them a lot more study too. Speaking on behalf of my clients, I do not feel I could concur with those amendments now. I would want to study them a great deal further in the light of all these things.

Finally, and this is final, I agree that Masters should be exempt from any liability in this matter. All liabilities should reside with the owner or the operator or demise charterer as has been suggested by others. I think that is all I have to say on this suggestion.

Senator Flynn: I wonder if the witness, or any of those from whom we have heard, have drawn the attention of the committee to the amendment in 495d. In the case of the Crown the expenses incurred may be recovered, but this would not be the case of a private citizen whose property would be fouled in the same circumstances. This seems strange to me because it has unlimited liability towards the Crown only and not towards any other person.

Mr. Hurcomb: I am sure, sir, Mr. Macgillivray of the Department of Transport can explain that. I think he might say that the abutting land owner has a civil action against the ship.

Senator Flynn: But with no "fault" consideration there at all.

Mr. Hurcomb: I would say not. However I am sure the Transport officials will clear this up. It is an interesting point.

The Chairman: Any other questions? Thank you, Captain Hurcomb.

Mr. Hurcomb: Like Mr. Brisset, I had planned to say a word or two about section 7.

The Chairman: Well, in that case, we would like to hear from you on that now.

Mr. Hurcomb: Section 7 is the one that Mr. Brisset spoke about briefly at the end of his remarks. To get my point across I will just touch on the background of this legislation very briefly. The Royal Commission on Pilotage was convened on November 30, 1962, over six years ago. We are not critical of the commissioners; we think they have done a magnificent job; it is a difficult task, which they have done painstakingly, and it has taken this time. But six years have elapsed. Part I of the report was published on July 17, 1968, as I recall, seven and a half months ago. I thought the consensus was that Part I, providing as it did the principles the commission had in mind, would in itself provide enough material for any basic legislation that had to be passed. The other volumes deal with different pilotage areas in great detail, but Part I provided the bones or structure that the commission had in mind.

I know that Senator Langlois' view of this was different. He felt we should await the arrival of all the volumes. The view of most of us, however, which I thought was shared by the Deputy Minister of Transport, was that the first volume was enough to start with. We were heartened too by a press release from the Prime Minister's office on July 17, the day Part I came out. The Prime Minister was quoted as stating:

> . . . a small task force, under the direction of the Department of Transport, will be set up to launch an early review of the report with a view to expediting implementation of the recommendations. The Government intends to proceed quickly with preparation of the appropriate legislation. . . The majority of the recommendations of the commission appear acceptable in broad terms.

That was July 17. The next day Mr. Baldwin, the Deputy Minister of Transport, called us to the meeting Senator Langlois has spoken of. He asked us in effect to exercise restraint in taking advantage of the legal loopholes that had been revealed by the pilotage commission report. He asked us for restraint on the basis that if we all started opening this can of worms with all sorts of legal actions the whole system would be seriously impaired and the security of the St. Lawrence would be impaired. We therefore all agreed, as Senator Langlois mentioned, to exercise restraint in asserting legal rights, but we did so with the fear in mind that if the Government got interim legislation through, such as they are putting forward here, people in authority would breath a sigh of relief and say to themselves, "We are off the hook now on the legal business. The 'urgent' tag comes off this matter. Let us deal with other important matters", and the outcome would be serious delay in the work. This is what we are afraid of.

Therefore we put in a deadline as a condition of our restraint of March 31, 1969. That gave seven months. Perhaps I should not speak personally, but I have had a hand in drafting a considerable amount of legislation in my time, and if you cannot do something like this in six months you are not likely to be able to do it at all. Anyway, that was the point, seven months. Nothing has really happened that I know of. We now see in the bill much to our surprise–and we were not informed of this at all, much less did we agree to it–that they are now given to the end of this year, December 31, with the right to extend the period of time.

The Chairman: What section is that?

Mr. Hurcomb: This is section 7 subsection (3). It says this remedial legislation will expire, cease to have force and effect, on December 31, 1969 or such date not later than twelve months after that prescribed by order in council. There is therefore scope for two years there virtually, which they can achieve simply by getting a routine order in council passed that nobody will ever know about until it is too late. This is what we are afraid of and determined to resist. We are not going to have delays. There are people who, I think, would like to see the system remaining as it is with these legal matters cured, who would be quite content to leave things as they are. We are not.

Perhaps, Mr. Chairman, at the risk of boring you I should tell you particularly why we are not willing to wait. One of the things we are saddled with in the heavy cost burden this industry has to bear is the need to pay pilotage dues in the districts of Montreal and Quebec, i.e. from Montreal right down to the Gulf of St. Laurence, whether we use a pilot or not. This is called compulsory payment of pilotage dues and amounts to thousands of dollars. Our people who ply these waters continuously, our masters and our mates, are just as competent to handle these ships as the pilots.

The Chairman: Do you apply the term "feather-bedding" to this?

Mr. Hurcomb: My master told me never to use that word.

The Chairman: I am sorry I brought it up.

Mr. Hurcomb: This costs thousands of dollars a year. The by-law imposing compulsory pilotage is as clearly illegal as anything could be. I can explain this to you, but I need not because I think everybody has agreed this is so. We could last season have said, "O.K. boys, that is all of that nonsense. We will stand on our legal rights and save thousands of dollars". We did not do that; we exercised restraint, as we were asked to do, but only for that season, and that season is now over. We are now being put in the position where because these illegal by-laws will be validated by this legislation we will have to continue to pay this.

Senator Kinley: Is there not a provision that the experience of the captain can be taken into consideration on these waters?

Mr. Hurcomb: In these waters that is exactly what the royal commission recommends. I should have mentioned that. If the royal commission recommendation is implemented masters will be tested on the basis of their knowledge of these local waters and if they pass, as we expect they all will–and we would not have them in that ship unless they did–their ship will be exempt from pilotage. This is what we want, but when are we going to get it?

Senator Kinley: I thought you had it.

Mr. Hurcomb: Oh no, sir. We are exempt from pilotage above Montreal and into the Great Lakes. In the Montreal and Quebec districts we do not have to take a pilot but we have to pay for it, so we might as well take it. That is the situation. This is one of the reasons we are so keen to have this thing implemented, and we will not brook any further delay. To cut a long story short, what we are respectfully asking is that subsection (3) of section 7 be amended, in a form that I will ask to place on the record, to say that the act expires December 31, 1969. We know now that we will not get the new pilotage act by March 31, next month.

I guess we are saddled with all this. So our amendment would be:

"(3) (a)This section expires on the 31st day of December 1969 unless before that date this Act is extended to a later date

which may be fixed by proclamation of the Governor in Council.

(b) A proclamation under subsection (a) shall be laid before Parliament not later than fifteen days after its issue, or, if Parliament is not then sitting, within the first fifteen days next thereafter that Parliament is sitting.

(c) Where a proclamation has been laid before Parliament pursuant to subsection (b), a notice of motion in either House signed by ten members thereof and made in accordance with the rules of that House within ten days of the day the proclamation was laid before Parliament, praying that the proclamation be revoked, shall be debated in that House at the first convenient opportunity within the four sitting days next after the day the motion in that House was made.

(d) If both Houses of Parliament resolve that the proclamation be revoked, it shall cease to have effect and this Act shall cease to be in force but without prejudice to the previous operation of this Act or anything duly done or suffered thereunder or any offence committed or any punishment incurred.

What we have done here is borrowed this from an act called the Maritime Transportation Unions Trustee Act, which is 12 Elizabeth II, Chapter 17. That was the act creating a maritime board of trustees.

The point was that one could not extend it by a simple order in council, that it should be debatable. This is what we strongly recommend, that this be done. With that, I thank you for your indulgence.

The Chairman: Thank you, Captain Hurcomb. I want to ask the advice of the committee as to how long we should sit. I understand there is only one witness to be heard, Mr. Cook.

Mr. Cook: I will be brief.

The Chairman: We want to give you all the time you need. Are there any other persons here to be heard? We shall hear Captain Cook now. He is the President of the Canadian Merchant Service Guild. Would you explain the nature of the organization that you represent?

Mr. Robert F. Cook, President, Canadian Merchant Service Guild: My association represents the vast majority of masters, mates and ship's pilots, engineers, across Canada from Newfoundland to British Columbia, and other ship's officers, all ships' officers in general.

In dealing with the matter of oil pollution we are primarily concerned with one particular part of the proposed section, that is dealing with the responsibility of the master in so far as damage is concerned.

I was pleased to see that the DMA representative and the representatives from the Chamber of Shipping also agreed with us that the master should be excluded from the responsibility for liability. I am not going to reiterate many of the things which were said by previous speakers very capably and very thoroughly but we agree with them that their definitely should be a limit to liability. To expect the shipping company to operate a vessel in a circumstance where they could be subjected to very high legal cost, without being able to get proper insurance coverage, is absolutely and thoroughly unfair.

I am not trying to defend particularly the shipping companies, other than the fact that if we do not have a healthy shipping industry our people do not work and for this reason I am very concerned with what takes place in the shipping industry in general.

Further than this, I also agree with the previous speakers when they say that there should be a matter of fault shown before the liability takes place. So we are in full agreement with those gentlemen on those areas.

However, we do agree with what is the intent of the legislation, to protect the citizens of Canada and the Crown against high cost caused by oil pollution and clean-up. There should be some responsibility from the shipping interest but I think it should be done in such a manner that there is a definite liability ceiling and that there definitely should be fault shown before such action should be taken.

Getting back to the matter of the master, as was pointed out by Mr. Brisset, the master could very well be charged with responsibility of an action which takes place aboard his vessel, even though he is nowhere around such activity. He may be, as Mr. Brisset has stated, down in his bunk. Our masters take the vessels on the Canadian ships from Cornwall straight down almost to Quebec City by themselves—because this is part of their responsibility when they get in narrow channels and so on, they make it a definite responsibility of theirs to be on the bridge. But they cannot stay awake forever, they may be up for 12, 18 or 24 hours, they have to go down and sleep and may leave the operation of the vessel in the capable hands of the pilot.

Senator Rattenbury: What about their officers?

Mr. Cook: They may leave it in the hands of their officers, but the master is still responsible under the Canada Shipping Act. Therefore we think it would be very unjust to have this man responsible for an action of which he may very well be innocent.

Furthermore, I do not think it has been pointed out what well could happen here is that the companies could be doubly penalized because of the introduction of this particular section, by virtue of first having to take insurance out on the vessel and secondly probably having to have an insurance policy out for their master. So they have got to take two policies covering the same particular problem.

You may well say it is the responsibility of the master to take out his own insurance but I can assure you that such insurance, if it were available, would be so costly that the average master, who is merely on a wage, could not afford it. Therefore, in order to be able to get masters, I am sure that companies would have to be responsible for their liabilities, and this is normally the procedure at present.

For these reasons I would say, gentlemen, that we do not think the master should be responsible and, secondly we feel that there should be coverage within the laws of Canada protecting the Crown whereby the shipping companies are responsible to a degree with a liability restriction and by showing fault. They should be responsible for the consequent accidents or whatever may happen which would cause oil pollution.

Senator Kinley: What financial responsibility is on the captain? He could be disciplined as the captain for being negligent in his duty, but would he be responsible for any financial loss to the ship owner?

Mr. Cook: Yes, sir, he is responsible now under the Canada Shipping Act. We had a case a few years ago where a captain of a tow boat got into an action and was sued for $250,000 and lost the case.

Senator Kinley: As the captain?

Mr. Cook: Yes. As an organization we take out liability insurance on behalf of members of ours who are masters, and many of the companies take out liability insurance on their behalf.

Senator Kinley: Do you classify cargo ships and tankers? I notice that you talk about tankers and you talk about cargo. What about the fuel cargo to propel the ship? Is that considered cargo?

Mr. Cook: No, not in actual fact. It is considered cargo; for instance, when you are dealing with your load line, it is a part of the gross or net tonnage of the vessel.

Senator Langlois: In order to save time, and I do not want to interrupt the witness, but I think I should inform the committee at this stage that the department has an amendment at this time in the case of the charter.

Mr. Cook: I am pleased to hear that.

The Chairman: Was that Master insured?

Mr. Cook: No, and this is the reason we got into this field of liability insurance for Masters.

That is all I have on the matter of pollution, but I would also like to speak on clause 7 covering pilotage situations.

I may say, as always happens when you have a meeting with a number of people, after the meeting you usually get two or three versions of what took place at the meeting, and it would appear that this happened with the meeting held by the people involved, the shipping interests, with the Department of Transport last summer. I am in full agreement with Senator Langlois when he states it was pointed out quite emphatically that it would be difficult to draft a bill covering the problems of pilotage without having the full report of the Royal Commission on Pilotage which was prepared at an exceedingly high cost and five years of work was put into it by the government and the representatives.

Secondly, I might point out, that at that particular meeting it was also stressed very strongly by the Deputy Minister of Transport and by the Director of Marine Regulations that being realistic and being knowledgable, as most of the people involved in this meeting were, it would be almost impossible to expect any bill of this magnitude to be drafted, go through committee and be passed in less than 18 months. The 18-month figure was used as a minimum period of time by various people in the discussion. I think Senator Langlois also mentioned it would take a considerable length of time.

Now in dealing with the two clauses which we now have before us, and dealing with the Royal Commission on Pilotage, we were told when section 1 came out that this was going to deal with everything in principle that was going to take place in the revisions within the pilotage authority. And lo and behold when section 2 came out covering districts in British Columbia and New Westminster we found that many very large and serious changes were being contemplated by the authors of the report which we had no idea were in the picture when we were dealing with section 1. Now we are very concerned that the same kind of thing will happen with sections 3, 4 and 5, that many drastic changes will be contemplated, ones which are of the utmost importance to pilots in particular and also to shipping companies. I think it would be at this time rather ridiculous to try to draft any kind of legislation covering problems which are not yet laid on the table because it could mean we would have to start revising legislation which was passed on a short term notice just in order to expedite matters.

I think I am in full agreement with the senator, and I believe Mr. Macgillivray can speak for himself, but at that time it appeared to me the government official took the same position.

The Chairman: Any questions?

Thank you, Mr. Cook.

Before we adjourn, we have a gentleman who came from a long way away from here to attend this meeting. Therefore I would not wish to adjourn without giving Mr. Miller an opportunity to make any statement he wants to make as a result of the proceedings before the committee.

Mr. Miller: Thank you for that statement, Mr. Chairman. I also want to thank you very much for listening to what I had to say. I was speaking simply as an insurer trying to say what could be done and what could not be done. Now I have one comment I would like to make at this point if not in confidence at least in semi-confidence, if I may put it that way. We have been asked to advise various governments on this matter including the Government of the United Kingdom. They asked us at one point how much can be insured and we said, to use a rather vulgar Anglo-Saxon expression, it is a question of "suck it and see." We have done this so that we could be quite certain that with people like yourselves who are really anxious about this problem we would be able to come up with and give you certain facts and not just guesses. Thank you very much.

The Chairman: Thank you, Mr. Miller.

Mr. Cook: Mr. Chairman, I did not want to confuse issues while I was at the table just now, but I do have a few words to say on the part of the bill dealing with landed imigrants. I would be prepared to come back at some other time to deal with this matter, or I can deal with it now, whichever you wish.

The Chairman: What does the committee suggest in that respect?

Senator Langlois: Let us deal with it now.

Mr. Cook: Mr. Chairman, honourable senators, on page 2 clause 3 deals with a contemplated change in the legislation which would change the present system whereby only British subjects may write his Master's, Mate's, or Engineer's certificates unless they are Canadian citizens. Now the contemplated change here would enable a landed imigrant from any nation whether British subject or not immediately upon becoming a landed imigrant to write his Master's, Mate's or Engineer's Certificate to sail in Canadian waters.

Now many people in Canada are under the impression that there is an abundance of marine officers' jobs and a shortage of marine officers. This is not the case. I wish it were, but it is not. As many of you know, the marine industry in Canada is a declining industry; we have no deep sea fleet and we have to depend on the Great Lakes fleet and the coastal fleet. We are finding through the trend of the industry today that on the Great Lakes they are now building vessels of 27,000 tons so that now one vessel does the work that three vessels previously did. The result is that now you have two crews of ships' officers unemployed. The same thing is happening with the two boat industry in British Columbia where they are now building barges as big as footbal fields. They are now towed by one tug whereas a few years ago they would have needed four or five tugs to do the same amount of work. Consequently, three or four crews are laid off.

We are now finding a situation in which there is a shortage of ships for marine officers in Canada and we are very concerned about this. This legislation proposes that we open our doors to people from any country in the world to emigrate to Canada with the idea that because they are officers in their own country they can immediately write for certificates and then be on the market as ships' officers in Canada. For one thing, it is thoroughly unfair to those who immigrate here with this understanding, or misunderstanding as the case may be.

There are hundreds upon hundreds of these people who want to emigrate to Canada. Our name is generally given, by Canadas' representatives in various countries throughout the world, to refer to for information on whether or not there are jobs here. We get about 30 to 40 letters day from all round the world asking how people can come to Canada, how they can get into the shipping industry, get a ship and so on. It is obvious to us that if this type of thing were allowed we would soon have an overabundance of ships' officers, and many, many unemployed ones.

We are concerned for Canadian citizens and for the shipping industry in general. Over the last five years at least we have been meeting with various departments of education in Quebec, Nova Scotia, British Columbia and other Maritime provinces to try to establish a better upgrading system for young Canadian citizens who are entering the shipping industry. We have not been completely successful in this; in our estimation, we still do not have a good program to provide the incentive for young Canadians to enter the marine industry and make it their future.

If we open the doors as contemplated here we would completely stop Canadian citizens from even contemplating entering the marine industry. We would cut out another industry offering employment opportunities, because we would be swamped with

certificates. Indeed, we would be swamped with senior certificates. Some of these people would probably be masters in foreign vessels out of Holland, Denmark, Sweden, Norway, Italy, Spain –you name it. We would have an overabundance of ships' officers. We de not think this is fair to the citizens of Canada.

Usually legislation of this type is proposed on an international level on the basis of a reciprocal arrangement; in other words, "If you allow people to come into our country and become landed immigrants so that they can write for certificates, we will allow the same thing." Here we are opening the door to, for instance, American immigrants to write for certificates and take jobs in the marine industry as ships' officers. A Canadian cannot do that in the United States because there a person must first become an American citizen before he can write for a certificate, so there will be no fair reciprocal arrangement in that respect. What could result from this would be our ending up with the dregs of the marine industry in the United States, people who are unemployable in their own area in this industry, people with long histories of perhaps drunkenness or irresponsibility. Because they cannot get jobs in their own country they say to themselves, "I can go to Canada and immediately walk about a Canadian dock as a ship's officer", so we end up having to thresh out the wheat from the chaff for a long period of time.

I should like to make a suggestion through you, Mr. Chairman, to your committee about what could be done. Perhaps there could be a section making it possible by regulation to allow landed immigrants to write for certificates if there were a sufficient number of jobs available in the country; in other words, allow the Minister of Transport to have a kind of quota based on knowledge of what is happening over the employment of ships' officers in Canada. If, as I hope, there is an increase in the number of jobs in the marine industry in Canada the minister would be able to take emergency measures very quickly. We would not be averse to that, but merely to open the doors completely to anyone from any country in the world to come to Canada and overcrowd the industry, which is already overcrowded, would be completely unfair to all those who have made seagoing their life's work.

The Chairman: Thank you, Mr. Cook.

Senator Kinley: I think there are provisions in Canada preventing people going from province to province.

Mr. Cook: That is true.

Senator McElman: I would simply comment that I think this representation should be made to the Department of Immigration rather than on this bill We are dealing with competence here, not numbers.

The Chairman: We will insure that that department gets a transcript of the evidence.

Honourable senators, will you be agreeable to adjourning this meeting at the call of the chair for probably next Thursday?

Mr. Hyndman: I was wondering, Mr. Chairman, while we are here, and while Mr. Miller is here, whether it would not be of benefit to hear some remarks from the representative of the Department of Transport, so that if there is anything to be dealt with we or Mr. Miller could answer it now, while the necessary witnesses are here.

The Chairman: Mr. Fortier, would you care to make any statement now, or Mr. Macgillivray?

Mr. Macgillivray: Mr. Chairman, there is a considerable amount of material in the representations made on clauses 23 and 24 upon which we could comment, and I am sure it would take me an hour merely to comment on it. The suggestion has been made that either the whole of clause 24 be deleted or that section 495D, which is supplementary to it, should be deleted. We were aware this representation was going to be made because we had been given advance notice at our meeting of February 11. However, we had to assemble certain information before this was put up to the minister. All I can say is that it has been put up to the minister and we have no answer yet whether the Government would consent to withdrawal of the whole of clause 24 or of the whole section that appears to be causing the most concern.

There are quite a number of items that have been mentioned by the witnesses from the shipping industry in relation to clause 24 and clause 23. A number of points have been brought up and facts cited that were not given to us prior to today.

The Chairman: May I interrupt for a moment, Mr. Macgillivray. I think the burden of quite a lot of the remarks we had from these gentlemen was that we should not deal with this bill in too great haste. I have indicated to you that this committee had no intention of dealing with this bill in haste but would give it very great study.

Consequently perhaps the only person who would be affected by any great delay would be Mr. Miller. He would not be able to be here again. I suggest to the committee that it might be better to have another full meeting in regard to this, where Mr. Macgillivray would speak. He says he will require some time and he could speak fully and after preparation. Does that appeal to the committee?

Hon. Senators: Agreed.

The Chairman: We would like the other witnesses to return and hear Mr. Macgillivray, and then if they would like to make further representations we would be willing to hear them again. Of course, Mr. Miller, you can come back also, if you like.

Mr. Macgillivray: I understand that Mr. Miller is going to appear before a United States Senate Committee a week next Wednesday, and it may be that he would be available.

Mr. Miller: I hope it is Tuesday, actually, and if I can help, may I say my convenience is the last thing to be considered by the committee. It is a very important matter and my group so regards it. If I can help next Thursday, I would come back.

The Chairman: I suggest we adjourn until 10 a.m. on Thursday next. We extend an invitation to anyone who would like to appear again, including Mr. Miller, to be here then. We will listen first to Mr. Macgillivray, or Mr. Fortier, or any other officials of the department. Then we will give an opportunity to the present witnesses, or others, to appear before the committee.

Hon. Senators: Agreed.

The committee adjourned.

Appendix A

STATEMENT OF PETER N. MILLER
DIRECTOR, THOS. R. MILLER AND SON (INSURANCE) LIMITED
BEFORE THE SENATE COMMITTEE
ON TRANSPORT AND COMMUNICATIONS
FEBRUARY 27, 1969

STATEMENT OF MR. PETER N. MILLER, LONDON INSURANCE EXECUTIVE

Mr. Chairman and Gentlemen:

My name is Peter N. Miller. I am a Director of Thos. R. Miller and Son (Insurance) Limited, of London. My firm have been brokers at Lloyd's for nearly 70 years and I personally am also an Underwriting Member of Lloyd's. My firm has always been responsible for placing the Reinsurances for the London Group of Protection and Indemnity Associations (including the Scandinavian Associations) to which my colleague Mr. J.C.J. Shearer has referred. For the last 11 years these Reinsurances have been my personal responsibility.

I thank you, Mr. Chairman and Gentlemen, for your kindness in allowing me to give testimony to you; this testimony is in support of that already given by Mr. Shearer and in elaboration of certain points made by him. Mr. Shearer spoke on behalf of the Associations. I speak on behalf of the Reinsurance Underwriters, the other major parties to the insurance of Shipowners' Liabilities.

First, I would like to tell you briefly how the Reinsurance of the London Group is arranged. I receive instructions each year from the Group (since their Reinsurance Contract is arranged on an annual basis, like most Insurance Contracts), and these include the instruction to obtain the maximum amount of coverage, using all available Markets. The actual placing of the Reinsurance Contract then takes my firm about two to three months to negotiate and complete, since we have to place the risk in London, in the provincial Markets of the United Kingdom, the European and American Markets, those of the Far East and any others available and willing to accept part of the risk. I am thus able to be definite when I say that my firm obtains the maximum amount of Reinsurance coverage possible.

The Contract is placed to reinsure the Group against liabilities in excess of a so-called "retention" by the Group, that is, there is no reinsurance against liability on claims until they exceed a stipulated amount. The size of this "retention" varies, but basically the Group assumes all claims other than those in the major catastrophe class, without benefit of reinsurance. Thus, by the co-operation between the Group and the Insurance Markets of the World which it is my job to arrange, the shipowner is protected to the maximum possible degree. It is not possible for commercial Underwriters to write Policies of Insurance for this type of risk without a limit on their total coverage. I must therefore say on behalf of underwriters that the proposal of Section 24 of Bill S-23 to introduce unlimited liability presents them with an impossible situation. Unlimited liability of this kind is as such, uninsurable.

In order to elaborate on the protection which *would* be available, I must for one moment turn to a subject mentioned by Mr. Shearer, namely the importance of the concept of negligence as the basis of liability. Underwriters in many countries are very often unwilling to write Shipowners Liability insurance for several reasons. For example: (1) the underwriters whom I ask to underwrite the liabilities, are already committed as underwriters of the physical hull and cargo. They may therefore be unwilling to expose themselves to further financial commitments on the same venture; (3) they also dislike the long period of delay before settlement of liability claims is reached. Working as they do on an annual or triennial basis, the possibility of claims being outstanding for as long as ten years has a bearing on the "line" they are prepared to write on such risks.

When it is possible to persuade underwriters to accept part of the reinsurance contract, the most important considerations in their minds in assessing the cost are the amount to which a shipowner can, in normal circumstances, limit his liability under the existing law, and the fact that such liability is based on fault or negligence.

It was these two facts which were uppermost in Underwriters' minds when, as instructed by the London Group, I approached them to discuss the matter of oil pollution in the last few months. Two points emerged; any alteration in the existing laws on limitation, or liability based on negligence would severely restrict the amount of coverage obtainable

and would severely increase its cost. I have most carefully discussed the matter with the leading underwriters of this type of risk, and while only a placing can show the exact position, it was their unanimous opinion that the maximum limit would be in the region of $10–$15 million each accident each vessel. Let me summarize the reasons again:

(i) The sweeping away of the normal underwriting criteria for such risks, namely, negligence as the basis for liability and the right to limit such liability to a reasonable figure in the absence of privity.

(ii) The heavy involvement in the other interests affected by a major casualty, namely the ship and cargo.

(iii) The heavy involvement by way of the reinsurance I already place on other liabilities stemming from the same casualty, e.g. removal of wrecks, etc.

(iv) The fact that their commitment is calculated on an "each vessel, each accident" basis. Thus they could have a large loss on the policy many times over in each year.

I must tell you that the capacity of the Market to absorb such risks is diminishing; this is because Underwriters have suffered severe losses on this and other types of business. The general tendency of legislators and courts alike has been to impose increased burdens of liability upon Shipowners both in type of liability and amount of award. This has led Underwriters to regard the risk of insuring against Shipowners' Liabilities as increasingly heavy, demanding not only high premiums but also a more restricted participation in such risks by each individual Underwriting Association. The legislation which you propose is uninsurable because there is no limitation at all on the liability thus placed on shipowners. What I am saying is, gentlemen, that the present placing of reinsurance on behalf of the London Group and the Scandinavian P. & I. Associations absorbs world capacity; there is no other market to which we can turn for the unlimited liabilities which the Bill seeks to impose upon the Shipowners.

As stated earlier, I have discussed the matter most carefully with Leading Underwriters for this type of risk. Their opinion was unanimous, namely, without limit on the liability of shipowners it was uninsurable, and even if partially insurable, the costs they indicated to me were such that it was evident that no shipowner could afford to trade his vessel where he would be exposed to such high additional costs.

I can, however, confirm from my talks in the market that Mr. Shearer's suggestion of some figure around $100 per gross registered ton, subject to a ceiling of $12,000,000 to $15,000,000 would probably be insurable. At least I have now actually placed a contract based upon $100 per gross registered ton, with a ceiling of $10,000,000.

Appendix B

In the absence of Mr. Shearer, the following statement was submitted by Mr. Peter N. Miller.

STATEMENT OF JOHN C. J. SHEARER,
PARTNER, THOS. R. MILLER & SON,
MANAGERS OF THE UNITED KINGDOM MUTUAL
STEAMSHIP ASSURANCE ASSOCIATION LIMITED
BEFORE THE SENATE COMMITTEE ON TRANSPORT
AND COMMUNICATIONS
FEBRUARY 27, 1969

STATEMENT OF J. C. J. SHEARER, LONDON INSURANCE EXECUTIVE

Mr. Chairman and Gentlemen:

Thank you for your kindness in permitting me to submit a statement on Section 24 of Bill S-23. I regret that I am unable to make this statement in person but my colleague, Mr. Peter Miller, has full authority to act on my behalf.

I am a Partner in the firm of Thos. R. Miller and Son, the managers of the United Kingdom Mutual Steam Ship Assurance Association Ltd. 14-20, St. Mary Axe, London, E.C. 3, England. I have been engaged in the management of that Association for seventeen years. I am also a Partner in the firm of Thos. R. Miller and Son (Bermuda), the managers of the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, which Association commenced business on 20th February, 1969.

The two United Kingdom Associations referred to above are associated with a number of mutual protection and indemnity Associations which are often collectively referred to as the London Group of P. & I. Associations.

The other Associations which comprise the London Group are:–

The Britannia S.S. Insurance Association Limited;

The London S.S. Owners Mutual Insurance Association Limited;

The Newcastle Protection and Indemnity Association;

The North of England Protecting and Indemnity Association;

The Standard S.S. Owners Protection and Indemnity Association Limited;

The Steamship Mutual Underwriting Association Limited;

The Sunderland Protecting and Indemnity Association;

The West of England Steamship Owners Protection and Indemnity Association Limited.

This statement is made on behalf of all of the mutual Shipowners Protection and Indemnity Associations designated above, and I would like to thank you on behalf of those Associations for being given the opportunity to appear before you.

Apart from the London Group, I am also authorized to represent the Scandinavian P. & I. Associations, namely Assurance Foreningen Gard, of Arendal, Norway, Assurance Foreningen Skuld, with a head office in Oslo, Norway, and Sveriges Angfartygs Assurans Forening, of Gothenburg, Sweden.

These British and Scandinavian Associations mutually insure Shipowners of various nationalities, owning tonnage approximating 140 million gross registered tons–about 70% of the world's tonnage–including over 4 million tons of United States flag shipping as well as practically the whole of the Canadian Lake fleet and the few foreign-going Canadian vessels. For example, the United Kingdom P. & I. Association consists of 15 percent British flag tonnage and 85 percent tonnage of other flags. The Board of Directors of this Association is composed of 32 members of many nationalities. Included are vessels flying the flags of more than 60 maritime nations.

I should explain here, albeit briefly, the main function of the P. & I. Associations. In each Association, shipowners band together for a common purpose:– to share mutually in the payment of claims brought by third parties for which they may become legally

liable as a result of their common commercial purpose–the operation of ships.

What, then, are the liabilities in respect of which the Associations afford coverage? The more important are as follows:–

a) Liability for loss of life and personal injury to passengers and crews;

b) One-quarter of the shipowner's liability for collision damage, the remaining three-quarters being customarily covered by the hull Underwriters, who insure the owner against loss of, or damage to his vessel;

c) Liability for loss of or damage to cargo;

d) Liability to third parties for property damage;

e) Liability for removal of wreck, etc.

It should be particularly noted that the Associations cover also any legal liability resulting from oil pollution.

I am appending to this statement a tabulation of all oil pollution claims exceeding £5,000 paid by the four largest P. & I. Associations, insuring 85 million tons of shipping, during the seven year period from 1960 to 1966, inclusive, the latest period for which such a tabulation is available. There were 29 such claims, and the payments totaled £869,652.

From the foregoing evidence, gentlemen, you will see that I speak as a representative of the most important insurers of shipowners' legal liabilities, and my colleague Mr. Miller is empowered to speak on behalf of the world insurance markets which, by re-insurance, support the coverage against such liabilities which the Associations provide.

In the usual case, the shipowner is liable only when fault is either proved or is self-evident and therefore admitted, and in all but the exceptional case, the shipowner is entitled to limit the amount of any such liability in respect of these claims.

The fact that international maritime law in general contains these two elements, namely, fault as the basis of liability, and the right to limit such liability in the absence of privity, is one of the main considerations upon which the assessment of P. & I. premiums is based.

As has already been indicated, all the members of a P. & I. Association included in the London and Scandinavian Group share mutually in the payment of claims incurred by one of their fellow members. As a Group, the Associations protect themselves by excess loss re-insurance coverage on the world insurance markets to the maximum amount obtainable; my colleague, Mr. Miller, will explain the details of these arrangements. Should a claim exceed the amount of this re-insurance protection, then it would fall back on the Group for payment; but the Group covers members of the participating Associations against liabilities even beyond the re-insurance obtainable, only because of the extreme remoteness of the possibility of such an event, since to exceed the re-insurance protection, the claims would have to exceed the amount to which a shipowner could normally limit the amount of his liability under the existing laws of the world's maritime nations.

It is precisely because the law of every maritime country provides for a reasonable figure to which a shipowner can normally limit his liability, and because liability is generally based on the concept of negligence or fault on the part of the shipowner, that the cost to the shipowner–and ultimately, therefore, to the consumer of the goods carried by the shipowner–of the insurance of his liabilities can be kept to a reasonable figure, and that the traditional insurers of this liability, the P. & I. Associations, can offer unlimited insurance coverage for the exceptional cases where it is needed.

It is because Section 24 of Bill S-23 violates these two fundamental principles of shipowners' liability insurance, i.e. negligence as the basis of liability and the right to limit any such liability in the absence of the owners' privity–that we earnestly ask you to reconsider certain aspects of this legislation.

If unlimited liability were imposed on the shipowner by such legislation, it would be uninsurable.

I do not believe that the Directors of the P. & I. Associations forming the London Group would accept such unlimited liability. They would surely consider that the risk would be too great, and that, furthermore, it offended against the principle of mutuality in that all members would be asked to share in an absolute and unlimited risk assumed, in practice only by shipowners trading to and from Canada. The group would have to restrict its coverage to an amount for which it could reasonably burden its own resources, supplemented by its re-insurances. This figure over-all is perhaps between $10 million and $15 million, with respect to each vessel involved in any single accident. My colleague, Mr. Miller, will give evidence on this point.

The position, therefore, would be that shipowners would be uninsured in respect of liabilities in excess of, say, $10 million to $15 million. It is possible that the shipowning subsidiary companies of the major oil companies might be able to assume liability for claims exceeding such a sum; quite frankly, I doubt it. But it is certain that the independent shipowning companies could not do this, and consequently, they would be unable to trade to and from Canada, unless they were prepared to do so partially uninsured.

The fact that legal liabilities are based on the concept of fault is a most important factor both in the cost of liability insurance and the amount of coverage which can be provided. Section 24 of Bill S-23 which

would impose absolute liability, without fault not even when the spillage was caused by an act of God, would lead to a very heavy burden of increased cost to shipowners trading with your country, with all the concomitant disruptive effects on such trade.

Moreover, I should like to point out that it is patently unfair that Section 24 of Bill S-23 would impose absolute and unlimited liability on a shipowner to the Canadian Government, because certain circumstances could arise where the owner whose ship was the source of the oil pollution, while being absolutely innocent in respect of the damage, would nevertheless be liable for it, without any adequate right of recovery against the party at fault.
For example:

(a) A properly anchored tanker may be damaged in collision by another vessel. The cleaning-up expenses might involve a catastrophic sum if the tanker was a large one. In these circumstances, the tanker owner would be compelled to pay the cost of the clean-up to the Canadian Government, but he would have a right of recovery from the offending ship only to the extent of that vessel's limit of liability under the provisions of the Canada Shipping Act permitting a shipowner to limit liability or if such provisions did not apply, the innocent shipowner might find the shipowner at fault uninsured for this type of liability and financially unable to meet it.

(b) Another example concerns oil pollution as the result of an act of war, and I do not think I need demonstrate the unfairness of imposing liability on an innocent shipowner in such circumstances.

You will observe that so far my evidence has been solely concerned with criticism of Section 24 of Bill S-23 in its present form. I now come to the question of proposing remedies for a situation which has not only given concern to the Canadian and United States Governments, but also other Governments, particularly the British Government, since the matter under consideration was highlighted by the unfortunate TORREY CANYON disaster two years ago. After that incident, the British Government immediately took action through the International Maritime Consultative Organization, commonly known as IMCO, which, as you are aware, is an agency of the United Nations on which the Canadian Government, as well as many others, is represented. IMCO decided that the proper body to investigate the position, particularly so far as concerns insurance and the legal questions, was the Comite Maritime International, known as the CMI, an organization of the national maritime law associations of some 29 nations, which has been instrumental in achieving a considerable degree of uniformity in international maritime law. Both CMI and IMCO have worked on the development of a draft convention on liability for oil pollution which is now in an advanced stage and which will be considered at the CMI meeting in Tokyo in March of this year and at the diplomatic conference which IMCO has proposed to be held in November. Both organizations have made positive recommendations and those which are of particular interest in the context of the present proposed legislation can be summarized as follows:–

(1) A reversal of the burden of proof, i.e., a requirement that the shipowner be liable for damages resulting from oil spillage unless he can affirmatively prove that it was caused without his fault;

(2) An increase in the limit of liability, within the structure of the 1957 Brussels Convention on Limitation;

(3) The recognition of the right of governments to recover the cost of protective measures to prevent or minimize the effects of pollution, following a spillage, as well as the cleaning-up costs.

These recommendations would necessitate substantial changes in the present system of international maritime law. I should point out, in particular, that it is the legal opinion in many countries that as the law presently stands, there is grave doubt in many cases as to whether any government has the right to recover such costs. The Protection and Indemnity Associations for whom I speak support these proposals and earnestly hope that the Canadian Government will give consideration to delaying any legislation until Imco has made its recommendations to the respective governments. Unilateral legislation in a matter of this sort by any one government cannot assist the endeavors of IMCO to reach a conclusion acceptable internationally.

Although these recommendations, as I have said, would result in substantial changes in the law, they would nevertheless preserve the two essential principles of liability based on the concept of negligence and the right of limitation of that liability, where there is no privity. The P. & I. Associations support the recommendations because they accept that, as the law now stands, the position of governments in regard to oil pollution is not really satisfactory. They must be given the right to recover costs reasonably incurred by them in preventing or mitigating the damage caused by pollution–and the costs recoverable must not be unduly limited, but must be such as to give adequate protection save only in the quite exceptional case.

The assumption of an additional risk of this nature would, as I have earlier pointed out, result in higher premiums, but it would nevertheless be insurable.

The Protection and Indemnity Associations to which I refer usually afford unlimited coverage, but

such coverage is granted only because the law of every maritime country provides for a reasonable figure to which a shipowner can normally limit his liability. If the liability of the shipowner under the proposed legislation is to be unlimited, re-insurance would be unobtainable. In these circumstances, my Group would be unwilling to grant insurance coverage.

While it would impose an additional burden on shipowners, I am satisfied that coverage for this type of liability could be provided by the P. & I. Associations and their Re-Insurance Underwriters at a realistic cost, provided the limit did not exceed a figure in the neighbourhood of $100.00 per gross registered ton and the ceiling did not exceed a figure between $12,000,000.00 and $15,000,000.00.

May I, therefore, respectfully suggest, Mr. Chairman and Members of the Committee, that some formula on these lines be introduced in this Bill in the place of the provision which I have mentioned.

Finally, I would say how much we sympathize with the general provisions of the Bill which has been introduced, and I am most grateful that you have given me the opportunity to criticize it on certain narrow points which the Associations I represent believe the commercial community would find unduly burdensome. I trust you will consider the Associations' proposals reasonable and acceptable.

Appendix C

STATEMENT OF JEAN BRISSET, Q. C. BEFORE THE SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS IN CONNECTION WITH BILL S-23, AN ACT TO AMEND THE CANADA SHIPPING ACT

Mr. Chairman and Honourable Senators:

My name is Jean Brisset; I am one of the Senior Partners of the firm of Beauregard, Brisset & Reycraft, Advocates, of Montreal.

I appear before you on behalf of the International Chamber of Shipping and the Canadian Chamber of Shipping.

The International Chamber of Shipping, which was established in 1921, is a body primarily concerned with international relations and in the field of international shipping its primary objective is to formulate the views of the shipping industry as a whole on all questions of major policy; it comprises the national Shipowners Associations of 19 countries, including Canada, together representing 65% of the world's active tonnage. The Canadian Chamber of Shipping is a constituent member of the International Chamber of Shipping and amongst its own constituent members includes:

The Shipping Federation of Canada

The Canadian Shipowners Association

The Chamber of Shipping of British Columbia

The British Columbia Towboat Owners' Association.

The Shipping Federation of Canada, incorporated in 1903, is an association of owners and operators of vessels trading from overseas to Eastern Canadian Ports, St. Lawrence River Ports and Canadian and U.S. Great Lakes Ports. It includes in its membership the great majority of the firms which, in Eastern Canada, operate overseas shipping services or act as agents for foreign shipping lines. The British Columbia Chamber of Shipping is a similar association of vessel operators and agents on the West Coast.

The vessels of the Lines which the Members of these Associations either own, operate or represent, carry practically the whole of Canada's overseas exports and imports.

May I first of all on behalf of the Associations which I represent express to you my sincere thanks for being afforded the privilege of appearing before you and of submitting the views of these Associations on these clauses of Bill S-23 which deal with the liability of vessels for pollution of our waters, namely Clauses 23 and 24.

All of the Associations represented here have directed me to respectfully suggest that serious consideration be given to the withdrawal of Clause 24 of Bill S-23 for the very reason that it deals with a problem which eventually will be, as it should, the object of International Conventions which have already been given extensive study by the International Maritime Consultative Organization known as "IMCO" to which Canada is a party and in whose deliberations Canada has taken a very active part, and by the Comité Maritime International ("CMI") on which Canada is also represented. The proposed Conventions will be considered at a Diplomatic Conference in November of this year which no doubt will be attended by representatives of the Canadian Government.

The International Chamber of Shipping has prepared a statement which develops the reasons for the above suggestion and with your permission I would like to read it at this stage so that it will form part of the record.

The Chamber of Shipping of the United Kingdom has, I understand, in an Aide-Memoire delivered to the Canadian High Commissioner in London made similar representations and no doubt this Aide-Memoire will be made available to your Committee.

If the Canadian Government is not prepared to consider favourably the withdrawal of Clause 24, then the Associations which I represent, although in complete sympathy with the aids sought to be attained, namely prevention of pollution by wrecked vessels and recovery by the Government of its expenses to prevent such pollution or clean it up, are desirous to go on record as opposing the legislation in its present form for the following reasons:

1. Because it imposes a liability without fault, in other words, an absolute liability;

2. Because it imposes a liability unlimited as to amount and, therefore, uninsurable as such;

3. Because it imposes such liability on charterers of vessels even where they are in no way respon-

sible for the navigation or management of the vessel from which the polluting matter might escape.

May I be permitted to deal with each of these three points in that order and if I am able to convince your Committee along with the others who will appear before you that they are well taken, then to suggest the possible amendments which may help in correcting the iniquities which we feel exist in the legislation now before you.

Before doing so, I would like to bring to your attention the fact that somewhat similar legislation was introduced in the United States some two years ago but as a result of the representations made by the interests affected, amongst others the American Merchant Marine Institute, the American Petroleum Institute, the Lake Carriers' Association, the American Maritime Law Association and others, the proposed legislation was considerably overhauled and the Bill introduced earlier this year before the United States Senate, namely Bill S 7, and the concurrent Bill, S 544, to amend the Federal Water Pollution Control Act and in respect of which hearings were held in early February before the Subcommittee on Air and Water Pollution of the Committee on Public Works of the United States Senate, does recognize the three principles which we are advocating before you, namely:

1. That there should be no liability without fault;

2. That there should be a limit to the shipowners' liability;

3. That as regards the charterer, the liability should only rest on one who is responsible for the navigation and management of the vessel.

It must be said that the limit set under the United States Bills S 7 and S 544 is quite high, namely $450.00 per registered gross ton of the vessel's tonnage, or $15,000,000.00, whichever amount is the lesser, but strong representations were made to have it reduced to $67.00 per ton, or $5,000,000.00, whichever amount is the lesser, the figure of $67.00 being intended to bring the limit in consonance with the dispositions contained in the Brussels' Convention of 1957 on the limitation of the liability of owners of vessels, to which Convention Canada adhered and which it implemented in its national legislation by amending the Canada Shipping Act in 1961 (Articles 657 and following). Although I am reliably informed that a realistic reduction may be made in the eventual amount of the limit of liability foreseen under the proposed United States legislation, it is too early to say what such reduction might be as the Bill has not yet been reported out of Committee.

It is not necessary for me to stress that in view of the considerable international trade between the United States and Canada, particularly on the Great Lakes, that there should be uniformity in the legislation of both countries on the subject with which we are now concerned.

I

That there should be liability without fault is, of course, contrary to all recognized principles of justice in democratic countries and only exceptional circumstances could possibly justify a departure from this principle.

It has been said, however, that, for instance, even though the operator of a tanker may not be at fault if under circumstances involving an Act of God or the fault of another vessel which strikes her, oil escapes from its tanks and pollutes our waters, still it is the owner of the tanker who created the possibility of such a risk of pollution by bringing his vessel into a Canadian port and it would be unfair for the innocent tax-payer to bear, through his Government, the expenses of cleaning up; on the other hand, it should be kept in mind that when ships, like tankers, are carrying on essential commercial activities, like the carriage of oil, the users of the commodity, i.e. the nation at large, are also involved and should assume the risk which their needs have equally created.

It is recognized that there already exists in our maritime legislation in Canada provisions under which liability is imposed on a vessel owner without any concomitant fault, namely, a liability for the cost of the removal of the wreck of a vessel which constitutes an obstruction to navigation in our navigable waters. This disposition is to be found in the Navigable Waters Protection Act and Clause 24 of Bill S-23 is apparently patterned on this legislation, although it goes further and imposes liability under sub-Section (e) of Section 495D even where the vessel is not in distress, stranded, wrecked, sunk or abandoned.

However, we submit that the position from a practical point of view is not quite the same, principally because, from past experience, the cost of the removal of a wreck as an obstruction to navigation without the additional factor of pollution has not proven to be and is not likely to be of such proportion as could possibly be the cost of removing or destroying a vessel coupled with the cost of cleaning up the polluting matter which has escaped from such vessel. Whereas the cost of the former has been insurable, it is doubtful that the second could be on the basis of absolute liability.

To solve the first problem which is related to the liability for the removal or destruction of a vessel in distress, stranded, wrecked, sunk or abandoned or of its cargo or fuel when likely to cause or causing pollution, it is suggested that Section 495C of Clause 24 be amended as follows:

"495C (1) Where the cargo or fuel of a vessel that is in distress, stranded, wrecked, sunk or abandoned–

(a) is polluting or is likely to pollute any Canadian waters,

(b) constitutes or is likely to constitute a danger to waterfowl or marine life, or,

(c) is damaging or is likely to damage coastal property or is interfering or is likely to interfere with the enjoyment thereof,

the owner of such vessel shall immediately take all the reasonable and appropriate measures to mitigate such pollution, damage or danger, and in default of his so doing, the Minister may take such measures and if necessary may cause the vessel, its cargo or fuel to be destroyed or removed to such place, and sold in such manner, as he may direct."

The purpose and the advantage of the proposed amendment are twofold:

1. It will allow an owner and his underwriters to take the measures necessary to avoid the pollution or clean it up if it has occurred, instead of incurring the risk of having the vessel destroyed or removed and sold and will, therefore, prove to be an incentive for those concerned to use all their resources with the assistance in case of an oil pollution, possibly from the industry itself in view of its interest in these matters.

2. It will in case of an oil pollution serve to attain the objective of the plan known as "TOVALOP".

To explain this plan, I would like to take the liberty of quoting from the statement of the representative of the American Petroleum Institute before the sub-Committee on Air and Water Pollution of the Committee on Public Works of the United States Senate dated February 4th, 1969.

"Earlier I mentioned that tanker-owning affiliates of certain major oil companies have initiated an international voluntary plan designed to encourage swift action in effecting the removal of oil discharges. This voluntary plan has a threefold objective:

1. To provide an incentive for a shipowner to act promptly if an oil spill occurs.

2. To indemnify national governments for the reasonable costs they incur in containing or removing oil spills off their coastlines if the tanker owner either does not or cannot act.

3. To assure the availability of funds to meet these objectives. The plan has a shorthand title, "TOVALOP", which stands for "Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution".

Briefly, TOVALOP provides that a participating tanker owner will reimburse national governments for expenses reasonably incurred by them to prevent or clean up pollution of coastlines that results from negligent discharge of oil from one of his tankers. The tanker causing the discharge is presumed to be negligent unless the owner can establish that the discharge was not the tanker's fault.

In the event of a negligent discharge of oil, where the oil pollutes or causes grave and imminent danger of pollution to coastlines, within the jurisdiction of a national government, the tanker owner involved is obligated to reimburse the national government concerned for the oil removal costs it reasonably incurs, up to a maximum of $100 per gross registered ton of the tanker discharging the oil, or $10,000,000., whichever is the lesser.

TOVALOP also contains provisions for reimbursing a tanker owner for any expenses reasonably incurred by him to prevent or clean up pollution from a discharge of oil. These provisions are designed to encourage a tanker owner to take prompt action to remove spilled oil or mitigate pollution damage.

TOVALOP will be administered by a limited company registered in England and headquartered in London. It is called "The International Tanker Owners Pollution Federation Limited", and each tanker owner who becomes a party to TOVALOP will be a member of this Federation. TOVALOP requires each participating tanker owner who becomes a party to establish and maintain sufficient financial capability to fulfill his contractual obligations. The parties to TOVALOP have made provision to establish their financial capability by forming another limited company and called "The International Tanker Indemnity Association Limited". This Association will provide insurance coverage for all tankers owned by the parties to TOVALOP, and thus assure that they will be able to fulfill their financial obligations.

Any tanker owner in the world can at any time become a participant in TOVALOP. Tanker owners owning at least 50 per cent of the dead-weight tonnage in the world (excluding tankers owned by governments or government agencies and tankers of under 5,000 dead-weight tons) must become parties before the principal obligations of participating owners and TOVALOP itself become fully effective, and TOVALOP will lapse if owners representing 80 per cent of the world's dead-weight tonnage (with the exclusions just mentioned) do not become parties at the end of two years after its effective date.

In the case of any disputes a national government can enforce the liability of a tanker owner

who is a party to TOVALOP through arbitration under the rules of the International Chamber of Commerce. This latter feature should avoid the problems of establishing jurisdiction and effecting collection which exist at present in maritime law and practice."

I have here with me a copy of the booklet containing the text of the agreement as well as the Articles of the Association of the two organizations and I will be pleased to leave it with you for reference purposes.

II

That as a general rule the liability of the owner of a vessel, even in case of negligence provided there was no personal fault or privity on his part, be limited is in line with the policy adopted by all maritime nations including Canada, which policy has for purpose to foster maritime commerce as a matter of national interest, a commerce which is vital for Canada and for the continuity of which it depends almost exclusively on foreign ships for its overseas trade.

As stated earlier, Canada adhered to the 1957 International Convention on Limitation of Liability of Owners of vessels and by legislative action in 1961, it implemented this Convention in its national legislation thereby increasing considerably the limit of a Shipowner's liability for property damage, which up to then was only $38.92 per ton. Such limit of liability under Section 657 of the Canada Shipping Act as amended in 1961 is now 1,000 Gold Francs per ton which, at the current rate of exchange, are equivalent to roughly $71.50. It recognizes the principle that a Shipowner would not be liable beyond such limit unless there was personal fault or privity on his part.

The Associations which I represent feel that such principle should be preserved in the present legislation along with that of no liability without fault insofar as it concerns the expenses incurred by the Canadian Government of the nature of those detailed in Section 495D.

It is, therefore, strongly recommended that the following amendment be made to this Section:

"495D. All *reasonable* expenses *less proceeds of sale as provided under sub-Section (2) of Section 495C.* incurred by

(a) the Minister in removing, destroying or selling a vessel, its cargo or fuel pursuant to Section 495C,

(b) Her Majesty in preventing the spreading of any cargo or fuel that has escaped or been discharged from a vessel, and

(c) Her Majesty in cleaning any property fouled by any cargo or fuel that has escaped or been discharged from a vessel,

shall constitute a debt due to Her Majesty by

(d) the person or persons whose negligent act or fault, or whose servants' negligent act or fault caused the distress, stranding, wrecking, sinking or abandoning of the vessel, or the escape or discharge of the cargo or fuel from the vessel."

In case of a collision between two vessels for which liability is apportioned between them, the liability of each vessel for such expenses shall be in the same proportion as that of their respective negligence.

The liability imposed by this Section shall be limited to an aggregate amount equivalent to 1,000 Gold Francs per registered gross ton or the equivalent in Canadian dollars of $5,000,000.00 (U.S.), whichever is the lesser, whenever the person applying for such limitation establishes that he comes within the ambit of the dispositions contained in Articles 657 to 663 of the Canada Shipping Act.

In any action instituted by Her Majesty under this Section, evidence of a discharge of pollutant matter from a vessel shall constitute a prima facie case of liability on the part of the Owner or Demise Charterer of such vessel and the burden of rebutting such prima facie case shall be upon such Owner or Demise Charterer."

May I respectfully point out at this stage to this Committee that the amendments proposed in this Section take into account the following:

1. That the amount of the limit of liability recommended is in line with that recommended by the following, amongst others, at the hearings held before the sub-Committee on Air and Water Pollution of the Committee on Public Works of the United States Senate in early February:

The American Institute of Merchant Shipping

The American Maritime Association

The Insurance Brokers Association

The Lake Carriers' Association

2. The apportionment of liability in relation to the degree of fault is in line with the principle given effect to by Section 648 of the Canada Shipping Act, which itself gave effect to the provisions of the Brussels Convention of 1910 on Collisions.

3. The reversal of the burden of proof is in line with the proposed International Convention under which such a reversal is contemplated.

4. That in the case of a serious casualty resulting in the possibility of pollution of Canadian waters, for instance, following a collision between two

vessels, the vessel at fault, or each of them if they are both to blame but are entitled to limit liability, will have to make available to claimants including the Canadian Government two limited funds:

A) one to provide for reimbursement to the Canadian Government of the expenses it may have incurred to prevent the pollution or clean up the polluted matter, which fund will be calculated on the basis indicated here if our recommendation is accepted, and,

B) a second one to provide compensation for all other claimants calculated in accordance with the provisions of the Canada Shipping Act on the topic of limitation of liability, namely 1,000 Gold Francs per ton for property damage claims, or 2,100 Gold Francs per ton if there are also claims for personal injuries and/or loss of life.

Thus, to quote dollar figures, in the case of a collision between a tanker of a registered gross tonnage of 120,000 tons and a limitation tonnage of 100,000 tons when calculated under the provisions of Section 662 of the Canada Shipping Act, and a dry cargo ship of a registered gross tonnage of 12,000 tons and a limitation tonnage of 10,000 tons under Section 662 of the Canada Shipping Act, the Owners of such ships will be liable to put up the following funds:

1. *IN THE CASE OF THE TANKER*

(a) To cover the Government's expenses –

120,000 tons x $71.50 = $8,580,000.00 (Can.)

which figure, however, has to be reduced to the lesser figure corresponding to the equivalent in Canadian dollars of $5,000,000.00 (U.S.)

(b) To cover all other claims –

(i) Property damage claims:

100,000 tons x $71.50 = $7,150,000.00 (Can.)

(ii) If there are both property damage claims and claims for loss of life or personal injury:

100,000 tons x (2.1 x $71.50)
= $15,015,000.00 (Can.)

2. *IN THE CASE OF THE DRY CARGO SHIP*

(a) To cover the Government's expenses –

12,000 tons x $71.50 = $858,000.00 (Can.)

(b) To cover all other claims –

(i) If there are only property damage claims:

10,000 tons x $71.50 = $715,000.00 (Can.)

(ii) If there are both property damage claims and claims for loss of life and personal injury:

10,000 tons x (2.1 x $71.50) = $1,501,500.00 (Can.)

We would also like you, however, to consider the problem raised in the case of an accident resulting in the pollution of both Canadian and United States waters, a possibility which, of course, cannot be ignored, particularly in the case of ships plying the International Waters of the St. Lawrence River and the Great Lakes. Unless there is an agreement between the two Governments of the nature envisaged under the proposed International Convention now before IMCO and CMI, the ship involved in such pollution would be liable to provide two funds, one to each Government.

The Convention provides in this case that if pollution damage occurs in the territory or territorial waters of more than one contracting state, and actions are brought in the Courts of more than one contracting state, the owner may pay the limitation fund into the Courts or other competent authorities of any such state. After the fund has been constituted in accordance with this Article, the Courts of the state where the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

We would respectfully suggest that if the present legislation is enacted but with the right to limit liability, a recommendation be made to the Canadian Government to look into the possibility of reaching an accord with the United States Government to avoid the inequitous results that would follow from dual liability.

III

If it is considered that liability without fault should remain as the basic principle for the present legislation, then we strongly urge that sub-Section (d) of Section 495D be amended to define the Charterer as the one responsible for the navigation of the vessel, i.e. a Demise Charterer, so as to remove the liability which under the present wording would lie on a Time or Voyage Charterer who would have had nothing to do with the navigation or management of the vessel responsible for the pollution. We have been assured by Officers of the Department of Transport that such an amendment would be proposed before your Committee and that the absolute liability or liability without fault would also be removed from the shoulders of the Master of the vessel by deletion of the Word "Master" from this Section; therefore, we will not comment further on these particular features. We would strongly urge, however, that when the vessel is operated under Demise Charter, that is by a Charterer who has the responsibility for the navigation and management of the vessel, the liability foreseen be imposed solely on such Charterer.

Counsel in Vancouver for the British Columbia Towboat Owners' Association, Mr. D. Brander Smith of Messrs. Bull, Housser & Tupper, in a letter which he wrote to the President of the Association on the 29th of January, 1969 expressed himself as follows:

> There is another aspect of the proposed legislation which will affect many of your members, and that is that they as individuals own barges which they charter out on a long term basis to other towing companies, the towing company being entirely responsible under the terms of the Charter Party to maintain the barge. Some individual owners are executives of towboat companies, but many others are in entirely unrelated businesses, and are in no way engaged in or knowledgable about the business of operating barges. These owners have been encouraged to build barges by the favourable subsidies and depreciation allowances specially designed as a stimulus to the shipbuilding industry. In my view, it seems harsh to impose upon these owners now an arbitrary responsibility as owner, whether or not they have any control whatsoever over the maintenance, navigation or management of the vessel.
>
> In my view responsibility for these expenses should be attached only to the persons who are in control of the navigation, management or operation of the vessel, or whose act caused the damage, and should not be attached to persons who have no operating control of the vessel."

I would, therefore, urge you to give your sympathetic consideration to the representations made on behalf of this particular industry.

In conclusion, may I reiterate that the Associations now appearing before you and which represent the major proportion of the world's shipping industry all consider that the enactment of Clause 24 should be deferred for further consideration. If your Committee is not prepared to so recommend, then we trust that the amendments which we have proposed will receive your favourable recommendation.

THE WHOLE RESPECTFULLY SUBMITTED.

February 27, 1969.

The ICS appreciates the anxiety felt by coastal states throughout the world at the threat of oil pollution and can well understand the wish of the Canadian Government to have suitable legislation dealing with its power to take action in an emergency and with the problem of liability.

The primary aim of shipowners, as of governments has been to avoid shipping casualties which could cause pollution, and the Committee will have heard of the work that has been done at IMCO and elsewhere on this subject. A particularly constructive development has been the establishment of recommended traffic separation schemes to reduce the risk of collision in congested waters. It is worth mentioning that the International Chamber of Shipping not only participated in drawing up such schemes for IMCO's approval, but urged its members to implement them at once without waiting for their formal adoption by the IMCO Assembly. Such schemes can lead to a reduction in collisions and if the Canadian Government favours a traffic separation scheme, for example on the Pacific Coast, the ICS would put at the disposal of the Government its experience of similar schemes elsewhere.

Action taken by IMCO to make certain navigational aids compulsory may also help to reduce the risk of casualties, but will not completely eliminate them. For this reason the ICS supports IMCO's proposal to have a Diplomatic Conference in November to consider two conventions on legal aspects of oil pollution. One of these conventions, that on the powers of coastal states, is already in its final draft form, and the other, on liability for oil pollution, has reached an advanced stage.

The convention on the powers of coastal states is a most important one. It empowers a coastal state, in the event of a grave and imminent danger, to take action on the High Seas, action which could even include the destruction of the ship and cargo. Such a breach in the freedom of the High Seas has caused much heart-searching by shipowners. The freedom of the High Seas is not an academic legal concept but a practical principle vital to the smooth operation of the world's seaborne trade. Accordingly the member-governments of IMCO have accepted that this right of a coastal state to interfere with foreign shipping should be strictly defined. The draft convention, therefore, makes it clear that there must be grave and imminent danger and that any action taken must be proportionate to the harm threatened. There is, moreover, another article the effect of which is that if the danger is not grave and imminent, or if the action is not proportionate, compensation shall be payable by the coastal state.

It is not settled whether this convention should apply also within territorial waters. The freedom of the High Seas is matched by the right of innocent passage in territorial waters and world shipowners believe that in this matter the same principles should apply in both places. The right of innocent passage is an ancient one but it was re-defined in a convention passed in 1958 which has received widespread ratification by countries as varied as the United States and the U.S.S.R., Australia and Nigeria.

The IMCO draft convention on liability for oil pollution has not reached the same stage as the public law convention, but already it is apparent that there is a general agreement that liability should be solely on the shipowner, that it should not be absolute, and that it should not be unlimited. It is understandable that IMCO's member-governments appear to be

unanimous on the need for such a convention. There are over one hundred coastal states in the world, and IMCO's work clearly acknowledges that this worldwide problem needs a worldwide solution.

It may be worth explaining the practical reasons for an internal solution. Some ships are specially built for particular trades, but others, notably tankers and dry cargo tramps, are not. They go where the cargo is, provided it is profitable for them to do so. Two of the elements in their costs are (i) hull insurance, and (ii) protection and indemnity (or P & I) insurance, that is, in essence, insurance against shipowner's liabilities to third parties. If a ship is liable to be destroyed without compensation for no better reason than that it may interfere with the enjoyment of coastal property, then insurance rates may be affected. It is even more certain that the cost of P & I cover would rise if the shipowner was made liable for oil pollution even if he was the innocent victim of a collision or had struck an uncharted hazard. Such extra costs will be passed on and it is the Canadian shipper and consumer who will be required to pay them. There is one exception; if the shipowner's liability for oil pollution was in fact unlimited, it would not be possible to obtain any insurance. Ships would either sail to Canada without insurance against their liability for oil pollution, or would not sail there at all. Legislation providing for unlimited liability would therefore be self defeating.

This means that the interests of Canada as an important trading nation require that legislation on oil pollution should strike a balance between the Government's wish for compensation for oil pollution and its wish to have its cargo carried at the lowest possible cost.

This is the problem facing all nations. It is a difficult one, but an answer is emerging and within a few months it will be clear exactly what solution has general approval. It must be rare to bring forward legislation so shortly before a Diplomatic Conference called to consider an international convention on the same subject. To proceed with it would seem to face Parliament with the likelihood of having to pass amending legislation within months of a new Bill's enactment.

For all these reasons, the International Chamber of Shipping strongly recommends that the Canadian Government withdraws *Clause 24* of Bill S-23.

From what has already been said, it will be clear that international shipowners are in sympathy with the principle of regulating operational pollution, and thus with the idea behind the proposal in *Clause 23* to extend the power to issue regulations to cover forms of marine pollution other than oil. The difficulty is practical and real. In an existing ship, to fit new equipment is a very expensive matter; in the case of a passenger ship sewage retaining equipment could cost millions of dollars and there would be a smaller, but still high expense, for dry cargo vessels. It may be worth mentioning that, in international conventions concerning ship construction, it is customary to apply requirements only to new ships. While regulations can and should distinguish between new and existing vessels, to do so does not solve all the problems. If one country has special requirements for the ships that serve its ports, the owners of tramps which do not regularly call at them may decide not to fit such equipment. If they do not, the pool of vessels able to serve that country is smaller, and freight rates tend to reflect the fact. Owners regularly serving the country will perforce install the equipment if they wish to carry on trading as before, but the cost will inevitably be passed on to the customer. Should the Canadian Government conclude that, in spite of these practical problems, regulations are essential, shipowners would be willing to discuss with the Government's experts what is technically and economically feasible.

The ICS appreciates that no two countries' pollution problems are identical, and that Canada's extensive coastline and important freshwater highways present peculiar difficulties. It would therefore be willing to discuss, not only these, but any other proposals that the Canadian Government may have for avoiding, reducing or compensating for pollution damage.

Canadian interest in IMCO's work has long been evident to other countries, and shipowners support its action in seeking international solutions to international problems. They believe that oil pollution is just such a case and hope that the Canadian Senate will view S-23 in this light.

12.2.69.

INTERNATIONAL CHAMBER OF SHIPPING

LIST OF MEMBER COUNTRIES

AUSTRALIA
BELGIUM
CANADA
DENMARK
FINLAND
FRANCE
WEST GERMANY
GREECE
INDIA
ITALY
JAPAN
NETHERLANDS
NEW ZEALAND
NORWAY
SPAIN
SWEDEN
SWITZERLAND
UNITED KINGDOM
UNITED STATES

Appendix D

THE SHIPPING FEDERATION

OF CANADA

INCORPORATED

326 BOARD OF TRADE BUILDING

MONTREAL 1

REGISTERED

File: LS, 18 – 26 February 20, 1969.

The Honourable Paul T. Hellyer, B.A.
Minister of Transport,
Department of Transport,
Hunter Building,
Ottawa, Ontario.

Bill S-23 – Clause 7 – Pilotage

Honourable Sir:

Our members are most anxious that I should bring to your attention one particular clause of Bill S-23 which has had Second Reading before the Senate and been referred to the Standing Committee on Transport and Communications whose hearings have been set for February 27th. This clause is intended to preserve the "status quo" in the administration of pilotage services across Canada pending action being taken on the implementation of the Report of the Royal Commission on Pilotage. This objective, it is considered, will be achieved by giving validity for the interim period to the various pilotage by-laws and regulations whenever the Commission has raised doubt on such validity or the Courts have found such by-laws in fact to have been illegally enacted.

Although I would like to confirm that our Members as users of pilotage services across Canada have agreed to support such legislation, I must point out respectfully that contrary to what was stated in the Senate on January 21st, 1969, our Members had not agreed that this remedial legislation should remain in effect until December 31st, 1969 and that it could be further extended without formality as the clause, as it now reads, seems to imply.

At the last meeting held in Montreal with officers of your Department and attended not only by our representative but also by representatives of the Dominion Marine Association and the Canadian Chamber of Shipping, it was made quite clear on behalf of those Associations that the life of the remedial legislation could only be extended beyond March 31st, 1969 by an Order in Council which would have to be tabled in and approved by Parliament before it could become effective, and reference was had by analogy to the safeguards contained in the Maritime Transportation Unions Trustees Act in connection with the extension of the trusteeship by Order in Council.

We realize, of course, that the date of March 31st, 1969 is now very near and that extension may be necessary; however, I have been asked to stress again that in our view such extension should be limited and all further extensions should be subject to the control of Parliament.

We propose to raise this matter before the Committee of the Senate but felt that we should advise you of our position beforchand so that you might give it your serious consideration.

I am, Sir,

Yours respectfully,

HC:nl

H. Colley
PRESIDENT

Appendix D

THE SHIPPING FEDERATION

OF CANADA

INCORPORATED

326 BOARD OF TRADE BUILDING

MONTREAL 1

REGISTERED

Files GS-46 - 26 February 20, 1969

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Minister of Transport,
Department of Transport,
Unette Building,
Ottawa, Ontario.

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HC/ge H. Colley
PRESIDENT

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

No. 7

Second Proceedings on Bill S-23,

intituled:

An Act to amend the Canada Shipping Act.

THURSDAY, MARCH 6, 1969

WITNESSES:

Pacific Hovercraft Ltd.: John P. Nelligan, counsel; F. Barry Jones, President; *Dept. of Transport*: Jacques Fortier, Q.C., Counsel and Director of Legal Services; R. R. MacGillivray, Director, Marine Regulations Branch; *Hoverwork Canada Ltd.*: A. E. Gerrans, President. *Canadian Chamber of Shipping*: Jean Bruneau, Q.C., counsel; Peter N. Miller, insurance executive.

THE QUEEN'S PRINTER, OTTAWA, 1969

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

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THE QUEEN'S PRINTER, OTTAWA, 1969

29575—1

SENATE COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators:

Aseltine
Blois
Bourget
Burchill
Connolly (*Halifax North*)
Davey
Denis
*Flynn
Fournier (*Madawaska-Restigouche*)
Gladstone
Hayden
Hollett
Isnor
Kinley
Kinnear
Langlois
Lefrançois
Macdonald (*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson
O'Leary (*Antigonish-Guysborough*)
O'Leary (*Carleton*)
Pearson
Petten
Rattenbury
Smith (*Queens-Shelburne*)
Sparrow
Thorvaldson
Welch—(30)

*Ex Officio member

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Senate, Tuesday, January 21, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Bourget, P.C., for second reading of the Bill S-23, intituled: An Act to amend the Canada Shipping 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 Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29575—1½

MINUTES OF PROCEEDINGS

THURSDAY, March 6, 1969.

Pursuant to adjournment and notice the Senate Committee on Transport and Communications met this day at 10.00 a.m.

Present: The Honourable Senators Thorvaldson *Chairman,* Aseltine, Blois, Burchill, Denis, Flynn, Hollett, Isnor, Kinley, Kinnear, Langlois, Lefrançois, Macdonald (*Cape Breton*), McElman, McGrand, Pearson, Petten, Robichaud and Smith (*Queens-Shelburne*). 19.

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

Consideration of Bill S-23, "An Act to amend the Canada Shipping Act", was resumed.

The following witnesses were heard:

Pacific Hovercraft Ltd: John P. Nelligan, counsel; P. Barry Jones, President.

Dept. of Transport: Jacques Fortier, Q.C., Counsel and Director of Legal Services; R. R. MacGillivray, Director, Marine Regulations Branch.

Hoverwork Canada Ltd: A. B. German, President.

Canadian Chamber of Shipping: Jean Brisset, Q.C., counsel; Peter N. Miller, insurance executive.

The following documents were ordered to be printed as appendices:

E. Submission by P. Barry Jones.

F. Supplement to Appendix A submitted by Peter N. Miller February 27, 1969.

At 12.45 p.m. the Committee adjourned until Thursday next, March 13, at 11.00 a.m.

ATTEST:

John A. Hinds,
Assistant Chief,
Committees Branch.

ERRATA

Proceedings No. 6, February 27, 1969:

Page 64, line 1: Delete "protective" and substitute "Protection and".

Page 64 line 2: Delete "indemnity" and substitute "Indemnity".

Page 64, line 13: Delete "limited" and substitute "unlimited".

Page 65, line 26: Delete "dead-weight" and substitute "tanker".

MINUTES OF PROCEEDINGS

THE SENATE

THE SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Thursday, March 6, 1969.

The Senate Committee on Transport and Communications, to which was referred Bill S-23, to amend the Canada Shipping Act, met this day at 10 a.m. to give further consideration to the bill.

Senator Gunnar S. Thorvaldson (*Chairman*) in the Chair.

The Chairman: Honourable senators, at the time we adjourned last Thursday it was understood that we would hear first from Mr. R. R. Macgillivray of the Department of Transport. However, since that time I have received a communication from two persons, Mr. John P. Nelligan, who represents a client who is interested in section 1 of the bill, namely, the section relating to what is known as hovercraft.

I also received a communication from Mr. A. B. German, President of Hovercraft Canada Limited, whose home is in Ottawa, and who would like to be heard before the committee.

Consequently, I suggested to them that if they were here this morning perhaps it would be agreeable to the committee to hear them first and then proceed with the rest of the matters involved which would commence with the appearance of Mr. Macgillivray. Is that agreeable to the committee?

Hon. Senators: Agreed.

The Chairman: Mr. John P. Nelligan.

Mr. John P. Nelligan, Counsel, Pacific Hovercraft Ltd.: Mr. Chairman, and gentlemen, I am grateful to you for permitting us to appear on such short notice, but we were concerned with so many of the technical aspects of what constitutes a new industry in the form of transportation in Canada. That comes under the head of what we now know as hovercraft. I feel this committee will be interested to learn some of the technical difficulties which we feel will arise if the bill is passed in its present form.

I will ask you to be good enough to hear the President of Pacific Hovercraft, who is at the present time, so far as we are aware, the head of a company which operates the only commercial hovercraft service in the country. Mr. Jones has had considerable experience in this field. He is now using the vehicles which were probably familiar to you at Expo, as ferry service in British Columbia.

He is here today and I hope he can explain to you some of the problems I anticipate will arise if this legislation is passed. May I ask Mr. P. Barry Jones?

Mr. P. Barry Jones, President, Pacific Hovercraft Ltd.: Thank you.

The Chairman: We have before us, gentlemen, Mr. P. Barry Jones. What is your position with Hovercraft?

Mr. Jones: I am the President of the Pacific Hovercraft Ltd. in Vancouver, sir.

The Chairman: Proceed, Mr. Jones.

Mr. Jones: We have taken the liberty of putting together a very small brief which is very basic in content. (*See Appendix "E"*)

The Chairman: Have you copies of that brief?

Mr. Jones: We did not have enough for everyone, Mr. Chairman, but we did bring 10 or 11. I have one extra copy here.

Our company has been operating commercial service for about two weeks now. We have had a hovercraft in Canada since November, primarily on trials until the initial service started. We will be getting three more SRN-6 hovercraft on or about the end of April this year. Our interest is primarily because we feel that hovercraft, although

there will only be four commercial machines this spring—there is a coast guard machine in Vancouver and that makes five. I am sure in two years you will see innumerable hovercraft of all shapes, sizes and models—it would appear to us that implementation of the Canada Shipping Act as a governing authority of hovercraft will sadly restrict the development of air cushion vehicles.

We have set out in our brief some of the problems. I would not like to say the Marine Department of Transport people are helpful in trying to assist us in getting our operation going. I am sure the Marine Department and ourselves will be discussing it forever if the Canada Shipping Act is the regulating authority. The problems are basically the unique capabilities of hovercraft. It is not an airplane and is not as much a ship as an airplane. It is like comparing horses, cows and sheep; they are all very different. Our hovercraft program will be throughout Canada. It probably will go into the United States in the near future if proper licensing can be approached. It definitely will be operating in the Arctic area this summer. Approximately 80 per cent of its operation will not be in a marine environment. The regulating hovercraft under marine authority when the hovercraft is operated on land is bound to create some difficulty. These difficulties are a means. We have minor problems, big problems, and we have worked them out to date in co-operation with the Department of Transport, but we can sit and list 400 problems. We have not even gotten hold of the Department of Transport yet and they are sitting here and probably anticipating calls from us. They have been getting them. It is our opinion that the only effective way to allow proper development of the air cushion vehicle industry is to give it rules and regulations of its own.

The Canada Shipping Act is a very thick document. If you took away some of the pertinent facts which do not reflect on hovercraft, you probably are taking away 95 per cent of the Canada Shipping Act.

It seems much easier to include air cushion vehicles in their own regulations in this statute because it is not a difficult matter. They are a very experienced group of people, and that group is here in this room, and I am sure that amongst those people quite rapidly and well equipped regulations could be produced, under the Department of Transport, without putting it in the Canada Shipping Act, not by marine rules.

In our brief we have briefly reviewed this problem. It is a major problem and could in fact result in commercial hovercraft operations becoming impractical. We feel that licensing should be a federal matter. Hovercraft will be operating on chartered services and scheduled services, etc, and will be operating throughout the country, not within one province, and they will be operating internationally, too, we expect. Therefore, we feel that for licensing the federal Government should be the authority.

One other area of interest is that at the present time competing vessels with hovercraft are operating in marine environments and are tax free, they qualify for posting licences. When hovercraft are used in competition with these, although they operate at a very different performance, and have different circumstances, we feel that they should be tax free and that retroactivity of any act that is passed should be effective for hovercraft.

Under present conditions, it appears that, if the bill is passed as it stands air cushion vehicles will be tax exempt. Although we do not agree with the bill as it stands, we suggest that, if it is passed, it should be retroactive.

When we brought our first hovercraft into Canada, there were no rules or regulations on it, so it was subsequently imported as a road vehicle for customs purposes and as an aircraft for tax purposes.

Senator Isnor: Would you require a licence in bringing it into Canada?

Mr. Jones: Our company competed for licences under the Canadian Transport Commission and it took three and a half years. There was a public hearing in Victoria in 1967 and the decision was set out in May of last year. It was appealed and the appeal was resolved shortly thereafter.

Pacific Hovercraft is Class 2 under the Air Transport Committee licence, operating between Vancouver and Victoria, and between Vancouver and Nanaimo; and there is a Class 2 Air Transport Committee licence being processed for the Arctic area of British Columbia.

Senator Isnor: Your air licence, is it restricted to the west coast?

Mr. Jones: The department had specific routes, although for chartered aircraft, these are being processed now.

The Chairman: Mr. Jones, before you go further, it seems to me that your representation concerns present federal legislation concerning hovercraft. As I see it, this bill deals with hovercraft in a very minor way, in that clause 1 of the bill has the effect of amending section 2 of the Canada Shipping Act and amends it certainly not in any fashion that seems to be of any great import. I will read the amendment; it is a definition; Air cushion vehicle is defined in clause 1 of the bill:

> "(2a) "air cushion vehicle" means a machine designed to derive support in the atmosphere primarily from reactions against the earth's surface of air expelled from the machine;"

Mr. Fortier, am I correct in saying that is the only legislation in this bill concerning hovercraft? I understand from Mr. Fortier that there is another clause in this bill which provides for the sections of the Canada Shipping Act which will be applicable to hovercraft once the bill is proclaimed. That is clause 27, which Mr. Fortier says also deals with hovercraft.

Do we understand, then, Mr. Jones, that we are dealing only with the present legislation?

Mr. Jones: Our understanding of the legislation is that it gives powers working under the terms of the Canada Shipping Act authority to regulate and exclude portions of the Canada Shipping Act that do not apply to hovercraft and to add other portions or at their discretion operate in circumstances which may benefit them. We feel that this is going at it the wrong way. It would be far better to wait a short period of time to enable the numerous well-qualified people who are capable of giving sound advice concerning air cushion vehicles the opportunity of doing just that. These qualified people, especially from Canada as well as other places, could help develop rules or regulations which would apply to air cushion vehicles, which would be preferable to using something presently in effect but which is inappropriate.

The Chairman: Honourable senators, these representations in regard to hovercraft may take more time than I had thought when I suggested that Mr. Nelligan and Mr. German appear today. I believe it is important to have an opportunity today to hear Mr. Miller, the gentleman from the United Kingdom, whom we heard last Thursday and who has just been to Washington and has returned here for this hearing.

Might we have an idea from you, Mr. Jones, how long you think your representation will take? Mind you, we propose to give you all the time in the world to present your case before this committee. It is just a matter of timing that I am talking about now, because my understanding had been, as I mentioned, that this was a minor amendment and that we would not be very long on it. Otherwise I would not have put you into this part of the proceedings.

Mr. Jones: We just wanted to attempt to bring to the attention of the committee the importance of air cushion vehicles, even though at the present time they cannot be called a big group, since they comprise only one commercial operator and one Government craft. But it is important at the beginning to get good legislation and good rules in the legislation governing the operation of hovercraft. That is important right from the beginning.

Our submission, basically, would be to not resolve anything at this time until full submissions on the operating capabilities have been put before you. For example, you have craft now operating quite soundly, if not on difficult routes. The coastguard operates craft in Canada and the Department of Transport have people who have studied the hovercraft and, probably in very short order, by some sort of working group very sound information could be provided. But it would be impossible to provide such information at this time. I think. It would be difficult to give a full submission on the problems at the present time because we have only been operating now for five months and two weeks, commercially. Even so, we do know some of the problems now.

The Chairman: My point now is not whether it is possible or impossible for you to give a submission. I am trying to find out what time you will require, because Mr. Miller is here from the United Kingdom and we promised him that we would be sure to hear him today, and it is just a matter of timing, Mr. Jones. Can you just give me an idea how long your submission will be and I will get the same information from Mr. German and then we

will proceed with the other part of the bill which we were discussing last Thursday.

Mr. Jones: I would suggest that if this submission is accepted by the committee and with our solicitor's approval we do not need any more time at this stage.

The Chairman: Supposing we agree now that the brief presented by Mr. Nelligan should become part of the record?

Mr. Nelligan: I think that is all we require for now. We also have some ligerature which has been distributed on the technical aspect of hovercraft. I am referring to the green covered document. At this stage there is nothing much further we can say to the committee. However, on the amendments, as we have pointed out, clause 1 deals with the definition of hovercraft, but in our view the critical clause is clause 27 which brings hovercraft into all the subsequent regulations concerning ships under the Canada Shipping Act. That concerns us greatly. Of course we are also to some extend concerned with clause 28 which provides that clauses 1 and 27 shall not come into effect until a date to be announced. Apparently the draftsmen did contemplate that this aspect of the legislation might be deferred. Now, this might be one way of dealing with it because what we are saying is that the time is not yet right for making a hovercraft into a ship. This should be well considered before this house does anything about it. I am simply pointing out, Mr. Chairman, that these three clauses would have to be considered when dealing with the question of hovercraft. Other than that it is not necessary to take up the time of the committee at this stage.

The Chairman: Thank you. I want you to understand that there is no effort at all being made to gag you. I assure you that you will be given ample time to make what representations you feel you want to make.

Mr. Nelligan: For example, taking this requirement that the name of the ship would be on the masthead, this would be rather cumbersome. We feel it would be rather difficult for the operators to operate under the regulations as they are now set out and we recommend that there should be no further recommendations made until the department is prepared to consider regulations for the hovercraft as a unique vessel. We are in a unique group just as aircraft are in a unique group and we feel that we should not be thrust into this pot now. Hasty action at this time might well destroy a very important aspect of transportation in Canada particularly one that is of great importance to the development of our remote areas.

The Chairman: Now, Mr. Jones, if you would like to complete your statement go ahead.

Mr. Jones: Mr. Chairman, if it would be of value to the committee we have a few copies of detailed information about hovercraft and their special use in Canada. If they would be of value to the committee, we would be happy to leave it with you.

The Chairman: We would appreciate it.

Mr. Jones: It is just some background material on hovercraft primarily and some on our own company.

Senator Isnor: Mr. Chairman, I would like to ask Mr. Jones where these hovercraft are operating at the present time.

Mr. Jones: Primarily in English countries, Scandinavia, Brunei, and some areas in Alaska. The only long-term operations have been in England where they have been operating since 1963.

Senator Isnor: Are they under licence?

Mr. Jones: I think the chairman has indicated there is a gentleman here from England and he could probably answer that for you.

The Chairman: Mr. German, you have heard what we have been discussing concerning this matter. Could you be fairly brief in your presentation now, on the understanding that if you would like to make a more complete statement later on this committee would be glad to give you time for that? All this is based on our position, namely, that we have Mr. Miller here from the United Kingdom who has to get back, and most of these other gentlemen are from Montreal. We promise we will try to finish before 1 o'clock. You are located in Ottawa, I understand.

Mr. Andrew Barry German, president, Hoverwork Canada Limited: Yes.

The Chairman: And we will give you another opportunity later on to present a more complete brief than you would have time for now.

Mr. German: Thank you, Mr. Chairman.

The Chairman: Would you give your name and position, please?

Mr. German: I am Andrew Barry German, President of Hoverwork Canada Limited of 90 Sparks Street, Ottwaa 4.

Mr. Chairman, it would take no more than 15 minutes, including perhaps any questions any members of the committee would like to ask. I have some copies coming in of a very short brief I have prepared which will be available for circulation in a matter of 10 or 15 minutes.

The Chairman: I think that will fit into our schedule this morning, if we can dispose of it within that period of time.

Mr. German: Mr. Chairman, honourable senators, my company was incorporated under federal charter in October, 1966, for the purpose of operating, managing the operations of and advising and consulting in the uses of air cushion vehicles in Canada. Our first operation was at Expo '67, where we carried 370,000 passengers for a total of 2,700 vehicle operating hours using two leased SRN6 hovercraft. This was a purely commercial venture. I think it might be well for you gentlemen to understand the various types of tasks which have been undertaken, in addition to the type of task Mr. Jones' company is now undertaking.

We then conducted a training course for the Department of Transport in late 1967, and took an SRN6 hovercraft to Fort Churchill, Manitoba on a test program for the Department of Transport, and we operated out of Fort Churchill in the months of January, February and March, 1968, as a test in low temperature conditions, under contract to the Department of Transport.

In July, 1968 my company managed a test series for the Department of Transport of the wheel-driven BC7 Terraplane air cushion vehicle, a completely different device with an air cushion and propelled by wheels designed to operate over very soft ground, such as winter roads in the summertime.

In addition, my company provides a full-time senior officer for the Canadian Coast Guard's air cushion vehicle search and rescue unit located in Vancouver, and we have been providing consulting services for over a year in that role.

Further, my company has been engaged during the last year as the lead member of a consortium in a major research study for the National Research Council, the Department of Transport, the Department of Industry, the Canadian Transportation Commission, the Department of Indian Affairs and Northern Development, the Department of Energy, Mines and Resources and the Atlantic Development Board, on the subject of the applications of and market for air cushion vehicles in Canada. This study was turned over to the government bodies involved in December.

We have, therefore, a rather firm base from which to speak from the point of view of variety of experience in the technical, operational and economic aspects of air cushion vehicles.

As far as the existing classification of air cushion vehicles is concerned—that is, pro tem as an aircraft—I was very pleased to learn that Bill S-14, amending the Aeronautics Act, contained a provision to amend the definition of an aircraft in such a way that the ground effect machines, air cushion vehicles—call them what you will—will be excluded from the category of "aircraft". In fact, this is similar to the action taken by the International Civil Aviation Organization. They carefully reworded their definition so that hovercraft or air cushion vehicles would not come anywhere near them.

The Chairman: I think the committee would like to know whether your vehicles are manufactured in Canada; or, if not, where they are manufactured.

Mr. German: The air cushion vehicles that have been produced to date, with the exception of some prototype ventures, have been manufactured in Britain, France or the United States, and none, so far, in Canada.

The ACV really never was an aircraft, but the need for extra light construction, high power and low weight engines, and aerodynamic propulsion and control methods, initially landed ACV development in the lap of the aircraft manufacturers. Undoubtedly ACV's will draw heavily on the technology of the aircraft industry, but light alloy construction and the use of gas turbine engines, for example, are becoming a quite familiar part of the marine environment, and the new technology is being developed in response to the need.

The existing classification of ACV's as aircraft is, to my mind, completely illogical. Indeed, I find it very hard, if not impossible, to define what ACV's are. There are many different kind of ACV's. There are purely marine craft which draw water like a conventional vessel, but which use an air cushion to lubricate their passage through the water and thus increase their speed. There are the marine optimized surface skimming craft, which you gentlemen can see before you in the brochure that you have. These devices are designed to travel more quickly over the water than anything else of their size and power. They have the property of being able to emerge from the water and thus become amphibious. There are devices that are propelled by wheels which can travel over rudimentary roads and which use the air cushion as a method of spreading the load and increasing their mobility. One can also have a simple lifting platform which requires something else to pull it along. Thus, while I would not venture to say what ACV's are—and I think it would be unwise to go into that—I certainly wholly support the stand that they are not aircraft.

ACV's are becoming more than just technical curiosities, and it is, of course, necessary to have some ground rules to guide users, operators, developers, inventors, and, of course, the Government officials whose duty it is to guard the public interest. If logical, sound, sensible rules to cope with a particular new situation do not in fact exist, then the public servant must cast around for the nearest approximation.

The result of such a situation is quite graphically illustrated by my own company's experience in the spring of 1967, and Mr. Jones, I think, had similar experience—or, perhaps, different ones but in the same class.

First of all, I imported two devices as motor vehicles. They were placed on the registry of civil aircraft. I complied with the procedures and requirements of the Air Transport Board, and obtained a licence to operate a commercial air service. The Department of Transport, Civil Aviation Branch, examined the qualifications of our operating and maintenance personnel, and they inspected the craft, as did the Steamship Inspection Board. At this time a practical demonstration established that we did not require seat belts for takeoff and landing. The operators were given an examination and issued certificates as air, land-mobile, and marine radio operators. Our three landing areas were inspected and certified as licensed airports, although aircraft were restrained from landing on them, I am glad to say. Finally, a permit to fly was issued, which contained the endorsation that we were required to carry two cork lifebuoys each with 14 fathoms of line on the outside of each of our craft. This was finally removed because it was...

Senator Langlois: What about anchors?

Mr. German: We did carry anchors at one time, sir, because we were required to do so by the regulations.

In the meantime the harbour master was properly concerned about safety, and we were required to demonstrate various appropriate safety procedures to assure him that we would not constitute a menace to navigation. He then issued, on behalf of the National Harbours Board, a permit to operate a ferry service within the limits of the Port of Montreal. The Wildlife Service then warned against operation without due regard to the safety of wild fowl in the areas in which we were required to operate.

At last we began to carry fare-paying passengers. It is only fair to point out that the officials concerned were most helpful and cooperative and made every effort to expedite their administrative procedures. They were quite prepared to listen to the logical argument and accept our operation as to what it was—a self-disciplined and professional one. The regular rules they had were simply not reasonably applicable and they did the best they could. I must say that subsequent experience with the government of the Province of Quebec was not quite so happy, because while aircraft and vessels using diesel fuel were exempt from paying the tax on diesel fuels, the hovercraft was attacked from a somewhat peculiar viewpoint.

We did use diesel fuel in our gas turbine engines, but the inspector, who had never seen a gas turbine engine before, taxed it at the full rate of tax on the basis that we had a gas turbine engine rather than a diesel engine, although the fuel itself was exempt if it had been used in another form of vessel. The problems of pioneering are somewhat complex and sometimes crippling.

The Department of Transport in fact expressed its views and intentions in early 1968 regarding the proposal of the legislation

now before the standing committee. It is my company's opinion that these amendments are a practical and sensible step. When an ACV is used in navigation—in other words, when it is operating over or in the water—it must have the status of a vessel; from the economic point of view it must compete with vessels, and from the overall operational point of view it must conduct itself as a vessel. This principle would not hold true when the same ACV operates over land; it would have the status I would think, of a special purpose motor vehicle, of which there are many examples in Canada, many of which are not permitted to run on the highways.

It would seem to me that the purpose of this amendment to the Canada Shipping Act is not to say that air cushion vehicles are ships, because plainly from the variety of vehicles I have recounted they cannot across the board be ships, but it is to put the air cushion vehicle when it is used in navigation, which is operating over water, in the same category as ships. I believe this is a very different thing. I believe also that these vehicles when operating in this environment must come under some existing act, with due regard for proper changes in the regulations which are written under that act, or indeed the writing of completely new regulations, because I agree with Mr. Jones here that new regulations are required.

If the advent of the ACV as a significant potential contribution to our Canadian transportation scene was not being taken as a serious matter, this particular section would hardly be before the standing committee. For this new and, I think, somewhat tender plant to survive economically and to grow and contribute it must have special consideration technically. By this I do not mean that matters of safety and crew standards, for example, should be treated indulgently, but rather that they be examined objectively, knowledgeably and with a full understanding of the implications of decisions made. In the current delicate economics of smaller passenger-carrying ACVs an arbitrary requirement to, for example, carry a licensed engineer at all times where this might not be necessary could be a crippling burden for an operator. It is my firm belief that the responsible officials are well aware of the care and judgment they must exercise in forming the regulations which the Governor in Council will be empowered to enact under section 712A of the proposed amendment to the act.

We are very concerned, however, that with this new responsibility they may not be given the means to discharge it. Each problem as it arises will be a new one. These must be handled by trained and experienced professionals and not by mere functionaries, as precedents will be set which will have far-reaching results.

Regulatory decisions will be made which will affect vehicle design and thus economics. Designers, developers and operators cannot wait indefinitely for decisions. They must be able to refer their problems to competent professionals in the Public Service, who are able to devote full time to them.

The decisions of steamship inspectors and inspectors of equipment and ship's tackle are bound to have a significant short-term and long-term effect. The best of intentions are not good enough. Inspectors must be specifically qualified and experienced to be able to handle their jobs with relation to ACVs.

In conclusion, Mr. Chairman, it is the opinion of my company that the public interest will best be served at this stage first by applying the parts of the Canada Shipping Act as outlined in Bill S-23 to air cushion vehicles used in navigation.

Secondly, by retaining flexibility in keeping ACVs from being economically regulated in such a way as aircraft operations are now regulated unless and until such is proven necessary.

Third, by encouraging the growth of the ACV industry by giving the appropriate Government departments and agencies the personnel and budgets they need to be able to handle ACV matters swiftly and competently.

In this regard I recommend that Part VII of the act be reviewed, with an eye to amendment to require that the Board of Steamship Inspectors include at least one member who holds a certificate from the chairman as to his competence in the field of ACV's and that ACV inspections be carried out only by people who are so qualified.

The same reasoning should apply to inspection of radio equipment and ship's tackle, which is required in the Canada Shipping Act.

In summary, Mr. Chairman, my company considers Bill S-23 to be wise and sensible, but urges that more than lip service be paid to the ACV. The machinery of Government departments and agencies must be properly

supplemented to handle the new problems which are going to arise. The proper measure of additional professional competence and experience should not cost much to acquire, and it is the best insurance that is against the death of the ACV by red-tape strangulation.

The Chairman: Thank you, Mr. German. Honourable senators, with your permission I am going to suggest that we defer Mr. Fortier's presentation in regard to hovercraft until some other time. Possibly today if we have time otherwise later on. When Mr. Fortier does address himself to this problem I am assuming that Mr. German will be here and also perhaps Mr. Nelligan. I must say that I did not expect this matter would take as much time as it has, and hence I allowed these gentlemen to proceed at the beginning of the meeting.

Honourable senators, is it agreed that we now hear the other gentlemen on the pollution problem—sections 23 and 24?

Hon. Senators: Agreed.

The Chairman: Thank you. Of course, we are going to hear Mr. Macgillivray first, and then we might have representations from others who are present.

Mr. R. R. MacGillivray, Director, Marine Regulations Branch, Department of Transport: Thank you, Mr. Chairman and honourable senators. I am R. R. MacGillivray, Director of the Marine Regulations Branch of the Department of Transport. That is the branch which administers those sections of the act. It administers most of the Canada Shipping Act provisions, including all those sections that are being amended by this bill.

Representations were made at a meeting a week ago on a number of subjects, and I understand that you would prefer that I restrict my comments at this time to clauses 23 and 24. I will have comments on some of the other representations which were made.

In respect to clause 24, I must say that I had expected the meeting to proceed in somewhat different fashion and I had thought that I would be heard before we heard the witnesses from the industry.

In my introductory remarks on this section, I had intended to say that we proposed ourselves to forestall some of the criticism by suggesting an amendment to clause 24 on page 15 in section 495D, paragraph (d) thereof. In regard to this provision, we had the criticism, first, that all charterers are made liable for the cost of removal of wreck and cleanup of oil spills, and also that the master of the vessel is made liable.

We recognized, after representations were made to us following the first reading of the bill, that we ought to have made it clear that the charterer we are intending to deal with is a demised charterer, that is, a charterer having responsibility for the navigation of the vessel, the charterer who takes over the vessel and has the master and crew engaged and responsible to him.

Also, we recognized that it was ridiculous to make the master liable in respect of claims which could be of such great magnitude.

In making the master liable, I may say that we were simply following the words of the Navigable Waters Protection Act, which deals with the right of the minister to remove a wreck that is an obstruction to navigation and, having removed it, to recover. In that act it is provided the recovery may be made from the managing owner, the master or the person in charge of the vessel, at the time of the wreck or sinking.

We were following that precedent when we included the master among those to be liable. As I say, we are prepared at the appropriate time, when we deal with this clause, to suggest an amendment to insert a new paragraph (d) as section 495D, which will delete reference to the master and which will clarify the point that it is only intended that the charterer having responsibility for the navigation of the vessel shall be liable to the Crown for the cost of removal of the wreck and clean-up of the oil spill.

Mr. Brisset in speaking to you did, I think, refer to the fact that he understood that we had such an amendment ready.

Now, Mr. Chairman, there are two principal objections which have been raised in connection with clause 24. The first is that in the proposed section 495D there is provision for absolute liability on the owner to pay the cost of wreck removal and of clean-up and of other preventive measures. The argument against this has been made by all those who have spoken on this clause. I should indicate that in introducing this feature we were not breaking new ground. Already in the Navigable Waters Protection Act there is the same provision. If a ship is wrecked and is causing an obstruction or a potential obstruction to navigation, potentially in the opinion of the

minister, the minister is then entitled to remove that wreck at the expense of the owner, after subtracting any amount of money he may get from the sale of the wrecked vessel.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Do you recall the section number?

Mr. MacGillivray: The sections of the Navigable Waters Protection Act are section 14, which authorizes the minister to remove the wreck if it remains there for more than 24 hours, and section 16, which is the equivalent of our section 495D here and which authorizes the recovery of the costs.

The Law Clerk: But that is not in connection with pollution.

Mr. MacGillivray: No. This relates to a wreck that is an obstruction to navigation or is likely in the opinion of the minister to become an obstruction to navigation. It happens now and again that we must avail ourselves of the provisions of that section and, sometimes at considerable expense, remove a wreck that is an obstruction to navigation.

We are unable to use that provision to deal with a wreck which is not an obstruction to navigation but which is causing oil pollution or other pollution, or that is a potential source of pollution. That is the reason, of course, for this provision. In the international discussions which have been referred to on the subject of how to deal with massive pollution incidents, which discussions were prompted by the *Torrey Canyon* incident, it is quite true it has been considered that limitation of liability should be concomitant if we are to have absolute liability, and this has been true of other international discussions as well. For instance, back in 1961 and 1962 there was a diplomatic conference on the subject of the liability of operators of nuclear ships, and that, I think, is the first instance where in international discussions on international arrangements on such matters it was accepted that there should be absolute liability on the owner of the ship, this being because that is the place where it is easiest to insure and to enforce the requirements for insurance.

On the subject of the limitation of liability, I think we have heard again from all parties the plea that there should be provision for limitations. Well, again in the Navigatable Waters Protection Act there is no provision for limitation on ship owner's liability. This is not unique to Canada; I know there is a feature of the law of the United Kingdom that wreck removal is not one of the matters in respect of which the owner of the ship may limit his liability. We have not inserted this provision following the precedent of what the law already is in respect to wreck removal.

The argument has been put forward that there should be limitation of liability because unlimited liability is uninsurable as such. Mr. Brisset argued this in his presentation as did Mr. Miller, but this is assuming that there is a right to limit to this figure. Limitation of liability is a concept that I am not sure that all honourable senators present are familiar with. It is a concept that is unique in the law relating to ships and ship owners. The provision in the Shipping Act which allows a ship owner to limit his liability is this; that having been found liable for damage done in the operation of his ship and in the carriage of his goods and passengers, and having been found liable...

The Chairman: That is on the basis of negligence?

Mr. MacGillivray: Yes, on the basis of negligence, and having been found liable on the basis of negligence, he may then apply to the Court to limit his liability. That is to say, if he has done a million dollars worth of damage and his ship is, for instance, under 300 tons, he may then apply to the Court for an order limiting his liability, and the Court will grant it and his liability is something around $66,000 or $65,000, and all persons injured must accept this in payment of their claims for damage.

Senator Langlois: If there is no negligence on his part?

Mr. MacGillivray: This relates only to his liability for the negligence of his servants or agents.

The Chairman: When you refer to the fact his liability may be limited by the court, is that synonymous with the word "reduced"?

Mr. MacGillivray: The amount that he has to pay out is reduced. It is a limitation on the amount of his liability.

Senator Kinley: What is the difference between an incorporated vessel and a vessel owned by shareholders, in sixty-fourths?

Mr. MacGillivray: It is the liability of the owner or owners. If you have 64 owners of the 64 shares, then the total liability of the 64 of them is the limit for that ship.

Senator Kinley: And the individual owner is responsible?

Mr. MacGillivray: The individual owner is only responsible if—I am not quite sure of the intent of your question, senator.

Senator Kinley: If you have an incorporated company, that is another person, is it not?

Mr. MacGillivray: Yes.

Senator Kinley: If you have a ship that is divided into sixty-fourths, and everybody buys a share who has practically nothing to do with the management, there must be a difference between those two vessels. One is another person, and the other is owned by 64 people.

Mr. MacGillivray: I am not sure whether you are talking here, senator, about the difficulty of proving the negligence of the person involved.

Senator Kinley: I was thinking of the old gold franc discussion and how that applied. The individual responsibility of an owner is important; it has an effect on how it is dealt with.

Mr. MacGillivray: Whether your ship is owned by a corporation or by the individual owning of 64 shares, or by a number of individuals, up to 64, owning individual shares or groups of shares, the liability of the owner must be based on fault, on the fault of his servants.

Senator Kinley: Of ocurse.

Mr. MacGillivray: And the master and crew are the servants of the owners, whether there is a number of owners or a single corporation or a single individual.

Senator Kinley: Yes, I know, but suppose I have a sixty-fourth of a vessel and I am interested in fishing or something, and a lot of the people in the district own a sixty-fourth, and there is a manager-owner and he is practically speaking the man who runs the ship and is the agent, if that vessel gets into trouble it is very important for the man who is a shareholder to know what his responsibility is.

Mr. MacGillivray: I think we are a little off the subject of limitation at the moment, when we get into this, but his liability is for one sixty-fourth of the amount.

Senator Kinley: But in the case of a limited company, we are within limitations there. We have a limited company. All they have is the vessel. They cannot go back on the people who have shares in a limited company?

Mr. MacGillivray: No, that is true.

Senator Kinley: You were speaking of pollution, and you mentioned the captain. You know, we had a discussion on that. We added 50 miles, and I think you have got it up to 100 miles, and England has it up to 1,000 miles. If the captain is not responsible for polluting the sea, he is not in charge of the routine of his ship. It should be the responsibility of the captain when he throws ashes or oil, and other things into the sea. That is his job.

Mr. MacGillivray: This is a matter dealing, of course, with clause 23 . . .

Senator Kinley: I am coming back to that other clause.

Mr. MacGillivray . . .under which regulations are made which have nothing to do with liability for damage done, but rather impose a penalty on the owner and the master of a ship.

Senator Kinley: And the captain is responsible under that?

MacGillivray: Yes.

Senator Kinley: Are you taking it away from him under this now?

Mr. MacGillivray: No, under this we are only taking away the automatic liability that would have been imposed on him by the wording that is here, and without his being personally at fault. If he is personally at fault then the liability is there.

Senator Kinley: If he is at fault what are you going to do about it. The insurance men say that to pay insurance when there is no fault is contrary to insurance practice.

Mr. MacGillivray: No.

Senator Kinley: And I think they are right.

Mr. MacGillivray: Yes. Now, on this matter of limitation of liability, honourable senators, the important point is, I think, that this is a concept which is quite an ancient concept. It

is somewhat over 200 years old in British law, and it applied to Canada from the time of its inception in British law. In the beginning the limitation was a matter entirely within the shipping fraternity itself. In the beginning an owner was only able to limit his liability in respect of the cargo aboard his ship. By the developments over the 200-odd years since this was first introduced, he became enabled to limit his liability towards passengers carried in his ship as well as the goods on board it, and later to limit his liability against the owner of another ship which he might damage, and the owners of the cargo and the passengers aboard other ships.

This is the history of the limitation of liability limitations up until 1957. At that time the voyage was treated as a venture in which the cargo owner, the passenger, the ship owner, and the master were engaged, and there was some logic to this provision for the limitation of liability. In 1957, at an international conference in Brussels, the scope of limitation was broadened a great deal. Where a ship owner originally could only limit in the manner I have indicated, he is now in a position—and this is a provision that was introduced into our law by an amendment of the Canada Shipping Act, to which Senator Kinley has referred, in 1961—to limit not only against the owner of the cargo aboard his ship and not only against the other ship owner, but also against any person who is damaged by his ship.

The Law Clerk: Have you the section number?

Mr. MacGillivray: Section 657 and following of the Canada Shipping Act. As I have mentioned, in those provisions in the Canada Shipping Act relating to liability, the owner may not limit in respect of his liability for the cost of raising wreck. This is a provision which we did not insert. By the way, I think Mr. Brisset mentioned that Canada has adhered to this convention. It is not quite true. We have not formally adhered to this convention although we have given effect to its provisions by the amendment of 1961 to the Canada Shipping Act.

It is against that background that we must look at the situation here. Considerable emphasis was made by Captain Hurcomb and by others as to the magnitude of the claims that may arise against the shipowner. For example, the recent spectacular oil spill off Santa Barbara in California was estimated by the United States coastguard as being 500 barrels of oil a day. As this went on for 11 or 12 days that would come to approximately 6,000 barrels of oil released by that one occurrence. Out of that there have arisen claims that are probably inflated but which total over a billion dollars for damage to shoreside property. On the other hand, the *Torrey Canyon* incident which started this international discussion that has been referred to with a view to getting international agreement on liability and the limitation thereof, involved more oil but less damage. The *Torrey Canyon* was probably carrying 500,000 barrels of oil, of which 40 per cent escaped. In other words, approximately 200,000 barrels of oil escaped from the *Torrey Canyon*, and the cost of the clean-up and the damages arising out of that amounted to somewhat less than $10 million. So, by 200,000 barrels, $10 million damage was done as compared to over $2 billion damage being done by 600,000 from the oil well off Santa Barbara. The damage off Santa Barbara was tremendously greater, therefore, and we cannot say what the damage is going to be from these occurrences in the future.

We have, trading into the Great Lakes, the *B.A. Peerless* which carries about 128,000 barrels. Captain Hurcomb has pointed out what would be the position of the owners of that ship, the Gulf Oil Corporation, if it were to be damaged and were to release oil into our inland waters. But in introducing this legislation we are thinking of the people who are going to be damaged by that. Recalling that we had until last year trading into Halifax a ship of the same size as the *Torrey Canyon*, or virtually the same size, carrying very nearly as much oil, and in 1970 we will have trading into the Port of Canso ships of 312,000 tons dead weight, which are the ones that have enough space on deck for three football games, you must realize that these tankers are going to be carrying oil into our waters and exposing to danger fishermen who may lose their gear, boat-owners, resort owners, who may have their resorts rendered useless for considerable periods of time. If limitation of liability is allowed, it is these people who will suffer.

It has been suggested that we are premature in bringing forth this legislation. There is a history here: About four years ago there was an oil barge which sank in Howe Sound near Vancouver. This barge sank in slightly over 600 feet of water. The owner, recogniz-

ing that it would be virtually not economic to raise the barge, informed us after inquiry that he was not going to raise the barge. The Government kept getting complaints from people because oil was seeping to the surface and because there was a fear that there would be a massive release. The barge in question, although I cannot recall its exact size, carried less than 5,000 tons of oil in it. The depth of the water being over 600 feet made a difficult job of salvage, but in any event the Government, although not bound to, stepped in and raised the barge and disposed of it at a cost of half a million dollars.

It was as a result of that incident that the Government decided to introduce into this Canada Shipping Act the amendments that we have here. It was not as a result of the *Torrey Canyon* incident.

Senator Langlois: May I interrupt at this point to suggest to the witness that since he has referred to the total damage done by the *Torrey Canyon* he might inform the committee what would be the limitation of the owner's liability, that is, the owners of the *Torrey Canyon*, if the limitation that is applicable under the present rules had applied to them.

Mr. MacGillivray: I do not have an accurate figure on it, Senator Langlois, but a rough estimate would be $2,700,000, under the law as it exists.

Senator Flynn: Mr. Chairman, may I interrupt? The witness mentioned that the reason for not permitting the liability here would be because of the extensive damage that could be caused to shore property. May I suggest to him that as the amendment is drafted, unless the clean-up job is made by the Government, a third party has no claim against the owner unless he proves fault first. Secondly, I would say that, if his argument is valid for not limiting the liability because damage is caused to third parties, then this would be valid in all other cases where the limitation of liability presently applies.

Mr. MacGillivray: I think it is true, senator, that if there were an incident such as the *Torrey Canyon* incident now, but off the coast of Canada, and a person on shore were damaged by that, whether through damage of his beach or otherwise, he would have to prove negligence before he could recover, and, having done so, he would find that, if there were sufficient claims, the claims were such as in the vicinity of $10 million against the ship whose limitation figure is $2,700,000, definitely he would receive 27 per cent only of the amount of damage he could prove.

Senator Flynn: Whereas if the clean-up were made by the Government the full amount could be recovered, without even considering the question of fault?

Mr. MacGillivray: Yes. Under this provision, if the Government felt it was serious enough that it ought to step in and do the cleaning up, then it certainly would be entitled to recover from the owner, and without limit.

The Chairman: Senator Flynn, would you care to follow up with the witness on the question of what was actually the legal liability in regard to that ship which sank in Howe Sound in 600 feet of water? I think that might be interesting for the Committee.

Senator Flynn: I think you have put the question.

The Chairman: I have really put the question to you, but the chairman wants to be silent as much as he can. Anyway, I think that would be illuminating to the committee.

Mr. MacGillivray: We are not really able to say whether it would have been possible to prove a claim, whether a person who was damaged would have been able to prove a claim. The sinking was unexplained. The barge was at the end of a tow line. The people on the tugboat heard a crack, and the barge started to sink. Whether that was some inherent fault in the barge, it was going to be very difficult to prove. I never did pursue the question as to what was the cause of the sinking, or if I did, I do not recall it at this time, but having gone in as a volunteer to raise the wreck and dispose of the oil, I think we would have had no claim against the owner, even if he were negligent, though the people ashore might have been able to prove negligence and to have had claims for damaged beaches and so on.

The Chairman: Then we take it the Government did not assert a claim in that case?

Mr. MacGillivray: No, we did not. As a matter of fact, we did not even have the right to go and interfere with this ship; she was still the property of the owner. We did not even have the legal right to go and tamper

with it, and we had to deal with the owner and obtain his permission to tamper and deal with his property.

The Chairman: Was the oil salvaged in that case; and, if it was, whose property was it?

Mr. MacGillivray: It was salvaged, and in return for the owner giving us permission to deal with the wreck we entered into an agreement with the owner before we raised the wreck and it was a term of the agreement, firstly, that we had the right to go ahead and do this; and, secondly, that anything we recovered, the barge itself and its cargo, became our property, and this amount was set off against the cost of recovery.

Senator Hollett: Before they sail, can vessel owners get insurance against such an emergency arising, or would it be too costly?

Mr. MacGillivray: I think it might be preferable if that question were asked of the other expert witnesses who are here and are much more knowledgeable than I on this feature.

Senator Flynn: Do I draw the conclusion that the witness is doubting the value or the principle of the limitation of liability now?

Mr. MacGillivray: I should say this, Senator Flynn, as the Minister of Transport has announced, we are doing a thorough review of the Canada Shipping Act, hoping to come up with a complete revision of the act, to bring it into modern terms, or into terms that are consistent with modern conditions. In the course of this, in the department we are going through the act in the greatest detail, and we are looking at every provision in it and are looking at the reason behind each provision and the objective we are hoping to reach by that provision, and whether it is appropriate in today's circumstances. When we come to the provisions on the limitation of liability, we will be doing that.

Senator Flynn: You would have already made one step with this amendment in removing the limitation of liability.

Mr. MacGillivray: I should say this, that had we known that the *Torrey Canyon* incident was going to arise and that there were going to be international meetings trying to achieve a world-wide rule of law governing incidents and circumstances of this sort, it is quite possible we would have deferred action until that time. However, we had been committed to this, and the Government had decided to go ahead with this provision.

Senator Flynn: What I suggest is that you could have the principle embodied in this new section 495D enacted, but still retain the principle of limitation of liability. You are doing away with this principle, and I am wondering whether this is the first step towards complete removal of any limitation of liability.

Mr. MacGillivray: I think it should not be indicated we are doing away with anything, senator, but actually what we are doing is imposing a liability, and the way the bill stands now we are not taking the further step of granting limitation.

Senator Burchill: Under what authority, previous to this section, did local harbour masters or local authorities make steamers or vessels polluting harbours with oil or other pollution material clean up the mess?

Mr. MacGillivray: Normally, when there has been an oil spill in a harbour, particularly if it relates to a tanker or to a spill while fueling a ship or while off-loading a cargo of oil, the oil companies have adopted a very responsible attitude, and immediately proceed to clean up operations without any prodding from the department or anyone else. Similarly, I would say that most of the ships which negligently or otherwise pump oily wastes or oil itself into our waters proceed immediately to try and contain it and to clean it up.

At present under the section that is being amended by the previous clause, clause 23, we have regulations which make it an offence to cause pollution; and there is nothing in the Shipping Act though about the clean-up of that. This merely imposes a liability through a penalty, but our experience has been that we have, over the years since we have had that provision in there, had some 90 prosecutions at the rate of something—I forget how long it has been there, but something in the vicinity of 10 prosecutions a year, but normally even in those cases the owner of the ship proceeds immediately to effect a clean-up.

Senator Burchill: But it was under that section of the Shipping Act that the harbourmaster, or whoever it was, took action?

Mr. MacGillivray: No, if the harbourmaster cleans it I suppose he is a volunteer, in the

same way as we were when we raised the oil barge in Howe Sound.

Senator Burchill: But the liability of the ship is not included at the present time?

Mr. MacGillivray: That is right.

Senator Burchill: There is no liability at all?

Mr. MacGillivray: They would have liability to the persons damaged if they were at fault—if there was negligence.

Now, Mr. Chairman, it has been suggested unanimously by the witnesses from the industry, I believe, that the Government should consider deferring this provision, or certainly this portion of it, which is the proposed new section 495D until such time as we see what is going to come out of the international discussions that are now under way. These discussions, as you know, arose following the *Torrey Canyon*. The International Maritime Consultative Agency, IMCA, immediately began discussions on both the technical problems arising out of massive oil releases and the associated legal problems, such as questions concerning the right of a coastal state to reach outside its territorial sea to the high seas, and deal with a ship which is probably in contravention of the accepted principle of freedom of the seas. That is one aspect, and the other is the aspect of the liability of the ship owner for pollution, and the limitation of that liability.

In quite recent days both the Government of the United Kingdom and the Government of Norway have taken pains to let us in the Department know that they themselves are deferring any action in this regard until they see the outcome of the international negotiations. Both of the representatives of these governments who spoke to us made it quite clear that they were not making any representation to the Canadian Government, but they did want us to know that they were deferring action on this until the results of the international discussions, which everyone hopes will become final in November of this year, are known.

We have also been informed that the Government of South Africa, which had legislation before its Parliament, did defer it after representations were made to it.

The representations which were made here last week have been brought to the attention of the minister. I have no instructions on the subject from the minister. So, I am certainly not in a position to suggest that this matter be deferred until later.

Senator Flynn: Have you put the question to the minister?

Mr. MacGillivray: The question has been put to the minister, yes, sir.

Senator Flynn: So we should probably call him.

The Chairman: I was going to suggest, honourable senators, that Mr. MacGillivray seems to have really come to the crux of this problem during the last few minutes. I had made a note here to ask him whether he has made a statement as to just what his attitude is in regard to deferring this legislation in the same manner as he has said other countries have done.

Honourable senators, you might consider now whether we should try to have the minister before us on this point.

I just want to refer to this situation which was brought out the other day by Mr. Miller and, I think, others, namely, what is Canada's position if we legislate now vis-à-vis the United States, having regard to this huge coastline on both the Great Lakes and the St. Lawrence. What is our position if we legislate now on this matter, and the United States does not? Would the members of the committee like to address themselves to that before Mr. Miller and others proceed?

Senator Flynn: It seems to me that this is the first question. If the minister will say he is considering deferring the legislation, then that will solve the problem for the time being.

The Chairman: I am in your hands, honourable senators.

Senator Denis: It is no use calling the minister if a decision has not yet been taken. I suppose the department will know when a decision is taken. Mr. MacGillivray said the minister is aware of the matter, but no instructions have been given.

Senator Flynn: Perhaps he has no instruction to give, but he wants to tell us what his feeling is.

Senator McElman: May I ask the witness a question, Mr. Chairman?

The Chairman: Yes.

Senator McElman: I understand that on this point the Government has no right in law to enter into such a situation in order to clean up. Is that correct?

Mr. MacGillivray: Well, we obviously have a right to clean up our own property, but in order to clean up the property of private individuals we would need their consent, I presume.

Senator McElman: But normally the Government as such has no recourse to the owner or the charterer?

Mr. MacGillivray: We have no recourse against them when we step in voluntarily to make a clean-up.

The Chairman: You are infringing the rights of the individual?

Mr. MacGillivray: That is a possibility.

Senator McElman: May I make reference to a case that is current? I have only preliminary information on it. Within the last week or ten days an international waterway between Canada and the United States—this is nothing on the order of the Torrey Canyon incident. I am referring to the St. Croix River which lies between Maine and New Brunswick. There has been a spillage or a pollution which is stated to be oil. By the vagaries of current and wind it has ended up on the American coast rather than the Canadian coast. My information is that it has polluted quite badly what I believe is called Red Beach at Calais. I am told there was only one vessel in the area which was carrying a substance similar to that which has polluted the area, and that the owner or charterer of the vessel has disclaimed any knowledge or responsibility in the matter.

I simply mention this as an incident that is current, and which tomorrow could happen on the Great Lakes system with a vessel of the tonnage that was mentioned here a few minutes ago. The damage could be very, very great.

The reason why I raise this matter is because it seems to me there is some urgency for the Government to establish a legal situation wherein the minister can act. We have been told it would be very arbitrary. Well, there are times when the public interest demands that the minister be able to act, especially when those who are involved disclaim a responsibility.

Senator Flynn: In the case you just cited, if the Government was unable to prove that the substance came from the vessel mentioned, he could not use even this provision.

Senator McElman: I agree, senator. I do not know in this instance whether it could be proven or not, but, as I say, the information is very preliminary as yet and there is only one vessel in the area.

Senator Flynn: There would be a presumption, in your case, yes.

Mr. MacGillivray: I think in that case, senator, there was only one vessel in the vicinity. It was suggested that it had been flushing its tanks when passing by, but this was a barge towed by a tug and there was no one aboard it. So it could not have happened while it was passing by empty and unmanned. We were not sure whether it came from ashore or from a ship, and, fortunately, on looking at the beach on Monday our people found that there was a very minimal amount of pollution, as it turned out. Indeed, they took samples of the oil but they were not able to really get a large enough sample to compare it with the oil at the tank farm to see if it was the same oil.

Senator McElman: I felt I should raise the point so the committee could understand that there would be situations where owners, although the preponderance of circumstantial evidence would indicate they were responsible, would disclaim responsibility when they felt there could not be any burden of proof brought against them.

Senator Hollett: Is anybody ready with regard to these particular sections as yet? Apparently we have to hear from the minister before we will know.

The Chairman: I am just coming to that point, Senator Hollett, because Mr. MacGillivray suggested he might be able to make some statement coming closer to the situation in regard to that problem. Would you like to make a statement before I call the other witnesses, Mr. MacGillivray?

Mr. MacGillivray: I am sorry, Mr. Chairman, but it was not on that point. There were some other matters raised. Mr. Brisset raised the problem on section 495c and proposed an

amendment that would allow the owner the right to step in and take his own corrective action without the Government stepping in and preventing that. On this again we are following the pattern of the Navigable Waters Protection Act, which allows the Government to step in whether the owner wishes to or not.

Our practice under the Navigable Waters Protection Act has been, when the wreck occurs, to communicate immediately with the owner and say that the provisions of the act are there authorizing us to remove it and, unless he steps in and removes it, we will.

Mr. Hyndman has had personal involvement in a case of this sort, the *Tritonica*, which sank in the St. Lawrence river several years ago. The owners did the removal job at a considerable cost, I may say, well over $2 million. The limitation figure was considerably less than that. This brings the point up, by the way, that these ships have been sailing into Canadian waters all these years subject to a liability which is unlimited. But this is not unique and I do not think it has raised the insurance rates or made the Canadian ports places that shipowners will want to avoid.

We feel that it would be a mistake to put any limitation on the rights of the minister to intervene. In the *Torrey Canyon* incident the British Government did delay for a considerable period while the owners sent people aboard the ship to see about salvage. It was only after several days' delay that the British Government did intervene. We feel that it is essential in the public interest that the Government have the right to intervene immediately, whether or not the owners wish them to. But quite obviously we would prefer to see the owner do it.

In the Department of Transport we have set up a committee, or at least we have organized an interdepartmental group with representatives from the Departments of Fisheries, National Defence and others, with a view to preparing a plan to be brought into operation, if and when we should have an incident similar to the *Torrey Canyon* incident. This is a new operation. We are not sure what sort of plan is going to come out of it, but we do know that we are going to need the co-operative effort of a great many departments of the Government, both federal, provincial and municipal, probably, and we also will need the co-operation of the industry.

We will have to consult with the oil industry and the tanker industry to determine the sort of problems that we are going to possibly meet, and we hope to involve them in the planning and we hope that eventually we will have at strategic points in Canada a group of people who will be familiar with a plan that is to be put into operation should there be a massive oil spill, and we would include in that group people from the industry.

Certainly the minister, in deciding whether he is going to intervene and try to take such action as the British did in the *Torrey Canyon* incident, or something of the sort, in taking that decision, is going to be advised by this local group, which, as I say, will include the representatives of the industry. Certainly, we would, I am sure, be in consultation with the representatives of the owner of the tanker and certainly the intention of the Government would be that we would prefer to see the work done by the owner of the tanker or by the oil industry, people who themselves I know have developed a considerable expertise in this question of dealing with massive oil pollution.

The Chairman: Thank you, Mr. MacGillivray.

With your concurrence, honourable senators, I think we should now call on Mr. Miller who was here last Thursday.

Hon. Senators: Agreed.

The Chairman: For the record, Mr. Miller, would you please give your qualifications for being here, where you are from and so on? We would appreciate that.

Mr. Peter N. Miller, Director of Thomas Miller Insurance Limited of London: My name is Peter N. Miller and I am a director of the firm of Thomas Miller Insurance Limited of London. I am appearing before you today as I did a week ago representing the major insurers of shipowners liability. The group I represent, as I explained to honourable senators last week, insures approximately 75 to 80 per cent of the world's shipping tonnage. It is, therefore, as an insurer I speak to you, not as a lawyer. I think the most interesting legal points brought up by Mr. MacGillivray are better answered by the very eminent legal gentlemen who are here today than by myself. If I may just comment on the insurance aspects of one or two of the things which Mr. MacGillivray has been saying, I

would be most grateful to you for that opportunity, sir.

I think, Mr. Chairman, that in fact, Mr. MacGillivray has not really commented at all upon the insurance implications which I put before you last week.

As I said, I hope plainly, it is no duty of mine, as an insurer, to say what you should legislate or even to suggest you defer it. These are legal questions to be put to you by legal gentlemen. All I must put in front of you is this, what can be insured by a shipowner on whom this very heavy extra burden of liability is placed.

If I might just give you a figure which I think will show you the size of the insurance problem, it is this. In the United States certain similar proposals to your own are being made. The one most commonly used by the Senate and House of Representatives' committees over the border is to put this new liability upon shipowners with some such limitation formula, perhaps in the region of $100 per gross ton or $10 million overall per vessel per accident. If one relates even that additional burden to the shipping of the world—and this is what we are talking about, gentlemen, because as soon as the United States and yourselves pass legislation like this, so will everybody else very quickly—we are talking about shipowners of the world having to buy additional insurance per annum in the region of $20 billion. That is a very large figure, and it is going to cost shipowners of the world a very great deal of money.

The Chairman: Would you like to suggest the premium figure, or is that not possible? Perhaps you could give an estimate.

Mr. Miller: Yes, I think I might be able to give an estimate. May I quickly deal with it in three stages. First of all, if the bill were passed into law as your Government has placed it in front of you, the liability, as I said last week, is uninsurable; there is no doubt about that at all. I am an underwriter and I should love to have as much premium as possible, I may say, but as an underwriter I may tell you it is not possible to insure it on the basis it is put in front of you. If you pass it like that, you must realize, if I may say so, that the concomitant to this is that you as a government might be forced to provide the necessary insurance coverage.

Senator Flynn: Why?

Mr. Miller: Because a shipowner, if he were partially uninsured for such risks, would buy what commercial insurance he could, but he might feel he would be unable to trade to a country where he was exposed to such enormous liabilities for which he was not insured in full.

Senator Flynn: Why would the insurers refuse to sell this insurance?

Mr. Miller: Ah! I am sorry, I misunderstood the question. The insurers would not refuse to sell insurance to the shipowner. What they would say is, "There is a limit to the amount of insurance we can sell you."

The Chairman: Did you not say last time, Mr. Miller, or at least infer that it was so, that it was actually uninsurable in this way, that no insurer would insure a risk of this kind? I think that is what Senator Flynn is driving at.

Mr. Miller: To answer you clearly, let us suppose that the bill as it is now in front of you were passed into law by the Canadian legislature. Underwriters' position would then be this, they would be prepared, or they could be prepared to sell a certain amount of insurance to a shipowner upon whom this burden was imposed. It would be a relatively small amount because of the concept of absolute liability in the bill. This cuts down the capacity of the insurance market, we submitted last week, unnecessarily. Thus, the shipowner would be in the position of having a certain amount of insurance, but being in a position of having to decide whether he should trade to a country where he had, theoretically at least, very much greater liabilities, without any insurance coverage to back them.

Senator Flynn: What is presently the coverage a shipowner can obtain with regard to his present liability?

Senator Langlois: The maximum coverage?

Senator Flynn: Yes, the maximum, which is not always limited, I suggest to you.

Mr. Miller: The normal range of a shipowner's liabilities, with two exceptions, which are very rare—one which Mr. MacGillivray has quite rightly mentioned and which I will come back to in a moment, if I may—with these two possible exceptions, a shipowner can limit his liability under your law and ours to certain figures calculated on a gross

tonnage basis. Using United States dollars, if I may, because I was talking United States dollars yesterday, it is $67 per gross ton for liability for all his range of liabilities, other than loss of life and personal injury. There is an additional figure of another $150 per gross ton for liabilities for loss of life and personal injury. At the moment, a shipowner can buy coverage for that range of liabilities based upon the limit I have stated.

Senator Flynn: Could insurance go over these limits presently?

Mr. Miller: The associations whom I represent, as you may know, do, in certain circumstances, and, indeed, in many circumstances, give an unlimited policy. The reason they give an unlimited policy is that there are very rare cases where a shipowner might have his ability to limit denied, for something which he had done which the courts might think should deny him that right to limit his liability; but which, in the opinion of his fellow shipowners, was an unfair burden on him. However, the associations I represent only give this unlimited policy in rare circumstances indeed, and would not and could not consider giving an unlimited policy to a shipowner to cover this additional burden of government clean-up costs of oil and other pollutants—they could not give a policy bigger than that they could provide by their own resources, backed by re-insurance.

Senator Flynn: I suggest your statement goes against one of the mottoes of Lloyds, that nothing is uninsurable, that Lloyds will cover any risk.

Senator Denis: What would be the difference between ship and car insurance? I have a car, and I have it insured for damage up to $100,000. I may cause damage up to $200,000, but the insurance company has accepted me to the extent of $100,000. That would be similar to ship insurance?

Mr. Miller: If I may say so, it is not.

Senator Hollett: You do not have to pay $150 a ton!

Senator Denis: No, but it is calculated; there is a range of rates for the car owner as well as for the shipowner.

Mr. Miller: I do not think it is quite a fair analogy because if you want to buy insurance coverage over your $100,000, up to any foreseeable amount you can do so. In practical terms, with one motor car, it is difficult to envisage an accident causing more than $100,000 damage. But should you so decide to do it, you have the ability to buy such insurance. What I am suggesting here is that the unfortunate shipowner has not the ability to buy the insurance anywhere in the world beyond the figures I suggested to the committee last week.

I should like, if I may, to answer Senator Flynn, sir, who said that Lloyds insure anything. I should like to answer him by repeating what I said last week, namely, that when an underwriter looks at the amount of liability he accepts on a risk he must look at how much he has got on that risk in relation to his total resources. This, sir, is the trouble with shipping. It is by far the biggest unit of transport there is in the world and, of course, it is by far the most expensive. As an underwriter I have to insure the hull of the ship; as an underwriter, I have to insure the cargo; as an underwriter I have to insure against liabilities stemming from the operation of the ship. Those are three enormous items. In addition, I am being asked to insure against another new liability. I have to look at the resources in my pockets, and in the pockets of my shareholders, and determine how much risk I can accept.

Senator Flynn: You are speaking as a shipowner there, and not as an insurer. What you are saying is that the shipowner cannot afford the additional premium.

Mr. Miller: No, I am trying to say, as an insurer and as an underwriter, how much I can accept on any one risk. Having regard to the world market this amount is limited to the figures I gave last week.

Senator Denis: Let us assume there is a liability of $1 million.

Mr. Miller: Yes, sir.

Senator Denis: Suppose there is no such limitation in law. What is stopping you from insuring an owner for $1 million?

Mr. Miller: I did not quite understand the question. Do you suggest there should be a limit?

Senator Denis: You said that it is very hard to insure a shipowner when there is no limitation of liability. You said that, did you not?

Mr. Miller: Yes, sir.

Senator Denis: Let us suppose there is a limitation, and you are in favour of limiting the liability, let us say, to $10 million or to $1 million?

Mr. Miller: Yes.

Senator Denis: What is stopping you from insuring the ship up to $10 million, which would be in the legislation but which is not at the present time? What would be the difference for the insurer?

Mr. Miller: There would be no difference, sir; no difference at all. We, as insurers, can provide a policy up to the figures I gave last week. The trouble arises with amounts over and above that.

Senator Denis: So the shipowner takes a chance as to the difference. It is a similar situation to my own in respect of my car. If I cause damage to the extent of $2,000 and I am insured for only $1,000, then the insurance company pays $1,000 and I am liable for the balance.

Mr. Miller: That is perfectly true. This is a point we made, that it is up to the shipowner to decide whether he wants to take such a chance. There are shipowners here today who might well say whether they are prepared to trade under such conditions. But, that is for the shipowner to answer.

The Chairman: In order to make this quite clear—and I can see Senator Denis' problem—as I understand it, what you are saying, in a nutshell, is that you will insure anything up to a certain amount, be it $5 million or $100 million, but you do not want to insure where the liability is unlimited, namely, where there is no top? Is not that what you are saying, Mr. Miller?

Mr. Miller: That is accurate, sir. We can insure a certain amount if the liability is imposed on an absolute basis. We can insure a greater amount if the liability is based, as we suggested it should be last week—and the United States authorities appear to be accepting this—on reversal of burden of proof. We can accept more. We get to a certain figure, and then say: "We cannot insure any more." If you have unlimited legistation then it makes it difficult to insure the amounts we suggested last week, but we believe it could be done. But, over and above the amounts we gave you last week, it cannot be done.

Senator Flynn: The legistation does not require that the ship owner be fully covered for the liability which would be imposed on him by section 495c.

Mr. Miller: Yes.

Senator Flynn: If there is not sufficient money from the insurance to meet the expenses incurred by the minister, the minister will do his best after that to recover them from other sources. There is always a limit on an insurance policy.

Mr. Miller: Yes.

The Chairman: As Senator Denis said a moment ago, if the ship owner is unable to get unlimited liability but is able to get insurance up to a certain figure, he has then to decide whether he can assume the rest of the risk himself. Is not that the point?

Mr. Miller: That is absolutely correct, sir, but it would be interesting to hear whether the ship owner would be prepared to trade to the country in those circumstances. From our investigations in our own country, we believe this is not so.

Senator Langlois: On the other hand, would not the Government, knowing that the ship owner is only partially insured, be reluctant to step in and spend huge sums of money in order to clean up beaches or remove wrecks?

The Chairman: Yes. Will you proceed, Mr. Miller?

Mr. Miller: I have one or two minor points, honourable senators, that I should like to make. Mr. MacGillivray suggested that the *Tritonica* did not push up the insurance rates. It so happens that this vessel was insured by one of the associations I represent, and this incident doubled the re insurance rate for the whole group. I cite this as an example of what can happen.

I attack, if I may, the concept of absolute liability on two grounds. One is capacity, and the other is cost. It is a fact, as I have stated, that if you have absolute liability you can insure a lesser amount on that basis. This, I think, from your point of view, is a pity. You want the ship owner to insure as much as is reasonable in the circumstances.

If I may, I should like to put one other thing in front of you. Absolute liability is going to cost to ship owners a very great deal of money. Rightly or wrongly, it is going to

cost them a great deal of money. This is something you might wish to consider in relation to your own merchant marine. It bears particularly heavily on the owners of inland craft, which are such an important part of your merchant marine.

A lot has been said about the *Torrey Canyon* and the Santa Barbara claims. The *Torrey Canyon* limitation figure is actually $4¼ million, and not something like $2 million, as Mr. MacGillivray suggested. That, in a sense, is not the point. On the figures I gave you last week, which were $134 a gross ton—or something in that range—the limitation figure for this risk alone, which is the risk of oil clean-up or pollution clean-up, would be in the range of $9 million which, I submit, is a very substantial figure, and is the sort of figure which as a maximum a legislator might reasonably impose on a shipowner. One may say: "We have done what is reasonable. We have put a heavy burden on the ship owner, but it is reasonable that he should assume it. We have done all that reasonably needs to be done." In regard to the Santa Barbara disaster the estimates of the clean-up costs are very, very much different from those suggested to you. What happens is that every hotel owner in the area has tried to make a profit out of the thing. These are not things that are the subject of your discussion here. You are not talking about hotel owners' rights of recovery. You are talking about the Government's right of recovery of clean-up costs, and there the estimates of the clean-up costs are very much smaller. The figures are enormous because there has been so much hysterical talk about it, but the best figure I have from the United States administration itself is in the region of perhaps $10 million, which is a very different figure from the one you have heard.

The Chairman: In the case of the *Torrey Canyon* was fault or negligence found? Was there a court adjudication?

Mr. Miller: No, it is the subject of pending court action in perhaps three jurisdictions, and certainly two, but absolute liability cannot be a question in the case of the *Torrey Canyon.*

Perhaps I may make this point; I submitted a very extensive list last week of all pollution claims which my associations have paid. In no case did the amount of the clean-up costs exceed $67 per gross ton, and in no case would absolute liability have given the person who cleaned it up one single cent more. It just did not come into it.

The Chairman: I see.

Mr. Miller: I do not think, sir, that I have any other particular point to make, except, if I might, should honourable senators wish to hear it, tell you the sort of attitude that the United States are taking. Would this be of interest to your committee, sir?

The Chairman: Do you wish to hear what the attitude of the United States is?

Hon. Senators: Agreed.

Mr. Miller: If I may put it like this, I and my colleague have now testified in front of three committees of the Congress of the United States. They started off last year with the same position you are starting off with now, with a bill based on unlimited liability and absolute liability as the basis of shipowners' liability. They listened very kindly to our representations last year and this year. In particular, sir, they listened to the point I made to you last week that anything they do must be done in consultation with you.

If they agree, as it seems very likely they will, to a figure of limitation, and here I must give you my own opinion, albeit based on very extensive discussions with the various committees and their staffs and their administration, if they accept the figure of perhaps $10 million over-all, allied to a per gross ton formula in the region of perhaps $100, they will be prepared to include in their legislation a provision whereby in the event of pollution occurring as has been described today, which could affect their shores and yours, or any other two neighbouring countries, Mexico as well as the U.S.A., for example, they would be prepared to introduce a provision whereby an insurance fund established under their law would be shared pro rata with other governments involved in the costs of cleaning up that other government's shores. This is a very important concept, and I was very impressed by the speed with which they took this point, that they should co-operate with you. It was something which would be very difficult, if they did not do so.

I stated that this is the way the United States legislation seems to be going. I only hope, sir, for the reasons I stated this week and last week that your legislature will feel able to proceed on a somewhat similar basis.

If there are any further questions, I should be pleased to answer them.

The Chairman: Would you like to comment, Mr. Miller, on the subject matter of the attitude of the United States authorities to deferral of their legislation until after these international conferences have taken place, as referred to last week?

Mr. Miller: I must say, sir, that they do not intend to defer their legislation. They are under very great political pressure because of the Santa Barbara case and others. If I may say, sir, one of my legal advisers in Washington said that it was as respectable for a congressman or senator to bring in a bill concerning oil pollution as is the institution of motherhood itself. Everybody is climbing on to the political bandwagon and, because of the political pressures, they do not intend to defer legislation.

Senator Flynn: When is it likely to pass?

Mr. Miller: As you know, sir, they got within a few hours, literally, of passing a bill based on $5 million over-all limit and $67 per gross ton before the presidential and other elections last November. Now, sir, it appears that the bill may very well be law by midsummer.

Senator Denis: Could we not pass the bill rather than defer it until after the conferences? Then we could amend the bill, if it is found that the conferences cause radical changes to the way you insure your ships. That bill could simply be amended next year, could it not?

Mr. Miller: Yes, sir. I understand that point, but I would submit that the bill in its present form is, from an insurance point of view, taking such an extreme stand that it will be a pity to legislate and then have to change it or to have to consider changing it so radically thereafter.

Senator Smith: Mr. Chairman, in the course of the discussion here, we all have centred our attention on several newspaper headlines, incidents which have happened. Mr. Miller, you said a few minutes ago that a Congress of the United States, whether house representatives or members of their Senate, are all rushing to the bar of their house with bills concerning oil pollution because it is the popular thing to do. How common are these incidents which have worried them? It cannot all stem from the famous Santa Barbara case, which does not even concern a ship at all. What is going on on their coasts that makes them so worried?

Mr. Miller: That is a very good question, sir. I understand the real problem which is worrying them is not so much pollution of the oceans but pollution of their inland waterways, particularly by industrial and other effluents. This apparently has rendered unusable river after river and lake after lake. This concerns them much more than the rather more headline news of the *Torrey Canyon* and the Santa Barbara which, as you rightly say, has nothing to do with a ship at all.

Senator Smith: So a lot of this legislation they are rushing to the clerk's office has nothing to do with what we are concerned with under this particular clause or section?

Mr. Miller: Quite correct, sir. What has happened is that the subject of the pollution of the oceans has got tacked on to bills dealing with other matters, as you may see simply from looking at the committee in which these bills are being dealt with, the Public Works Committee rather than what one would expect in marine matters.

Senator Kinley: When the hazard of dumping oil and other matters was being considered, the danger to the maritime provinces' fishing industry was not, I think, properly taken into account. The off-shore distance should be at least 1,000 miles in order to protect the industries, but it is only 100 miles. Even so, because the Gulf Stream washes the American coast and cleans the American coast they were not so concerned and they voted against this when we were trying to get the distance increased beyond 50 miles.

The Chairman: Mr. Miller, I think there is probably one more question the committee would be interested in having answered, and that is a double-barrelled question. Was fault or negligence found in the *Torrey Canyon* incident, and, secondly, can you give us any idea as to the attitude of the United States committee concerning the question of fault or negligence? In other words, in the event of pollution, should there be a finding of liability if there is no fault or negligence?

Mr. Miller: I think it would be fair to say that no lawyer would say that there was no fault or negligence on the part of those responsible for the navigation of the *Torrey*

Canyon. Undoubtedly there was fault or negligence on their part. I am speaking of something under jurisdiction, but I think this is accepted. The burning question on the *Torrey Canyon* is that concerning the old limits of liability; that is one point, and the second point is whether a government had under British or French law at that moment any right to recover clean-up costs. These are the burning questions of the *Torrey Canyon* rather than the question of fault or negligence. I think that is accepted.

With regard to the attitude of the United States Committee on Public Works, their bills all accept the concept of what we call reversal of the burden of proof, which Mr. Brisset detailed to you last week. They have abandoned the concept of absolute liability in favour of that of the reversal of burden of proof.

The Chairman: In other words, the vessel owner must prove there was no liability?

Mr. Miller: That is correct, sir, which is a very, very rare thing for him to be able to do.

The Chairman: Honourable senators, may I say on your behalf that we have greatly appreciated Mr. Miller's presentation before us, both last week and today. We are particularly appreciative of the information you have given us concerning the attitude of the Washington committees, before whom you have appeared, in regard to this problem, and we are especially happy to know that they are thinking of the problems vis-à-vis themselves and Canada. We wish you God speed back to Great Britain, and we will always be prepared to listen to you, and hope that you will come back again, so long as it is on a problem of insurance.

Mr. Miller: That is very kind, Mr. Chairman. I thank you for your remarks and your kindness, and that of honourable senators in listening to me.

The Chairman: Mr. Brisset, will you and Mr. Hyndman determine which one of you will speak next?

Mr. Hyndman: I think Mr. Brisset will speak next.

The Chairman: As you all know, Mr. Brisset is an attorney and counsel from Montreal. Will you put on the record whom you represent, Mr. Brisset, so we will have it in this particular record?

Mr. Jean Brisset, Q.C., Counsel, Canadian Chamber of Shipping and the International Chamber of Shipping: Mr. Chairman and honourable senators, I represent the International Chamber of Shipping and the Canadian Chamber of Shipping. Among the constituent members of the latter are: The Shipping Federation of Canada, the Canadian Shipowners Association, the British Columbia Chamber of Shipping, and the British Columbia Tugowners Association.

Mr. Chairman, there has been reference made to the United States legislation presently under study. I understand there are many bills that have been introduced in Congress and in the United States Senate. One of the important ones is Bill S-7, on which Mr. Miller, I believe, gave you some of his reactions to what was likely going to be the fate of this bill. I have a copy of it with me. If it were of any use to your committee, I could leave it with the Clerk.

The Chairman: We would be glad to have it, Mr. Brisset.

Mr. Brisset: As Mr. Miller pointed out in answer to one question, this bill is much more extensive than the legislation before you in Bill S-23. It covers the problem of pollution arising out of, not only leakage of pollutants from ships but also from all kinds of other sources, industrial and otherwise.

There is one point I want to touch upon at this stage, and here I am not speaking like Mr. Miller, as an underwriter, but rather as a shipowner. He has pointed out to you that in the United States it seems to be accepted that there will be no liability without negligence, except for the reversal of the burden of proof, and that there will be a limit of the liability and, therefore, we will have a risk that is uninsurable.

Let us assume that the limit eventually will be $10 million overall. I would like you to compare the competitive position of two shipowners trading to this side of the Atlantic, if one calls at a United States port and if the other calls at a Canadian port. If he calls at a United States port he will face a limited liability, provided there is negligence on his part, and, therefore, he will face a risk that he can insure and, I assume, even though at a high cost, still a cost that he can meet. If he comes to Canada he will face a risk that he can only partly insure, if there is no limit, and that may be more costly to him to insure,

in any event, up to a certain amount. Therefore, faced with these two competitive situations, you may very well find shipowners who will say, "We can only go to United States ports and pick up there the Canadian goods that the Canadian importer or exporter has either to receive or ship abroad."

There is, as you probably know, already some diversion of Canadian cargoes to U.S. ports for other reasons, but this is a trend whigh might develop even further if legislation of such a kind as Bill S-23 were adopted the way it presently reads.

There has been reference to the Navigable Waters Protection Act under which there is at present no limit of liability of the shipowner for the cost of removal of his wreck. In my earlier statement—and I think it is sufficiently important that I should repeat it at this time—I stated that from a practical point of view there was a difference in the situation because the amount of the liability or of the risk involved in this particular aspect was much less than in the case of an accident resulting in a ship being wrecked and pollution in addition being a possible risk.

Over a number of years there have been a number of vessels wrecked here in Canada, particularly in the St. Lawrence River, and they have had to be removed in practically all cases. I am referring to the major cases where the costs were quite high. This removal was effected by the owners themselves, of course with the support of their underwriters.

The most costly case was that already referred to, the removal of the *Tritonica* from the St. Lawrence River in the vicinity of St. Joseph de La Rive, below Orleans Island. The cost there was approximately $2,800,000. The circumstances were extremely difficult, and it took months to complete the job. The work could only be done at a certain set of the tide. I think just a few hours per day could be worked. It is my understanding that it was the most costly job anywhere in the world that has ever had to be done.

Senator Smith: Was this a tanker?

Mr. Brisset: No, it was a bulk carrier, carrying iron ore. She was fully loaded at the time, and she went down in 60 to 80 feet of water, depending upon the state of the tide.

After cutting away her superstructure they had to dig a deep trench in the bottom of the river, and then in some way push her over and bury her in that trench. She was quite a large vessel—26,000 tons deadweight, I believe, and possibly more. So, it was quite an extraordinary job to complete.

Senator Langlois: Possibly, Mr. Brisset, will you permit me to correct you? You said that this incident occurred in the vicinity of St. Joseph de la Rive when you should have said it occurred in the vicinity of Petite Riviere St. François.

Mr. Brisset: Thank you, senator.

I repeat that from a practical point of view we have a different situation in relation to the Navigable Waters Protection Act.

There is one problem that has been discussed at international meetings, on which perhaps my friend, Mr. Hyndman, will be better qualified to speak than I am, but I would like to say a few words about it. It has to do with the liability of the owners and operators of nuclear ships. It was realized that in the case of an accident involving an escape of the nuclear material, heavy losses and, therefore, heavy liabilities could be incurred. The discussions resulted in a proposed convention which, I believe, set the amount of the liability of the owners—and in that case, absolute liability—at a high level. But, on the other hand, it was realized that the insurance market could not insure the full risk, and that for the excess over and above the amount which the insurance market could take the Government of the flag of the nuclear ship involved in such accident would become the party responsible. This is, in general, the scheme.

As I said earlier, my friend, Mr. Hyndman, who has been attending some of these meetings, will be in a better position than I am to give more accurate details, but my point is to have you realize that, as Mr. Miller said, there is a limit upon what the insurance market can take by way of insurance, and that then it behooves the national governments interested to be the re-insurers, which would be the case here anyway. If there was a limit of, say, $X million, and the costs of the cleaning up were in excess of that amount the Government would be more or less the re-insurer for the benefit of the nation at large, being the user, for instance, of this very essential commodity nowadays, oil.

There was during Mr. MacGillivray's evidence reference made by one of you gentlemen to what has happened in the Ste. Croix

River, and I think the question was asked whether the Government, without the legislation before you being enacted, could intervene. My reaction to this is that certainly in case of pollution of our rivers or shores, the Canadian Government has the right—and I might even go as far as to say it has the duty—to clean up our shore properties. The question is whether and to what extent the Government can recover from the party responsible.

This is really the issue before you because I do not think it can be said that the Government should do nothing unless this legislation is passed. Certainly, the Government can go in and do the job. The issue is who would bear the cost. Of course, in the case mentioned, about which we do not have too many details, if the Government were to attempt to recover from the ship, whether there is absolute liability, or only liability with negligence, the Government would have to prove first that it was the ship that was the agent of the escape of oil—in other words, that the oil came from that ship and not from another installation. In either case, that burden would be on the Government. Having established that this oil came from the only ship that went through this river in the recent days, then the question will be what has been discussed before you, namely, what should be the liability of that ship; should it be limited, or should it be absolute?

I think it is quite important to note that the United States legislators have accepted the two principles which we have developed before you—no liability without negligence, but with reversal of burden or proof, and a limit on such liability. But, there is more. Mr. Miller pointed out to you a problem which I had raised in my own brief, without offering any positive cure for it, and that is the problem which may result from the fact that accidents might occur involving pollution of the contiguous waters of the United States and Canada.

I think what is being done in the United States, or what is likely to be done in the United States, will give us a solution to the problem here. I am not suggesting at this stage any precise form of wording, but we could say in our own legislation that if such an accident were to occur then the limited fund which has to be made available by the owner—assuming that the Government in this legislation agrees to the limit—or the fund to be made available by the owners, whichever is the higher, either in Canada or the United States, would then be shared proportionately by the Canadian and United States authorities, depending upon the amount of their respective expenses.

If the higher limit were $10 million, and each Government were to spend $5 million, then, of course, there is no problem, but if it were more than that on either side there could then be a division made on a proportionate basis.

There is one final point, Mr. Chairman and honourable senators, I should like to make, which has to do with the remarks of Mr. MacGillivray on the amendment I had proposed to section 495c, when I suggested that the owner should first be given the opportunity to do whatever was necessary to mitigate the danger of pollution, or to clean up pollution which had already occurred. He has explained the custom or practice followed by the department in the case of the removal of a wreck; in other words, the owner would be notified and asked to remove the wreck causing an obstruction to navigation and if he refused or did nothing the Government would intervene. This is to some extent the practice I am respectfully suggesting should be given effect to by the wording I have proposed to you, for the reasons I gave at that time, that it would provide an incentive to the owner to act so as to avoid possibly the destruction of his own vessel.

In the proposal I made to you before I think I chose words that permit the minister to take action quite quickly if the owner is doing nothing. The words appear on page 65 of the report of February 27, in the first column:

> the owner of such vessel shall immediately take all the reasonable and appropriate measures to mitigate such pollution, damage or danger, and in default of his so doing, the Minister may take such measures and if necessary may cause the vessel . . to be destroyed . . . and sold.

I respectfully submit that there is not likely to be any loss of time, and the urgency which always exists in circumstances of this kind will not be forgotten.

I said that was my last point. I apologize; I have another one. If there were to remain absolute liability on the owner or charterer I respectfully suggest it is important that such liability rests on only one the them, on the

owner if he is operating his own vessel, or if the vessel is under charter on the charterer. I explained before the iniquitous results which would obtain, particularly in the barge industry on the west coast. I think, as I have covered that fully, it is not necessary to go over it again, Mr. Chairman.

The Chairman: Thank you, Mr. Brisset. Are there any questions?

Senator McElman: One question, Mr. Chairman. You have proposed an amendment to 495c. Do you feel that this would cover a situation such as in the basin of the Halifax harbour where we have highly flammable cargoes and a vessel adrift leading towards shore installations. Do you feel that this would cover such a situation where the Crown would have to act immediately? There would be no time to contact the owner or the charterer. Would this not lift responsibility from him in law—I am not a barrister—if the Crown stepped in without any referral to the owner?

Mr. Brisset: Senator, I have difficulty in seeing in my own mind how such a situation could develop this quickly, that action would have to be taken within a matter of minutes.

Senator McElman: We have had two such situations in the harbour of Halifax.

Mr. Brisset: Then action to be taken I assume would be to prevent the vessel from running ashore, being sent to a rescue.

Senator McElman: Or by explosion to damage shore property.

Mr. Brisset: Yes, I think in a case like this, certainly not only the Government, but any, for instance, salvor in the vicinity would be perfectly entitled to take whatever action is necessary. What you are describing to me looks more like a case of salvage with which you may be familiar in maritime law, when a ship is in distress anybody can go to her rescue and if the services rendered are victorious in helping salvaging the vessel the salvor will be given an award. This is something that in maritime law has been devised to encourage people to go to the assistance of vessels.

Senator Smith: Mr. Brisset, Senator McElman may be thinking in terms of the first Halifax explosion. I do not have any idea of what liability was for those two ships involved in that horrible disaster where thousands of people lost their lives. Under this limitation of liability of course one of those awful things happening could not be—I do not think you could cover it. My gracious, think of the . . .

Senator McElman: Let me complete my . . .

Senator Smith: Let me finish my sentence, then it will look better on the record. Certainly, if a navy tow came along and towed that thing out to the harbour he would have every legal right to do that I suppose.

Mr. Brisset: I think he would have every legal right to do it and would probably be given a reward for doing it if the ship eventually was saved by the efforts of the salvor.

Senator McElman: I am not thinking of either salvage or the limitation of liability. I am only questioning whether this lifts the liability from the owner if the Crown should move in without any consultation with the owner.

Mr. Brisset: No, that is not the intention.

Senator Denis: When you talk about the liability, do you mean to say that, if damages had been caused to your private property or injury had been caused to an individual, and let us suppose the damage all told were $20 million and the limit were $10 million, do you mean to say that the individual would get only half of the damage caused to him by the shipowner?

Mr. Brisset: This is the principle, yes, of limitation. If all the claims exceed the limited fund, then everybody gets a proportion. But I should like to point out to you, senator, that in the bill before you we are only dealing with Government's expenses, not the expenses which the owner of shore property may incur himself to clean up his own installations. This would be covered, as I explained in my previous statement, by another fund which is a fund that would be provided by the ship under the present legislation, the Canada Shipping Act.

Senator Denis: Do you mean to say that with that limitation the Government would be responsible for the excess?

Mr. Brisset: The Government would be responsible for the excess or would have to assume the excess of its own expenses over and above the amount paid by the shipowner

pursuant to the limit of his liability, whatever it might be.

The Chairman: Honourable senators, it seems obvious that we cannot finish our proceedings on this bill today. I suggest we adjourn our deliberations until next Thursday at 11 o'clock, at which time Mr. Hyndman will be here and we can also hear any further representations from the gentlemen from Hovercraft. The meeting is terminated.

The committee adjourned.

APPENDIX E

PACIFIC HOVERCRAFT LTD

A SUBMISSION IN THE MATTER OF PROPOSED CHANGES IN THE CANADA SHIPPING ACT UNDER STUDY BY THE SENATE OF CANADA, STANDING COMMITTEE ON TRANSPORTATION.

Air Cushion Vehicles (Hovercraft) have recently reached a stage of development where effective commercial service can be provided if appropriate operating rules and resulations and stabilizing government controls on licencing exist.

The unique operating capabilities of hovercraft provides excellent potential for the craft in coastal marine areas and in the Arctic and Sub-Arctic regions of Canada. The public benefit which can be made available through utilization of Air Cushion Vehicles, particularly in remote northern areas, can only be realized if the introduction of a commercial service is properly regulated and given adequate time to stabilize and become commercially feasible.

This submission is intended to describe, in very brief form, the problems which presently exist and to suggest methods of correcting difficulties subsequently enabling hovercraft to provide the required public benefit.

The areas of importance are outlined hereafter, as per the following index.

Part I Licensing and Commercial Operators

Part II Provision of Operating Rules & Regulations

Part III Federal Tariffs and Taxes

Part IV Summary

Part I

LICENSING OF COMMERCIAL OPERATORS

1. The management of Pacific Hovercraft Ltd. feels that licensing of commercial operators should be retained by Federal Government Authorities.

2. The provision of Hovercraft services requires that sufficient numbers of craft be operated to enable necessary inventory support, overhead costs, and associated non-operating expenses. Subsequent cost benefits resulting from the operation of a fleet of similar craft includes reduced overhead costs per unit or per operating hour.

3. The establishment of a fleet of Hovercraft depends upon the type of services to be provided, the area of operation and the experience of company personnel.

4. To be able to operate sufficient craft, as per paragraph 2, operations must be carried out at various locations in Canada. Pacific Hovercraft Ltd. presently provides services between the Cities of Vancouver and Nanaimo and will be introducing services between the Cities of Vancouver and Victoria on or about the end of April, 1969.

5. The company has been licenced by the Canadian Transport Commission, after lengthy negotiation and a competitive Public Hearing, held in Victoria, British Columbia, in December of 1967.

6. Pacific Hovercraft Ltd. had difficulty in having licence applications processed until a Federal Justice Department ruling indicated that they would be classified as aircraft. At this time necessary action was taken by the Air Transport Committee, Canadian Transport Commission, with the subsequent approval of the licences applied for.

7. The great difficulty encountered regarding Federal Government licencing included heavy expense and extensive effort on the part of Pacific Hovercraft Ltd.

8. After licence was approved, Pacific Hovercraft Ltd. had to make necessary submissions regarding an appeal to the Minister of Transport by another applicant for licences. Further cost, time and effort was required in this regard.

9. To allow the required size of proposed operations and to introduce needed economies, as set out above, activities will include services at various points in Canada. The present routes in the Southwest Coastal regions of British Columbia are expected to expand to include flights to Seattle in the United States. Introduction of Hovercraft in the Northwest Territories is anticipated this coming summer. Further locations where the possibility of operating is being studied include the Great Lakes area, regions in the Atlantic Provinces, and points where charter

services can be provided to exploration, forestry and mining organizations. Subsequently, Hovercraft services will be Interprovincial and in Pacific Hovercraft's instance, International.

10. Our understanding of legislation affecting the licencing of commercial transport services, suggests that should the Canada Shipping Act apply to Air Cushion Vehicles, Provincial authorities may be the regulating body as concerns operating licences. This is felt to be undesirable because future hovercraft activities will be carried out throughout Canada and since the expected favourable impact on the transportation industry and associated public benefit, will be the result of nation wide operations.

11. Because of the wide ranging type of services anticipated in varying environments, and under different operating conditions, it is felt that Federal Government authorities must be retained to allow effective control of the growth of the Hovercraft industry with subsequent benefits being available to the Canadian people.

12. Experience regarding licencing and control of other forms of transport service, particularly aviation, indicate the need for regulatory bodies of a Federal nature. Pacific Hovercraft Ltd. submits that similar rules should apply to the Air Cushion Vehicle industry.

13. Because Hovercraft will be operated under marine land and other conditions indicative of all forms of Canadian regions, Federal licencing under specific air cushion vehicle guide lines is necessary.

Part II

PROVISION OF OPERATING RULES AND REGULATIONS

1. The problems associated with the operation of air cushion vehicles under present rules and regulations are immense. It would appear that Federal Government authorities feel that the air regulations are completely inappropriate for such purposes. Pacific Hovercraft Ltd. submits that the Canada Shipping Act regulations are even more inappropriate to the point of making commercial operations impractical.

2. To provide for the peculiar circumstances which arise when air cushion vehicles are operated in the marine environment, special conditions are included and unapplicable rules of the Canada Shipping Act are excluded in the vehicle flight Permit and in the company's Operating Certificate as issued by marine authorities. If all the inappropriate rules contained in the Canada Shipping Act were excluded from Hovercraft regulations, the list of exclusion would include the majority of the Act in question.

3. If proper rules are to be set out for the operation of air cushion vehicles and the Canada Shipping Act is the regulatory authority, it will be a matter of eliminating the vast amount of rules therein and leaving semi-adequate or antiquated guide lines to supervise the operation of Hovercraft. This must result in a poorly controlled, inconcise operating situation which will make commercial activities impractical if every effort is to be made to follow the authorities in effect.

4. Pacific Hovercraft Ltd. has been operating for about 4 months with scheduled services being in operation for about 2 weeks. During this time the problems encountered while attempting to operate under the terms of the Canada Shipping Act and associated directives include a variety of circumstances which economically and operationally cause a detrimental effect on the operation of Hovercraft. In all instances difficulties have been the result of the inadequacy outlined below.

(a) The requirement to use marine style radio, accessory and associated equipment which cannot be installed in a Hovercraft due to its aircraft type crew cockpits, requirements for lightweight products and density seating arrangements.

(b) The licencing of pilots is presently dependant upon the English manufacturer, British Hovercraft Corporation, and no specific requirements have been set out by Federal authorities and no Canadian licence is available. Training of radar operators presently includes the requirement to have marine style plotting instruction given which will never be used on Hovercraft and in fact, negatively effects the actual operating techniques used on hovercraft operations. The closest comparison for crewing is a combination of aviation pilots and mariner. The only practical way of setting out a crew requirement is the actual implementation of air cushion vehicles' rules.

(c) Difficulties in present necessary navigation procedures exist which create a

high degree of confusion and difficulty for a commercial Hovercraft operator. Because of speed, manoeuvrability and other operating characteristics of Hovercraft which completely differ from current ships, it is felt that air cushion vehicles must have their own fixed rules and regulations set apart from any other activity.

(d) Requirements for fuel reserves have been set out to include sufficient reserve to equal the length of time taken on the routes in question, which greatly exceeds any normal, safe requirements. This is a portion of the problem in developing proper rules and regulations for air cushion vehicles.

(e) Numerous other requirements of the Canada Shipping Act include the type of rules intended to govern ships consistent with other maritime nations. In the majority of cases, such rules cannot be applied to Hovercraft.

5. Throughout our operational program, Department of Transport officials have assisted in altering the many impractical rules. Future problems are expected to cause ever increasing and time consuming impractical rules negotiations under the existing situation.

6. There is no way of comparing air cushion vehicles and other forms of transportation. The operating techniques, practices and procedures utilized cannot be compared with any other form of service. The only similarity is that the environment that Hovercraft operate in is similar to that used by marine vessels.

7. The major differences between ship and Hovercraft operating procedures are as previously outlined as follows:

(a) Navigation; air cushion vehicles will react in a manner similar to aircraft when taking into consideration wind effect. Drift is notable and the craft's heading on numerous occasions is different from the actual track. Therefore use of normal marine navigation lights presents difficulties since a Hovercraft could be on a track directly towards a point but heading is a different direction. The indicated lights would not show a relatively true picture of a Hovercraft's direction of movement to another vessel.

(b) Hovercraft move at a speed much greater than normal marine traffic. They are able to avoid other water traffic with ease and subsequently operational needs can be compared to power driven aircraft which have the responsibility to avoid a balloon or glider. A Hovercraft moving at 60 miles per hour can readily cross the bow of a ship moving at 10 miles per hour at a relatively close range and with great safety.

(c) Piloting and navigation of Hovercraft is very similar to that of aircraft. The requirement to be aware and knowledgeable of marine regulations and rules of the road is mandatory. This combination of aviation and marine techniques in conjunction with the unique operating methods known only to Hovercraft make it impractical to regulate the operation of air cushion vehicles under any preset rules, particularly regarding crew requirements.

8. It is our understanding that the Canada Shipping Act will be altered in the near future because many older, unused rules are included therein. Pacific Hovercraft submits that the regulation of air cushion vehicle operations by an Act which itself is to be amended due to its unsuitability, will not assist the Hovercraft industry and will create hardships which could well preclude expansion of commercial activities. The placing of a new and different form of transportation service under existing regulations, which cannot practically be complied with, will harm the Hovercraft industry. Elimination of parts of the Canada Shipping Act is not a practical solution because the great majority of the Act would be involved. We submit that the most effective means of developing a controlled and stable Hovercraft industry in Canada is to introduce specific rules which effectively control the operations of air cushion vehicles from the start. Should present marine rules and regulations be applied, it is felt that uncontrolled difficulties will result and future changes will ultimately be needed. If rules are implemented now the problems associated with a change at a future date can be eliminated and Hovercraft can more effectively be needed. If rules are implemented now the problems associated with a change at a future date can be eliminated and Hovercraft can more effectively be a helpful part of the Canadian Transportation scene.

9. Members of Pacific Hovercraft Ltd. include the world's most experienced technical and operating personnel. Operating

experience includes four months of trial operations in the Southwest Coastal regions of British Columbia, five years of investigation into the potential and operating principals of Hovercraft, extensive development of charter programs in Arctic regions and other points, and completion of associated studies regarding air cushion vehicle operations.

10. At the present time the Canadian Coast Guard operates Hovercraft in the coastal waters of British Columbia. Knowledge and experience concerning the use of air cushion vehicles can be obtained from this source. Federal Government studies also provide excellent information on operating requirements.

11. Valuable assistance is available from regions where air cushion vehicles have operated including England, Scandinavian countries and the United States.

12. We submit that specific, complete and effective regulations can be developed utilizing the knowledge of persons presently operating Hovercraft in Canada, though review of surveys and reports completed by private and governmental bodies of other countries.

13. The implementation of separate authorities governing the use of Hovercraft in Canada will assist in the development of the industry, prevent hardships from being placed upon commercial operators, and generally be in the public interest because of the expected beneficial result offered by growth of air cushion vehicle use.

14. It is suggested that it is far wiser to start new regulations when a new vehicle is put into service, including pertinent and appropriate rules from other Acts, such as the Canada Shipping Act and the Aeronautics Act, as may be required, rather than using old impractical authorities and deleting necessary portions thereof.

15. Pacific Hovercraft Ltd., in conjunction with the manufacturers representatives, other Hovercraft operators and experienced personnel associated with the air cushion vehicle industry have organized an Advisory Group to privately gain insight into the many existing and future problems associated with regulations. It is felt that this group could effectively assist in setting out Hovercraft rules in Canada.

16. The greatest benefit provided in the form of public transportation by Hovercraft is a result of the unique, fully amphibious capability of some air cushion vehicles. The result is that no present rules can apply to hovercraft because its operating areas include marine, ice and land locations.

17. To allow any form of effective development in the Hovercraft industry, a single regulating authority should be in effect and govern the operation of air cushion vehicles in all their operating configurations.

Part III

FEDERAL TARIFFS AND TAXES

1. The operation of Hovercraft in Coastal waters of British Columbia, will be primarily as passenger and cargo carriers in competition with ferry boats.

2. Because Hovercraft were initially declared to be aircraft, Federal Sales taxes were required. 12% Tax has been paid on the initial SRN-6 hovercraft imported by Pacific Howercraft Ltd.

3. Since Coastal operations provide equivalent services to competing ferry systems, it is felt that application of Federal Sales taxes is unjust because transportation vehicles operated by competitive organizations are tax exempt because of their ability to obtain a "Coasting Licence".

4. We submit that no matter what legislative authority governs Hovercraft, that their use in a marine environment should justify the provision of "Coasting Licence" relief from taxes.

5. When Hovercraft are operated in Arctic regions of Canada we submit that the expected economic benefits and public advantages which will be provided should justify the exclusion of payment of Federal Sales taxes.

6. We submit that any alteration in legislation which will allow future relief from the payment of Federal Sales taxes should be retroactive to allow a claim to be made for a rebate of taxes paid on the initial Hovercraft entered into Canada, as per paragraph 2 above.

7. Negotiations are presently being carried on between Pacific Hovercraft Ltd., and the Federal Government, Department of Finance, regarding the above.

Part IV

SUMMARY

This submission is intended to very briefly indicate the problems currently effecting Hovercraft operations in Canada and to suggest that the expected notable benefit which can be provided to the Canadian public might be affected in a derogatory manner, unless specific, qualified and complete rules and regulations are implemented.

In summary, of the previous Parts, please note the following.

Part 1; Pacific Hovercraft Ltd. submits that to allow proper and justified development of a national Hovercraft industry, that operating, licencing authorities must be provided by the Federal Government.

Part 2; Pacific Hovercraft Ltd. submits that to allow proper, safe and economical development of operational Hovercraft activities, that present governing rules and regulations and possible proposed regulating authorities, the Canada Shipping Act, are totally inadequate. We further suggest that separate rules and regulations be prepared and put into effect as rapidly as possible.

Part 3; Pacific Hovercraft Ltd. submits that because of tax priveleges provided competitive forms of transportation and because of the extreme public interest in developing the most effective transportation in Canada's Northern regions, that Federal Sales taxes relief should be afforded air cushion vehicles.

SUBMITTED THIS 6th DAY OF MARCH, 1969, BY P. BARRY JONES, PRESIDENT, FOR YOUR KIND CONSIDERATION.

APPENDIX F

SUPPLEMENT TO APPENDIX "A" SUBMITTED BY PETER N. MILLER—FEB. 27, 1969

SCHEDULE

November 1967

Date of Incident	Name of Ship	Place and Nature of Incident	Amount of Claim (Over £5000)	Was limitation of liability involved	Was the carrier held 100% to blame
			£		
21.5.60	*Mary Billner*	Gashaga, Sweden, oil spillage due to fractured valve spindle	8,960	No	Yes
July 1960	*Alkaid*	Grounding—East River	26,500	No	Not yet known
10.9.60	*Arcturus*	El Segundo, Cal. U.S.A. Oil discharged due to faulty closure of valves. Contamination of beaches and shore property	11,182	No	Yes
15.9.60	*Bideford*	Southampton Water. Spillage due to faulty closure of valve	8,182	No	Yes
17.12.60	*Sister Katingo*	Newhaven	71,381	No	Yes
30.12.60	*Crinis*	Los Angeles	16,085	No	Yes
25.1.61	*Esso Lyndhurst*	Poole Harbour—Collision with "*Mogilev*". Harbour and beach pollution	8,640	No	Two-thirds
31.8.61	*Marathon*	Southampton Water. Spillage due to faulty closure of valve	9,996	No	Yes
13.10.61	*Vibex*	Grounding St. Lawrence Estuary. Leaking oil damage yachts, fisheries	90,861	No	Yes
14.2.62	*Eagle Courier*	Grounding Tokyo Bay. Leaking Oil damaged edible seaweed beds	195,430	No	Yes
27.6.62	*Olympic Falcon*	Los Angeles. Oil Spillage	12,258	No	Yes
21.11.62	*Esso Libya*	Tonsberg (Norway) faulty valve manipulations during discharge causing considerable spillage with coastline contamination	10,762	No	Yes
26.12.62	*Partula*	Providence. Oil Spillage causing damage to beaches, pier, etc	11,723	No	Yes
5.6.63	*World Mead*	St. Nazaire. Oil Spillage	21,181	No	Yes
30.11.63	*Zelos*	Grounding at Stockholm. Oil pollution from leaking bunker oil	82,260	No	Yes
10.1.64	*Brother George*	Stranding on Dry Tortugas Contamination of National Park and Bird Sanctuary by leaking oil	7,923	No	Yes
Feb./Mar. 64	*Lady Dorothy*	Libya/Delaware City	6,801	No	Yes
20.8.64	*Mormacsurf*	Los Angeles	7,466	No	Yes
1.12.64	*C. T. Gogstad*	Grounding at Bruno. G. of Bothnia. Contamination of Beaches	155,088	No	Yes
Jan. 65	*Rice Queen*	San Francisco	8,711	No	Yes
9.2.65	*Ardgroom*	Oil Spillage at Fremantle due to opening of wrong valve	6,311	No	Yes

SCHEDULE November 1967

Date of Incident	Name of Ship	Place and Nature of Incident	Amount of Claim (Over £5000)	Was limitation of liability involved	Was the carrier held 100% to blame
			£		
20.2.65	*Esso Lincoln*.....	Vessel grounded at Avocat Rock and about 20,000 tons of crude escaped. Many small islands contaminated. No claims seriously pressed.....	10,000	No	Not yet known
3.8.65	*Esso Amsterdam*....	During discharging operations at Fawley and due to the overboard stripper valves not being properly closed, a quantity of heavy fuel oil was allowed to escape into the harbour. In spite of immediate remedial steps, severe pollution, including the cleaning of no fewer than 273 yachts and boats (the incident occurred during Crowes week) which was carried out under the supervision of a surveyor appointed by the Association amounted to £4,757.4s.7d. In addition the Master was prosecuted and fined including costs, the sum of £521.....	35,000	No	Yes
19.8.65	*Sarah Bowater*.....	During the operation at Holmsurd of pumping the engine room bilges a quantity of oil was allowed to escape into the harbour waters. Immediately the escape was noticed, pumping was stopped and special steps were taken to prevent pollution of a large area of the harbour and also a considerable number of floating logs which were in store. Approx. 18,750 logs were affected, and cleaning charges of Sw.Cr. 10.29 per log had to be accepted. There were in addition charges for cleaning jetties and parts of the harbour area, all necessary arrangements being made by the Association's Stockholm lawyers.....	8,519	No	Yes
23.9.65	*Esso Wandsworth*....	R. Thames.—Collision with *Moerdijk*.....	35,000	No	Not yet decided
21.11.65	*Achilles*.....	Grounding of Daikoku Jima leaking fuel oil damaged Murorn Aquarium and property.....	8,433	No	Yes
June 1966	*Bidford Priory*.....	Oil Pollution Rijeka Bay Contamination of beaches etc.....	17,938	No	Yes
5.9.66	*Protostatis*.....	St. Lawrence Seaway. Oil pollution due to spillage during trimming of ship.....	6,624	No	Yes

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

No. 8

Third and Final Proceedings on Bill S-23,
intituled:
An Act to amend the Canada Shipping Act.

THURSDAY, MARCH 13, 1969

WITNESSES:

Department of Transport: Jacques Fortier, Q.C., Counsel and Director of Legal Services; R. R. MacGillivray, Director, Marine Regulations Branch. *Pacific Hovercraft Ltd.:* John P. Nelligan, Counsel. *Hoverwork Canada Ltd.:* A. B. German, President. *Canadian Chamber of Shipping:* Jean Brisset, Q.C., Counsel. *Dominion Marine Association:* P. R. Hurcomb, General Manager.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

29577—1

STANDING SENATE COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators:

Aseltine
Blois
Bourget
Burchill
Connolly (*Halifax North*)
Davey
Denis
*Flynn
Fournier (*Madawaska-Restigouche*)
Gladstone
Hayden
Hollett
Isnor
Kinley
Kinnear
Langlois
Lefrançois
Macdonald (*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson
O'Leary (*Antigonish-Guysborough*)
O'Leary (*Carleton*)
Pearson
Petten
Rattenbury
Smith (*Queens-Shelburne*)
Sparrow
Thorvaldson
Welch—(30)

*Ex Officio member

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Senate, Tuesday, January 21, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Bourget, P.C., for second reading of the Bill S-23, intituled: An Act to amend the Canada Shipping 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 Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

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

ROBERT FORTIER,
Clerk of the Senate.

29577—1½

MINUTES OF PROCEEDINGS

THURSDAY, March 13, 1969.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 11.00 a.m.

Present: The Honourable Senators Thorvaldson, *Chairman*, Aseltine, Blois, Bourget, Burchill, Denis, Flynn, Gladstone, Isnor, Kinley, Kinnear, Langlois, Macdonald (*Cape Breton*), McGrand, Pearson, Petten, Robichaud, Smith (*Queens-Shelburne*) and Sparrow—19.

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

Consideration of Bill S-23, "An Act to amend the Canada Shipping Act", was resumed.

The following witnesses were heard:

Dept. of Transport: Jacques Fortier, Q.C., Counsel and Director of Legal Services; R. R. MacGillivray, Director, Marine Regulations Branch.

Pacific Hovercraft Ltd: John P. Nelligan, counsel.

Hoverwork Canada Ltd: A. B. German, President.

Canadian Chamber of Shipping: Jean Brisset, Q.C., counsel.

Dominion Marine Association: P. R. Hurcomb, General Manager.

Documents tabled by Jean Brisset, Q.C., were ordered to be printed as Appendix G.

On motion of the Honourable Senator Langlois, it was *resolved* to report the Bill with the following amendments:

1. *Page 15:* Strike out lines 17 to 41, both inclusive.

2. *Page 17:* Strike out lines 17 to 21, both inclusive, and sustitute therefor:

"(*a*) providing for the licensing of persons acting as members of the crew or employed in connection with the maintenance and repair of air cushion vehicles used in navigation, and for the suspension and revocation of such licences;"

At 12.45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

John A. Hinds,
Assistant Chief,
Committees Branch.

REPORT OF THE COMMITTEE

THURSDAY, March 13th, 1969.

The Standing Senate Committee on Transport and Communications to which was referred the Bill S-23, intituled: "An Act to amend the Canada Shipping Act", has in obedience to the order of reference of January 21st, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 15:* Strike out lines 17 to 41, both inclusive.

2. *Page 17:* Strike out lines 17 to 21, both inclusive, and substitute therefor:

"(*a*) providing for the licensing of persons acting as members of the crew or employed in connection with the maintenance and repair of air cushion vehicles used in navigation, and for the suspension and revocation of such licences;"

All which is respectfully submitted.

GUNNAR S. THORVALDSON,
Chairman.

THE SENATE

THE SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Thursday, March 13, 1969.

The Senate Committee on Transport and Communications to which was referred Bill S-23, to amend the Canada Shipping Act, met this day at 11 a.m. to give further consideration to the bill.

Senator Gunnar S. Thorvaldson (*Chairman*) in the Chair.

The Chairman: Honourable senators, as you know, we are dealing with Bill S-23, an act to amend the Canada Shipping Act. I will ask Mr. Fortier, Counsel for the Department of Transport, to make a submission to us.

Mr. Jacques Fortier, Q.C., Counsel and Director of Legal Services, Department of Transport: Mr. Chairman, honourable senators, Mr. P. Barry Jones and Mr. John P. Nelligan represented to the committee last week that the licensing of hovercraft operations should be provided by the federal Government and not by the provinces, and that regulations governing hovercraft should be put into effect as soon as possible. Mr. German also stated last week that the International Civil Aviation Organization has recommended that air cushion vehicles be removed from the classification of "aircraft". He also stated that in the United Kingdom an air cushion vehicle is by law a ship when operated over water and a land vehicle when operated on land.

I would point out that there are various kinds of air cushion vehicles. In France there is now in operation what is called an air cushion train, the wheels of which never leave the tracks, but the air cushion mechanism incorporated in the train considerably lightens the weight of the train on the wheels. There has also been developed what is called an air cushion truck, in which the same principle is applied; the same mechanism is incorporated in the truck so that the weight of the vehicle on the wheels is considerably lightened.

Finally, there is the hovercraft that operates exclusively over water, and that is the vehicle that Mr. Jones' company operates in a ferry service between Vancouver and Vancouver Island.

The hovercraft is theoretically an aircraft. However, it operates only a few inches above the ground and therefore the regulations applicable to aircraft cannot be applied to hovercraft. This is the basic reason why hovercraft have been taken out of the Aeronautics Act and brought under the Canada Shipping Act when operated over water.

The recent bill to amend the Aeronautics Act has now received Royal Assent, and the amendment of the definition of "aircraft" in that act, which removes air cushion vehicles from the provisions of the Aeronautics Act, will come into force upon proclamation by the Governor in Council.

The definition of air cushion vehicle in this bill to amend the Canada Shipping Act will come into force upon proclamation. I would like to point out that the reason for these two amendments to come into force upon the proclamation is not as suggested by Mr. Nelligan, being that the Department of Transport may have some reservations about removing air cushion vehicles from the Aeronautics Act. The reason for the proclamation being necessary is that the two amendments in the Aeronautics Act and in the Canada Shipping Act must be brought into force simultaneously, and that before air cushion vehicles may be brought under the Canada Shipping Act the department must prepare regulations for their control.

The remaining question as to whether these air cushion vehicles, when they are operated on land, will come under federal or provincial jurisdiction, is now under active consideration.

Mr. Chairman, it is felt that when air cushion vehicles are operated over water they may be equated to ferries; however, ferries

come under the provisions of section 92.10 of the British North America Act.

Senator Pearson: Why would they be considered as ferries?

Mr. Fortier: Because they are lines of communication. They operate as communication between two points on a regular basis or otherwise.

Senator Pearson: A ferry would be just across a stream or a river.

Mr. Fortier: Essentially a ferry may be considered to be a ship, but they could be classified as ferries because they are engaged in the transport of passengers between two points on a more or less regular basis.

The Chairman: Is it not true also, Mr. Fortier, that most streams and rivers are navigable waters and hence under the jurisdiction of the federal Government?

Mr. Fortier: For navigational purposes that is so, Mr. Chairman, as pursuant to section 92 of the British North America Act. Lines of communication within a province come under the exclusive jurisdiction of that province. That would be why ferries and hovercraft could not be brought under federal jurisdiction for licensing purposes as was suggested by Mr. Jones.

Senator Pearson: Supposing you had a hovercraft service between Newfoundland and Prince Edward Island. Those are separate provinces.

Mr. Fortier: In that case, sir, the licensing would come under the federal Ferries Act and they are operated interprovincially or internationally.

Senator Burchill: Or between Canada and the United States.

Mr. Fortier: That would be so, sir.

Mr. Chairman, there is another item that we feel should be brought to the attention of your committee. On page 17 of the bill in section 712A, paragraph (a) there is provision for the making of regulations to prescribe the qualifications of the crews and the maintenance of hovercraft. We would like to propose an amendment that would read as follows:

(2) The Governor in Council may make regulations

(a) providing for the licensing of persons acting as members of the crew or employed in connection with the maintenance and repair of air cushion vehicles used in navigation, and for the suspension and revocation of such licences;

The Chairman: Where do you suggest that amendment?

Mr. Fortier: Mr. Chairman, that would be on page 17, paragraph (a).

The Chairman: Paragraph (a). Yes, of subclause (2) of clause 27 of the bill.

Senator Burchill: You mean to strike out this paragraph and substitute that?

The Chairman: It would be proposed to strike out subparagraph (a). Honourable senators, we will come to the question of this amendment when we consider the bill clause by clause. We need not consider it further at the moment.

Mr. Fortier has nothing further to say now. With your permission, I would suggest that we ask Mr. Nelligan or Mr. Jones, or both of them, if they would like to say something in response to the submissions made by Mr. Fortier.

Senator Langlois: Mr. Chairman, before we proceed with Mr. Nelligan, I would like Mr. Fortier to confirm if my interpretation of paragraph (a) of subsection (2) of section 712A on page 17 is correct. Is it the intention of the department to prescribe the qualifications of personnel engaged in the maintenance and repairs of hovercraft even though they are not members of the crew of that hovercraft?

Mr. Fortier: For the purpose of the engineers that would be engaged in the repair of these air cushion vehicles, it is the intention that they should be licensed.

Senator Langlois: We are getting out of the Canada Shipping Act. If we are going to control qualifications of persons working in shipyards or establishments or where repairs and maintenance is done to hovercraft, are we not getting out of the scope of the Canada Shipping Act?

Mr. Fortier: Senator, I might point out the provisions such as this in respect of hovercraft would be generally in line with a similar provision in the air regulations made under the Aeronautics Act, where the department controls and licenses not only the pilots, but also the members of the ground crews

engaged in the maintenance and repair of aircraft.

Senator Langlois: Two wrongs do not make a right.

The Chairman: Are there any further questions in regard to this clause? We will come to that again, of course, Senator Langlois, when we consider the bill later on.

Mr. Nelligan, would you like to address the committee?

Mr. John P. Nelligan, (Counsel, Pacific Hovercraft Ltd.): Mr. Chairman, it is difficult to add very much to what Mr. Fortier has said. However, I would like to make one correction with respect to his statement that hovercraft operate exclusively over water. Of course, that is our very point: they do not. Our hovercraft at the present time are maintained at the Vancouver Airport, which is very much on dry land. We are not exclusively over water, unlike ferries which are; and this creates a very serious problem. We are operating as an aircraft until we taxi off the runway and then suddenly we become a ferry wehn we hit the salt water. Therefore, the problem is not quite as simple as Mr. Fortier suggested.

The other great difficulty we have in this question is that of licensing. Because my client acted in good faith and assumed the interpretation of the Department of Justice, we have gone to some expense now in qualifying under the Aeronautics Act. We have in fact received licences under the Aeronautics Act only after very long and prolonged hearings and complying with a number of very stringent regulations.

If we find—just as we start in business—that the licences are valueless and we must start applying to provincial authorities and start all over again, we are very seriously prejudiced, because we accepted the interpretations of this Government that they were in control and authority. We feel that as this Government has the authority they should maintain the authority—until there is a much more clear answer than Mr. Fortier suggested, until at some point regulations will be devised which will be peculiar to this particular type of vehicle.

I would submit that this leaves us in a very anomalous position at the present time—in not knowing what regulations to comply with. We have in fact followed all the regulations given to us up to now.

The Chairman: Mr. Nelligan, just on that point, you said "this Government". Do you question the authority of the federal Government and suggest that in some way these matters should be under provincial jurisdiction?

Mr. Nelligan: Not at all. We say we have accepted the authority of the federal Government, and because we have accepted it we have gone to considerable expense to conform to the regulations; and, just as we go into business, almost at the same moment as we go into business, we find this Government abrogating its control and authority and abandoning it to the provincial authority. This leaves us in a commercial dilemma right now; we do not know where we stand. This perhaps is more a personal problem to us, and honourable senators have to deal with a question of principle. However, in the interests of developing this industry, perhaps it might be wiser not to make such a change until there is some experience upon which this house can formulate a wise policy. We would suggest, with respect, that since this hovercraft has only now started, this aspect of the bill should be deferred until there is some experience upon which they can base a sound and wise policy. In the meantime we should be at least given credit for having complied with the regulations and be permitted to carry on, at least for a limited period of time.

I would point out one other difficulty, which may not concern honourable senators. We understand that there are other branches of the Government which are interested now in using hovercraft, and they are requiring that only licensed vehicles may apply. No one has licences at the moment, because this bill is now sort of suspended and we cannot get licences. We are certainly not going to be given a provincial ferry licence to do the work now in the Northwest Territories, and yet no one else knows who should be the licensing authority. This puts us in a very serious quandary. If the Aeronautics Act were left as the supervising authority for a period of time, this is what we are suggesting. Then we all could benefit from the developing technology of this art and formulate a much wiser policy than I suggest can be devised at this particular moment. I do not think I can put it any better than that at the moment.

The Chairman: Has any province legislated, Mr. Nelligan, in regard to these vehicles?

Mr. Nelligan: Not to my knowledge, sir. The whole question is that they will simply consider we are a ferry and we will have to have the same number of anchors as every ferry and the same number of deckhands and follow the other regulations—which we think will not solve problems for the time being.

Senator Langlois: To my mind it is not a question of a province having legislated or not in this field: it is a question of the federal Government having jurisdiction. There is nothing we can do about it.

The Chairman: I was wondering if any provinces had claimed jurisdiction in this matter.

Mr. Nelligan: I think there is no doubt at the moment that this Government has jurisdiction.

The Chairman: You agree the federal Government has jurisdiction in this field exclusively?

Mr. Nelligan: Exclusively, yes. But by putting it in the Canada Shipping Act it would be abandoning jurisdiction to the extent that they were engaging in traffic between interprovincial points. That is the only distinction. As long as it remains under the Aeronautics Act, this problem does not arise.

The Chairman: We might ask Mr. Fortier whether "air cushion vehicle" is defined in the Aeronautics Act?

Mr. Fortier: Yes. Under the recent amendments to the Aeronautics Act, the definition of aircraft was revised to read as follows:

> "aircraft" means any machine used or designed for navigation of the air, but does not include a machine designed to derive support in the atmosphere from reactions against the earth's surface of air expelled from the machine.

That is the definition which excludes hovercraft.

Mr. Hopkins: That is now law, is it not?

Mr. Fortier: It has not been proclaimed yet, but Bill S-14 has received Royal Assent.

Mr. Hopkins: It has not been proclaimed yet?

Mr. Fortier: It has not been proclaimed.

Mr. Nelligan: In our view, if I may point out with respect, that definition will also include every helicopter which is within a certain number of feet off the ground. I do not think that it was intended to exclude helicopters, but that is one of the problems of definitions.

Mr. R. R. MacGillivray, Director, Marine Regulations Branch, Department of Transport: I think so. The air is not expelled from the machine.

Mr. Nelligan: I hope we never get to court on it.

The Chairman: Do you have anything more to say on Mr. Nelligan's submission, Mr. Fortier?

Mr. Fortier: Mr. Chairman and honourable senators, I would like to point out on the question raised by Mr. Nelligan, on the particular service which is now operated between Vancouver and Vancouver Island, that part of that service in Vancouver operates not only on water but on land. I would just like to state that the amendment in the Shipping Act would provide for control over these vehicles only when they are over water. The question as to what will happen when they are operated over land, as to whether the federal or the provincial authority will exercise jurisdiction, is now under study.

Mr. Chairman, on the other point, that of the licence that has already been granted by the Canadian Transport Commission to the company of Mr. Jones, I would like to point out that that application was made to the Canadian Transport Commission by Mr. Jones' company and also by another company, to operate a hovercraft service between Vancouver and Vancouver Island. The Commission held public hearings, a licence was granted to Mr. Jones' company and the other application was denied.

Following that, an appeal was taken by the other company whose application was denied, the appeal was made to the Minister of Transport under the provisions of the Aeronautics Act, an appeal from the decision.

In the judgment that was given by the minister, the Commission was ordered to give a licence also to the other company. Therefore, both companies are now licensed. That licence was given on the understanding and because these vehicles were being removed from the Aeronautics Act and brought under the Shipping Act.

The Chairman: Have you any objection, Mr. German, to the inclusion of these items in the Canada Shipping Act?

Mr. Andrew Barry German, President, Hoverwork Canada Limited: No, Mr. Chairman. In the statement that I made to the committee last week my intention was to put forward the idea that I agree in principle with the inclusion of air cushion vehicles under the Canada Shipping Act when, as stated in the proposed amendment, they are used in navigation.

I will be quite happy to say that I cannot anticipate, and have not had in the past, any difficulties in obtaining licences from, at that time, the appropriate authority for operations in Montreal, although this did have its administrative problems I must agree, and for operations last year in the Northwest Territories, and, indeed, for operations of a completely different type of air cushion vehicle here in Ottawa on an overland range.

These licences are certainly available so long as appropriate authority has been satisfied that the equipment is appropriate to the task and that the qualifications of the personnel who are involved is appropriate and that one is operating a competent organization.

This has been dealt with on an *ad hoc* basis, to my experience, in a perfectly satisfactory fashion.

So far as the point raised by Mr. Fortier regarding a proposed change to section 712A, subparagraph (2) (a), my reaction is to agree with his proposed change. Vessels normally of a certain size carry a licensed engineer who in fact is not carried for the purpose of repairing the vessel but who does carry out that function. Air cushion vessels normally leave their engineer behind, and he is involved in technical work when the machine is not being used. I think it is reasonable to require these people to have a proper qualification, and it seems to me that the Governor in Council should be in a position to prescribe those regulations and to issue licences and revoke them as has been allowed for here.

The Chairman: Thank you. Are there any questions of Mr. German? If not, are you ready to proceed with the bill clause by clause?

Senator Flynn: Mr. Chairman, may I have clarified the question whether there is any legislation governing the hovercraft when it travels over land? I understand that the hovercraft was to come under the Canada Shipping Act when travelling over water, but is there any legislation in respect to it when it travels over land?

Mr. Fortier: Senator, that question is now under study. I might say that under the British North America Act lines of communication within a province exclusively come under provincial jurisdiction. However, in the question of these hovercraft we understand that they will be widely used in the Northwest Territories and, of course, in the Northwest Territories the provinces do not come into the picture. So it may be that they would, when operated in that part of the country, come under federal jurisdiction. But I do not say that with any certainty because the matter is under study.

Senator Flynn: In short, there is no legislation at all, either provincial or federal, applicable to these vehicles when they travel over land, at least presently.

Mr. Fortier: No.

Senator Flynn: There is a problem of jurisdiction, as you suggested, but there is no legislation either federal or provincial which would apply to them.

Mr. Fortier: It is not, sir, that there is no legislation. It is a question as to whether the existing provincial jurisdiction in respect of lines of communication operating within a province will be applicable on the question of operation of hovercraft.

Senator Flynn: Do you know of any provincial legislation that deals with hovercraft?

Mr. Fortier: No, sir.

The Chairman: That was explained some time ago, Senator Flynn. No province is presumed to have jurisdiction and, consequently, no province has legislation.

Senator Flynn: There is a difference between jurisdiction and the existence of legislation. That is my point. I agree that there is a problem of jurisdiction, but I want to know if there is legislation.

The Chairman: No, there is none.

Are there any more comments with regard to section 1?

Senator Kinley: What is the speed of hovercraft? Is it about 60 miles an hour?

The Chairman: Yes, Mr. Nelligan says that is the speed.

Senator Kinley: Provincial control is very important at 60 miles an hour, because it would be for short distances only.

The Chairman: However, as we understand it, Senator Kinley, the provinces do not claim jurisdiction over these vehicles.

Senator Kinley: Well, the provinces are beginning to claim jurisdiction over considerable amounts of the ocean now, so they will be claiming that too, you know.

The Chairman: If they do, we will have to wait until that occurs, I suppose.

Now, does clause 1(1), (2) and (3), having to do with air cushion vehicles and load line regulations, pass?

Hon. Senators: Carried.

The Chairman: Clause 2?

Hon. Senators: Carried.

The Chairman: With respect to clauses 3 and 4, I understand that Mr. MacGillivray would like to make a statement in respect of an objection to those clauses presented by Mr. Cook on behalf of the Canadian Merchants Service Guild.

Mr. MacGillivray: Honourable Chairman and honorable senators, Mr. Cook, representing the Canadian Merchants Service Guild, which is an organization representing masters, mates and engineers on Canadian ships, objected to these clauses. He suggested that there is a shortage of jobs for ships' officers in Canada owing to the trend to larger ships. He also suggested that the result would be that people who are unemployable in the United States would be able to come across into Canada and take away jobs from Canadians.

At present there is no surplus of officers. Under the Canada Shipping Act, section 135, the minister is empowered to exempt a ship from the requirement to carry the full complement of certificated officers, if he deems it necessary, and, during the year 1968, he had to issue over 900 such exemptions because of shortages of qualified masters, mates and engineers. So that there is not really a present shortage of jobs for properly qualified officers. As to allowing American unemployables to come and take away jobs from Canadians, I think that the immigration procedures leading to landed immigrant status are such as to weed out the truly undesirables and, in any event, Canadian shipowners are unlikely to trust expensive ships or their machinery to such undesirable personnel.

The fact is that at the moment under the Act any British subject can hold certificates and act on Canadian ships. However, we have immigrants from Norway, West Germany and France and other places who are well qualified in their own countries and who would like to sit the examinations in Canada, prove their qualifications here and follow their chosen calling, and we think it is desirable that this amendment remain in effect.

Senator Kinley: What is the law of the United States?

Mr. MacGillivray: There presumably it is restricted.

Senator Kinley: It is. They have to be full-grown American subjects. That is all the union is asking here.

Mr. MacGillivray: Yes.

Senator Kinley: Don't you think it is reasonable?

Mr. MacGillivray: No, I do not think it is because in many other instances the immigrant who comes to Canada and is well qualified in a trade is allowed to practice that trade.

Senator Kinley: Can he practice medicine?

Mr. MacGillivray: No.

Senator Kinley: Or law?

Mr. MacGillivray: No.

Senator Kinley: He can be a mechanic if he has a mechanic's qualifications.

Mr. MacGillivray: That is true.

Senator Kinley: We have no merchant marine and anything that Nova Scotia wishes to do must be connected with the ocean. We have many unemployed there. Now we have technical schools and education and you are paying good money for that. Therefore I think we should preserve the jobs for our own people. You know they do not pay the wages in other countries that are paid in Canada and so people are attracted here because of that abnormal situation.

Mr. MacGillivray: But they come here as immigrants.

Senator Kinley: After they have been here five years they are citizens and they can have equal opportunity. But we should not compete against the world in this. We do not do so in anything else. I am an employer of labour and I am not a labour union man as a rule but I think they have a just cause here.

Senator Langlois: Mr. Chairman, may I ask a question of Mr. MacGillivray? He mentioned 900 applications in the course of last year. I should preface my question by saying that these applications for exemption are given for periods shorter than one year; they are given on the basis of a three-month exemption. Now when you speak of 900 applications, Mr. MacGillivray, do you mean there were 900 different applications, or were some of these repetitions?

Mr. MacGillivray: I should have pointed out that there were a certain number of repetitions. They are not all issued for the period of a whole year. Some are issued for a limited period. The actual figure was 990 applications but that does not mean that there were 990 people at any one time.

Senator Langlois: Is it not also a fact that most of these applications come from the province of Newfoundland, or at least a good part of them?

Mr. MacGillivray: I could not answer that. I would say a substantial proportion. I think most come from the east coast and the St. Lawrence.

Senator Robichaud: They had a few from St. John.

Senator Kinley: It is quite a field for recruitment. I am not sure about the higher positions, but the young fellows who learn come there afer after a while.

Mr. MacGillivray: As Mr. Cook pointed out there is a strong campaign on to improve the education of seamen. There is a very good fisheries college in Newfoundland at which they teach navigation and engineering, and there are others in the other provinces. They are run by the provinces because being a matter of education they come within provincial rights, but they are subsidized and assisted to a certain extent by the department, and we are doing our best to bring up the the standards so that young men will be able to qualify.

Senator Kinley: We accept the British certificate do we not?

Mr. MacGillivray: Yes.

Senator Kinley: And any other countries?

Senator Langlois: And Ireland?

Mr. MacGillivray: Yes . . .

Senator Kinley: I am sorry, I didn't hear what you said.

Mr. MacGillivray: Other countries in the Commonwealth and the Republic of Ireland.

Senator Langlois: That was the result of a recent amendment to the Canada Shipping Act?

Mr. MacGillivray: An amendment of a few years ago.

The Chairman: Any other questions in respect to this clause 3?

Are you ready for the questions? Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Clause 4? Shall Clause 4 carry?

Hon. Senators: Carried.

The Chairman: Clause 5. Perhaps Mr. MacGillivray might say just a few words of explanation for the sake of members of the committee who were not here on the last occasion. Perhaps he would tell us why these sections 238 to 243 and 270 to 275 are now being repealed.

Mr. MacGillivray: These sections are really archaic. They have been in the Canada Shipping Act and its predecessor legislation for many years with practically unchanged wording back into the days of sail. There are provisions for the protection of seamen against creditors and unscrupulous keepers of taverns and houses of public entertainment, lodging houses and bawdy houses and they provide a means for coercing such people into co-operating in the apprehension of deserters. They are really out of tune with the times. Perhaps in removing them from the act is in line with keeping the government out the nation's bedrooms.

The Chairman: If any honourable senators read the small print on the following two or three pages they would understand why these are being repealed.

Shall clause 5 carry?

Hon. Senators: Carried.

Senator Denis: Why do we have two clauses to repeal these sections 238 to 243 and 270 to 275?

The Chairman: I suppose it is a matter of drafting.

Mr. MacGillivray: It is a matter of some of the niceties of drafting as practiced by the Department of Justice. In one clause they will deal with sections which fall in sequence.

The Chairman: Shall clauses 5 and 6 carry?

Hon. Senators: Carried.

The Chairman: Now we will deal with clause 7 on page 4. This relates to by-laws made under the Canada Shipping Act. Mr. MacGillivray, would you like to explain just briefly the meaning of clause 7?

Mr. MacGillivray: Yes, Mr. Chairman. The Royal Commission on Pilotage, in reporting in Part I of its report, declared that some of our pilotage by-laws are *ultra vires* and, therefore, are invalid. Almost simultaneously we have had one or two decisions in the courts declaring some of our by-laws to be invalid. Also, the report of the Royal Commission on Pilotage casts doubt on some of the other provisions.

We are not necessarily in agreement with their legal opinions on the point, but in order to remove all doubt we have suggested that this provision go in validating all existing by-laws, so that we may continue the administration of pilotage in the same manner as that in which it has been administered over the past many years.

Senator Kinley: This is not new, is it?

Mr. MacGillivray: We are not bringing in any new features.

Senator Kinley: Except the control by Governor in Council.

Mr. MacGillivray: No, the control has been exercised for many years.

Senator Kinley: I know.

Mr. MacGillivray: And what I say is that the royal commission has cast doubt on the validity of the by-laws made under that system.

Senator Kinley: We had a submission the other day, made by some gentleman representing a certain body, that it means that the pilotage that he complains about is now controlled by Order in Council.

Mr. MacGillivray: The objection that was taken was taken by Captain Hurcomb, on behalf of the Dominion Marine Association, and his objection was that we have, in providing for a cut-off date for the validity of this section, set the cut-off date at 31st December, 1969, with provision for its extension by Order in Council by proclamation for a further year.

In the Department of Transport we are working on a study of the royal commission report. It must be recalled that Part 1 of that report runs to some 800 pages; that Part II has come out and it runs to some 500 or 600 pages; and that there are three more parts to come. So, this is an extensive study in order to determine what legislation can be proposed by the Government to institute a new regime in the field of pilotage. When we got the royal commission report and found that our bylaws were being attacked by the royal commission, we decided it was necessary to have something to perpetuate our system until such time as we can come up with new comprehensive legislation on pilotage, and in order to try to bring forward legislation that would not be contentious, we called a series of meetings of all organizations which would have an interest in the matter. This was the Shipping Federation of Canada, the Dominion Marine Association, the Federation of St. Lawrence River Pilots, and the National Association of Canadian Marine Pilots. We met with them and said we thought something had to be done, and we proposed that something of this sort would be done. We asked them whether they would support such legislation, and they said unanimously that they would support it, provided there was a cut-off date that would keep us under the gun on the matter of preparing the new legislation. The cut-off date that was suggested at those meetings by Captain Hurcomb was the end of this month, and as Senator Langlois mentioned at the first meeting here of this committee, and also Mr. Cook of the Guild, it was quite clear to the members present at that meeting, who know how difficult it is to rush legislation through, that a cut-off date at the end of this month was unrealistic. This was last October, and we were talking then and we suggested at the time that about 18 months was probably being optimistic. So, when the Government

decided on this section, it was the Government that decided that it would propose these cut-off dates.

Senator Kinley: His special request was that his captains and mates, who continually travel the St. Lawrence River and who are experts on pilotage there, should not have to hire special pilots to go up the river.

Mr. MacGillivray: Yes, and he pointed out that this was a fact recognized by the royal commission . . .

Senator Kinley: Yes.

Mr. MacGillivray: . . . and so reported by the royal commission. I would anticipate that when the new legislation comes out there will be a provision in it that will satisfy Captain Hurcomb.

Senator Kinley: By Order in Council you can do that now, under this bill.

Mr. MacGillivray: No, this will simply validate a by-law about which there is some dispute which now imposes the requirement to pay compulsory pilotage of the Districts of Montreal and Quebec on these Great Lakes ships.

Senator Pearson: Would these mates and captains have to hire a pilot or be licensed as pilots themselves?

Mr. MacGillivray: There would have to be some method of giving them licenses or certificates to indicate they have the qualifications.

The Chairman: Captain Hurcomb, do you wish to be heard on this?

Mr. P. R. Hurcomb, General Manager, Dominion Marine Association: I would like to have a moment or two, unless Mr. Brisset would like to speak on this.

The Chairman: Mr. Brisset?

Mr. Jean Brisset, Q.C., Counsel, Canadian Chamber of Shipping and the International Chamber of Shipping: If I may be permitted, Mr. Chairman and honourable senators, the only issue in this case is the cut-off date. The associations I represent are quite in accord with the legislation intended to validate the by-laws, but the cut-off date has been the source of considerable discussion with the department. At a meeting on February 27 I tabled a letter which we addressed to the minister reminding him that the cut-off date had been agreed at the 31st March, 1969. That was in August of last year. We had a reply from the minister—and, if I may be permitted, I would like to table it too—which acknowledges that date, and a copy of the proposal by the department in August of last year also, setting the date of March 31. Will I be permitted to do so?

The Chairman: Yes. Would you like to read them?

Mr. Brisset: Well, they are rather lengthy and simply refer to this single issue of March 31 as being the agreed date. All I will say is that we support the proposal made by Mr. Hurcomb, which your committee will find at page 75 of the report of the proceedings of February 27 last, when he agreed that the cut-off date could be extended, in view of the time that had elapsed, to December 31, but that any subsequent Order in Council further extending the deadline should be tabled before Parliament.

I wish to point out to this committee that the way the legislation reads now, section 27 would in practice push the date of the permanent legislation two and a half years away from the date of the issue of the first report of the commission, which I believe everybody agreed would be sufficient to prepare the general current legislation required. That is, two and a half years from July. I think July 11 was the date of the issue of the first report.

The Chairman: What year?

Mr. Brissett: 1968, and our meetings at which the date of March 31 was agreed were from August of last year.

The Chairman: If you have a letter we will print it as an appendix to the proceedings of today. Is that agreed? (*See Appendix "G"*)

Senator Smith: I should like to ask a question at this stage. I do not quite get the point you were making when you said recommendations had been made that such order in council should be passed and tabled in Parliament. What is the advantage of that over the usual procedure of the order in council appearing in an issue of the *Canada Gazette?*

Mr. Brissett: The purpose of this is that it would permit discussion of the whole situation. We feel that certainly this provision would perhaps help in having the department concerned prepare the required legislation within the time allowed, as otherwise explanations would have to be given to Parliament

showing why the legislation was not ready. It would relieve—here I speak, perhaps, for Captain Hurcomb—the members of his association from the agreement that they had made in respect to using restraint, particularly with respect to pilotage dues in those districts where dues were compulsory and where, if the report of the royal commission is to be accepted, the by-law making these dues compulsory is unlawful, and where the masters of these ships could travel without having a pilot and without having to pay the dues.

The Chairman: Mr. Brissett, may I ask you this question: Do you or do you not agree with the date used in the bill, and, if not, what alternative date do you suggest?

Mr. Brissett: I agree with the date of December 31, 1969, but suggest that the other part of the clause which permits an extension of a year be amended in line with the suggested wording of Captain Hurcomb, which the committee will find at page 75 of the transcript of the hearing of Thursday, February 27, and which I think he explained to you was patterned on the wording used in another act, the Maritime Transportation Unions Trustee Act.

So, there is a precedent for an order in council being tabled before Parliament in respect of this particular legislation.

The Chairman: Mr. Macgillivray, would you like to comment?

Mr. MacGillivray: Yes, Mr. Chairman. There is a suggestion that the Department of Transport made some agreement on this cut-off date, but it was made quite clear at the meeting—and I think Mr. Cook will bear me out in this; indeed, I believe he has said so—of this committee on February 27 last that the department explicitly stated it was not agreeing to anything; that it was not in a position to agree to anything binding the Government.

We have called this meeting for the purpose of trying to present to Parliament legislation that would not be contentious. It was agreed by all at the meeting that such legislation was necessary. We tried then to get agreement between the four parties, the two pilot organizations and the two organizations representing the users of the service, on what sort of legislation they would support. We felt that there was a certain amount of give and take between the organizations. We felt that it was in the interests of both the pilot organizations and the user organizations—those who have a need for the service—that the present system of operating pilotage should continue in force.

There is nothing for the department to gain in keeping it in force. It would not hurt the department one bit to accept the rulings of the royal commission to the effect that we are not, for instance, allowed to operate the despatch system that we operate; that we are not allowed to do a number of thing that we are doing. However, it is in the interests of the pilots and of the users of the service that there continue to be a service organized in such a way until such time as we can come up with the legislation.

Now, Captain Hurcomb made the point two weeks ago at the meeting of this committee that he was concerned that the department, with the passage of this clause, would set back and not press on with plans for new legislation. He said some people want the situation to remain as it is, and that nothing has happened so far. In point of fact, no one is more anxious than we in the department to see the appropriate legislation drafted and put into effect. I cannot think of anyone who wants to retain the present system indefinitely—the pilots don't, the users don't, and we don't.

I think it is rather silly to say that nothing has been done, because a task force has been organized in the department. Three people were detached from other work and put on to this work, and this caught us at a time when there was a freeze on appointment to the civil service. We had to detach people from other work and put them on to this. These three working full time, along with half a dozen others working part time, are engaged in a study of the report, and are proposing to come forward with papers on which the Government can make its policy decision.

The Chairman: Would you say there was a reasonable consensus amongst the interested parties in regard to the text of the legislation that you have in this section?

Mr. MacGillivray: With the exception of the expiry date, yes, I think there was reasonable consensus, but the expiry date that Captain Hurcomb suggested at the end of this month was quite impractical. The expiry date of December 31 is going to be very difficult to meet because the fitting of a new bill into the legislative calendar is going to be very difficult. Nevertheless, we are confident that we will be in a position before the end of the

year to make recommendations to the Government on the content of the bill, and we would hope that it will be up possibly before December 31, and certainly early in the new year. If not...

The Chairman: You have no other recommendations to make now as a result of the remarks that have just been made as to changing the section?

Mr. MacGillivray: No. We would like to see the clause remain precisely as it is, and we can see no advantage in calling for a debate in Parliament. As soon as we were sure that we were not going to meet the December 31 deadline, we would then have to stop work on drafting the new legislation in order to prepare the arguments for the Government to use in Parliament in the debate on this proposed tabled order in council.

The Chairman: Is the committee ready for the question in regard to the...

Senator Flynn: I just want to point out that Mr. Brisset, in fact, is in agreement with the clause. The only thing he wants is an order in council extending the time up to December, 1970 to be tabled in Parliament. I do not see what advantage this would give the people he represents, because anybody can put a question, even if the order in council is not tabled. A debate on this question could be provoked on the Estimates, and there are other devices. The mere fact of tabling an order in council does not create a debate in Parliament, and I do not see we would render any service to Mr. Brisset's clients in accepting this suggestion.

The Chairman: Are you ready for the question?

Senator Smith: Mr. Chairman, one of the witnesses was rising to speak.

Mr. Hurcomb: I was very diffident to rise and ask to be heard here, but I do think you issued an invitation and I would like to spend a few moments on this.

The Chairman: I would invite anybody who wishes to be heard again on this section to come forward.

Mr. Hurcomb: I will be three minutes at the most.

I represent Dominion Marine Association, the Canadian registry inland shipping people. I want to speak to the point Mr. Brisset mentioned this morning, which we are now discussing. I agree in all respects with what Mr. Brisset has said. Just to give balance to the situation, I would point out that at the meeting of July 17 called by Mr. Baldwin, then Deputy Minister of Transport, the department in effect were coming to us hat in hand. This, of course, is my version of it. They were in difficulties. The royal commission had called in question the legality of many of the things they had been doing and many of their bylaws. In effect, the department asked the users, namely the shipping companies and the pilots, to co-operate with them in getting out of this awkward dilemma. They asked us to be restrained in exercising our legal rights until such time as the department would be able to prepare the new legislation. That meeting was on July 17, 1968. On September 6, 1968, I wrote a letter to Mr. Baldwin which clearly sets out our position. I said:

> I think it would be useful to review the position taken on behalf of Dominion Marine Association from the outset and maintained consistently since then. It appears to be more or less generally agreed that the By-laws making the payment of pilotage dues compulsory within the pilotage districts of Montreal and Quebec are illegal. Our members are therefore at the present time in a position from the legal standpoint to refrain from paying pilotage dues in respect of those districts. However, we recognized that insistence on legal rights by ourselves, or by the pilots, or by other shipping organizations, and the consequent altering of the practices that had been followed for some years would seriously and perhaps dangerously disrupt the system of navigation in the St. Lawrence River. Accordingly we, with the other interested parties, agreed to persuade our members to exercise restraint in asserting their full legal rights at this time.
>
> Our agreement was from the beginning, still is, and will remain conditional on the Government proceeding at the earliest practicable moment with the drafting and introduction of new legislation to implement in general the recommendations of the Royal Commission on Pilotage. Looking at all the circumstances and with full awareness of the problems that are encountered in the preparation of new legislation, we felt that a deadline of March 31, 1969 for the introduction of the new legislation in Parliament would be quite practical.

> It was for this reason that we have insisted that the remedial legislation to validate existing by-laws would expire on March 31, 1969. It could be extended beyond that date only after an elaborate procedure which would put the Department and the Government in the position of having to explain to Parliament why it did not prove possible to introduce the new legislation by that date.

I will not quote the rest of that because it refers to Mr. Brisset's suggestion, the device for tabling. I went on:

> I cannot emphasize too strongly our insistence upon a procedure along the above lines. It has not been easy to persuade our members to exercise restraint in a matter involving many thousands of dollars spent, in most cases, fruitlessly and needlessly. Their restraint and our co-operation with your Department depend entirely upon your implementing the above undertakings.

That put our position on September 6. On November 8 we followed up with another letter dealing with the same question. We referred the department back to the letter I have just read and stated it was our policy. This is a bilateral arrangement between the department and ourselves. We helped them, at some expense to ourselves, but we did it conditionally. They have not met that condition. They have, as we feared they would—

Senator Burchill: Was there any reply to your communication?

Mr. Hurcomb: There was no specific reply to that letter, sir. The letter of November 6 to which I have just referred mentioned certain aspects of the commission's report, and in the last paragraph I said:

> May we emphasize again the points raised in our letter to you of September 6

that is the one I have just read—

> particularly the need for expedition in the provision of the new legislation. As we stated in that letter, the restraint of our members and our continued co-operation with your department in this matter depend entirely upon your adherence to the guidelines agreed to during recent meetings, and described in great detail in my letter to you of September 6, a copy of which is enclosed.

If they did not get the letter on the first occasion they got it this time, because I have an acknowledgement from Mr. Gordon Stead of November 15 acknowledging that letter. It is not specifically on this point, but it is an acknowledgement of the letter.

That is our position, and we are serious about it.

The Chairman: Are there any questions? If those are all the submissions, I would just like to say to you, Mr. Hurcomb, that naturally the position of this committee is not exactly easy in respect to the representations now made by you and Mr. Brisset. On the other hand, I think you will understand that in important legislation of this kind the committee might not be very desirous of acceding to your wishes without calling upon the minister and having him speak to the committee.

Senator Flynn: It is a useless remedy anyway. It would be different if they were proposing something practical, but this does not give them anything. They have only proposed that the orders in council be placed before Parliament. It does not change the situation whether they are placed before Parliament or not.

Mr. Hurcomb: With great respect, sir, may I just add a word on that? The order in council, as Senator Flynn is aware, could be passed without anyone knowing anything about it and could be effective.

Senator Langlois: What about the *Canada Gazette*? It will be published in the *Canada Gazette*.

Mr. Hurcomb: *Ex post facto.*

Senator Langlois: How can it be published without anybody knowing about it?

Mr. Hurcomb: Until after the passage I mean.

Senator Flynn: Oh, I see. You have added this.

Mr. Hurcomb: Yes, sir.

Senator Flynn: It is not only tabling, but you want to provide for a debate within a given period.

Mr. MacGillivray: Exactly, sir. On page 76. I think Senator Flynn will agree that this does give some added protection or force to the condition.

The Chairman: Thank you.

Is the committee prepared to deal with the sections? Clause 7, subclause (1)—that was in

regard to the report of the Royal Commission on Pilotage. Agreed, honourable senators?

Hon. Senators : Agreed.

The Chairman: Subclause (2), licences to pilots and apprentices. Agreed? That is on page 5.

Hon. Senators: Agreed.

The Chairman: Subclause (3). That is the controversial section we have been discussing. May I have a motion either to accept or reject it?

Hon. Senators: Carried.

The Chairman: Sub (4)?

Hon. Senators: Carried.

Senator Burchill: Pardon me, but I would like to clarify a point. In regard to the pilotage dues on the St. Lawrence and this area, as the situation is at the present time, can they be questioned legally? Can they evade?

Mr. MacGillivray: This is a matter, senator, of opinion. I may say that some years ago this department did bring forward an amendment to the Canada Shipping Act. Some people in the department were of the same opinion as the Royal Commission and Captain Hurcomb that there was not a legal basis for the by-law making pilotage costs compulsory in those two districts. When the matter was debated in this committee it accepted another opinion, the opinion that the by-laws already were valid and rejected our amendment. This is seven or eight years ago.

Senator Burchill: It is a question of law.

Mr. MacGillivray: So there is room for opinion on the part made by Captain Hurcomb?

The Chairman: Agreed?

Hon. Senators: Agreed.

The Chairman: Page 6, clause 8.

Hon. Senators: Agreed.

The Chairman: Clause 9 on the same page.

Hon. Senators: Agreed.

The Chairman: On clause 10 there has been no controversy, honourable senators.

Hon. Senators: Carried.

The Chairman: Clause 11.

Hon. Senators: Carried.

The Chairman: Clause 12?

Hon. Senators: Carried.

The Chairman: Clause 13?

Hon. Senators: Carried.

The Chairman: Clause 14?

Hon. Senators: Carried.

The Chairman: Clause 15?

Hon. Senators: Carried.

The Chairman: Clause 16?

Hon. Senators: Carried.

The Chairman: Clause 17?

Hon. Senators: Carried.

The Chairman: Clause 18?

Hon. Senators: Carried.

The Chairman: Clause 19?

Hon. Senators: Carried.

Senator Pearson: Why were those sections repealed?

The Chairman: Senator Pearson has a question in regard to the repeal of these sections in 18 and 19.

Mr. MacGillivray: Claude 18 provides for the repeal of section 472 and that is consequential on the previous clause 17. Clause 17 provides for making regulations in respect of safe working conditions aboard ships and so this is simply consequential on that.

The Chairman: Thank you. What about the repeal of section 477 and section 478?

Mr. MacGillivray: The repeal of those two is consequential on the provisions of clause 9 which you have approved. Clause 9 provides for the making of regulations respecting vessels that are not self-propelled. For some reason the act contained these two sections dealing with this, whereas if they were self-propelled vessels they came under regulations which were made. This is consequential on clause 9.

The Chairman: Agreed?

Hon. Senators: Agreed.

The Chairman: Clause 20. Is there any explanation you are required to make on that, Mr. MacGillivray?

Mr. MacGillivray: At the present time this is the inspection requirement under the act

and extends only to vessels of 15 gross tons and over. Because of response to considerable pressure, particularly by unions on the west coast, we have decided that we would have to undertake some inspection of vessels below that tonnage. We have decided that it would be possible for us to carry out the inspection of vessels between nine and 15 tons. This provision will allow for regulations to be made respecting the extent of inspection made to such vessels. The principal effect will be on tug boats on the west coast of Canada.

The Chairman: Agreed, honourable senators?

Hon. Senators: Agreed.

Senator Smith: Mr. MacGillivray, does this change with regard to subclause (3) have an effect on the operations of fishing vessels on the east coast?

Mr. MacGillivray: Yes, it does bring in fishing vessels of that sort.

Senator Smith: There have been some exceptions in the past in relation to fishing vessels. I am wondering what effect this has on the industry.

Mr. MacGillivray: It will mean that the inspection of fishing vessels, up until now, has been only carried out where there were vessels of 15 tons or over. The small fishing vessel inspection regulations will be amended as the result of this to include vessels of nine tons and over. It continues to be our intention to treat fishing vessels in a category by themselves as we always have done.

Senator Smith: You mean that you would draw up regulations in such a way that there would be discretion as to the kind of inspection procedures and the time of them and so on?

Mr. MacGillivray: Yes.

Senator Smith: Before those are drawn up is it the usual practice to have consultation with the industry?

Mr. MacGillivray: Our invariable practice is to circulate draft regulations for discussion with the industry. We have a very lengthy mailing list.

Senator Smith: Yes, I hope you do.

Senator Kinley: Nine tons is just a small boat.

Mr. MacGillivray: As I say, it is going to be done by regulation and the place where it has been found really necessary is in the tug boat field, which is principally on the west coast and where you do have vessels now being built to 14.9 tonnage so as to avoid inspection. But they are very powerful tugs.

Senator Kinley: The Cape Island boat would be about that size, but not quite as big.

Mr. MacGillivray: The usual Cape Island boat would be a little smaller.

Senator Smith: I wonder if the witness would give us information as to what length of boat on an average is related to nine tons.

Mr. MacGillivray: In the fishng vessel category, probably between 35 and 40 feet in length.

Senator Smith: These are not small boats, then, and whether or not this may be a change which may mean trouble for some of us later on will depend on the enforcement and the regulations.

Mr. MacGillivray: That is right, senator.

The Chairman: Shall clause 20 carry?

Hon. Senators: Carried.

The Chairman: On Clause 21—this involves the repeal of a section and also an amendment. Would you like to say something Mr. MacGillivray?

Mr. MacGillivray: This is an amendment that has become rather routine in nature, as we go through these bills.

The present section 493 provides a penalty of $100. The standard punishment which the Justice Department likes to see, in clauses of this sort, is a penalty of $500 or six months' imprisonment, which is the penalty in the Criminal Code for summary conviction of an offence. The penalty of $100 was probably set a hundred years ago.

The Chairman: Shall clause 21 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 22 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 23 carry?

Senator Kinley: On this question of garbage and sewage what is the law now, exactly?

Mr. MacGillivray: The provisions of section 495A of the act would allow the Governor in Council to make regulations respecting pollution of the sea and all Canadian waters by oil from ships.

Senator Kinley: We have an international agreement—what is it, is it 50 miles or 100 miles?

Mr. MacGillivray: At the present time the prohibited zone off the east coast of Canada is 100 miles.

The Chairman: Shall clause 23 carry?

Hon. Senators: Carried.

The Chairman: On clause 24.

Senator Langlois: Mr. Chairman, I wish to move the following amendment:

> That page 15, clause 24 of Bill S-23, an act to amend the Canada Shipping Act, be amended by striking out lines 17 to 41, both inclusive.

This refers to the whole of the wording of the proposed new section 495D on page 15.

Senator Flynn: Section 495C would remain the same?

Senator Langlois: Yes.

The Chairman: I thought we should deal first with section 495c. Mr. Fortier, have you anything to say in regard to it?

Mr. Fortier: No.

The Chairman: As I understand, there is no controversy in regard to that section, is that agreed?

Mr. Brisset: Mr. Chairman, we had suggested an amendment to this section, the text of which will be found in the transcript of the proceedings of this committee of February 27, at page 65, at the top of the page. This amendment, if I may be permitted to read it, was as follows:

> (1) Where the cargo or fuel of a vessel that is in distress, stranded, wrecked, sunk or abandoned
>
> (a) is polluting or is likely to pollute any Canadian waters,
>
> (b) constitutes or is likely to constitute a danger to waterfowl or marine life, or,
>
> (c) is damaging or is likely to damage coastal property or is interfering or is likely to interfere with the enjoyment thereof,
>
> the owner of such vessel shall immediately take all the reasonable and appropriate measures to mitigate such pollution, damage or danger, and in default of his so doing, the Minister may take such measures and if necessary may cause the vessel, its cargo or fuel to be destroyed or removed to such place, and sold in such manner, as he may direct.

I explained at the time the reasons for this.

The Chairman: I take it, Mr. Brisset, that the main effect of the amendment is to give the owner an opportunity first to remove the polluting vessel and only in default of such being done that the minister has the right to step in?

Mr. Brisset: That is so.

Senator Aseltine: Could he not have that done, anyway?

The Chairman: No. We might discuss that.

Senator Langlois: It has been the practice.

Mr. Brisset: This was intended also in connection with a scheme which I described before your committee, TOVALOP, which permits the owner to do the necessary work to prevent pollution or to clean up beaches, even where he is not liable for the action which caused this, and then recover from the indemnity association to which he will belong. I have given an outline of the whole scheme which was introduced by some of the major oil companies in the world.

Senator Kinley: Did you say anything insurance rates on this kind of risk, that it would be not insurable, that the rate was too high?

Senator Langlois: That is under another section.

Mr. Brissett: The uninsurable action is in connection with the following section, 495D, which is covered in the TOVALOP scheme and is up to a limit of $10 million. This is a voluntary scheme to repay expenses incurred by national governments all over the world in case they have to do a job of cleaning up or preventing pollution.

The Chairman: Thank you, Mr. Brisset.

I would like to call on Mr. MacGillivray or Mr. Fortier to express the attitude of the minister to this; but first, Senator Langlois, did you have some comment you wanted to make?

Senator Langlois: I wanted to draw the attention of the commitee to a statement the other day by Mr. MacGillivray, when he said that even though we had similar provision under the Navigable Waters Protection Act, that it has been the practice of the department always to notify the owners and give them an opportunity to go to the wreck and take measures to remove it; and he indicated, if I understood him correctly, that this would be the practice under this new legislation—that the owner would be given an opportunity to take the necessary steps to remove the wreck.

Senator Flynn: Therefore, in principle the amendment is correct.

Senator Langlois: I am not prepared to say that, Senator Flynn, because here we are dealing with a danger, a grave danger, and if the owner does not take immediate action the damage might be quite extensive.

Senator Flynn: But the minister may then act, if the owner does not do what he should do.

Senator Langlois: The proposed amendment by Mr. Brisset is referring to "any reasonable steps". What is meant by "reasonable steps"?

Senator Flynn: They must be efficient, I suppose.

Senator Langlois: One thing we have to bear in mind is that this organization TOVALOP is in the City of London, England.

Senator Flynn: I am not referring to that.

Senator Langlois: Mr. Brisset is basing an amendment on this.

Senator Flynn: There is no mention of this organization in the amendment.

Senator Langlois: I know that. It is quite evident.

Senator Flynn: Normally, the principle embodied in the amendment suggested by Mr. Brisset would be acceptable, and I do not see why the department is not willing to accept it.

Senator Langlois: It is because, as I said, the department will have to act in a hurry.

Senator Flynn: Well, yes.

Senator Langlois: And the slightest delay might increase the damages tremendously.

Senator Flynn: If you say that in practice they will give the opportunity...

Senator Langlois: But the amendment goes farther than that. The minister would have to wait until the owners had taken reasonable steps.

Senator Flynn: You suggest that in some cases the minister may not give the opportunity to the owners?

Senator Langlois: Who is going to interpret what is meant by "reasonable steps or measures"?

Senator Pearson: Would it not be better to put in a time limit?

Senator Langlois: Mr. Miller covered that point pretty well the other day.

Mr. MacGillivray: Mr. Chairman, I did mention this the last time I spoke on this in response to Mr. Brisset's suggestion for an amendment. As Senator Langlois has pointed out, I mentioned what is our practice. But I also mentioned that we feel that the Government has a responsibility in the public interest to make the judgment as to whether it is advisable to wait for the owner to act or not. It is a fact that in the case of the Torrey Canyon, which prompted this, the British Government did wait while the owners went aboard the ship with their salvage experts to see what they were going to do about saving the ship and its cargo and preventing pollution. This delay contributed considerably to the damage that was done while they gave the owner a fair opportunity to arrange salvage. The owner is going to be under a compulsion to try to save his ship, and he will be looking not only to preventing pollution, but also to saving his ship, and the Government is going to have to have the power in the public interest to step in, if it feels that the owner is devoting too much attention to saving the ship and not enough to avoiding pollution.

Senator Burchill: What has been the experience over the years?

Mr. MacGillivray: Fortunately, senator, we have had very little experience with wreck causing pollution. But our experience with wreck that is only a hazard to navigation has been that normally, when we give the owners a chance, they step in and effect the removal of the wreck. We are quite anxious that they should, because we are not anxious to spend money and then have to go to court to collect from the owner.

Senator Kinley: There was a rather bad wreck at the entrance to Halifax harbour. How did you get along with that one?

Mr. MacGillivray: With respect to that wreck, there was good co-operative effort by the owners and ourselves. We were also blessed by a change of wind that carried the oil out to sea. But there was full co-operation between the owners and us.

Senator Kinley: Was it a Canadian ship?

Mr. MacGillivray: No, it was not a Canadian ship, but the Canadian agents and their counsel in Halifax worked very closely with us.

Senator Kinley: And there was another wreck across the harbour.

Mr. MacGillivray: Yes.

Senator Kinley: And that one caused some trouble.

The Chairman: Thank you. Are there any further comments?

Senator Flynn: I said that in principle I agree but I think in practice we need not worry.

The Chairman: Shall section 495c carry?

Hon. Senators: Carried.

The Chairman: Honourable senators, we come now to section 495D on page 15. Senator Langlois some time ago, seconded by Senator Kinley, moved the following amendment:

> That page 15, clause 24 of Bill S-23, an Act to amend the Canada Shipping Act, be amended by striking out lines 17 to 41, both inclusive.

The effect of that amendment is to completely delete section 495D.

Senator Flynn: And replace it?

The Chairman: No. Just remove it from the bill. I might add that this was the controversial section which was objected to by the people from Montreal and by Mr. Miller from England.

Senator Langlois: This amendment goes a long way towards meeting the objections which were made before this committee. It goes almost the whole way.

The Chairman: Are you ready for the question? All in favour?

Hon. Senators: Carried.

Mr. MacGillivray: I would like to have added in connection with that, Mr. Chairman, that while this amendment has been proposed and passed now, the minister was not prepared to suggest or propose such an amendment. And I was under instructions not to raise any objection to it but to point out that in this connection we consider this as merely a deferment of the provision and not its final rejection.

The Chairman: We come now to page 16, clause 25.

Hon. Senators: Carried.

The Chairman: Clause 26.

Hon. Senators: Carried.

The Chairman: With respect to clause 27 there is an amendment which Senator Langlois would like to move.

Senator Langlois: I wish to make the following motion:

> That Bill S-23, An Act to amend the Canada Shipping Act, be amended by striking out paragraph (a) of subsection (2) of section 712A on page 17 thereof and substituting the following:
>
> '(a) providing for the licensing of persons acting as members of the crew or employed in connection with the maintenance and repair of air cushion vehicles used in navigation, and for the suspension and revocation of such licences;'

The Chairman: Honourable senators, the only change appearing in that is with respect to the provision for suspension and revocation of such licences, as well as, as Mr. Fortier points out, providing for the licensing of the persons referred to in the subsection. Does this clause carry?

Hon. Senators: Carried.

The Chairman: Clause 28?

Hon. Senators: Carried.

The Chairman: The title and preamble?

Hon. Senators: Carried.

The Chairman: The bill is reported subject to the amendments that have been made to it. Honourable senators, this terminates this part of today's meeting. Thank you very much.

The committee adjourned.

APPENDIX G.

Documents tabled by

Jean Brisset, Q.C.

THE MINISTER OF TRANSPORT

February 25, 1969.

H. Colley, Esq.,
President,
The Shipping Federation
of Canada, Inc.,
326 Board of Trade Building,
Montreal 125, P. Q.

Dear Mr. Colley:

Thank you for your letter of 20 February advising me that you propose to appear before the Senate Committee on Transport and Communications and raise objections in connection with Clause 7 of Bill S-23, an Act to Amend the Canada Shipping Act.

As you have noted, this Clause was inserted into the Bill in order to permit the continued operation of pilotage services under the rules that have been applied heretofore by the various Pilotage Authorities. It is intended as an interim measure only and will be replaced by comprehensive new legislation when the Government has had an opportunity to give full consideration to the Report of the Royal Commission on Pilotage.

I understand that the matter of a termination date for this interim legislation was discussed at three different meetings between officials of the Department and representatives of The Shipping Federation of Canada and other interested organizations.

I had been informed at the time that these organizations only undertook to support the legislation on the conditions mentioned in your letter. However, the Government considered that a termination date of March 31, 1969, with provision for extension for one year, was not a reasonable target in view of the complexity of the subject and the many substantial changes in the present system that must be considered.

I fully share your feelings about the desirability of proceeding as quickly as possible toward complete revision of our pilotage laws and I wish to assure you that we are proceeding as quickly as we can to deal with the matter.

Yours sincerely,
Paul T. Hellyer.

THE SHIPPING FEDERATION
OF CANADA
INCORPORATED
326 BOARD OF TRADE BUILDING

COPY

File: LS.17—11E

MONTREAL 125

March 4, 1969.

The Honourable Paul T. Hellyer, B.A.,
Minister of Transport,
Department of Transport,
Hunter Building,
Ottawa, Ont.

Re: Bill S-23—Clause 7—Pilotage

Honourable Sir:

I am taking the liberty of acknowledging your letter of February 25th to our President, Mr. Colley, as he is presently abroad.

Although our members were in accord that an interim legislative measure was required to permit the continued operation of pilotage services and undertook to exercise restraint until the general recommendations of the Pilotage Commission could be implemented by appropriate legislation, they had only agreed to do so until March 31, 1969, a date which they were led to believe would appear in the text of the proposed interim legislation, as you will see from the document submitted by the Officers of your Department at the last meeting held in Montreal on August 30, 1968 with the representatives of all the interests concerned.

It was at this meeting that strong representations were made to have an Order-in-Council purporting to extend such termination date tabled before Parliament. It was, therefore, with considerable surprise and also shock for they had had no previous advice of this departure from the agreement, that our members found that Clause 7 of Bill S-23 set a termination date not of March 31, 1969 with provision for extension for one year, as you mention in your letter, but of December 31, 1969 with another year of extension, thus pushing the enactment of new pilotage legislation, which is so urgently needed, as far

ahead as two and a half years from the date of the release of the Commission's first report.

This report, it is generally felt, contains sufficient material to permit the enactment of the required legislation, a view which we have already expressed along with other shipping interests in a letter addressed to your Assistant Deputy Minister, Mr. Gordon W. Stead, on November 11, 1968, and a copy of which is also enclosed.

I am, Sir,

Yours respectfully,

Marcel Jetté,

EXECUTIVE DIRECTOR.

MJ:MT

Encs.

c.c. Canadian Chamber of Shipping

THE SHIPPING FEDERATION
OF CANADA
INCORPORATED
326 BOARD OF TRADE OF BUILDING

REGISTERED

File: LS.17—11E

Montreal 1
November 11, 1968.

Gordon W. Stead, Esq.,
Assistant Deputy Minister,
Marine Services,
Department of Transport,
Hunter Building,
Ottawa, Ont.

Dear Sir:

Re: Implementation of the Report of The Royal Commission on Pilotage

You have asked for the views of the Federation on the specific recommendations made by the Royal Commission on Pilotage and although we have at a recent meeting with Members of the Pilotage Task Force appointed by your Department, made it known that we were in general agreement with these recommendations, we would like to reiterate perhaps in a more formal manner the views which we have already expressed.

The general recommendations of the Royal Commission, which are intended to serve as a basis for the legislation which we hope will be introduced before Parliament with the least possible delay can, we consider, be grouped under six (6) main headings, such recommendations foreseeing:

1. The necessity of an entirely new Pilotage legislation fully comprehensive and, therefore, such as to permit the organization and administration of Pilotage without reference to any other legislation;

2. The creation of a central Pilotage Authority to be a Crown agency or Corporation responsible to Parliament and having full jurisdiction to implement the proposed legislation with the Pilotage District to remain the unit of organization with as much autonomy as possible. It is, of course, the earnest hope of the shipping industry that when such a Corporation is established, the industry will be represented on its Board;

3. The imposition of compulsory Pilotage where required in the interests of safety of navigation but with personal exemptions to be granted to masters and mates whose competency is such as to permit them to dispense with the services of pilots; in imposing the compulsory system, the legislation should, of course, not depart from the intent of the International Conventions to which Canada has adhered;

4. Giving to the Pilots the status of Crown employees where Pilotage is compulsory because it is considered to be an essential public service;

5. Close supervision by the Pilotage Authority over the grouping of Pilots into Corporations with regard to each Pilotage District;

6. The adoption of all administrative measures necessary to ensure that at all times the competence, physical and mental fitness and reliability of Pilots to perform their duties be of the highest standard, such measures to include re-appraisal of Pilots, the re-appraisal procedure to take into account all technological developments with which Pilots should be familiar.

With these principles, the Federation is in full accord. Even though Parts II to V of the Royal Commission's Report may not be available for some time, it is felt that on the basis of the general recommendations of the Commission contained in Part I, the required legislation can be drafted, whereas the By-laws applicable in each of the Districts eventually formed could be delayed until the

Commission's Report on them is published, since under the general pilotage legislation the task of drafting such By-laws will be left to the local Authority.

It has been suggested that the Departmental Task Force should prepare a statement of at least the principles which in their view should be expressed in the new legislation for submission to the interested parties for their comments before it goes to the Cabinet. With this suggestion, the Federation is in complete agreement, and if the Department does not meet opposition from the interested parties to such principles, then the drafting and eventual steering of the legislation through Parliament should be greatly facilitated.

Yours very truly,

THE SHIPPING FEDERATION OF CANADA

H. Colley,
PRESIDENT.

PROPOSED LEGISLATION (GENERAL) TO VALIDATE PILOTAGE BY-LAWS

The Department of Transport, with the assistance of the Department of Justice, is working on a draft text of legislation to give force and effect to and to validate the current Pilotage By-laws.

An attempt will be made to have the final text contain the most essential elements which were agreed upon at the August 7th meeting between the Department of Transport, Dominion Marine Association, Canadian Chamber of Shipping, Federation of the St. Lawrence River Pilots, and others. The text will be subject to the usual elements of form and substance which are in accordance with Government policy.

The following points are presently being considered for inclusion into an amendment to the Canada Shipping Act for the purpose of validating the current Pilotage By-laws:

1. A general provision to the effect that By-laws purported to have been made under section 329 of the Canada Shipping Act will be deemed to have the same force and effect from the days they were confirmed by Order-in-Council as though the By-laws had regularly been made on such days and in accordance with an Act of Parliament authorizing such By-laws.

2. A provision to include a schedule in the amending Act, containing an enumeration of the various Orders in Council and By-laws.

3. A general provision to validate nominations, appointments, pilots' licences, etc., until amended or rescinded in accordance with the provisions of the Canada Shipping Act or By-laws made thereunder.

4. All Orders-in-Council referred to in the Schedule (paragraph 2 above) will be repealed or revoked on March 31, 1969 or at a later date to be fixed at any time in a proclamation of the Governor-in-Council.

First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

TRANSPORT AND COMMUNICATIONS

The Honourable L. LANGLOIS, *Acting Chairman*

No. 9

Complete Proceedings on Bill S-31,
intituled:
"An Act respecting Canadian Pacific Railway Company"

WEDNESDAY, MAY 7th, 1969

WITNESSES:

Canadian Pacific Railway Company: J. E. Dardis, Q.C., Senior Solicitor; J. Charrington, Engineer, Special Projects; Pacific Region; E. S. Allison, Regional Manager, Operations and Maintenance, Pacific Region; and W. Miller, General Manager, Fording.

Fording Coal Limited: H. M. Porter, President.

REPORT OF THE COMMITTEE

First Session—Twenty-eighth Parliament
1968-69

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Fording Coal Limited: R. M. Porter, President.

REPORT OF THE COMMITTEE

29579—1

STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, Chairman

The Honourable Senators

Aird,
Aseltine,
Beaubien (*Provencher*),
Bourget,
Burchill,
Connolly (*Ottawa West*)
Connolly (*Halifax North*),
Croll,
Davey,
Desruisseaux,
Dessureault,
Farris,
Fournier (*Madawaska-Restigouche*),
Gélinas,
Gouin,
Haig,
Hayden,
Hays,
Hollett,
Isnor,
Kickham,
Kinley,
Kinnear,
Lang,
Leonard,
Macdonald (*Cape Breton*),
McDonald,
McElman,
McGrand,
Méthot,
Molson,
Nichol,
Paterson,
Pearson,
Phillips (*Prince*),
Quart,
Rattenbury,
Roebuck,
Smith (*Queens-Shelburne*),
Sparrow,
Thorvaldson,
Welch,
Willis.

Ex officio members: Flynn and Martin.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 29th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Nichol moved, seconded by the Honourable Senator Prowse, that the Bill S-31, intituled: "An Act respecting Canadian Pacific Railway Company", be read the second time.

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

The Bill was then read the second time.

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

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

"Extract from the Minutes of the Proceedings of the Senate of Canada, April 22nd, 1969:

With leave of the Senate,
The Honourable Senator McDonald moved, seconded by the Honourable Senator Bourget, P.C.:

That the name of the Honourable Senator Nichol be substituted for that of the Honourable Senator Lefrançois on the list of Senators serving on the Senate Standing Committee on Transport and Communications.

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

ROBERT FORTIER,
Clerk of the Senate.

29579—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, May 7th, 1969.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day to consider Bill S-31, "An Act respecting Canadian Pacific Railway Company."

Present: The Honourable Senators Langlois (*Acting Chairman*), Connolly (*Halifax North*), Connolly (*Ottawa West*), Hollett, Isnor, Kinley, Molson, Pearson, Sparrow and Welch.

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

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

Canadian Pacific Railway Company:

J. E. Paradis, Q.C., Senior Solicitor,
J. Cherrington, Engineer Special Projects, Pacific Region,
R. S. Allison, Regional Manager, Operations and Maintenance, Pacific Region, and
W. Miller, General Manager, Pricing.

Fording Coal Limited: R. M. Porter, President.

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

At 10:35 a.m., the committee adjourned to the call of the Chairman.

ATTEST:

Marcel Boudreault,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, May 7th, 1969.

The Senate Committee on Transport and Communications to which was referred the Bill S-31 intituled, "An Act respecting Canadian Pacific Railway Company", has in obedience to the order of reference of April 29th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

L. LANGLOIS,
Acting Chairman.

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Ottawa, Wednesday, May 7, 1969

The Standing Senate Committee on Transport and Communications to which was referred Bill S-31, an Act respecting Canadian Pacific Railway met this day at 10:00 a.m.

Senator Leopold Langlois (Acting Chairman) in the Chair.

The Chairman: Honourable senators, we come here this morning to consider Bill S-31, an Act respecting Canadian Pacific Railway Company. We have here as witnesses Mr. R. S. Allison, Regional Manager, Operations and Maintenance, Pacific Region, C.P.R.; J. Cherrington, Engineer, Special Projects, Pacific Region, C.P.R.; W. Miller, General Manager, Pricing, C.P.R.; Head Office, Montreal; R. M. Porter, President, Fording Coal Limited; J. E. Paradis, Senior Solicitor, Law Department, C.P.R., Montreal.

We also have with us here Mr. Jeffrey King, who is the parliamentary agent for the C.P.R. Mr. King?

Mr. Jeffrey King, Parliamentary Agent, Canadian Pacific Railway Company: I believe Mr. Paradis would first like to give a brief introduction and speech on the Bill.

The Chairman: Mr. Paradis?

Mr. J. E. Paradis, Q.C., Senior Solicitor, Law Department, Canadian Pacific Railway Company: Mr. Chairman, honourable senators, on the second reading of the bill on April 29, Senator Nichol gave a very comprehensive explanation of the bill and I do not propose to go over the same ground. However, at that time he indicated that perhaps it would have been a little easier for him if there had been a plan or plans in the hands of the senators who were listening to him. We have prepared plans, and with the chairman's permission, I would have them distributed to the members of the committee.

Senator Isnor: Do we require the maps? Could you not proceed now?

Mr. Paradis: Sir, I thought it would facilitate matters if you had the maps before you. However, I will proceed.

There are two parts to this bill. In clauses one and two the applicant seeks parliamentary authority to construct a branch line. As you know, under the provisions of section 183 of the Railway Act as revised in 1967, if a branch line exceeds 20 miles in length, parliamentary authority must be secured in order to proceed with its construction.

That is the reason why we have these two clauses. Clause 1 indicates briefly where the line will be constructed. Clause 2 of the bill is the traditional clause which provides that if the construction is not started within two years or completed within five we must come back to Parliament for authority.

The smaller of the two plans is the one which indicates the proposed branch line of some 34 miles in length which would serve the coal deposits of Fording Coal Limited. As you see, it runs in northerly direction from the C.P.R. line near Natal and Sparwood in British Columbia.

My colleagues with me here this morning will answer questions you may wish to put to them with regard to the engineering or operational features of this branch line that might be of interest to you.

In clauses 3 and 4 of the bill we seek parliamentary authority to enter into agreements with British Columbia Hydro and Power Authority in order to purchase an interest in and operate trains over three small lines of railway which they have been authorized to construct by provincial authorities in British Columbia.

If you refer to the larger plan of the two you will see that the C.P.R. line is indicated in brown in the legend. I might say that the last two clauses of the bill would enable Canadian Pacific to participate with three other railways in the creation of a rail route from a point near Mission, British Columbia, to the superport at Roberts Bank which is presently under construction.

Senator Pearson: That means only one railroad would be running into Roberts Bank?

Mr. Paradis: That is right, sir, one rail line but there will be four railways cooperating and collaborating in this route: Canadian Pacific, Canadian National, Great Northern and the British Columbia Hydro and Power Authority.

At the present time British Columbia Hydro and Power Authority has a line of railway in southwestern British Columbia, but in order to create this rail route they had to secure authority to build three additional small pieces. In due course all four railways will be participating in this rail route.

Senator Pearson: You had to get permission from British Columbia or Hydro?

Mr. Paradis: B.C. Hydro had to secure that authority. It is not in the form of an Act of Parliament. An application was made to the Minister of Transport—really to the Cabinet—and a certificate was issued in November last authorizing the construction. You will note that the C.P.R. line—

The Chairman: You are using a larger chart now.

Mr. Paradis: There are two distinct maps, Mr. Chairman: One has to do with the Fording branch line, covered by clauses 1 and 2 of the bill; the second and larger map deals with clauses 3 and 4, namely, the rail route to Roberts Bank. We are now on the second map.

I might draw your attention to the scale at the bottom right-hand corner, which is ten miles to two-and-one-half inches. I say this because the line of railway shown in brown which starts at the very right hand-side of your map and goes into Mission is the C.P.R., but C.P.R.'s participation can be better explained by saying that the coal fields which this rail route will serve are some 650 to 670 miles east of that point. Canadian Pacific will be carrying the coal for the 650 or 670 miles into Mission, where it will there join the other railways in the proposed rail route.

From Mission going west the Canadian National line is shown in yellow. Canadian Pacific will have running rights over the Canadian National Railways. There is already statutory authority for that.

Then we come to the first small line of 2.5 miles indicated in red. Clause 3(a) of the bill—

The Chairman: To be constructed.

Mr. Paradis: To be constructed, exactly. That is one of the three small lines of railway which B.C. Hydro has been authorized to construct by the provincial authorities Then we reach a line indicated in blue, and, as you will note from the legend, this line is the existing B.C. Hydro railway line over which we seek running rights under clause 4 of the bill.

Running rights under section 156 of the Railway Act may be granted by one railway to another but for a period not exceeding 21 years. However, there has got to be some permanency in this organization of the railways creating this rail route, so we are before Parliament in clause 4 of the bill to secure running rights for more than a period of 21 years over part of the B.C. Hydro line already constructed, indicated in blue in the centre of the plan.

Proceeding westward from the blue section of the B.C. Hydro line, we come to a second short line, 6.8 miles in length, shown in red which B.C. Hydro has been authorized to construct.

We now reach on the plan a small line of railway indicated in green. This one mile of railway is already constructed and owned by the Great Northern. The Great Northern's railway line starts in the United States and runs in a sort of northwesterly direction in British Columbia. At that point, shown in green on the plan, the proposed rail route will be proceeding over the Great Northern for one mile. There is already statutory authority for Canadian Pacific and Canadian National to have running rights over the Great Northern, so we do not need additional authority for that purpose.

Finally, we come to the last portion of the rail line, shown in red, to be constructed by B.C. Hydro, over a distance of 14.1 miles and which actually runs from the Great Northern to the superport which is under constuction at Roberts Bank.

Senator Isnor: Why did they undertake to construct that 14 miles, instead of your own company, the C.P.R.?

Mr. Paradis: Sir, you will appreciate that Canadian Pacific has no line of railway in that territory at the present time. Canadian Pacific's line of railway, if you will refer to the plan, runs from Mission north of the Fraser into Vancouver. Southwestern British Columbia, I might say, is territory over

which B.C. Hydro presently operates. There was a great deal of negotiation and it was finally agreed that B.C. Hydro would secure authority to construct, and they would proceed with the construction of the necessary links. Canadian Pacific proposes to purchase an interest in these short lines, as will Canadian National, and the Great Northern in part but B.C. Hydro has the authority to construct these three lines shown in red on the plan.

Senator Molson: Mr. Chairman, could I ask the witness what is the B.C. Hydro line shown here used for at the present time?

Mr. Paradis: Senator Molson, if I may, I would like to have my colleagues assist me; I am not too familiar with the operations of B.C. Hydro in British Columbia.

Senator Pearson: Is this to be a double track?

The Chairman: Would you identify these gentlemen?

Mr. Paradis: Mr. Allison, on my right, is Regional Manager of Canadian Pacific, Operations and Maintenance, on the Pacific Region; Mr. Porter, on his right, is the President of Fording Coal Limited; immediately behind me is Mr. Cherrington, Engineer, Special Projects, on the Pacific Division of the C.P.R. and, on his right, Mr. Miller, General Manager, Pricing, of C.P.R.

Mr. Allison, I think you heard the question put by Senator Molson regarding the operations of B.C. Hydro. Would you be good enough to answer his question.

Mr. R. S. Allison, Regional Manager, Operations and Maintenance, Pacific Region, Canadian Pacific Railway Company: Sir, the B.C. Hydro have very little rail traffic east of Cloverdale. That line of theirs comes out at New Westminster to Cloverdale and proceeds on to Chilliwack.

At the present time they operate one train in each direction daily, I believe it is, except Sunday, between Cloverdale and Chilliwack.

I might say that the entire line from what is shown as mile 102 on the C.N.R. through to Roberts Bank, which consists of some 32 miles of tracks, would be governed by what we call centralized train control system, which is an automatic block system. The line will have adequate capacity to give us all ready access to Roberts Bank. It will be an uncongested route in other words.

Senator Molson: As far as you know is this the only railway that B.C. Hydro operates in British Columbia?

Mr. Allison: Yes sir; it is the only one that B.C. Hydro operates.

Senator Molson: Is that daily train mixed freight, freight or passenger?

Mr. Allison: No, it is just a freight train that switches to any local industry along the route and delivers cars into the Huntingdon area.

The Chairman: This B.C. Hydro line is under provincial jurisdiction?

Mr. Paradis: That is right, sir.

The Chairman: Would it not become a national undertaking after it is linked with the C.P.R. main line?

Mr. Paradis: I would not like to pass judgment on that, sir; I do not know whether because they will be linked with Canadian Pacific and Canadian National they will become an undertaking under the jurisdiction of the federal Government.

The Chairman: They will become part of a national railway system though.

Mr. Paradis: That may be so.

Mr. D. Russell E. Hopkins, Law Clerk and Parliamentary Counsel: I can say this, that the Department of Transport has absolutely no objection to this proposal.

Senator Kinley: What objection could there be?

Mr. Paradis: Honourable senators, I think I have nothing to add except to repeat that insofar as the rail route to Roberts Bank is concerned we are not seeking authority to construct but simply to enter into agreements with B.C. Hydro, whereas in the first part of the bill we seek authority to construct the Fording River branch line.

Senator Hollett: Is there any evidence of coal deposits on that first map you gave us?

Mr. Paradis: Yes. I think Mr. Porter will be able to answer that question for you.

Mr. R. M. Porter, President, Fording Coal Limited: I am not just quite clear what the question was—the extent of the coal deposits?

Senator Hollett: The estimated amount of the deposits there?

Mr. Porter: With reference to the Fording Coal property with which we are directly concerned and which Fording Coal Limited plans to exploit, our intention is to ship 3 million tons per year for a period of 15 years. We consider that there are adequate reserves available now, new or developed, to support our production plans. Beyond that there is significant potential which has not been developed, and therefore it cannot be defined in terms of tonnage.

Senator Hollett: Where is most of the coal shipped to?

Mr. Porter: Almost entirely to the Japanese steel companies.

Senator Isnor: What is the present production per year?

Mr. Porter: Fording Coal is not in production. To the south, at Natal, Kaiser Resources now are shipping at the rate of about one million tons per year, mainly from underground operations. They are in process of developing surface operations, which will be starting in 1970, and they will be shipping at a rate in excess of 5 million tons per year.

Senator Isnor: My question was: what are they producing at the present time per year?

Mr. Porter: From that area?

Senator Isnor: Yes.

Mr. Porter: Approximately one million tons per year.

Senator Kinley: What are the features that give you this market? What are the advantages that get this market for you?

Mr. Porter: Because this is what is referred to as a metallurgical coal. It is a hard coal that is suitable for the manufacture of steel.

Senator Kinley: It is the quality of the coal first. How does your price compare with American coal?

Mr. Porter: Of course, the main suppliers to the Japanese steel industry at the present time are the Americans from West Virginia. Their predominant position will probably be taken over by the Australians within the next year or so, who ship from eastern Australia, New South Wales from the old mines and particularly in Queensland, where new mines are developing. So it is a competitive situation. We feel that we can produce and make the necessary investments at the prices which have been established on a competitive basis in Japan.

Senator Kinley: The water transportation is your advantage; is that it?

Mr. Porter: Yes.

Senator Kinley: Do you ship it in your own ships?

Mr. Porter: No.

Senator Kinley: Do Canadian Pacific ships carry the coal?

Mr. Porter: No. We plan to transfer ownership of the ship at Roberts Bank.

Senator Kinley: Then the Japanese will carry the goods?

Mr. Paradis: That is right, sir.

Mr. Porter: They will take care of the ocean transport and part of it will be in their own ships.

Senator Kinley: That looks right.

Senator Molson: This will go in unit trains, I suppose. What does that work out at daily?

Mr. Porter: It is in the order of 10,000 tons per calendar day.

Senator Isnor: What are the possibilities of increased production?

Mr. Porter: From the Fording Coal Properties?

Senator Isnor: Yes.

Mr. Porter: There certainly is a potential. This is a very large undertaking that we are entering into. I would not like to predict a higher level of production, but there is a distinct possibility that we may produce at a higher rate than the 3 million long tons per year which are planned at present.

Senator Isnor: I am asking that question, Mr. Chairman, because of the closing down of certain mines in Nova Scotia. I was wondering if some day these lost miners might find employment in British Columbia, not that I want to see them leave Nova Scotia. Would you care to comment on that? Increased production should mean increased employment.

Mr. Porter: Very definitely, and we will be certainly going out to hire men. I feel confident that if there are applications from those

people that they would get certainly full consideration. This surface mining means employing people who have the ability to operate large equipment.

Senator Sparrow: What would the total be? You estimate that in 1972 you will be in full production; what would your employment be?

Mr. Porter: We plan to start production in 1972 and we would expect to employ about 300 at the site.

The Chairman: Coming back to the bill, clause 4, why limit the duration of your agreement with B.C. Hydro to 21 years?

Mr. Paradis: On the contrary, Mr. Chairman. Under the provisions of section 156 of the Railway Act, running rights may be given by one railway to another without parliamentary authority provided it is for a period not exceeding 21 years. Here, since we propose to make an arrangement with B.C. Hydro to have running rights over their line for a period exceeding 21 years, we must come before Parliament. That is the reason for clause 4.

Mr. Hopkins: There is no limitation in clause 4.

Mr. Paradis: That is right, sir.

Senator Molson: I move we report the bill, Mr. Chairman.

Honourable Senators: Agreed.

Senator Isnor: I have a question: What is the actual number of miles that C.P.R. will be constructing?

The Chairman: Thirty-four miles.

Mr. Paradis: For the Fording River branch line, senator, 34 miles.

Senator Isnor: What kind of country does that go through? In other words, what do you estimate the average cost per mile to be?

Mr. Paradis: I think either Mr. Allison or Mr. Cherrington can give that answer.

Mr. J. Cherrington, Engineer, Special Projects, Pacific Region, Canadian Pacific Railway Company: It is at the west slope of the Rocky Mountains, through rolling valley following the Elk and the Fording Rivers. There is some grazing land, but very little habitation and no public roads. Some lumbering has been carried out. The original estimate of cost is $9.2 million. That is approximate, because we have not completed our engineering.

The Chairman: Shall we report the bill?

Hon. Senators: Agreed.

The committee adjourned.

THE QUEEN'S PRINTER, OTTAWA, 1969

First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON

TRANSPORT AND COMMUNICATIONS

The Honourable GUNNAR S. THORVALDSON, *Chairman*

No. 10

Complete Proceedings on Bill C-184,

Respecting

"An Act to establish a Canadian corporation for telecommunication by satellite".

THURSDAY, JUNE 26th, 1969

WITNESSES:

Department of Communications: The Honourable Eric Kierans, Minister; Dr. J. H. Chapman, Assistant Deputy Minister; H. Turta, Advisor, Project Office.

Department of Justice: P. E. Hinson, Legislation Section.

REPORT OF THE COMMITTEE

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REPORT OF THE COMMITTEE

20021—1

STANDING SENATE COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators:

Aseltine
Blois
Bourget
Burchill
Connolly (*Halifax North*)
Davey
Denis
*Flynn
Fournier (*Madawaska-Restigouche*)
Gladstone
Hayden
Hollett
Isnor
Kinley
Kinnear
Langlois
Lefrançois
Macdonald (*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson
O'Leary (*Antigonish-Guysborough*)
O'Leary (*Carleton*)
Pearson
Petten
Rattenbury
Smith (*Queens-Shelburne*)
Sparrow
Thorvaldson
Welch—(30)

*Ex Officio member

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 25th, 1969:

"The Order of the Day being read,

With leave of the Senate,

The Honourable Senator Macdonald (*Cape Breton*) resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Kickham, for the second reading of the Bill C-184, intituled: "An Act to establish a Canadian Corporation for telecommunication by satellite".

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

The Bill was then read the second time.

The Honourable Senator Martin P.C., seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

ROBERT FORTIER,
Clerk of the Senate.

20021—1½

MINUTES OF PROCEEDINGS

THURSDAY, June 26th, 1969.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met to consider:

Bill C-184, "Telesat Canada Act".

Present: The Honourable Senators Thorvaldson (*Chairman*), Burchill, Isnor, Kinley, Kinnear, Macdonald (*Cape Breton*), Petten and Smith. (8)

Present, but not of the Committee: The Honourable Senator Haig.

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

The following witnesses were heard:

Department of Communications:

The Honourable Eric Kierans, Minister.
Dr. J. H. Chapman, Assistant Deputy Minister.
R. Turta, Adviser, Project Office.

Department of Justice:

F. E. Gibson, Legislation Section.

Resolved:—That 800 copies in English and 300 copies in French be printed of these proceedings.

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

At 11:00 a.m. the Committee adjourned.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, June 26th, 1969.

The Standing Senate Committee on Transport and Communications to which was referred the Bill C-184, intituled: "An Act to establish a Canadian corporation for telecommunication by satellite", has in obedience to the order of reference of June 25th, 1969, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

GUNNAR S. THORVALDSON,
Chairman.

THE SENATE

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Ottawa, June 26, 1969

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-184, to establish a Canadian corporation for telecommunication by satellite, met this day at 9.30 a.m. to give consideration to the bill.

Senator Gunnar S. Thorvaldson (*Chairman*) in the Chair.

The Chairman: Honourable senators, I see a quorum. May we have the usual motion to print?

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

Honourable senators, we are considering Bill C-184, the short title of which is the Telesat Canada Act.

We are much favoured this morning by having with us the Minister of Communications, the Honourable Eric Kierans. We also have with us several officials of his department, including Dr. J. R. Chapman, Assistant Deputy Minister, Research; Mr. G. Bergeron, Assistant Deputy Minister, Operations; Mr. R. Turta, Adviser, Project Office; and, from the Department of Justice, Mr. F. Gibson, the legal adviser.

The Minister has a Cabinet meeting later this morning and, consequently, I have told him that we will not keep him any longer than we have to. I have suggested that he might make a general statement in regard to the bill, and then you might direct your questions to him, as long as he is able to stay. Then, after he leaves, the officials of the department will be here to answer any further questions concerning the bill.

Honourable Eric Kierans, Minister of Communications: Mr. Chairman, honourable senators, thank you very much. I do not want any of you to feel you are under pressure, because I will stay as long as there are questions to answer. My particular role would be to answer questions in the field of the financing of the satellite; and, for the rest, Dr. Chapman and Mr. Bergeron are fully qualified, and much more so than myself, to speak on the technical aspects and all the other problems associated with building the satellite and getting it up there.

However, before starting I would like to make an announcement here, instead of calling a press conference to make it.

The department intends to invite all Canadians to put their name in space. In other words, we are preparing an elaborate but inexpensive program, the total cost of which will be about $12,000, that will invite every Canadian across Canada to suggest or choose a name for this domestic satellite, and the winning prize is a nominal one, but it will be an expense-paid trip to watch the launching which will take place at Cape Kennedy.

The purpose of the competition is to enable Canadians to participate, in a small but significant way, in this satellite project, and I hope that a great many Canadians will enter the competition, so that the satellite may be launched bearing a name that is expressive of Canada and that is also expressive of the vast potential that is signified by this brand-new technology.

The competition will run through the summer, until October 1, and then, shortly thereafter, the winning name will be selected by a panel of three judges.

The judges of the competition will be: Professor Marshall McLuhan, whom I think everyone knows, the Director of the Centre of Culture and Technology at the University of

Toronto; M. Gratien Gelinas, an extremely well-known playwright, both to English speaking and French-speaking Canadians, of the Comedie Canadienne in Montreal; and Leonard Cohen, poet, novelist and singer, of Montreal. Their decision will be final.

To bring this competition to the attention of as many Canadians as possible we have prepared some 12,000 distinctive blue and green *Satellite Canada* posters, which we are distributing across the country. They are going to carry the slogan "Put Your Name in Space/Mettez Votre Nom en Orbite", and a stylized maple leaf flag overlayed with the broadcast beams demonstrating the manner in which the satellite will beam down on Canada.

All of the information will be printed, and the rules and entry forms and so on will be distributed through the 8,000 post offices across the country. They will be displayed also at a number of outlets including the bookstores of the Queen's Printer, the public offices of Canadian telephone companies, the ticket offices of Air Canada, CP Air, and Pacific Western Airlines, the public offices of Canadian National Telecommunications and Canadian Pacific Telecommunications, distribution centres of R.C.A. Victor, Man and His World, the House of Commons Information Booth, and the National Arts Centre. I might say here that the telephone companies are quite anxious to co-operate with us in every way, and they are going to enclose information on this competition at their own expense in their July mailings to more than 5 million customers.

For the information of senators I will say that a number of these posters are being translated into the Eskimo and Indian languages, and will be distributed in the Yukon and Northwest Territories.

One or two names that have already been suggested on an informal basis have an Eskimo or an Indian origin. I do not know what the judges are going to say about this, but one or two seem to be completely expressive of the nature of both the satellite itself and Canada. However, that is up to somebody else to judge. I am not going to take on that responsibility.

Now, I am here to answer questions on the satellite and its financing.

The Chairman: Mr. Kierans, I wonder if we might ask you to make a brief statement in respect of the financing of this satellite which, as we have found, is most unusual because it contains new ideas of financing such a project. It would be most interesting if you would make a statement on that first.

Hon. Mr. Kierans: Basically, it has been Government policy since the White Paper that this should be a tri-partite venture. The Government's interest depends first of all on the fact that we have a tremendous scientific in-put to make ourselves. Dr. Chapman, who was the Vice-Chairman of the Defence Research Board, has now, among his other responsibilities, charge of the communications research centre out at Shirley's Bay where there are 500 engineers, scientists and technicians who have devoted years and years to research in space. So, we do have a contribution to make in this satellite sphere.

The Government is in it also because part of our national objective is to ensure that there be communication in both languages right across the country. This is a national objective which purely private corporations cannot be expected to accept entirely. I am not criticising them in any single way. If I were running a private telephone system I would proceed up north as it became economic or profitable. But, the Government wants to make sure that right across this country there will be television in both languages, and communications in both languages.

I do not know whether honourable senators have done this, but I have certainly made a great many speeches alluding to the vast potential that is Canada. Canada is one of the largest land masses in the world and it has tremendous mineral, fish, and forest resources, and it has oil and gas, but I have never been in more than nine per cent of Canada in all my life. The farthest north I have been is Grande Prairie, where I was on one occasion. I have talked about the development and the vision of the north. Mr. Diefenbaker proposed this, and it is a great and imaginative concept. We have talked like this, but it is necessary to bolster this kind of statement, just as in 1867 it was necessary to link this country by rail—the steel ribbon from one end of the country to the other. We must make valid all these wonderful speeches that I and others have made. We must ensure that there are communications in this country.

The greatest difficulty that most prospecting and development corporations face in the north is with their people—their engineers, prospectors, technicians, drillers, and excava-

tors. Once they get up there and lose contact with the rest of Canada they have a feeling of isolation, and this results in tremendous turnovers. There have been turn-overs of personnel as high as 35 per cent in six months.

So, the basis of really talking about Canada's vast potential in the north—the real fundamental, underlying basis—is going to be providing communications so that if a man is up in the Eastern Arctic he knows that he can see the same programs at the same time—taking into account local real time—that you and I see them. He knows that he can hear them in either language. He knows that he can be in telephone contact with his friends in Windsor, Ontario or in Liverpool, Nova Scotia, or wherever it may be. This is the reason why the Government feels it should have an in-put into this satellite.

Secondly, there is no way that I can see of putting up a satellite effectively without taking advantage of all the expertise that exists in the common carriers and the telephone companies across this country. This is the reason why they are in this. They are not only going to be users of the new system, but they are also going to put in a tremendous amount of scientific knowledge and capability.

Thirdly, the Government wants the public as a whole to participate by investing in this. One of the probable line-ups that we have suggested in respect of financing is that the Government will put in a third, the common carriers a third, and the general public a third. These fractions may vary, although I do not think the common carriers' fraction will vary. They will put in a third. The Government may decide to put in only 25 per cent, and, if so, the general public will have more opportunity to invest. But, all of this is going to be the subject of bargaining.

This new corporation will be committed to no underwriter in particular. All existing corporations have traditional relationships with their underwriters, whether it be Wood Gundy, Dominion Securities, or Nesbitt Thomson, or anybody else. We are inviting the investment community to develop this. We are putting it up to them to develop an imaginative proposal for financing this corporation. Therefore, the financing could be a combination of equity and debt.

What is the advantage of that? Suppose some underwriter said: "All right, we will take on this issue; we feel that we can sell this to the public on the basis of $40 million equity and $20 million debt.", and suppose at that time the Government has decided that it will, in fact, subscribe a third of that amount of $40 million, then the Government's actual investment in the whole satellite project will be a third of $40 million, because the debt will be sold on the market to pension funds, insurance companies, and so on. If the Government decides it will invest only 25 per cent, then its actual investment will be $10 million. We are thinking of it in this way because we want to limit the actual financial commitment of the Canadian Government as much as possible.

These are times when there is great stringency in the capital market. To the extent that the federal Government can limit its own demands on that capital market it will leave the market open for the provinces, the municipalities, and the corporations.

It is true that this will have no budgetary impact. If the Government invests $10 million it does not mean that the Government's surplus goes down or that its deficit goes up by $10 million. But, it does mean that the Government will be going into the market for $10 million in order to put $10 million into the Telesat Corporation. So we, have a very flexible financial outline at the moment.

In the bill—and I will be very frank with honourable senators here—there are two clauses, one of which provides that the Government can invest up to $30 million in equity, and another which says that the Government can invest up to $40 million in debt. In fact, what we are doing there is reserving for ourselves an ultimate bargaining position with the telephone companies and the public.

I will tell you the reasoning behind that. Suppose the telephone companies had come to us and said: "We will invest in your new satellite corporation only on condition that we own it 100 per cent outright ourselves, or only on condition that you sell all the capacity of that satellite to us." Then, by this bill, honourable senators, we would have been able to say to them: "Well, if you are going to adopt that attitude the Government cannot accept you having a complete monopoly on all space communications. The Government, rather than permitting a perfect monopoly in this entire area, will go ahead and do it itself." In other words, it is a bargaining position.

I do not think it is relevant right now, but, in other words, we are trying to give ourselves as many "hole cards" as we can in this poker game.

Senator Smith: Is it the intention of the Government and the corporation to have a complicated arrangement of deferred classes of shares; and with regard to the debt, will that be bonds with shares attached to them, with options, or will there be one class of shares, common shares?

Hon. Mr. Kierans: We had a proposal put to us, senator Smith, that there should be those and that there should be all these other instruments but, as a former president of stock exchanges, I am psychologically opposed to this.

Companies with class A and B shares would provide for A and B with different voting rights. The sophisticated manager of the pension fund of the C.P.R. would know what to invest in, but the ordinary shareholder would not know whether or not he has a vote and whether one of those classes would have ten votes to his one.

These will be simple equity, simple debt. It may be that, to sell some of the debt, we may attach some benefit—if you buy $100 or $1,000 worth of bonds, it may be that we will put in the package so many common shares at the same time, so that you have it both ways. However, that will be for everybody. This is a selling device.

Your question is, will the certificates themselves be clear. The answer is yes, that is right. Every share we sell will have the same voting rights, the same share in all of the profits of the company. It will be one simple common share.

Senator Smith: Would private carriers some day be able to buy shares from others and so eventually get control of this? What is the safugard?

Hon. Mr. Kierans: It is not possible. I will ask Mr. Gibson, from the Department of Justice, to expalin exactly why.

Mr. F. E. Gibson, Legislation Section, Department of Justice: Mr. Chairman and honourable senators, the bill contains specific prohibitions against common carriers, or the Government, going into the market to acquire shares that were originally issured to persons described in the bill as persons wo fulfil statutory conditions.

The bill is designed to safeguard the original proportions in which the sares are alloted amongst common carriers, the Government, and persons who fulfil statutory conditions.

Except under very strigent controls, those original proportions cannot be varied.

Hon. Mr. Kierans: I would add one point. Within a group—for example, within the common carrier groups—supposing they had 33⅓ of the total shares—then, as Mr. Gibson has said, that group cannot have more.

It may be that there will be a re-scheduling. At the beginning of the shareholding in that group, that 33⅓, Bell Canada may have 8 or 9 per cent. Then, if Bell Canada should take over one or two other companies holding shares, Bell Canada's share may increase to 11. But they cannot hold more than the 33⅓. They have to work that out with B.C. Telephone and other telephone companies, if they wish to do this.

Senator Smith: What effect, if any, would this have on the operations of the satellite tracking station at Mill Village?

Hon. Mr. Kierans: That is an international one, and I think you will be pleased that this afternoon we are tabling in the house the COTC annual statements, both on operations and on capital. Their profit has gone up considerably and most of this is due to the more efficient performance of the assets which have gone in, in Mill Village.

Senator Burchill: Do you anticipate that this new proposal will be a profitable undertaking?

Hon. Mr. Kierans: Yes, I do.

Senator Burchill: You mentioned earlier that you could not expect the common carriers to do this job because they would regard it as an economic exercise, and you would not blame them. If it would not be profitable for them, how is it profitable?

Hon. Mr. Kierans: I was probably thinking in another time zone there. The Canadian Government wants this to go ahead right now, whereas, if you were the head of a telephone company, you might say that this is not your immediate priority and could be put off and off. In the ordinary investment policies of the telephone companies, those companies might say, for instance, that they would go up to the Mackenzine Valley when there were enough people there to justify it.

We are going to ensure, by the revenue contracts with the telephone companies and with the CBC, the two big users of this, that there will be enough revenue to pay for the

cost, the depreciation, the absolescence—built in, in this kind of technology—and all other costs, to ensure a profit and a return, exactly as COTC is doing today.

Senator Burchill: In order to get private investors, you would have to assure them of some kind of income.

Hon. Mr. Kierans: There will be an income in it and we will assure that. We will assure that in the bargaining that will take place this summer between the corporation itself. If you pass this bill, until we name the officers, they will not be going in their own name, but in the meantime we have to go ahead giving contracts, to ensure the actual building of it. At that time, we will be undertaking the revenue requirements for the use of the satellite.

Senator Burchill: Will this have any effect on Trans-Canada Telecommunications?

Hon. Mr. Kierans: No. We have been dealing with them, rather than with the individual telephone companies, with the system itself.

The Chairman: I have just one question and probably I should put it to Mr. Gibson. I was going through Schedule B which contains provisions affecting the acquisition and holding of common shares. I observe that they seem to be quite stringent in regard to control of foreign ownership. In the case of a Canadian company which is foreign owned and controlled, is such a company entitled to hold shares in this corporation?

Mr. Gibson: Clause 4 of Schedule B, on page 32 of the bill, contains a definition of non-resident, which not only speaks in terms of non-resident in terms of an individual but also in terms of a corporation. For instance, a corporation, incorporated firm, or otherwise organized elsewhere than in Canada, is a non-resident corporation. A corporation that is controlled directly or indirectly by non-residents, as defined in any of the sub-paragraphs (i) to (iii)—which is a reference back—is a non-resident. A corporation...

The Chairman: I think I have the answer. So, in other words, this covers a Canadian company which is controlled by a foreign corporation or individual is not entitled to be eligible.

Mr. Gibson: That is—well—if it falls within the limited class in which 20 per cent of the shares held by the public may be held by non-residents, such as corporation would fall within that limit.

The Chairman: Thank you.

Senator Kinley: How far has this developed in other countries?

Hon. Mr. Kierans: Communication satellites themselves are a real thing. They are a routine thing now, but only on the international level, starting with Early Bird International Satellite, and now up to Intelsat 4, there are four up there.

Canada participates in that, and all of the information channels come down through Mill Village for distribution across Canada. So the technology itself has all been proved out for many years.

We will be the first country to have our own domestic communications satellite. The No. 1 reason is there is hardly a country in the world, except possibly Brazil or India, of roughly the same size having the same problems that we have of communicating within all parts of the frontiers. So there is the impulse which forces us to go at it right away.

The United States, for example, can say that although they are almost as big as we are, nevertheless their microwave systems reach into every corner of the United States. There is not the same pressure to have a domestic satellite, therefore. So this is the pressure on Canada: "To do its own thing", if you want, and get that one up there.

In Europe the problems are of a different order. They have to sort out the capacity of such a satellite. How do you distribute part of such a satellite to France, another part to Germany, another part to Belgium or Sweden or whatever country it might be? We have none of those problems. So the political problems involved in Europe also have the effect of retarding it.

There are other nations that could put a satellite up, but it seems to us, for motivational reasons, to face up to the problems that are peculiar to Canada, that we have got to get one up as soon as possible.

It so happens that we will be the first nation to have a domestic satellite up.

Senator Kinley: Is Canada's place in the continent particularly suitable for this sort of communications system, owing to the fact that we are in the northern part of the conti-

nent and the distance from earth to the satellite might be shorter?

Hon. Mr. Kierans: The advantage is just in what the satellite will do itself. The satellite will make it possible to reach into every corner—every inlet in the Arctic, every harbour in Newfoundland and every harbour on Vancouver Island.

Incidentally, when I say that Canada will have the first domestic satellite up, I mean that it will be the first synchronous domestic satellite. The Russians already have a non-synchronous satellite up.

Canada's system will be the most ideal and most inexpensive way to proceed. If we tried to do the same thing by extending land systems into the vast territory that is Canada, it would not be feasible economically.

Senator Kinley: This is a natural for Canada.

Hon. Mr. Kierans: It is a natural for Canada and it is a necessity.

The Chairman: Honourable senators, I understand the minister has to attend another meeting very shortly, but his officials will be very happy to answer any further questions you might have. Thank you very much, Mr. Kierans.

Hon. Mr. Kierans: Thank you very much, senators. I enjoy this and I hope you keep inviting me back.

Senator Isnor: Mr. Chairman, perhaps Dr. Chapman could tell me who took the initiative in this—a private company or the Government?

Dr. J. H. Chapman, Assistant Deputy Minister, Department of Communications: The first moves in satellites in Canada were taken by the Government, immediately after the launching of Sputnik I, which was in October, 1957. At that time the Government analysed the impact that this new technology might have on Canada and it came to the conclusion that it would be important to Canada and that something should be done. The Government decided that some programs should be started in Canada to make sure that we were in the position to take advantage of the new technology of space, being able to put satellites in orbit. The Government began at the end of 1958 the Alouette I scientific satellite program. In 1963 the Government moved to extend the knowledge of technology which had been gained in the Government laboratories in industry through the program called ISIS, International Satellites for Ionospheric Studies, a joint program with the United States which had two objectives. One objective was to carry on the research which was particularly pertinent to the problems of Canada's north and the communications in Canada's north. The second objective was to make Canadian industry able to move into the space age.

The industry—Bell Telephone Company—began in about 1962 serious studies of satellite communications. Private industry—first the Power Corporation and Niagara Television in 1966 and then Trans-Canada Telephone System and the Canadian National-Canadian Pacific Telecommunications together—came forward with a proposal to the Government for a communications satellite system. So there were two proposals to the Government in 1966 and 1967 from private industry for satellite systems such as were described in the Government's White Paper.

Perhaps that covers your question. The Government started; industry came in very shortly afterwards and the two have marched it along together since.

Senator Isnor: Thank you very much.

The Chairman: Dr. Chapman, we have heard in the Senate that some of these companies were willing to go ahead by themselves. Is that correct?

Dr. Chapman: Both Power Corporation, in association with Niagara Television, and the Trans-Canada Telephone System in association with CN-CP Telecommunications came forward with proposals requesting the Government to give them permission to go ahead and make systems on their own. Either on their own or in association with the Government.

The Chairman: Will you be able to have telephonic communications with the north without wires, Dr. Chapman? Or will you still need telephone wires and poles and the usual equipment that goes with telephone systems?

Dr. Chapman: Well, the satellite will provide the long lines. To give you a specific example, there will be circuits from the earth stations in the Toronto and Montreal areas to the satellite. There will be a circuit from the satellite to Frobisher Bay. There will be a Frobisher Bay satellite-earth terminal which will receive the signals from the satellite and

transmit back to the satellite and thus back to the southern part of Canada. You will, of course, have to have telephone lines in and around the community of Frobisher Bay to connect the telephones to the switchboard and the switchboard to the satellite terminal. But the hop from Frobisher Bay to the Montreal area, for example, will go by satellite.

The Chairman: Dr. Chapman, who will be your main payers of revenue? That is, the main paying customers of the corporation?

Dr. Chapman: There will be two main classes of customers. One class will be the telephone company and the second will be the broadcasting company. The department has been holding discussions and negotiations with both these groups, to determine their needs and what they are prepared to pay for the kind of service the satellite corporation can give them.

The Chairman: Has there been a projection of the total revenues?

Dr. Chapman: The projection made by the department is that a revenue of $18 million a year—

The Chairman: Gross?

Dr. Chapman: —gross, is required in order to cover all the needs of the corporation, as the minister has described.

The Chairman: Thank you. Are there any further questions of Dr. Chapman?

Senator Macdonald: What is the legal angle on putting these satellites up there? Do you have to have agreements with the United States or Russia or anybody else; or can each country put up their own, and as many as they want?

Dr. Chapman: Let me first say that there is a Treaty on Outer Space which says that space is open to all nations. Space occupies the same position as the high seas do—they cannot be claimed by any one nation.

The Chairman: Was that treaty negotiated through the United Nations facilities? If you do not know, it does not matter.

Dr. Chapman: I believe it was. It is a treaty that Canada has ratified, the Treaty on Outer Space. So, we cannot, figurately speaking, put a stake in a particular piece of space or put a Canadian flag up there and say, "That's ours."; nor can any other country.

The second point is the use of space for any purpose which uses radio, and here the problem is quite simple. You can only put one radio transmitter or receiver in any particular place; and the satellite is a radio-transmitting and-receiving station in space. You cannot put another one using exactly the same frequency in the same place; otherwise they interfere with each other. Therefore, one must have an international agreement between countries regarding the frequencies which will be used in a particular place.

There is an arm of the United Nations, the International Telecommunications Union, which is the international body which has been developed to co-ordinate the use of radio frequencies on the ground; and now we are extending its jursidiction to the co-ordination of radio frequencies in space. This means that Canada will register with the International Telecommunications Union that Canada wants to put a satellite on the Equator, at 109 degrees west, which will use this list of six frequencies for transmitting and six frequencies for receiving and that we will want to put that satellite there about the end of 1971. That registration of the frequencies and location would effectively establish a claim for that particular piece of space and to use those particular radio frequencies.

The procedure in the International Telecommunications Union is that other countries can protest Canada's use of that space; or we can protest the Russians' use of space or the Americans' use, if we wish. Therefore it is necessary to discuss with other countries that might be interested in that same area of space, their interest, in order to make sure that when it comes down to the final registration it is agreed that this does not conflict.

In principle, this is exactly the same procedure as must go on between Canada and the United States so far as broadcasting stations are concerned close to the border. We cannot have a Channel 4 television station on one side of the St. Lawrence River and they have another Channel 4 television station on the opposite side, because no one can use the same frequencies. In principle, it is the same thing: we have to agree with those countries that have an interest; we have to work out how we are going to share the use of the frequencies and the orbit positions.

We are in the process of carrying out the negotiations. I myself was in Washington last week to put before the international communications satellite consortium, Intelstat, a

plan for our use of frequencies and positions, and notified the other countries officially that have an interest in this that this is what Canada wants to do. It is part of the process of consultation.

The Chairman: Would you describe Intelstat? Just what is it?

Dr. Chapman: It is an international consortium which was established by a convention signed in 1964 between about 11 or 12 countries, of which Canada was one, the purpose of which is to set up a system of international communications by satellite—therefore, the name Intelstat, International Telecommunications by Satellite. I believe it now has about 65 member countries. In principle, the satellites are owned by this international consortium, and the earth stations are owned by the country in which the earth station is located.

Perhaps to make it a little clearer, I will use Canada as an example. The Mill Village Station in Nova Scotia is the Canadian earth terminal for international satellite communications. It uses the satellites over the Atlantic ocean: Intelstat 1, 2 and 3. The COTC rents channels, telephone circuit capacity or television transmission capacity, from Intelstat and it transmits and receives at Mill Village and communicates to one of the European countries, whichever one has a ground station in use at the particular time—France, Britain, Germany or Italy.

The Chairman: In other words, it puts you into the world system?

Dr. Chapman: Yes, we are in the world system, and the Canadian Overseas Telecommunications Corporation is the Canadian member of this international communications consortium, and it is a shareholder in the satellites which exist there now. We own something like 3 per cent of the stock—we own 3 per cent of all the satellites in orbit now; that is, the Canadian people as a whole.

Senator Smith: Mr. Chairman, may I add something to what the expert has said about the earth station which is very near my own home. That is what Mr. Kierans referred to when he said that he is going to table the report today, indicating a very profitable year. I also understand—and I can be corrected if I am wrong—that they generated their own capital, without coming to the Government, for an extension to that station down there, within the last year or so.

If this is an example of how the communications corporation we are now setting up is going to operate, we had better get our order in right away and get some of those shares!

The Chairman: I saw an interesting statement in regard to the stock of COMSAT. Their shares have doubled and trebled and quadrupled, is that right?

Mr. Turta, Adviser, Project Office, Department of Communications: Yes. They came out in 1964, at $20 a share. The stock was very heavily oversubscribed in a very short time, and it doubled in price very soon after issue. At one time the shares reached a high of $70, and at present they are trading at between $45 and $50 in spite of the depressed market.

The original stock issue was $200 million which was divided between the common carriers and the general public. The public portion of the stock was very heavily subscribed, and it was necessary to allot only a portion of the orders in order to satisfy the demand for the stock.

The Chairman: And that is an American corporation?

Mr. Turta: Comstat is a U.S.A corporation.

The Chairman: Where is the head office?

Mr. Turta: The head office is in Washington, D.C.

The Chairman: That gives you an idea, Senator Smith, of the possibilities. Are there any more question?

It has been moved by Senator Kinley, seconded by Senator Smith, that we report the bill. Is it agreed?

Hon. Senators: Agreed.

The committee adjourned.

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SENATE OF CANADA

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