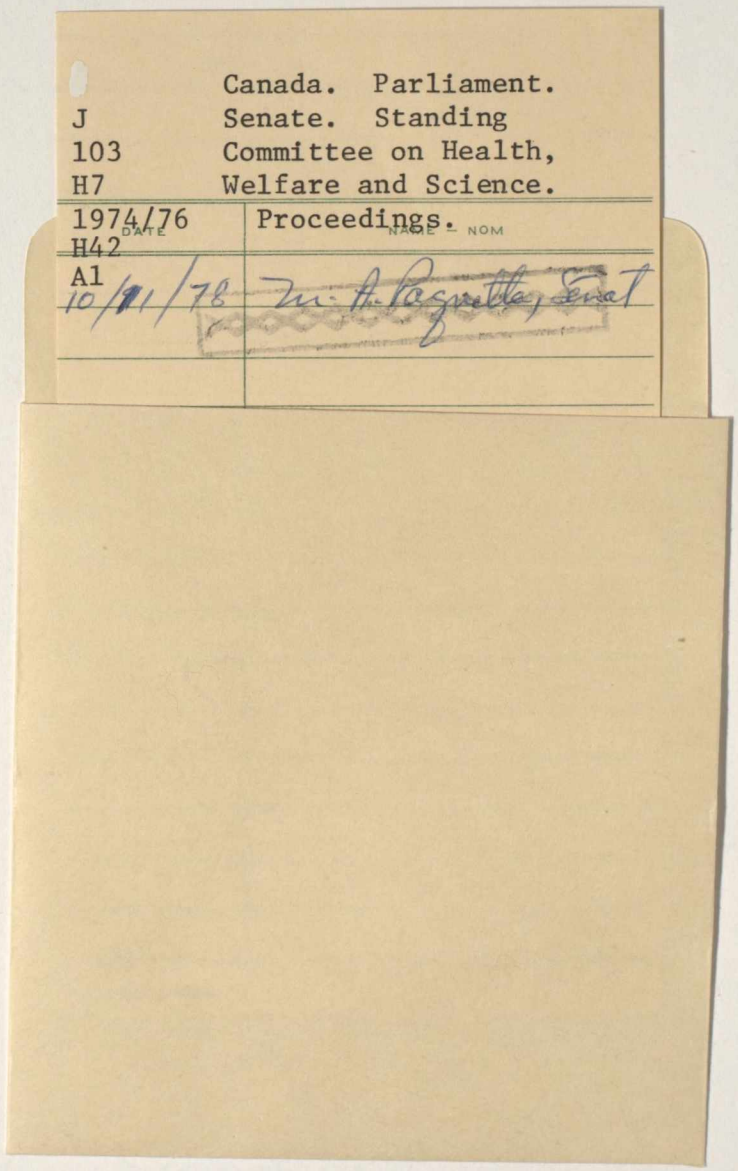
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FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable D. Smith, *Acting Chairman*

Issue No. 1

THURSDAY, OCTOBER 31st, 1974

First Proceedings on Bill S-9, intituled:

"An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act"

(Witnesses: See Minutes of Proceedings)

28267—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C., *Deputy Chairman*

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Bélisle, R.	Inman, F. E.
Blois, F. M.	Lamontagne, M.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Carter, C. W.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, Jacques	Smith, D.
Fournier, Sarto	Sullivan, J. A.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate of Tuesday, 22nd October, 1974:

"With leave of the Senate,

The Honourable Senator Sullivan resumed the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator McGrand, for the second reading of the Bill S-9, intituled: "An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks 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 Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

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

ROBERT FORTIER
Clerk of the Senate

Minutes of Proceedings

Thursday, October 31, 1974.

Pursuant to notice the Standing Senate Committee on Health, Welfare and Science met this day at 10.05 a.m. for consideration of Bill S-9, intituled: "An Act to repeal the Proprietary and Patent Medicine Act and to amend the Trade Marks Act".

Present: The Honourable Senators Belisle, Carter, Denis, Inman, Macdonald, Smith and Sullivan. (7)

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

After discussion, it was *Agreed* that the Honourable Senator Smith be elected Acting Chairman. The organization meeting is to be held immediately after this meeting.

On motion of the Honourable Senator Inman it was ordered that unless and until otherwise ordered by the Committee 800 copies in English and 300 copies in French of its day-to-day proceedings be printed.

Witnesses heard in explanation of the Bill:

Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare Department;

Dr. B. Liston, Acting Assistant Deputy Minister, Health Protection Branch;

Dr. Jean Apse, Chief of Regulatory Affairs Division, Drugs Directorate, Health Protection Branch.

Also heard:

Mr. R. E. Curran, Q.C., Counsel to Proprietary Association of Canada.

After discussion, it was *Agreed* that further consideration of the Bill be postponed to next week.

At 11.35 a.m. the Committee, in conformity with Rule 69, proceeded to the election of a Chairman.

On motion of the Honourable Senator Denis, the Honourable Senator Carter was elected Chairman.

On motion of the Honourable Senator Carter, the Honourable Senator Lamontagne was elected Deputy Chairman. The election of a Steering Committee will be made at the next meeting.

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

ATTEST:

Gérard Lemire,
for Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, October 31, 1974

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill S-9, to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act, met this day at 10 a.m. to give consideration to the bill.

Senator Donald Smith (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have for consideration Bill S-9, an act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act. This bill has had second reading in the house and we are now in a position to discuss it in much more detail. I now ask Miss Coline Campbell, who is here to represent the minister, to come forward and make a presentation. Miss Campbell is the Parliamentary Secretary to the Minister of National Health and Welfare, and I am sure you will all join me in wishing her well in her career in Ottawa.

Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare: First of all, Mr. Chairman and honourable senators, I should like to say that the minister regrets that he cannot be here today. He is on his way to Toronto and as of tomorrow will be out of the country. However, there was a prepared text for him, and, if no one objects, I will read it to you now.

Before I do that, however, I should introduce to you Dr. Liston, who is Acting Assistant Deputy Minister, Health Protection Branch, and Dr. Apse, who is Chief of Drugs Regulatory Affairs Division.

In introducing the discussion of Bill S-9 to this committee, I would like to dwell briefly on the purpose behind the repeal of the Proprietary or Patent Medicine Act and the overall effect on Canadian drug regulations.

For a better understanding of the reasons behind the government's intention to repeal the act, permit me to Give you an explanatory statement on where proprietary medicines fit into the Canadian drug market of today.

Drugs are generally divisible into two main categories on the basis of the type of sale: those sold on prescription and those sold without a prescription. Drugs sold without a prescription are called over-the-counter or OTC drugs. Proprietary medicines are a type of OTC drug. Provincial legislation forbids the sale of drugs outside pharmacies but does exempt proprietary medicines from the general prohibition and, therefore, the latter are available in non-pharmacy outlets such as grocery stores and supermarkets. In this discussion, honourable senators, we are concerned with proprietary medicines which are available to the general public in non-pharmacy outlets.

The Proprietary or Patent Medicine Act regulates this type of drug. This act has served the Canadian public well since its introduction in 1908 and has effectively eliminated the nostrum menace existing at the turn of the century. But now, honourable senators, the time has come when the Proprietary or Patent Medicine Act must be laid to rest. In keeping with the giant strides in medicine and drug technology Characteristic of our time, the government must be in a position to respond in proper regulatory fashion as new knowledge about various drugs comes to light. All of you know that the major Canadian drug legislation is the Food and Drugs Act and Regulations. Proper regulatory control can best be accomplished by one statute and one set of regulations to govern non-prescription drugs. The food and drug regulations are being continously up-dated, thus providing an ideal vehicle to subject all drugs, especially those available to the general public, to a rigorous scientific scrutiny as the needs arise to ensure the supply of safe and effective drugs to all Canadians.

Once the repeal of the Proprietary or Patent Medicine Act becomes effective, proprietary or patent medicines now registered under the PPM Act will be regulated by a new division of the Food and Drug Regulations. These new regulations will retain the best features of the P.P.M. Act and will be subject to the Food and Drug Regulations.

Historically and by statute certain products registered under the P.P.M. Act do not now require a quantitative list of medicinal ingredients on the label. In other words, these ingredients are secret. They are known only to the manufacturer, and to the Health Protection Branch of the Department of National Health and Welfare. Honourable senators, I am sure that you will concur with the government, the medical and pharmacology experts, and the pharmaceutical industry that secrecy in labelling is a relic of the past. Indeed, there may well be some health hazard if an allergic reaction or an accidental poisoning occurs. It should also be remembered that we are in an era of greater consumer awareness and the purchaser should be in a position to know what he is purchasing for his self-medication.

Most importantly, and as I indicated earlier, honourable senators, proprietary medicines will be subject to the Food and Drug Regulations including those not now requiring a quantitative list of medicinal ingredients to be shown on the label. Therefore the secrecy aspect will no longer exist for proprietary medicines.

Before concluding, it might be informative to dwell on the extent of powers provided by the Food and Drugs Act and Regulations. This law contains the wherewithal to regulate almost every aspect of matters pertaining to drugs including advertising, sale, and manufacturing. The powers are very sweeping and the Act contains a regulation-making provision enabling the Governor-in-Council to pass regulations. Once the Proprietary or Patent Medicine Act is repealed, only these regulations will apply to proprietary medicines. The proposed regulations will provide a capacity to review drugs as applications for registration are made, and also during the currency of the registration and when the manufacturer changes the formulation.

In other words, there will be supervision all the way through. Certain drugs will not be permitted in proprietary medicines and these will be listed in a schedule.

Honourable Senators, I think that we can generally say that this new Division in the Food and Drug Regulations will modernize Canadian drug law and at the same time will provide the Canadian public with safer and more effective medicine for the relief of the symptoms of minor ailments.

The Acting Chairman: Honourable senators, I think we can now have questions, directed through the chair, to either Miss Campbell or to Dr. Liston or Dr. Apse.

Miss Campbell: If I may say one thing, Mr. Chairman, I should bring to your attention that we will introduce here a motion to amend the bill, in that clause 3, instead of reading: "This Act shall come into force on the first day of January, 1976," shall read, "This Act shall come into force on a day to be fixed by proclamation." In other words, as we proceed with its discussion you will note that the department's intention is to allow the provinces plenty of time to notify manufacturers as well as others of any changes that are to come about by a tentative date of January, 1976. However, it was felt that leaving the date unspecified afforded the government more leeway. It has definitely been the intention of the department to have the date January, 1976.

The Acting Chairman: Thank you, Miss Campbell. Perhaps one of you two gentleman would care to make a statement before questions are put to you.

Dr. B. Liston, Acting Assistant Deputy Minister, Health Protection Branch, Department of National Health and Welfare: I do not have a prepared statement, Mr. Chairman. I think the introduction speaks for itself. It is relatively straightforward legislation. If there are some ramifications, I would be very pleased to try to answer questions or clear up difficulties that may arise from this proposed change in legislation.

The Acting Chairman: Thank you. I would like to give the floor first to Senator Sullivan.

Senator Sullivan: Mr. Chairman, before I comment on this legislation I concluded my remarks in replying to the sponsor of the bill in the house, Senator Bonnell, by saying that I commended the legislation. However, I did bring up a few pertinent points and I trust that they can be answered today.

Before going into those, on page 3 of your brief you make this statement:

> This law contains the wherewithal to regulate almost every aspect of matters pertaining to drugs including advertising, sale, and manufacturing. The powers are very sweeping and the act contains a regulation-making provision enabling the Governor in Council to pass regulations.

Would you enlarge on that a little, please?

Miss Campbell: I would think that that is in relation to the Food and Drugs Act, which is already in existence.

Senator Sullivan: It can be changed from time to time.

Miss Campbell: I imagine that the regulations under the Food and Drugs Act have been in existence for a while.

Senator Sullivan: Since 1908.

Miss Campbell: You are referring to the proprietary drugs act?

Senator Sullivan: Yes.

Miss Campbell: These regulations would come under the existing Food and Drugs Act.

Senator Sullivan: I realize that. That is all right. In my presentation, as reported at page 155 of the *Debates of the Senate*, I made this statement:

> It is to retain the best features of the Proprietary or Patent Medicine Act while discarding those features which are out of date. This is to be accomplished by an as yet unwritten amendment to the Food and Drugs Act . . .

Have you got that?

Dr. J. Apse, Chief, Drugs Regulatory Affairs Division, Drugs Directorate, Health Protection Branch, Department of National Health and Welfare: Yes.

Senator Sullivan: Let me hear it.

Dr. Liston: It is not envisaged that there is an amendment necessary to the Food and Drugs Act for this particular set of regulations. We already have adequate powers in the Food and Drugs Act to make regulations with respect to proprietary medicines.

Senator Sullivan: That is clear enough. Thank you.

At the bottom of page 155 I said:

> It is, however, difficult to assess the total impact of this legislation without knowing the details——

which you have given now

> . . . of the proposed amendments to the Food and Drugs Act . . .

I think that was a fair question for me to put in my presentation and I think that what you have stated now will help to clarify that point.

Another point I raised was with respect to the continuous scientific review. Who is going to carry out the scientific review?

Dr. Liston: Officers of the Health Protection Branch.

Senator Sullivan: Who are these officers? Can you give me their names?

Dr. Liston: They are under the direction of Dr. C. Scott, who is the Director of that bureau.

Senator Sullivan: Yes, I know that. Has there been any consideration given at all to farming out the tremendous amount of work which the whole field will encompass, without increasing the personnel of the Health Protection Branch? Has there been any idea at all in the department to allocate this type of investigation to the various teaching hospitals and their pharmacy and pharmaceutical divisions?

Dr. Liston: The *modus operandi* of the Health Protection Branch is to seek advice from experts from universities, from industry, from whatever sources we have available to us. We ask for their advice.

Senator Sullivan: And from industry, too?

Dr. Liston: Yes. We have no predisposition to seeking advice from only one source. We have advisory committees

that provide us with a balanced assessment of any drug related problem.

Senator Sullivan: You can see how important that point is with this new legislation, and that is why I emphasized it so much in my presentation.

In the presentation that Dr. Morrison gave in Bermuda in September—and you can tell him this—it was very interesting to realize that he was such a student of Dickens. However, he brought out points which I think were very fair, and which I trust will be incorporated in this legislation, and I emphasize this: if we get responsible, factual, scientifically-based advertising, it should yield several benefits. No. 1, it will provide the consumer with choice; No. 2, it will inform the consumer about availability and use; No. 3, it will ensure that healthy competition exists, and that is important; and, No. 4, it will create economics of a scale which will result in lower prices.

I think that your legislation is going to go far to do that, at least I certainly hope so, but I can also see that you are going to have a terrible problem with these non-prescription drugs. One of my colleagues asked a question in the house the other day, "How is the ordinary Joe on the street going to know, when the non-prescription drugs are labelled, just what they have in them and how long they can keep on taking them?" I know very well from practical experience over the years that there are abuses which happen to these people who keep on buying drugs of that type from pharmacists. The great majority of pharmacists are honest, but some are going to keep on selling these. Do you feel yourself that the enumeration of the contents of that particular product is going to help allay the fears of the medical profession who have to handle these people as a result of over-dosages?

Dr. Liston: Basically, the attempt here is to provide medications which are needed for an individual who has a minor ailment. When the medication has a potential for creating adverse effects, when it is a very potent medication, it would not be incorporated into the proprietary medicines portion of the Food and Drugs Act and Regulations. Schedule F drugs, that is drugs that are normally available only on prescription, would not be available. Those medications which might have a propensity for abuse or which would be addictive would be excluded from these proprietary medicines. We are looking at a class of medication that is being made available with the label containing a list of the active ingredients so that if an individual seeking medication for a minor ailment knows at the same time that he is allergic to a certain chemical—because he may have had an unfortunate experience before—then he is in possession of the information to steer himself away from re-exposing himself to that same medication. So the whole question of allergic reactions would be dealt with amongst others.

Senator Sullivan: But how are you going to prevent the continual use of these?

Dr. Liston: The continual abuse, senator?

Senator Sullivan: Yes. I am speaking now of the patients who come to see you and they have taken aspirin, aspirin and more aspirin, or that wonderful thing that dissolves excess stomach acids at all times.

Dr. Liston: We will have a schedule of drugs which are prohibited for inclusion in the class of proprietary medecines so that if there are indications of an abuse situation, then when the Health Protection Branch people dialogue with the registrar of pharmacies or with the Canadian Medical Association we shall have the ability to have this ingredient listed or scheduled as one of the products not to be sold as a proprietary medicine.

Senator Inman: This may not be pertinent, at all, Mr. Chairman, but it is still a question that I should like to ask. There are many drugs which lose their potency after a certain period of time. I have known cases of people who have had medicine in their home for two or three years and who have still taken it occasionally. Are those medicines still effective at that time?

Dr. Apse: There are requirements in the regulations which provide for an expiry date to be placed on the label of a drug. The buyer should take a look at the date when he buys the drug. But if he has it in his house beyond the expiry date, that does not necessarily mean it has lost its potency, but it is a warning to the consumer that it may have lost its potency. It becomes a rather difficult matter if he has had the drug in his possession for two or three years. But if it has no expiry date marked on it, then it will probably retain its potency for quite a long time. It probably will still be very stable because many of these drugs are of the type that remain stable. For that reason they do not always require an expiry date.

Senator Inman: But if they do require an expiry date, it will be put on?

Dr. Apse: Yes. If they do not put it on, then they are in breach of the regulations.

Senator Macdonald: Mr. Chairman, as I understand it, this act is now being repealed but perhaps those things that are necessary will be brought forward in the regulations and will be retained. Are there draft regulations in effect now, or have you drafted any new regulations?

Dr. Liston: The regulations have been drafted and have been forwarded to the Department of Justice for their review and to ensure that they are in conformity.

Senator Sullivan: But we have not seen them. That was part of one of the first questions I asked.

Dr. Liston: We have not yet received them back from the Department of Justice.

Senator Macdonald: You mentioned that certain ones would be discarded, those that might be addictive or subject to abuse. But at the present time is there anything being sold, under the old act, that is dangerous to the public?

Dr. Liston: Drugs that are dangerous to the public are never allowed for sale as a proprietary or patent medicine. Here we are attempting to outline the provisions that would be included in the new section of the Food and Drugs Act so as to provide the same protection, so that there would not suddenly be an expansion in the number of these proprietary medicines which would include any medication which already had a need to be supervised by the health profession, whether pharmacists or physicians.

Senator Macdonald: Dealing with the subject of advertising drugs, I do not know if the Food and Drug people have the right under the act to censor advertising. As you know, some of it is ridiculous, particularly when you see somebody who has a terrible cold and takes a pill and in

five minutes he is better than he has been for years. It does not work that way, I can assure you.

Senator Sullivan: They come on so fast, you cannot see the penalty or the man who got it in the game.

The Acting Chairman: Do I understand your question to be as to whether there would be something done to regulate that form of advertising?

Senator Macdonald: That is right.

The Acting Chairman: And which would indicate that this type of thing is going to be illegal from now on?

Senator Sullivan: But it is not in the bill, senator, it is not in the bill at all. I asked that question in the speech I made.

Dr. Liston: The Department of Health and Welfare is quite concerned over the impact of advertising, some of it being of dubious quality, perhaps; and to that end we have initiated some rather extensive studies with a number of associates at the University of York where they are doing some extensive survey work on a national basis to determine what medications are being used by people in their homes, what medicines they have in their home pharmacies, et cetera. We propose to continue this study. The first aspect was a survey of the number of households to find out just what was there. The second stage of this study is an attempt to determine what led these people to purchase these medicines, whether it was advertising, word of mouth, the advice of a pharmacist or a physician, to try to determine what the role of advertising is and whether in fact it does lead to the over-use of certain classes or types of medication. This is an ongoing study and we anticipate having a completed report sometime before July of next year. This, then, will form the basis for us to look at the amount of control required to try to strike the appropriate balance.

Senator Sullivan: Was there not a comparable study made in the United Kingdom?

Dr. Liston: I am not fully conversant with all the details of that study, senator, but this is the first one being done in Canada. Our regulations or, indeed, our total situation with respect to the use of drugs is not entirely analagous to that of the United Kingdom. We feel it is mandatory that we should have this information before we can move forward with controls and regulations.

Senator Belisle: As a supplementary to that, Mr. Chairman, what will be done with the drugs to be discarded? What procedure is being followed to inform the druggist that he will not be able to continue to sell that particular drug?

Dr. Liston: There is no intention here of prohibiting a manufacturer from continuing to sell his product. It is proposed that basically a manufacturer will have the option of continuing for a period of time offering his product for sale as a proprietary or patent medicine, and as the manufacturer is able to undertake the changes either in labelling or to formulate a request to the Health and Welfare Branch of the Department of National Health and Welfare, he will then be able to come and ask for a certificate or registration which will permit him to continue with his product and offering it for sale as a proprietary medicine. We will receive from the manufacturer some basic information for this registration purpose. If, perchance, the formulation has some ingredients in it that are of concern to us because of new knowledge, we shall then have the authority under the Food and Drugs Act to ask the manufacturer for additional information to prove its safety and efficacy. It is only under those circumstances where there is reason to believe that a medicine is harmful or that it may not be effective, or where there is available in the world of literature some evidence of adverse reactions or adverse effects—that we would go in and ask for this continuous review process, and we would seek this additional information. But if we are talking about a relatively harmless preparation which has stood the test of time and has had a beneficial effect with respect to self-medication for coughs or colds or something of that nature, then under those circumstances the manufacturer slides over from a PPM product into a proprietary medicine at the time that he registers his intention to do so with us in the Health Protection Branch.

Senator Macdonald: But he must list the ingredients on the packaging.

Dr. Liston: That is correct.

Senator Macdonald: On that point and looking at the schedule to the present act Senator Sullivan has already mentioned this, and as Senator Bonnell mentioned when he sponsored the bill—I can see that it might be advisable to have the ingredients listed so that if there is an overdose or if there are adverse effects, then a physician will know what to treat the person for. But I have looked at that list and I cannot see where it is of the least benefit to the ordinary layman. Speaking for myself, I cannot even pronounce most of them.

Dr. Liston: The active ingredients must be listed that the manufacturer is including in his product to alleviate a cough or a cold or to act as a laxative or have some sort of beneficial effect. The intention here, as I mentioned before, is that if there are problems of allergies, then this could be dealt with quite easily because the patient would know what he has taken. If there is a case of an overdose or if, for example, a child in the home has taken some of this medication by accident, then at least the physician in the hospital will know from the label what that child has taken and it will be much easier for him to treat the patient or to take the appropriate action. These are some of the benefits.

Senator Macdonald: I can quite see that, but I would point out that you say on page 2 of the statement read to us this morning that:

> It should also be remembered that we are in an era of greater consumer awareness and the purchaser should be in a position to know what he is purchasing for his self-medication.

I agree with that, but the list of those drugs with the ingredients contained in them would not make any sense, so far as I can see, to the ordinary layman.

Dr. Liston: But that is a schedule, I believe, of drugs that cannot be offered for sale.

Senator Sullivan: Those are prescription drugs.

Dr. Liston: They may not be offered for sale as proprietary medicines. Those are the prohibitions.

Miss Campbell: Is that list annexed already to the Food and Drugs Act?

Senator Macdonald: It says the Proprietary Medicine Act.

Dr. Liston: You are referring to the existing schedule to the PPM Act.

Senator Macdonald: Yes.

Dr. Liston: These are medications where it is necessary, even mandatory, to list what the active ingredient is. Again it refers to the situation where these medications have a somewhat higher potency or have a more pronounced pharmacological effect, and this is the reason why, basically, it is necessary.

Senator Macdonald: I had in the back of my mind anything, say, on the labelling that would be an explanation of what the ingredients were or what action that product might have, other than simply a listing of the ingredients.

Senator Inman: Mr. Chairman, I would be interested in knowing something about cough medicines. For example, I have a chronic bronchial condition and I have tried almost everything, but some remedies do not have a very good effect. I was wondering about the people who might take too much medicine. For example, if the medicine is supposed to be taken five times a day, they might take it ten times. What do you do about those cases? Some of those medicines are pretty potent.

Dr. Liston: In all proprietary or patent medicines there is a rather extensive review that is undertaken by the Department of National Health and Welfare of the claims that are made for the medication and what it can be utilized for. We review those to make sure that there are not overstatements and so that they are factual. We also review the label and the package inserts to ensure that there is a proper listing of how frequently, the medication may be taken, for what indications and also what contra-indications there might be. A person who has a heart condition may be advised not to take a certain type of medication. There is also here what we call globally adequate directions for use. If there is any potential or any possibility of a person who might take twice the amount, since they have twice the amount of cough or whatever, we look at that and we try to build in enough safety so that even if the directions for use are not followed very closely the medication normally does not provide a health hazard. If it is so active that by doubling the dose there would likely be toxic effects or side effects and so on, then it would not be included in the proprietary medicines. It would then likely be an over-the-counter drug which would have to be bought from the pharmacist, so that in those circumstances the pharmacist could start to give some advice. If the individual were coming back repeatedly for a certain proprietary medicine and the frequency seemed to be too high, the pharmacist could tell that individual that it was not advisable. If the medication requires even stronger supervision, then we would place it on a Schefule "F" and it would be prescribed only by a physician.

Senator Inman: Are you telling me that all those cough medicines that are sold over the counter are perfectly safe?

Dr. Liston: Yes. If we had information indicating that they are not safe, they would not be offered for sale.

Senator Sullivan: Unless you take too much and you get sick, senator.

Senator Inman: This is what I am thinking about.

Senator Denis: You have tried them all, and you are still alive!

Senator Macdonald: There is no way you can prevent people from taking more medicine than they should, if they want it. That is so even with prescription drugs. If the prescription says to take one pill every four hours, if you want to you can take the whole boxful of pills.

Senator Sullivan: If you are given a prescription by a qualified physician, he writes the number to take and the intervals at which to take them, and you cannot get more of the prescription without either a further prescription or without the physician informing the pharmacist.

Senator Macdonald: But I am suggesting that you could take the whole prescription at one time if you wanted to. If you give me six pills and I am supposed to take one at a time, there is nothing to prevent my taking all six at the same time.

Senator Sullivan: In that case I would be dealing with a paranoid.

Senator Macdonald: You never know in your practice.

Senator Inman: Of course, if you go to a doctor and he gives you a prescription with instructions and you do not foolow them, then you are being very stupid. But I was thinking more of the things that are sold in trade stores, and they all keep drugs, don't they?

Senator Sullivan: Senator, you and I ave chronic conditions so we would probably be good candidates for acupuncture.

Senator Carter: Mr. Chairman, what is the position of the doctor who may have to prepare his own medicines? I am not sure if doctors still do that now, but it used to be the case in my province, and it is quite conceivable that on the Labrador coast, where there are no drug stores or facilities like that, the doctor would, in making his rounds, be passing out samples at his disposal or would be making up his own prescriptions. In effect, he would become the pharmacist. As I say, I know that doctors used to do this in my own province quite extensively. How does the doctor fit in under this legislation? Does the legislation place any restrictions on him at all?

Dr. Liston: This legislation would not in ny way impinge on or be related to that particular question, because a physician who is treating his patient has the authority or is able to formulate a particular product for an individual under his medical care.

Senator Carter: But the regulations require him to put certain things on the labels and all of that, do they not?

Dr. Liston: No. It is not a medication then that is being offered for sale, You see, that is part of the physician-patient relationship and eould not refer to these which are basically commercially available products intended for use actually with the minimum amount of supervision.

Senator Carter: I believe earlier the witness referred to a substance which may have been found to be harmful, and I would like to know who determines and by what means it is determined that a substance is harmful. For example, I recall that a few years ago cyclamates were the rage. They were being put into soft drinks, food and all sorts of things. Suddenly someone in the United States "discovered" that

cyclamates were terrible things, and all of a sudden they were cut off. Now they have "discovered" that that was all wrong and that cyclamates are all right. Who governs these things? Whose criteria do we use, ours or those of the United States? Are we governed by what they find south of the border or do we made up our own minds on the subject?

Dr. Liston: In all situations where there is concern over a particular chemical that is either a drug or a food additive, et cetera, the Health Protection Branch seeks whatever advsie there is available anywhere in the world. Sometimes the studies are undertaken in other countries; sometimes they are of such a nature that one must react very quickly to them. On other occasions we judge that it is advisable to undertake further studies in Canada to determine whether in fact the product is toxic or has certain adverse reactions associated with it, in which case we formulate a decision, a course of action predicated on the worldwide knowledge that is available.

We also have other sources of information about toxicity, such as the poison control centres. We have physicians reporting to us an adverse reaction or a toxic reaction, and we utilize their information base to undertake systematic reviews, as they are required, to see if it is necessary to adjust the status of certain medications. A medication may be moved from the proprietary medicines to a schedule. It may be moved to a different provision altogether.

Senator Carter: Let us take a certain substance that might not be much good. It does not do anybody any good, but on the other hand it doees not do anybody any harm. For example, take vitamin E. There is quite a controversy about that. A lot of people say it does not do anybody any good. They say, "If you want to take it, go ahead, because it won't do you any harm." So far as I know, I have never come across anything that has proved that vitamin E is harmful. Where do you stand with respect to a substance like that?

Senator Sullivan: Vitamin E has never been proved harmful by anybody.

Dr. Liston: Basically, the ingestion of any chemical which does not have a known benefit has the potential for being accompanied by an associated risk. Our philosophy in this area is to try to develop a risk-benefit ratio.

If we are convinced that there are no benefits . . .

Senator Carter: And no risks.

Dr. Liston: . . . then there certainly can still be some risks associated with it, if it is taken chronologically and so on. Our posture, then, with respect to drugs which are entirely ineffective is that we wish to preclude their being offered for sale. This does not even touch upon the question of fraud here, actually.

Senator Carter: Here again I am asking you whose criteria you use as to whether they are beneficial or not. Good cases can be made on both sides.

Dr. Liston: When there is some controversy of this sort we tend not to utilize the testimonial evidence.

Senator Sullivan: The hearsay.

Dr. Liston: It is possible with respect to many of these proprietary medicines or formulations that are developed by individuals, home remedies and so on, to obtain a great deal of testimonial evidence suggesting that the particular remedy is a marvellous formulation, that it rejuvenates, et cetera, et cetera. But we make our determinations only by reference to control studies, where we would look at people receiving a placebo or blank form of medication. It is a control study against an individual chemical and then you try to measure, normally, some altered physiological state.

Senator Carter: Do you acknowledge in your department any responsibility to determine the truth or otherwise of the controversy, or are you sitting back waiting for somebody else to carry out control studies?

Dr. Liston: Our philosophy in general is that we place the responsibility or the onus on the manufacturer to provide us with enough evidence to satisfy us that this medication has a certain therapeutic effect, that the claims that he makes for his product are justified on the basis of the studies with which he provides us. If he undertook a very small, limited study but undertakes to make a great variety of claims, then we would not permit this in the information that would accompany such a product. We would have our officers go back to the firm and say, "You have not proven this. You have not shown this to be effective for that indication. You are thus not permitted to make those claims or to advertise it in this way."

Senator Carter: Speaking of advertising, this bill does include advertising, does it not?

Senator Sullivan: No, not yet.

Dr. Liston: The bill itself does not touch upon advertising. I should address myself to this by saying that under the Food and Drugs Act we do have the control of advertising so that, since it is proposed that these proprietary medicines would be included in a specific portion of the regulations under that act, we would then have the control of advertising.

Senator Carter: That comes under the Food and Drugs Act.

Senator Macdonald: They have that under the present act in section 8. It is an offence to give any exaggerated claims, and so on. You have a right to regulate that under the present act.

Dr. Liston: Yes.

Dr. Apse: I believe section 9 of the Food and Drugs Act is almost the same, senator.

Senator Macdonald: One thing bothers me here. You mention in your statement that "certain drugs will not be permitted in proprietary medicines and these will be listed in a schedule." Do you have in mind now such drugs that will not be allowed to be used in proprietary medicines?

Dr. Liston: No. Basically, we are not looking initially here for a major change in those drugs that are permitted or not permitted. Our intention here is to provide the mechanism, and we will develop a schedule of drugs which may not be utilized but would tend to reflect the present situation in large measure.

Senator Sullivan: Mr. Chairman, don't you think, by this means you are attempting to carry out, that you are going to rid the market of a lot of ineffectual, so-called drug preparations? The manufacturers of them are automatically going to quit putting them on the market.

Miss Campbell: People will then see what they are taking.

Senator Sullivan: The manufacturer will just not put them out because people will know about them and will not take them. They should, anyway.

Dr. Liston: This is where this process of continuous review comes in. Basically, if there are no benefits from it then there are risks associated with taking drugs.

Senator Sullivan: Herbal medicines too.

Senator Macdonald: I notice under the old act where they define patent medicines they say those that are not listed in any of the pharmacopoeiae and go on to say

> ... or upon which is not printed in a conspicuous manner the true formula or list of medicinal ingredients contained in it.

At the present time there are some drugs which do list the ingredients. Would those come under the new regulations also?

Dr. Liston: If I have captured the essence of your question, senator, all medication must have stated on it the active ingredient and the weight per dosage form—whether it is a 25 milligram tablet or capsule—and the intention here is to remove a class of drug which in the past was not obliged to have the active ingredient listed. That is the major impact in this change.

Senator Macdonald: I notice you also mention that the provinces are being consulted in connection with their pharmacy acts too. I can see that it might be advisable to do so, but do you think that it is necessary to do so when you are acting under a federal statute?

Dr. Liston: The consultation with the provinces is primarily to alert the registrars of pharmacies, who have responsibility for the provincial pharmacy acts, to this change because most provincial legislation has a clause which in effect exempts proprietary medicines from being sold only in pharmacy outlets. So this will require some modification of provincial legislation, and it is, amongst other things, one of the reasons why we have had rather expensive consultations with the provincial registrars of pharmacies.

Senator Macdonald: The regulations which you say now being considered by the Department of Justice, do you think they will be available when this bill reaches the committee of the House of Commons? One of their committees will probably go into even greater detail than we have gone into, and I am wondering if they will have the regulations before them at that time.

Dr. Liston: Well, I cannot say when these regulations will be returned to us. All I can say is that we have had them in the mill for a considerable period of time. But they do require some extensive review under the Statutory Instruments Act.

The Acting Chairman: May I ask a question at this stage? How extensive are the regulations now in effect under the act we are presently acting under?

Dr. Liston: The Food and Drugs Act.

The Acting Chairman: It seems to me that they are very extensive and that they would occupy a great deal of space. Furthermore, is this something that is changing from time to time?

Dr. Liston: Yes.

The Acting Chairman: Because there is a question as to what is practical. I am often reminded of the powers that we seem to have to give to departments, and here I mention specifically the Department of Agriculture, for the same good public reasons. It is so often necessary to change them that if you waited to bring regulations back to Parliament in order to amend an act or a schedule to an act, then it would be a pretty cumbersome thing to have to deal with so far as enforcement is concerned.

Dr. Liston: Well, I have here in my hand a copy of the regulations under the food and Drugs Act, and you can see that it is pretty bulky. Obviously, they undergo extensive review because we are always making adjustments as new drugs become available. There is new information on them, information as to interaction between drugs, new types of schedules and new manufacturing and control facilities. There is a tremendous variety of items changed routinely in the course of our efforts to maintain these in a modern and updated state.

The Acting Chairman: I would like to point out too that whenever a change is made, then it must be done by order in council. After that it must be published, so those who are in the trade have access to that information and they are the only ones who can judge whether the change is good or bad. If the change is bad, then they will squeal. I know I would if I were in the position of counsel for the Proprietary Association of Canada.

Senator Sullivan: How long will that period of time be?

Dr. Liston: Depending on the nature of the changes envisaged, and here I am not referring specifically to this bill, but normally we have information letters sent out and we ask for comments. Then, if the changes that we have proposed receive no adverse comment, we go ahead or we modify them if we have had comment on them, and then they are gazzetted, this, in turn, provides an additional period of time for comment and for alerting the manufacturing association.

The Acting Chairman: Are there any further questions relating to this bill?

Senator Denis: Coming back to the question asked by Senator Inman as to the length of time during which a product retains its efficacy, it has been said that you should note the date when you buy the drug. But would it not be better if the date of manufacture were stated and also the length of time during which it would be effective? Because even if I note the date I bought the drug, it may still have been on the shelf for two or three months and we have no way of knowing that this drug is no longer effective.

Miss Campbell: I think what has been referred to is the fact that when you go in to buy a drug there is already a date on it to show how long it is good for. In most stores the things you buy, like milk or yoghurt, will have a date marked on them before which they should be sold. In other words, they have a date of efficiency. It has been done for most drugs that I have seen.

Senator Sullivan: It is done on all antibiotics.

The Acting Chairman: It is done on all insulin.

Dr. Liston: May I add that when we examine data received from a manufacturer concerning his product, he must now provide information on the shelf-life or the

stability of the product, and if the product is not stable, then the expiry sate that he must put on the label must reflect this lack of stability. The result is that, in general, medications will have this date to suggest that beyond that date it will have lost some of its potency, perhaps, or some of its effectiveness.

Senator Denis: It should be done on every label of every drug.

Senator Inman: What will happen when that date has passed? Will the people selling it take it off the shelves then?

Dr. Liston: For a drug which has an expiry date and when there is concern about its stability or its effectiveness—and the date has been placed on the label—then the manufacturer of that drug will go back to the pharmacy outlets and replace the material so that there is no outdated material left for sale.

Senator Inman: Are you telling me that they will go around to every drugstore in the country?

Dr. Liston: Well, it is illegal to offer for sale a product whose expiry date has passed. So the responsibility is primarily on the manufacturer to remove his product when the expiry date has passed. The Health Protection Branch have drug inspectors who go around and verify that, in fact, products offered for sale have not gone beyond the expiry date. This is a process of verification. We do not check every pharmacy every week or once a month, however. This type of close attention would be impossible, but we do have programs for monitoring to make sure that manufacturers are accepting their corporate responsibility to remove these products as required and as the expiry date is approaching on their products available in pharmacies.

The Acting Chairman: Are there any further questions to be directed to Dr. Liston or Dr. Apse? If not, I would like to get to another part of the discussion which would be to seek the advice of someone who may represent the pharmaceutical industry.

Senator Carter: Before we go on to that, I would like to clarify a point raised by Senator Macdonald with regard to advertising. In connection with advertising relating to a proprietary medicine covered by this act, do you lay charges under this act or under the Food and Drugs Act?

Dr. Liston: In the future, when the Proprietary Medicine section of the Food and Drugs Act is in force, if a manufacturer has registered his product as a proprietary medicine, then we shall lay charges under the Food and Drugs Act and Regulations. If in the interim it is a proprietary medicine and it is labelled as such, then it will have to come under the Proprietary Medicines Act.

Senator Carter: Where do you draw the line between advertising and promotion?

The Acting Chairman: That is a philosophical question.

Dr. Liston: I am not sure I can differentiate between them. Promotion may take the form of a detail man, working for a pharmaceutical manufacturer, who will be promoting a drug by going and visiting physicians and giving them samples of the medication, giving them copies of literature and whatever studies they may have done, and trying to explain for what indications this medication may be used. That is promotion.

Advertising is of a more general nature and can be in the form of having advertising to the health profession placed in Canadian Medical Association journals, or it can be advertising to the general public, in which case we are talking about television advertising and other things of that sort.

Senator Carter: But if a doctor wrote an article about a certain drug that he had used and found useful or valuable, and if that article were used by the manufacturer, would that article be considered as advertising or as promotion?

Dr. Liston: Generally speaking, if a physician has written a case study or a case report as to how he has treated a particular patient . . .

Senator Sullivan: In a recognized journal.

Dr. Liston: . . . in a medical or scientific journal, this is not considered as advertising. He is giving information of a scientific or professional nature. He is saying that he has observed a certain cause and effect. This would not be considered as advertising.

Senator Carter: And if the article were written for a medical journal it would not be considered either as advertising or as promotion. But if another magazine, a current magazine, reproduced the article, what would be the situation then? Would it be advertising or promotion, or what? Could you lay charges under it?

Dr. Liston: It would depend on what claims would be made and how they were phrased. Generally speaking, this would not be permitted advertising. If we were to take the statement of a physician who may have made some claims, some exaggerated claims for what he observed in an individual case, it would not be permissible for him to utilize that and reproduce it as a control study or case study proving the safety or efficacy of the medication. That would not be permitted. I might also add that this just does not occur.

Senator Sullivan: Mr. Chairman, Senator Carter, no reputable scientific journal will take as documentary evidence claims with respect to just one patient or one drug. No reputable doctor would make such claims. He has to carry out a controlled investigation. He is not promoting anything. He is simply giving to the profession at large his findings. He is a recognized man in his field. You can just as well accuse me of being an advertising man, if you want to.

Senator Inman: If I may ask one last question, what do the officials say with respect to drugs containing a large percentage of alcohol? I am thinking, for example, of people who are alcoholics who take these things.

Dr. Liston: Under the Proprietary or Patent Medicine Act there is a limit to the amount of alcohol that can be placed in the formulation. This is done specifically to avoid that sort of abuse. Certainly, when the new regulations are in force under the Food and Drugs Act similar concerns will be taken into consideration, because we will receive information from the manufacturer on what his formulation consists of. If it is 50 per cent alcohol, obviously it will not be permitted—or even much less than 50 per cent, I should say.

The Acting Chairman: I should like to put a question on that point myself. In my earlier days, quite a long time ago, I used to be involved in the drugstore business. In my innocence I was unaware of why people were buying so

much of these preparations for rubbing themselves. I remember very well that there were large quantities of the essence of lemon, the essence of almond and Jamaica ginger, as well as some of the patent medicines which at that time has great "beneficial effect" due to the fact that they had a large percentage of alcohol. What control is there on the essence of lemon, the essence of almond and Jamaica ginger today? Is it a provincial responsibility to see that alcohol is not illegally sold in this guise?

Dr. Liston: If the products are registered under the Proprietary or Patent Medicine Act, or if they are products which would be registered there, then certainly the alcoholic content is controlled. In that respect the alcoholic benefits are no longer available.

Senator Macdonald: Subsection (b) of section 8 covers that.

The Acting Chairman: You have nothing to do with the sale of the essence of lemon, do you? That must come under some other department. It is not a proprietary or patent medicine.

Dr. Liston: If no claims are being made for it that it can remedy a certain situation, it would not come under the Proprietary or Patent Medicine Act.

Senator Sullivan: Mr. Chairman, I do feel that we require an amendment here, but perhaps you would like to wait until we have finished with the bill.

The Chairman: We will deal with that in a moment. In the meanwhile, if we are through asking questions of Dr. Liston and Dr. Apse, perhaps we could hear from Mr. R. E. Curran, who is no stranger around here. Mr. Curran is counsel to the Proprietary Association of Canada. Perhaps Mr. Curran would care to make an opening statement.

Dr. Apse: Mr. Chairman, before Mr. Curran begins his remarks, I should like to point out that he is the dean of the regulations as they presently stand. He has, in the past, done a great deal of work on those regulations. I hope Mr. Curran does not mind my interrupting.

Mr. R. E. Curran, Q.C., Counsel, Proprietary Association of Canada: Mr. Chairman, honourable senators, I am glad to have the opportunity to say a few words in support of this proposed bill. In the first place, I represent the Proprietary Association of Canada, which is probably the oldest trade association in Canada. It represents, I would say, 80 per cent in volume of the proprietary medicines registered under the Proprietary or Patent Medicine Act, which are now being sold. We heartily support the purpose of this legislation. We have for a long time—I think something like 20 years—been advocating a change which would permit the disclosure on the label of the active medicinal ingredients of proprietary medicines. Therefore, we welcome the proposed change which will permit the manufacturers who belong to the association to disclose, with pride, the formulae and the ingredients of their particular products.

Senator Sullivan mentioned something like 2,000 proprietary products. Our association does not represent 2,000. We represent a limited number. However, that limited number constitutes a volume of about 80 to 85 per cent of the volume of proprietary medicines which are presently being sold.

The association has had a long tradition of cooperation with the department. We work closely with the department and we have had many discussions with respect to the proposed legislation which we heartily support.

I should like to emphasize at this point what Senator Sullivan has said. We have not yet seen the regulations and are therefore only going on the basis of what we have been told, namely, that this will encompass the best features of the present legislation and permit the registration of products which traditionally have been registerable through the Proprietary or Patent Medicine Act.

The changeover, of course, will be to transfer registration to a different act, the Food and Drugs Act, and we welcome that opportunity to comply with the regulations which we assume will provide for the mechanism of registeration, the supervision of the formulation and of the claims.

I think there is one point I should emphasize here, that in seeking registration even under the Proprietary or Patent Medicine Act the manufacturer subjects himself to preclearance of his formula and of the claims which can be made for his product. His packaging has to be approved, his labelling has to be approved and his advertising has to be approved.

The Proprietary Association of Canada recently formulated a guide of advertising practices which has been endorsed by the department as constituting a step forward in more effective control of drug advertising to the general public. I think it is appropriate to mention that, and to emphasize the reputation and reliability of the association in trying to protect the public with safe and effective medicines for self-medication and self-diagnosis.

I do not think I need to make any point about the value of self-medication. It is endorsed by all the medical professions around the world because, without self-medication the strain on the health resources team would be an intolerable one. The point is that proprietary medicines are advertised for the symptomatic relief of minor ailments, and very great care is exercised in the department to make sure that it is only products related to minor ailments and symptomatic relief which are permitted to be registered and sold.

Under the present law the products which are registered are sold subject to an annual licence, and that licence, of course, can be revoked or not renewed. So there is absolute control over the various products which are being offered to the public.

We are assuming that much the same principle will apply under the new legislation. Therefore, we have no fears, even though we have not seen it, that the legislation will not prove to have a workable set of regulations and further the aims and objects of the association in providing to the public safe effective medications for the treatment of minor and symptomatic ailments.

I was very glad that Miss Campbell suggested an amendment to bring the bill into force by proclamation.

Miss Campbell: May I just point out, Mr. Chairman, that there is still some discussion going on with respect to the exact wording of that proposed amendment and whether it should or should not be by proclamation. We are just waiting for word on that very point now.

Mr. Curran: Mr. Chairman, our preference would certainly be for proclamation, for a very good economic reason. The proposal, which we have not seen yet, involves virtually the complete re-tooling of the proprietary medi-

cine industry. It means that all of the products which are now registered and which will be registered, will have to be re-packaged and re-labelled, and with the present shortage of essential packaging materials—bottles, cardboard cartons, and so on—and with printing and art work, because all the labelling will have to be redesigned with new art work, this presents a great many difficulties. Believe me, from my experience and the experience of others in the industry, while a year may seem quite a long way off it is by no means a long way off when you come to a complete re-tooling such as will be required here. Of course, we are also anxious for economic reasons to avoid wastage of packaging materials. For the last year or so, since the energy crisis situation developed, the manufacturers of proprietary medicines have had to order more than ample supplies, because you can no longer depend on a local order on a short-term basis. The industry is perhaps overloaded in certain respects with inventories of products which comply with the Proprietary or Patent Medicine Act now, but on the date that this bill becomes effective those labels and cartons will be obsolete.

I will not get into the question of whether they can be legally sold, but there will be a great deal of obsolescence in terms of present stocks of materials which have been labelled and which have been sold in conformity with the Proprietary or Patent Medicine Act.

It was indicated to us today that there would be no substantial change in the control, except under a different act, of the class of products which have been registerable in the past. I think it is most important to keep in mind the length of time, the lead time, which is required. I can assure you that the association will not drag its heels on conforming to the new legislation. It is our desire that we should bring ourselves under that with the utmost speed. However, there may be physical difficulties through shortages of supplies and materials which will make it very difficult to comply.

There is one other factor which perhaps is relevant, although not as important at the moment, and that is the fact that all of the provinces will need to pass amending legislation to provide for the changeover and the continuous sale of such products in non-drug store outlets. We can hardly dictate the speed at which the provinces will move. We are hoping that maybe January 1 will be a good date for that purpose, but, on the other hand, it may be that a particular province, for its own particular reasons, will not have been able to amend its legislation by that time. If that were the case, it would create great disruptions in the industry, to say nothing of public inconvenience, if people are no longer permitted to buy certain stock products which they have traditionally been able to buy in non-drug store outlets.

If I may say so, honourable senators, I have submitted to the clerk a form of amendment which would provide for the bill to come into force on the basis of a proclamation, but, as Miss Campbell has pointed out, there wIll be further discussion on this point. As I have indicated, our preference would be for that procedure, but if a more extensive date were suggested, then we would certainly want to consider that to see if it is realistic in terms of our ability to conform to the changeover contemplated by the regulations.

The Acting Chairman: Mr. Curran, is this the last point that you are interested in? If it is not, then please tell me, because I would like to suggest to you that there is still confusion between the Department of National Health and Welfare and the Department of Justice as to the appropriate amendment. It is still in a fluid condition. The departmental officials were hoping that this would have been cleared up before the meeting this morning, but it has not been.

So I am going to suggest to the committee, since you have your case on the record now, and I am sure it has been listened to very carefully, that we postpone further consideration of the bill itself until some time next week, and ample notice will be given as to the date, at which time we will be in a position to have a combined judgment of the departmental officials on this point. So, is it agreed, honourable senators, that we postpone consideration of the bill until the next meeting of the committee?

Hon. Senators: Agreed.

The Acting Chairman: Thank you very much, gentlemen.

Senator Denis: Mr. Chairman, before we adjourn may I revert to the item related to the nomination of a permanent chairman? I would be very happy to have you as chairman, because you have done a very good job. I have a good suggestion. I know an able senator who is willing to accept that position, and so I want to nominate Senator Carter, who would be willing to assume those responsibilities.

The Acting Chairman: Honourable senators, you have heard the motion of Senator Denis. Is it agreed that Senator Carter be elected chairman of this committee?

Hon. Senators: Agreed.

The Acting Chairman: There is another matter I have on my mind. It is the practice to elect a deputy chairman, and perhaps Senator Carter would have some suggestions in this regard.

Senator Carter: I would like to nominate Senator Lamontagne as deputy chairman. As you know, he has been chairman of this committee for several years now but he is also chairman of the Special Senate Committee on Science Policy. The Science Policy Committee is going to be very, very busy this year and I understand that this committee will also be very busy because of the number of pieces of legislation to come before us. It is expected that we will also have before us legislation arising out of science policy, and I think Senator Lamontagne would be the appropriate person to preside over its consideration.

The Acting Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Acting Chairman: Just one other matter. May I suggest, therefore, that we leave it to the chairman to consult with the whips on both sides of the house with regard to the nominating of a steering committee?

Hon. Senators: Agreed.

Senator Denis: And I hope you will not arrange meetings for the same time as the meetings of other committees where the same senators are members of both committees.

The Acting Chairman: I think Senator Macdonald should consult with his opposite number on that because I think it is a very serious situation.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT

1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, Chairman

Issue No. 2

THURSDAY, NOVEMBER 7, 1974

Second and Last Proceedings on Bill S-9,

intituled:

"An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act"

(Witnesses—See Minutes of Proceedings)

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THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C., *Deputy Chairman.*

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Bélisle, R.	Inman, F. E.
Blois, F. M.	Langlois, L.
Bonnell, M. L.	Macdonald, J. M.
Bourget, M.	McGrand, F. A.
Cameron, D.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, J.	Smith, D.
Fournier, S. (*de Lanaudière*)	Sullivan, J. A.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate of Tuesday, 22nd October, 1974:

"With leave of the Senate,

The Honourable Senator Sullivan resumed the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator McGrand, for the second reading of the Bill S-9, intituled: "An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks 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 Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

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

ROBERT FORTIER,

Clerk of the Senate.

Minutes of Proceedings

Thursday, November 7, 1974.
(2)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9.40 a.m. for further consideration of Bill S-9, intituled: "An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act".

Present: The Honourable Senators Carter (*Chairman*), Denis, Inman, McGrand and Neiman. (5)

The following witnesses were heard in explanation of the Bill:

Miss Coline Campbell, M.P.,
Parliamentary Secretary to the Minister of National Health and Welfare;

Dr. B. Liston, Acting Assistant Deputy Minister,
Health Protection Branch,
Department of National Health and Welfare;

Also heard:

Mr. R. E. Curran, Q.C.,
Counsel to Proprietary Association of Canada.

In attendance:

Dr. Jan Apse, Chief of Regulatory Affairs Division,
Drugs Directorate, Health Protective Branch,
Department of National Health and Welfare.

Upon motion of the Honourable Senator Denis, it was *Resolved* to amend the Bill as follows:

Page 1: Strike out clause 3 and substitute therefor the following:

"3. This Act shall come into force on the first day of July, 1976".

On motion duly put it was *Resolved* to report the said Bill as amended.

At 10.50 the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,

Clerk of the Committee.

Report of the Committee

Thursday, November 7, 1974.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill S-9, intituled: "An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act" has, in obedience to the order of reference of Tuesday, October 22, 1974, examined the said Bill and now reports the same with the following amendment:

Page 1: Strike out clause 3 and substitute therefor the following:

"3. This Act shall come into force on the first day of July, 1976."

Respectfully submitted.

Chesley W. Carter,

Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, November 7, 1974

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill S-9, an Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act, met this day at 9.40 a.m. to give further consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, I see a quorum, so now we can get down to business.

Senator Denis: Mr. Chairman, before we start, would it be possible to have someone, either the clerk of the committee or the chairman of the committee, look into the names of those who are members of the committee? I say that because there are members of this committee who also belong to one or more other committees and at times it is hard to get a quorum, particularly if you have two or more committees meeting at the same time. We have to choose one or other committee, and then you find that one committee is lacking a quorum. Therefore I wonder if more care could be taken when setting down the times of committee sittings so as to facilitate those senators who are members, as I said, of two or more committees. Perhaps one committee could be set down for a time that is an hour later than the other.

The Chairman: I quite agree that there should be more co-ordination in timing the sittings of committees. At the present time nearly every senator is on three or four committees.

Senator Denis: I know one senator who is a member of five committees.

The Chairman: I do not think that can be avoided altogether, particularly where our Conservative colleagues are concerned because they have such a small number. Each one of them has to serve on quite a number of committees. But I agree that there certainly should be better co-ordination so far as timing is concerned. However, I would point out that this morning is rather an exception because, as you know, the Immigration bill was delayed much longer than was necessary, and we thought that consideration of this present bill would be completed at our last meeting. The result is that we are now sitting this morning and we are faced with the problem of trying to report these bills back before the end of this week. That has left everything piled up until this morning.

Anyway, honourable senators, I gather that this meeting will not be very long because we have before us Bill S-9, which was discussed thoroughly at the last meeting and then was left over mainly for the purpose of considering a proposed amendment.

We have with us this morning Miss Coline Campbell, representing the ministry, and I am going to ask her to introduce her staff in case there are some senators here this morning who were not here at the last meeting. I shall also ask her to explain the amendment.

Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare: Honourable senators, I have two gentlemen from the department with me this morning, Dr. Liston and Dr. Apse. They were here last week.

If I may I should like to give you a very brief summary of what happened last week.

This is a bill to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act, and what it is really doing is simply transferring everything that was in the Proprietary or Patent Medicine Act over to the Food and Drugs Act so that there will be a greater element of control. That is to say that all the ingredients of proprietary medicines would be known to the public. In other words, it is forcing the manufacturers of these medicines to have somewhere on the labels, and by a certain date, the contents or the ingredients of the medicine.

I do not really want to go into it in detail again, but there is nothing new except for the disclosure. Here I am of course referring to over-the-counter drugs, drugs that are sold either from a shelf in the grocery store or in the drugstore but which are non-prescription drugs.

The reason we got bogged down at the last meeting was that we wanted to present an amendment to the Senate committee so as to avoid, perhaps, having to come back later to the Senate for this amendment. It was very kind of your chairman to allow us to meet again today on that proposal.

The amendment would be to clause 3 of the bill, and instead of:

> 3. This Act shall come into force on the first day of January, 1976.

we should like to substitute:

> 3. This Act shall come into force on the first day of July, 1976.

The Chairman: You are just substituting "the first day of July" for "the first day of January".

Miss Campbell: Yes.

Senator Denis: Mr. Chairman, should we proceed clause by clause? We heard the witnesses in detail at the last meeting, so I suggest that we proceed clause by clause. I do not think we need to hear further from the witnesses.

The Chairman: We have another witness with us this morning who was also with us at our last meeting, and that is Mr. Curran, counsel to the Proprietary Association of Canada.

Mr. Curran, do you have anything you wish to say at this stage?

Mr. R. E. Curran, Q.C., Counsel, Proprietary Association of Canada: Mr. Chairman, I should like to say a few words, if I might be permitted to do so.

When I was here last week I indicated the support of the association for the purposes of this bill. However, we have not as yet seen the regulations, and we are assuming that, as Miss Campbell points out, the regulations will simply be concerned with the transfer from one regime to another for the purpose of registration only under the Food and Drugs Act rather than under the Proprietary or Patent Medicine Act. In fact, our association has been anxious that this should be done and we therefore heartily support the purpose of the legislation.

The point, however, I wish to address myself to this morning relates to the effective date of the coming into force. I pointed out last week the rather gigantic problem involved in the preparation of all new labels. There are something like 2,000 proprietary products now registered, and all of those will have to be re-registered and brand new labels will have to be printed. It is very difficult to predict exactly now what effect the energy crisis, if there is one, will have on the situation so far as the change-over to new labels is concerned. It means new art work, new packaging materials and maybe new containers—there are a whole lot of things that have to be done; and while we would do our utmost to meet the July 1st date we feel it is a little on the tight side because of the many things over which we have no control and which make it difficult for the association to make an orderly change-over. We therefore hoped that a later date might be proposed such as, perhaps, the end of September. We do not think that this would present any problem to the department; in fact it might help the department, to have a little extra time. Therefore our preference would be for a date "on proclamation", which would give us the comforting time we need. However, if a fixed date is to be recommended, then I would strongly suggest that the date be somewhat later than July 1st.

Frankly, we do not see why there is this fixed date of such short duration. It may seem to be a long time, but where industry is concerned it is a not a long time when you consider the problems involved in preparing all new labels. It is a retooling job, if I may say so. Some years ago when the new labelling regulations were introduced for the food industry, two years were given for the change-over. That was in the Packaging and Labelling Act. We think that is a more reasonable period of time, and if the date were fixed at, say, September 30th we would feel that the extra three months would be of great value to the association in dealing with this problem.

I should also point out that it is the custom in Canada for many industries to close down their plants for a couple of weeks or three weeks during the summertime, so there would be six weeks taken out of the period if that should happen. There is also the problem of possible strikes and labour upsets, and all we want to do is to be on the safe side so that we can have an orderly change-over and not be crowded out at the last minute and find ourselves faced with a situation over which neither we nor the government has control.

That is the whole purpose of my presentation, Mr. Chairman. We would strongly prefer a later date for the reasons I have indicated. I want to make it quite clear again that we are not at loggerheads in any way with the representatives; it is simply a matter of working out what is, in our view, best to effect an orderly transition, and I think the department should heed the advice of industry because they are the ones who have had most experience and have the greater problems to contend with. That is the reason I would ask for a later date, if somebody would be prepared to support that.

I do not think I need say any more, Mr. Chairman, but if there are any questions I would be glad to answer them.

The Chairman: Thank you, Mr. Curran. Have you a reply to that, Miss Campbell?

Miss Campbell: Perhaps Dr. Liston would answer that.

Dr. B. Liston, Acting Assistant Deputy Minister, Health Protection Branch, Department of National Health and Welfare: Thank you, Mr. Chairman. We have had, obviously, some extensive dialogue with the manufacturing industries involved, and we have discussed some alternative proposals with regard to time. All of these discussions were predicated on when it would be feasible to implement these changes, and it was indicated to us that anything less than 18 months would have created some very serious problems; but I believe that in our more formal discussions with the Pharmaceutical Association of Canada it was indicated to us that 18 months would be a date, which would, although tight, provide adequate lead time for these changes in labels. We submit that the industry has had some discussions with the Health Protection Branch. These were held, I think—and correct me, Mr. Curran, if I am wrong—in September of this year; so that there has been general knowledge that this change was coming. We therefore feel that although the specifics of the regulations are perhaps not known to the industry at this point in time, they have been alerted to the fact that there will be some changes required.

We would hope that the regulations would be in place by late 1974, or at the very beginning of 1975, and with this element of contact that has occurred, plus the 18 months for the transition period, we feel that this would probably provide adequate time for the manufacturing industry to make these changes.

Mr. Curran: Mr. Chairman, may I just add a point here? The suggestion of 18 months as being the minimum time that we require was submitted to Dr. Liston. Since that time we have made a short survey in the industry of the people who will be most affected, namely, those who have the most products, and they will have the biggest problem in the change-over. Their indication to us was that a longer lead time would be very comforting, for reasons which I think are self-apparent, and so that is the only purpose I have in speaking the second time, namely, because we did at one time indicate 18 months. Since then, however, many of our members have indicated that they would very strongly prefer a little longer time for safety purposes, and to avoid any wastage of present packages. The time will come when these things are obsolete on the shelf, and there could be a heavy

wastage of materials. We are anxious to avoid wastage if we can.

Senator Inman: So in the meantime we buy the ones that do not have the ingredients marked on them.

Senator Denis: I suggest that we proceed with the bill clause by clause.

The Chairman: Shall clause 1 carry?

Honourable Senators: Carried.

The Chairman: Shall clause 2 carry?

Honourable Senators: Carried.

The Chairman: Shall clause 3 carry?

Senator Denis: Mr. Chairman, I move:

That Bill S-9, An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act, be amended by striking out clause 3 thereof and substituting therefor the following:

"3. This Act shall come into force on the first day of July, 1976."

Senator Inman: I second that.

The Chairman: The amendment is now open for discussion.

I would like to ask Dr. Liston a question. You say you consulted the industry. Mr. Curran says he represents the association. Does the association include all the industry, or were your consultations with the association?

Dr. Liston: Our consultations were with the association, basically.

The Chairman: Another question. Is there any particular objection to having this act come into force on proclamation, rather than on a specific date? What is the reasoning behind that?

Miss Campbell: I think I can answer that, Mr. Chairman. It is just that we wanted a definite date on this so that everybody would know what it was, and so that there would be no fooling around and extending it beyond that date.

The Chairman: I take it, if the industry can show that we are asking them to do something impossible, then this date can be changed later by amendment.

Miss Campbell: Yes.

The Chairman: Are there any further questions?

The amendment is:

3. This Act shall come into force on the first day of July, 1976.

All in favour?

Honourable Senators: Carried.

The Chairman: Shall the title carry?

Honourable Senators: Carried.

The Chairman: Shall I report the bill as amended?

Honourable Senators: Agreed.

The Chairman: It is agreed that we report the bill as amended.

Miss Campbell: Mr. Chairman, I would just like to say thank you very much for taking this extra time and meeting again today for us.

The Chairman: Thank you very much for coming here and answering our questions.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT

1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 3

TUESDAY, NOVEMBER 19, 1974

Complete Proceedings on Bill C-4, intituled:

"An Act to amend the War Veterans Allowances Act and the Civilian War Pensions and Allowances Act"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

28353—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C., *Deputy Chairman.*

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Blois, F. M.	Inman, F. E.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Choquette, L.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault
*Flynn, J.	Smith, D.
Fournier, S. (*de Lanaudière*)	Sullivan, J. A.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate of Tuesday, November 19, 1974:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Cook, for the second reading of the Bill C-4, intituled: "An Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances 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 Carter, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

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

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, November 19, 1974

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 3.25 p.m.

Present: The Honourable Senators Argue, Blois, Carter (*Chairman*), Choquette, Croll, Denis, Fournier, Inman, Langlois, Macdonald, McGrand, Neiman and Norrie. (13)

Present but not of the Committee: The Honourable Senators Bélisle, Benidickson, Fournier, Prowse and Quart. (5)

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

The Committee proceeded to the consideration of Bill C-4, "An Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act".

The following witnesses were heard in explanation of the Bill:

Mr. H. Hanmer, Director,
Service Bureau,
Royal Canadian Legion; and

Mr. D. M. Thompson, Chairman,
War Veterans Allowance Board.

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

At 4.15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Tuesday, November 19, 1974.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-4, intituled: "An Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act" has, in obedience to the order of reference of Tuesday, November 19, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Tuesday, November 19, 1974

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-4, to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act, met this day at 3.25 p.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have just had referred to us Bill C-4, an Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act. We have with us this afternoon from the War Veterans Allowance Board: Mr. Don Thompson, Chairman; Mr. J. U. Doucet, Deputy-Chairman; Mr. J. P. Gagné, Executive Director of Operations; and Mr. E. Keenleyside, Chief, Finance and Administration. Also with us today is my old friend Mr. Bert Hanmer, the Director, Service Bureau, Royal Canadian Legion.

Honourable senators, on November 18 I received a letter from Mr. Hanmer which sets forth the position of the Legion with respect to this bill. I think it would save time if I simply read the letter into the record. We could then hear from Mr. Hanmer if he wishes to make any supplementary remarks, and we could then proceed with the questioning. Is that agreeable?

Hon. Senators: Agreed.

The Chairman: Mr. Hanmer's letter is addressed to me as Chairman of the Standing Senate Committee on Health, Welfare and Science and refers to Bill C-4, an Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act. The text of the letter reads as follows:

Dear Senator Carter:

The Royal Canadian Legion welcomes Bill C-4, which is presently under consideration by the Senate.

The amendments included in this Bill will effect improvements in the legislation which our Organization has previously sought, namely:

1. quarterly escalation based on the Consumer Price Index, rather than annual escalation;

2. basing of the escalation on the permissive income ceilings, instead of on the rate of allowances;

3. recognition of a child of a widow or widower attending an educational institution up to age 25, and

4. allowances for the children of recipients—this amendment is particularly welcome.

We note other changes in Bill C-4 involving equality of status between male and female veterans. These we feel sure will also be well received.

The Royal Canadian Legion does not wish to delay passage of this Bill but we would like to place on record a number of other improvements which we would like to see enacted soon.

1. *Establishment of a Single Scale of Income*

Currently there exists a variety of income levels for recipients of the Allowance. For example:

—a single veteran under 65 years who has no income but Veterans Allowance, will receive, when the new legislation becomes law, a monthly rate of *$183.66* effective 1 October 1974;

—a single veteran who has some income from other sources, such as disability pension, and who still qualifies for War Veterans Allowance, may have a monthly total of up to *$238.66*;

—a single veteran over 65 and qualified for Old Age Security will receive *$238.66*.

The Royal Canadian Legion would like to see everyone treated the same and the level for all single recipients set at the figure of $238.66 (The comparable figure for married veterans would be $412.90.)

The Assistance Fund is available to supplement the recipient's income when it is at the lowest level, if need can be established on the basis of a prescribed formula. This provision would become unnecessary with the establishment of the standard scale of income.

2. *Removal of the Canadian Residence Requirement for Qualified Applicants Living Abroad*

Currently Canadian veterans living out of Canada can only qualify for benefits by returning to this country for one year and then subsequently leaving while a recipient of benefits. Those residing out of Canada feel that this arrangement does not properly acknowledge their wartime contributions to this country.

The Royal Canadian Legion believes that otherwise qualified persons should not be ineligible because of residence out of Canada.

3. *Qualifying Service in the United Kingdom in World War I*

An otherwise qualified veteran must have served in the United Kingdom for 365 days prior to 12 November 1918. Such veterans feel let down by the failure of the Government to recognize their willingness to serve overseas during hostilities.

The Royal Canadian Legion believes that in view of the advanced years of the majority of these veterans, they should now be treated in exactly the same fashion as those who volunteered for overseas service in World War II. This would mean recognizing any service in

the United Kingdom before 12 November 1918 as qualifying service.

4. *Elimination of the Age Requirement for Widows*

Widows of qualified veterans or recipients must be 55 years of age or, if under that age, permanently disabled and unable to work before they can get Widow's Allowance. Currently widows who cannot qualify because of age and who cannot get work, are obliged to seek social assistance from provincial governments. Widows concerned maintain that their husbands undertook honourable service for Canada, and they should be eligible for benefits under the War Veterans Allowance Act and Civilian War Pensions & Allowances Act, especially where there are dependent children, without having to wait until they are 55.

The Royal Canadian Legion therefore proposes that the age reference be eliminated, and that eligibility to Widow's Allowance be determined solely on the basis of financial need.

5. *Service on Deep Sea Rescue Tugs*

The number of men who served on deep sea rescue tugs was small. They performed a gallant service, often in extremely hazardous conditions, when they proceeded far out to sea to rescue vessels disabled by enemy action. They are currently excluded from the benefits of the Civilian War Pensions & Allowances Act by virtue of the narrow definition of "ships" as contained in that Act.

The Royal Canadian Legion therefore proposes an amendment to the definition of "ships" so as to include not only vessels carrying cargo or passengers, but also deep sea rescue tugs.

Our Dominion President has proposed the establishment of a Joint Study Group to review these and other outstanding War Veterans Allowance matters, as was done in the case of the Basic Rate of Pension in 1972. Such a group would consist of persons nominated by the Minister of Veterans Affairs from his Department and the War Veterans Allowance Board, and veteran members nominated by our President representing all Veterans' Organizations. The previous Group served an exceedingly helpful role in connection with the establishment of a new basic rate.

Your Invitation to attend Tuesday's meeting is appreciated. I will be prepared to answer questions or to provide more details regarding the Legion position, as may be required by the Committee.

Yours sincerely,

And it is signed "H. Hanmer, Director, Service Bureau."

I do not know if you wish to say anything to supplement your letter, Mr. Hanmer.

Mr. H. Hanmer, Director, Service Bureau, Royal Canadian Legion: Thank you, Mr. Chairman.

Honourable senators, the Royal Canadian Legion greatly appreciates the opportunity to appear before this committee, and to present its views on some of these subjects in brief form. We have no desire to delay the processing of this bill and we made this adequately clear, I think, when we appeared before the committee in the House of Commons. At the same time we did not wish to let go by the opportunity to bring to the attention of our legislators the changes which we see as being desirable in this legislation in the future. We realize that this cannot be brought about in the bill that is presently before you, but at the same time we do feel that these issues are very important, particularly the one dealing with the equalization of war veterans' allowance payments, which we would very much like to keep active.

We feel that one way this might be done, Mr. Chairman, would be by the appointment of a committee such as our Dominion President has mentioned in his submission to the other committee, and which is mentioned in this letter. This would be an on-going committee consisting of public servants and members of veterans' organizations, and would go deeply into all aspects of the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act. Hopefully, from this might emerge a report which the legislators could work on with a view eventually to bringing down all the desirable changes in this legislation which we and other veterans' organizations have been seeking for a number of years.

I have no desire to delay matters any further, Mr. Chairman, except to introduce my colleague Mr. Ed Slater, from my staff at the bureau, who is here with me.

The Chairman: My good friend Don Thompson is here. Have you a statement you would like to make on the act?

Mr. D. M. Thompson, Chairman, War Veterans Allowance Board: No, Mr. Chairman.

Senator Croll: I'll have him say something in a minute, don't worry!

The Chairman: We are open now for questions.

Senator Croll: If I may, Mr. Chairman, this is the first time I have ever seen Mr. Thompson before the committee. I have seen you, Mr. Thompson, often on other occasions, when you did not, in my opinion, ask for enough. Let me see if I am correct. You said $238 was the recommendation for all single veterans, did you not?

Mr. Hanmer: This is our recommendation for the single scale.

Senator Croll: Yes, $238. If I multiply that out, that means about $2,850. Will somebody multiply that and see if I am right in saying $2,850? It sounds close. I just multiplied by twelve.

Mr. Thompson: I think, sir, with due respect, Senator Croll is assuming that I am part of the Legion delegation . . .

Senator Croll: No, no; I know who you are. I am just asking the questions, because you have to deal with it. I mean, you are on our side in this case.

The Chairman: You are taking Mr. Hanmer's figure and are asking Mr. Thompson questions on it.

Senator Croll: Well, all right, Mr. Hanmer. Let us get it right. Has somebody multiplied it?

Mr. Hanmer: It is $2,866.

Senator Croll: That is right. Do you remember that in the inquiry that was made last year you established a method for calculating a poverty line, which was half of the average income for a family of four? That was one of the principles in the findings of the committee, as set out in the report.

Mr. Hanmer: In the poverty committee?

Senator Croll: No. I am referring to the veterans' report. Do you remeber that report?

The Chairman: Which report is that?

Senator Croll: Last year there was a committee established to deal with veterans' problems, and they brought in a report.

Mr. Hanmer: We had a committee, sir, that dealt with the basic rate of disability pension.

Senator Croll: That is right, and on that basis they established a principle by which they based it on half the average income for a family of four.

Mr. Hanmer: The pension committee determined that the rate should be established on the average of five categories of public servants, and the salaries paid to them, and this would be the basic rate for a single, one hundred per cent pensioner, after income tax had been taken into account; but this, of course, dealt with disability awards rather than with war veterans' allowances.

Senator Croll: It is this question of the allowance I am concerned with, and the amount. I recall the principle very clearly, but I may be mistaken. I know the five categories, but in fixing the poverty line they not only accepted it, but I remember reading the speeches in the House of Commons commending it. I could be wrong, but I doubt it very much. You do not remember it?

Mr. Hanmer: No, sir.

Senator Croll: All right. Somebody else go ahead. I will see if I can recall it.

Senator Inman: I want to ask a question about people who have a disability, who, when they came out of the services, did not speak of it because they wanted to get out instead of being kept in. The gradually the disability got worse and worse. Several people have been to me about this sort of thing, and nothing can be done because they came out of the army with a clean bill of health, when in fact they were disabled. Now, what can be done about people like that?

The Chairman: Are you asking Mr. Thompson?

Senator Inman: I am asking whoever is able to answer it.

Mr. Thompson: Mr. Chairman, in the case the senator has mentioned, the person would still have the right to claim under the Canada Pension Act; but, aside from that, if they are 60 years of age, or if through a combination of physical handicap and economic circumstances they are unable to provide for themselves, and they have the service qualifications of having served in a theatre of actual war or having served in both wars, they could be eligible for war veterans allowance, depending on their income. But the two statutes are completely separate. The one, the Pension Act, deals with disability or death as a result of service, whereas the war veterans allowance provides for an allowance to be paid to persons of 60 years of age, or under 60 years of age if they are unable to provide for themselves and maintain themselves. So you could have a situation, such as the senator mentioned, where a person did not establish a claim or it was not recorded but who now, if he is unable to provide for himself and if he has the service, could come under the War Veterans Allowance Act.

Senator Inman: Well, I have one particular case in mind of a man who said that he was all right, but in fact he was not. Now he has a bad case of emphysema. He gets something, but it is not enough. His wife goes out to work. It seems to me that I have heard that he has been before boards and has been turned down because he was all right when he came out of the service. I know a lot of the boys did that for the sake of getting out.

Mr. Thompson: That would seem to be a situation that would come under the Pension Act.

Senator Croll: Mr. Thompson, do you have a copy of the task force report that was referred to, or does anybody have a copy of it?

Mr. Thompson: Are you referring to the report of the joint committee of departmental officials and veterans' organizations which made the proposal on the 100 per cent pension?

Senator Croll: Yes, that is right.

Mr. Thompson: I do not have that, senator, because that dealt with the Pension Act, but I would think that the veterans' organizations would have it or the minister's office.

Senator Croll: Would the library have it, do you think?

Mr. Thompson: I would think so, but I do not know. But, as I say, I do not have one because it comes under the Pensions Act.

Senator Bélisle: Mr. Chairman, I have a question to ask of Mr. Thompson which I think he may have answered partly, but I am not quite satisfied with the answer as given. Does the department intend considering shortly reducing the age limit for males to 55 to correspond with that for females when it is conceded that the veteran has forfeited 10 years of his life in service? In other words, when will we have equality?

Senator Croll: With women?

Senator Bélisle: Yes, with women.

Mr. Thompson: I must, with all due respect, point out that that is a question of government policy, and as chairman of the War Veterans Allowance Board I would not be in a position to give Senator Bélisle an answer on that question.

Senator Bélisle: Well, a final question. I spoke at length about the morality of the new bill, and here may I point out that I am all in favour of the bill but I would like to know how many veterans, male or female, will benefit from the shortening of the period in the case of common-law relationships before the children can qualify for assistance. It used to be seven years, and now it is reduced. But how many cases have you on file that will qualify?

Mr. Thompson: I do not have any figures on that. You mean, how many people will benefit by reducing the seven-year term to three years?

Senator Bélisle: Yes.

Mr. Thompson: We do not have any figures on that.

Senator Prowse: Can you give a good guess?

Mr. Thompson: There would be no basis for a guess, senator. But where there are children in a family in this

situation—and this may be helpful to Senator Belisle—it has been possible, even though under the act you could not recognize the wife for married rates, to recognize the children and pay the married rate, under the appropriate column, in the schedule to the act which provides for a veteran residing with a child. Therefore you could pay the married rate in that case if there was a child. Now, under this bill, where there is additional provision for the children it would mean that with the reduction to three years you can pay the married rate and then you can pay the additional moneys for each child provided for in the bill.

Senator Bélisle: I am all in favour of that. I hope you will read my comments afterwards. I wish this applied to the Senate too.

Senator Fournier (de Lanaudière): I would like to know how many persons are receiving the benefits under the War Veterans Allowance Act and the global amount of payments.

Mr. Thompson: As of March 31, the total number of recipients for both war veterans allowances and civilian allowances, part 11, was 85,238 for a total figure of $111,765,086.

Senator Bélisle: In other words, I was right in my figure.

The Chairman: Any further questions?

Senator Prowse: Is this allowance subject to abatement where a person has a very large disability pension, let us say 100 or 80 per cent, that would give him extra income but which comes from another source. In other words, if the disability pension is paid in full, is it taken into consideration in considering the other financial aspects and limitations?

Mr. Thompson: Yes, the additional pension paid under the Pension Act, except that part paid on account of children, for a veteran or for a veteran and his wife is assessable as income under the War Veterans Allowance Allowance Act.

Senator Prowse: Why?

Mr. Thompson: That is the way the act is written. But there is a difference of $40 single and $70 married between the rate payable and the ceiling permitted. So that in the case of a single veteran, if he had no other income, $40 of that disability pension would be exempt income, just as $40 of workmens' compension or something else like that would be. From then on it is considered dollar for dollar of income.

Senator Macdonald: In the case of a married woman getting a disability pension, with a working husband and a son they are educating, if they felt they could not afford to send him to a professional school would the department assist in paying for his education?

Mr. Thompson: I would like to make it clear that under the bill before you and under our act there would not be such a provision, because I assume from what you said that the income of the couple would be above the ceiling provided for in the War Veterans Allowance Act. Therefore there would be no provision under our act, but there may be under other measures, through welfare services or benevolent funds or some other measures like that. But under our legislation, since it would seem that their income would be in excess of the ceiling, there would not be any benefit of this type for them.

Senator Norrie: I have in mind a family of four children. The veteran fought in Italy for four years and never got a scratch; he had no disability. But then, when he was about 55 or 57 years of age, he had a stroke, so he is greatly worried about his family not having enough money to be educated. Now hid wife is working and he is pushing a wagon around a factory somewhere and getting some money for doing that, but he should not be doing it. That, in turn, knocks money off her income which is about $5,000. Now one of those children is going to college, or is trying to, and they just have no income under the War Veterans Allowance Act to educate the children. Why is that? He served four years in the midst of the fighting and they cannot obtain any money to educate their family.

Mr. Thompson: You say her income would be $5,000 from her earnings?

Senator Norrie: I think it is a little less than $5,000.

Mr. Thompson: By regulation $1,500 of that would be exempt income, because that is casual earnings, and the balance would have to count as income against the income ceiling provided in the act.

Senator Croll: What amount is that?

Mr. Thompson: How many children are involved in this case?

Senator Norrie: Four.

Mr. Thompson: Under the new bill, married and with four children, it would be $582.90 per month as the income ceiling. That is taking the married ceiling and adding the additional $50 allowed for each child, making a total of $582.90.

Senator Croll: She only earns $5,000 and is entitled to an exemption of $1,500 so there is only $3,500, as opposed to $7,000 which is the limit. Why, then, are not the children entitled to assistance from the fund, or any other fund, for purposes of education?

Mr. Thompson: This bill changes that situation in such an instance as that mentioned by the senator drastically, because now under the act they can only be recognized as a married couple. As of January 1, 1974 the ceiling, under which they are recognized as married, was $344.44. Because there was no provision for any additional payment on account of the children, a married veteran with no children received the same payment as a married veteran with four children. Under this bill the children are recognized and the ceiling is increased. The amount of allowance that can be paid increases in proportion to the children in the family.

Senator Norrie: That is much better.

Senator Prowse: Would that cover the situation?

Mr. Thompson: By just a rough calculation it seems as though it would well cover it.

Senator Norrie: Whatever she earns is deducted from her salary.

Mr. Thompson: Because casual earnings apply in a lump sum to both. She may earn part of it, he may earn part of it, or he may earn all of it, but it is a total $1,500 for both.

Senator Norrie: Does he still have to deduct whatever he earns from his wife's salary?

Mr. Thompson: It is the same whichever earns it. That is $1,500 under the regulations, not under the act.

Senator Norrie: That is much better, is it not?

Senator Croll: Is it a full or a partial deduction for money earned over and above that figure?

Mr. Thompson: After the exemption is deducted, sir, and once it becomes assessible income, it is assessed on a straight dollar-for-dollar basis.

Senator Norrie: So it does not matter whether he has a disability, the children will still be looked after?

Mr. Thompson: Up to the permissible rate and ceiling, yes. In cases such as that, senator, many of these people, if the bill is passed and receives royal assent, may have inquired years ago and been refused. They will benefit now but may have no knowledge that this will bring them entitlement.

Senator Croll: How will that information get to them?

Mr. Thompson: It would be expected that the procedure followed the last time the bill was changed will be repeated. Then an advertising campaign was mounted to bring it to the attention of those involved. The personal property factor a year ago last March was abolished with respect to eligibility. An advertising campaign was carried on to draw it to the attention of the public that personal property was no longer a barrier to eligibility for war veterans allowance.

Senator Croll: I believe the chairman will inform you that it would be the wish of the committee that advertising be carried out throughout the country.

Mr. Hanmer: I would like to make two observations with respect to this particular situation. First, in the instance of the child you mentioned, attending university or pursuing further education, many of our provincial commands have bursary schemes under which they are prepared to assist, as far as the money goes, children, particularly of veterans in difficult financial circumstances, with the costs of university training. The assistance varies, ranging from perhaps $200 to $300. However, it is some help at least, and we have experienced a number of instances recently in which people have been assited in this manner. I do not know which province is involved in this particular case.

Senator Norrie: Nova Scotia.

Mr. Hanmer: I do not know how extensive the Nova Scotia bursary scheme is, but certainly in Ontario it is quite substantial and the ladies' auxiliary have provided a good deal of the money from their resources. I am certain that once this legislation becomes law our magazine, which has a circulation now of approximately 420,000, will certainly publish references to the changes. This will inform those who might otherwise not know, or those who might previously have failed to qualify because of the less generous provisions, that they can now re-apply with some prospect of succeeding. We consider this to be part of our task, of course.

Senator Norrie: We have a good Legion man down there.

Senator Inman: I know of the case of a young man who is endeavouring to put himself through college and wishes to enter university next year with a view to becoming an engineer. He is earning money and helping himself so far. He can still work during holidays, I imagine. Will he be eligible to apply? His father is a veteran. It is the same couple to which I referred, the mother going out and doing housework and the father earning a little over $200.

Mr. Thompson: Is this young man an orphan, or a child of a widow?

Senator Inman: No. He is a child with a father and mother who certainly do not earn sufficient to pay for his university course.

Mr. Thompson: The bill also proposes to raise the age to which the allowance may be paid if a child continues education to age 25 from 21. Therefore if the person meets the qualification of a dependant child the raising of the age to 25 would cover that situation.

Senator Inman: Thank you.

Senator Bélisle: In my observations I inquired if the Government would consider raising the minimum level throughout the country. This is because in British Columbia there is now a guaranteed income of $220. Under the existing legislation that figure is $201, which would be raised to $211. A veteran living in British Columbia or Ontario will receive more because of that provincial legislation than one in Nova Scotia, Prince Edward Island, Newfoundland or, maybe, Manitoba. In view of the fact that veterans served throughout the country, would any consideration be given to that? Why should they be penalized if they live in the non-rich eastern provinces or some of the western provinces?

Mr. Thompson: That again is a matter of policy to determine rates. Where the supplements are paid—you mentioned British Columbia, and so on—the regulations have been made so that the money paid as a provincial supplement is considered as being exempt income. So you do not have the situation of the provincial government paying a person some extra dollars and the War Veterans Allowance taking it away so that one has not accomplished what you referred to, equalizing it so that the War Veterans Allowance recipient in New Brunswick will get the same as the one in British Columbia. It has by regulation been possible to avoid the situation of taking away the dollars because it has been exempted by regulation. With regard to the other side of the question, sir, it is a question of government policy to determine the rates and ceilings they put forward.

The Chairman: May I ask a supplementary question, connected with the one asked by Senator Fournier? In reply to his question about the total cost, you said it was $111,765,086 for the year ended March 31. Do you know what the comparable figure would be if this bill had been in effect—how much difference it would have made?

Mr. Thompson: Not on that basis. It was estimated that the cost of this would be in the neighbourhood of $10 million.

The Chairman: A year?

Mr. Thompson: Yes.

The Chairman: Does that mean $10 million over and above what would be paid with the regular escalation computed annually? There would be some escalation anyway, whatever the index is for the previous year.

Mr. Thompson: I am out in my recollection. The proposals here will cost approximately $12,700,000; but since there was an escalation already included, the annual escalation, it is estimated there will be $12 million additional, because you already had provision for an annual escalation. Now we are going to the quarterly escalation and there is a slight increase on the cost of a quarterly escalation in addition to the additional moneys for children and other costs.

The Chairman: So the total additional cost of this legislation will be around $10 million, roughly 10 per cent?

Mr. Thompson: Yes, on that basis.

The Chairman: With regard to widows, how will the widow's allowance under this legislation compose with the widow's pension under the pension plan? Will there be much discrepancy?

Mr. Thompson: It is $313 under the Pension Act.

The Chairman: What will the widow's pension be?

Mr. Thompson: The widow is paid, under the War Veterans Allowance Act, at the single rate, which, at the revised rate, will be $183.66.

Mr. Hanmer: The rate on January 1 for the disability widow is $345.38

The Chairman: There is still a gap between what the widow would receive under the Pension Act and what she would receive under the War Veterans Allowance Act.

Mr. Thompson: Yes. There is a $40 difference between the rate and the ceiling. If the rate is paid and there is no other income to take care of that $40 difference, there is a fund known as the Assistance Fund, War Veterans Allowance, which can be paid by welfare services to meet actual proven costs within that gap. So that if a person has proven costs, they get the equivalent of the ceiling, because they get the rate and the benefit of the assistance fund which can be used to bring it up to the ceiling. The single ceiling will be $223.66.

Senator Norrie: Is that for the veteran's widow?

Mr. Thompson: That is for the widow under the War Veterans Allowance Act.

Senator Norrie: What does the ordinary widow receive?

Mr. Thompson: Three hundred and forty five dollars and forty eight cents, from January 1. It is 313 at the moment. That is where the husband died as a result of war service.

Senator Norrie: I am referring to those outside the veteran service, the ordinary widow's pension or mother's allowance.

Senator Inman: What about the case of a woman who has served overseas and she herself is not well, but her husband receives a salary—what happens then?

Mr. Thompson: I am not clear whether her illness is as a result of her service or has no connection with it.

Senator Inman: Well, it might be from her service.

Mr. Thompson: In that case, she could make an application under the Canada Pension Act. But as far as the allowance is concerned, if her husband has a job, his income must be counted with her income. On the other hand, if she were the breadwinner and he was unable to work, the married rate could apply in this case on the basis of her service.

Senator Inman: I asked the question because we shall be receiving letters asking this sort of question, and I want to be clear.

The Chairman: I would like to take that comparison a little further. A single widow, under the Pension Act, would receive $346. A single widow receiving the allowance would get 183.66. If the widow has a child, under the War Veterans Allowance Act she would be paid at the married rate as though her husband were alive. Under the Pension Act she would receive an additional allowance for the child. What would a widow and one child receive under each act?

Mr. Thompson: Under the War Veterans Allowance Act, under the revised ceiling, the widow with one child would be considered as being married. The ceiling there would be $382.90.

The Chairman: There is a tremendous gap there.

Mr. Hanmer: The widow with one child, under the Pension Act—we do not have the chart with us, we are just guessing—would receive about $460.

The Chairman: Under the War Veterans Allowance Act she would receive $382.90. There is a tremendous gap there for the single widow.

Mr. Thompson: The ceiling and the rate are different by the said $70. The widow with one child, under the War Veterans Allowance Act would receive a revised rate of $312.90. Then you have a $70 difference in the rate of the ceiling.

The Chairman: If the widow had three children, eventually she would receive more under this act than she would under the Pension Act.

Mr. Hanmer: No, sir.

The Chairman: It goes up by $125 for each orphan.

Mr. Thompson: They are not orphans. They are children. The orphan rate applies only in the case of children that meet the definition of orphans under the act.

The orphan rate only applies in the case of children who come within the definition of orphan under the act.

Mr. Hopkins: In the case where both parents are dead.

Mr. Thompson: Or one parent dead and deserted by the other.

The Chairman: Is it not possible under the act for a widow to have two or three orphans?

Senator Benidickson: No.

The Chairman: How can one child be an orphan and two or three children not be orphans?

Senator Prowse: As long as there is a mother or a father, they are not orphans.

The Chairman: So, it is when the mother and father are both gone. The first child gets the larger amount and the others get $50 minus the family allowance?

Mr. Thompson: Yes.

The Chairman: So, the discrepancy is between the single widow under the Pension Act and the single widow under the War Veterans Allowance Act, one getting almost double the other.

Senator Benidickson: I should know this, but I have forgotten. I think it should be on the record in any event. When was the legislation introduced which provided for the escalation or indexing of benefits to the cost of living?

Mr. Thompson: For the first time, senator?

Senator Benidickson: Yes.

Mr. Thompson: In May 1972.

Senator Benidickson: And at that time were there also some substantial increases provided in basic allowances?

Mr. Thompson: Provision was made for escalation only, senator, to reflect the consumer price index increases.

Senator Benidickson: That was the sole import of the amendment brought down at that time?

Mr. Thompson: Yes.

Senator Bélisle: Mr. Chairman, I move that we report the bill without amendment.

The Chairman: Is it agreed that we report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, Chairman

Issue No. 4

TUESDAY, NOVEMBER 26, 1974

Complete Proceedings on Bill C-22,
intituled:

"An Act to amend the Canada Pension Plan"

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

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THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Blois, F. M.	Inman, F. E.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Choquette, L.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, J.	Smith, D.
Fournier, S. (*de Lanaudière*)	Sullivan, J. A.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate of Tuesday, November 19, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator Fergusson, P.C., for the second reading of the Bill C-22, intituled: "An Act to amend the Canada Pension Plan".

After debate, and—

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

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Fergusson, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

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

Robert Fortier,

Clerk of the Senate.

Minutes of Proceedings

Tuesday, November 26, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 2.35 p.m.

Present: The Honourable Senators Carter (*Chairman*), Argue, Bourget, Denis, Fournier, Inman, Lamontagne, Langlois, McGrand, Neiman and Norrie. (11)

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

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

The Committee proceeded to the consideration of Bill C-22, "An Act to amend the Canada Pension Plan".

The following witnesses were heard in explanation of the Bill:

Miss Coline Campbell, M.P.,
Parliamentary Secretary to the
Minister of National Health and Welfare;

Mr. Walter A. Kelm, Director,
Planning and Development Division,
Canada Pension Plan Branch,
Department of National Health and Welfare.

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

At 3.00 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,

Clerk of the Committee.

Report of the Committee

Tuesday, November 26, 1974.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-22, intituled: "An Act to amend the Canada Pension Plan" has, in obedience to the order of reference of Tuesday, November 19, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,

Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Tuesday, November 26, 1974.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-22, to amend the Canada Pension Plan, met this day at 2.35 p.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, as you know, we have for consideration Bill C-22, and as witnesses Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare, and Mr. W. A. Kelm, Director, Planning and Development Division, Canada Pension Plan Branch, Department of National Health and Welfare.

Do you wish to make an opening statement, Miss Campbell?

Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare: Thank you very much, Mr. Chairman. I have a brief statement.

As most of you know, this bill is just about identical to that which was introduced and was before the House when it adjourned for the election in May. I will just go over the substantial amendments which have been incorporated into it. If there are questions, perhaps they can be fielded by Mr. Kelm or one of his officials. Mr. Kelm, would you introduce your officials?

Mr. W. A. Kelm, Director, Planning and Development Division, Canada Pension Plan Branch, Department of National Health and Welfare: Mr. MacKenzie is not with our department. He is the Director, Source Deductions Division, Department of National Revenue, Taxation. To his left is Mr. Bassett, Operations Officer, Source Deductions Division, and further to his left, Mrs. J. F. Lee, Senior Project Officer, Canada Pension Plan Branch, and Mr. R. F. Kemp, Assistant Director, Claims and Benefits, Canada Pension Plan Branch.

Miss Campbell: I will just read to you a few of the major amendments. The substantial planned amendments proposed in this bill are identical to those which were contained in Bill C-19 which was before the last Parliament, namely, full equality of treatment of male and female contributors and beneficiaries under the Canada Pension Plan. I believe everyone understands that point. If not, it can be explained in more depth.

The second amendment is the repeal of the earnings and retirement tests under the plan, so that contributors aged 65 and over can draw the total CPP retirement pension they have earned, without regard to the subsequent earnings.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: What about their present earnings?

Miss Campbell: The choice is to continue to contribute until age 70, or decide to take the pension. If it is decided to take the pension it is not necessary to contribute further, but the contributor can continue to earn.

Senator Denis: A person could retire two years from now in order to obtain the maximum, because it was passed in 1966 and the qualifying period is 10 years.

Miss Campbell: That is right.

Senator Denis: What is the final date?

Mr. Kelm: January 1, 1976.

Miss Campbell: Previously a person could not earn in benefit and this legislation provides for earning in benefit but not contributing in benefit. Once a person starts receiving benefits he or she will no longer contribute.

Mr. Hopkins: A person must retire in order to benefit.

Miss Campbell: No. A person can collect the pension and continue to earn without contributing.

Senator Argue: The contributor just discontinues contributing, that is all.

Mr. Hopkins: No one ever had it so good!

Miss Campbell: As the senator pointed out though, at January 1, 1976 the maximum 10-year pension would be payable.

Mr. Kelm: After January.

Senator Inman: From what age did you say?

Miss Campbell: Sixty-five.

The third amendment is the introduction of a new formula for determining the year's maximum pensionable earnings, which is the earnings ceiling for the plan, so that future benefits and revenues will reflect the advances in Canadian wage levels that have occurred during the last decade. The new formula also provides that once a base for calculating new benefits and determining fund revenues is brought up to parity it will keep pace with future increases in the average earnings of Canadian industrial workers.

Senator Haig: In other words, the pension will increase?

Miss Campbell: That is correct.

Mr. Kelm: Yes, the ceiling determines the contribution and also is the basis for determining the level of pensions.

Senator Haig: The pension increases automatically.

Mr. Hopkins: There is no means test, income test or any other test?

Miss Campbell: No.

Mr. Hopkins: Was there at any time?

Miss Campbell: The ceiling rises even though the person is not contributing, but the new contributors will contribute according...

Senator Haig: Let us take a person who has taken a pension at age 65. That pension will increase, depending on what?

Mr. Kelm: The cost of living.

Senator Haig: Will that be adjusted quarterly or annually?

Mr. Kelm: Annually.

Senator Inman: What would happen if the cost of living were to decrease?

Mr. Hopkins: In that event no adjustment would be made?

Mr. Kelm: That is correct.

Senator Bourget: Until what age is a person allowed to contribute? Is there a limit on the age? Is it 70 years of age?

Miss Campbell: Yes.

Senator Denis: When you retire and get your pension, is it based on the last ceiling?

Mr. Kelman: It is related to the ceilings in the last three years.

Senator Denis: Suppose the ceiling is $6,000 and you are entitled to one-quarter, it is fixed on the last ceiling?

Mr. Kelm: It is the average of the last three years. It is the year in which you retire. You take a quarter of that. Assuming a person has been making contributions at the maximum, the pension for that person is 25 per cent of the average ceiling of the last three years.

Senator Denis: But if any of the ceilings increase, you do not take advantage of that?

Mr. Kelm: No; it is only the cost of living.

Miss Campbell: There is another change. Modifications of the current formula for determining the basic exemption for the plan, so that Canadians at lower income levels will have a greater opportunity to participate more fully in the Canada Pension Plan. In other words, that would probably affect the independent fisherman or farmer who perhaps in a bad year cannot contribute as much as he would in a normal year. He cannot juggle it exactly, but fluctuate it.

Senator Bourget: He can average it out.

Miss Campbell: Not average it, so much; he can drop out at a certain level and come back in later.

Mr. Kelm: At the present time the minimum is 12 per cent of the ceiling. This bill proposes that it be reduced to 10 per cent.

Miss Campbell: There are a large number of technical amendments, many of which are designed to rectify minor errors, inequities and anomalies that the department has uncovered in the administration of the plan. Generally speaking, these technical proposals do not affect large numbers of contributors and beneficiaries, but they are of substantial importance for individuals directly affected and would in almost all instances operate to their advantage.

There was also one amendment made at the committee stage, at which time there was a change in the appeal procedure. The board was increased from 6 to 10. The six may have come from central Canada and they could not meet out West. The change is to enable a regional board to meet and speed up appeals. That was done at the committee stage during the second reading of the bill. I now open the floor to questions.

The Chairman: Do you have anything to add at this moment, Mr. Kelm?

Mr. Kelm: No, Mr. Chairman.

Senator Denis: What is the present ceiling?

Mr. Kelm: Sixty-six hundred dollars.

Senator Denis: Does it increase every year?

Mr. Kelm: Yes, to $7,400 next year.

Senator Denis: That is an increase of $800.

Mr. Kelm: Right.

Senator Denis: Is that the average?

Mr. Kelm: The bill provides that the ceiling will be increased at 12½ per cent a year until it reaches the level of Canadian industrial worker wage rates. At the moment it is $6,600 to $7,400, which is an increase of 12½ per cent. It will increase 12½ per cent a year. From $7,400 it will go to $8,400 the following year, then $9,300, and then $10,400.

Senator Denis: That is an average of 12½ per cent?

Mr. Kelm: Yes.

Senator Argue: What is the maximum pension?

Mr. Kelm: Right now we are in a transitional period. It is $108.58.

Senator Argue: What would it be three or four years from now?

Mr. Kelm: In January 1976 it will be $154.85. Then it increases roughly $20 a year from that point on. It depends on the average of the ceilings I have mentioned. It is 25 per cent of the average of the last three.

Mr. Hopkins: That is without a means test, income test, or anything else?

Miss Campbell: That is right.

Mr. Hopkins: And in addition to Old Age Security, and so on?

Miss Campbell: That is in addition to Old Age Assistance.

Senator Haig: It is taxable?

Mr. Hopkins: It is taxable, yes.

Senator Denis: When you are talking about an increase of $20 per year, you mean $20 per month.

Mr. Kelm: Yes. The monthly rate is increased by $20. You are quite right. It is a monthly increase.

Senator Argue: What might it be 10 years from now?

Mr. Kelm: I think the minister, in his statement, indicated that in 1985 the maximum would probably be around $350 per month per person.

Senator Bourget: Did you discuss the amendments with the Province of Quebec, and will they accept all of the amendments you are now proposing?

Mr. Kelm: Yes. These proposals arise from the conference that was held with the provinces in October last year, when all the provinces agreed to the increases in the earnings ceiling.

Senator Inman: How much of this amount comes from contributions to the fund?

Mr. Kelm: It would vary with the particular contributor. In the early stages of the plan, 1976, it is only necessary to contribute 10 years to get the maximum pension; whereas, to go to the other extreme, a person who was 18 years in 1966 has to contribute 47 years to get the maximum pension. It depends a great deal on the particular contributor you are talking about.

Senator Bourget: In the case of the death of a recipient, what percentage would his wife get; and, if the wife dies, how much will the children get?

Mr. Kelm: Let us take someone under the age of 35 with children. It would be a flat rate, which at the moment is $33.76, plus 37½ per cent of the retirement pension that would be payable.

Senator Bourget: That would be the maximum?

Mr. Kelm: Yes, plus $33.76 for each child. That is under age 35. It goes all the way up to age 65. At 65 it changes to 60 per cent of the spouse's retirement pension.

Mr. Hopkins: What is the minimum pension payable under this?

Mr. Kelm: The minimum retirement would be 10 per cent.

Mr. Hopkins: Of the last three years?

Mr. Kelm: Yes. A person could get a pension that might be a few cents, if he contributed for one month.

Mr. Hopkins: When does the period begin?

Mr. Kelm: The period begins on a continuing basis when a person reaches the age of 18. When the plan was introduced, we substituted for age 18 the age of the person in 1966.

Mr. Hopkins: That was the year I wanted—1966.

The Chairman: These pensions are calculated on the earnings of the past year.

Mr. Kelm: This is the maximum pension. If you relate a pension to a particular individual, you would have to look at the ratio that his wages bear to the maximum. If a person has contributed all along at half the maximum level, then it would be half the pension.

The Chairman: The acceleration at the rate of 12½ per cent a year is intended to catch up with the industrial index. If the index advances at 12½ per cent a year, you will never catch up.

Mr. Kelm: That is true.

The Chairman: How does that 12½ per cent escalation compare with the increases in the index over the last two years?

Mr. Kelm: Let us say the last five to 10 years. It has been moving at the rate of 7½ per cent. In the last year I think it moved something like 10 per cent, or thereabouts.

The Chairman: So you are on an upgrade. It is quite possible that it could go up to 12 per cent, in which case the gap will never close.

Mr. Kelm: That is right.

Senator Haig: What time of year does the increase take place? If a person receives his pension in July 1974, does it go up in July 1975?

Mr. Kelm: The cost of living adjustment is made every January.

Senator Haig: Regardless of when he started?

Mr. Kelm: That is right.

The Chairman: Senator Macdonald did raise several points in connection with this bill during debate on second reading. One of the points he raised was in connection with retroactive payment, and I quote from his speech reported at page 277 of Senate Hansard of Tuesday, November 19, as follows:

> I notice, though, that while in such cases retroactive entitlement is provided for, retroactive payment is not provided for. I do not understand why this should be so, since the female contributor made contributions just as the male contributor did.

Is there any explanation for that?

Mr. Kelm: There are two aspects to that, Mr. Chairman, one being administrative and the other being the general problem which presents itself whenever you date something back too far. In other words, you have to take a look at what the situation was. If we took this back to 1968, for example, and some of the people had been receiving welfare or guaranteed income supplements, based on the assumption that they were not receiving Canada Pension Plan income, you are then altering the situation.

Also, there are situations where the payment of a survivor's benefit, particularly for people under the age of 35, depends upon whether or not they are disabled, and to go back to apply that you would then have to ask whether or not the person was disabled at the time of the spouse's death. That is the kind of difficulty you get involved in.

The Chairman: These would be administrative complications?

Mr. Kelm: That is right.

Senator Carter: Senator Macdonald raised another point, as follows:

> Speaking of retroactive payments, there is another case dealt with by the act itself which I find very confusing. I do not understand why it is that, if a person is late in applying for the Canada pension after he or she becomes qualified, retroactive payment will be made for only one year prior to the application. To me it is absolutely incredible that, for example, a person who becomes, say, 70 years of age and does not make application for the pension until two years later, will be paid for only one year retroactively, although that same person and his employer have made the required contributions.

What is the reason for that?

Mr. Kelm: Whenever you get into retroactivity, Mr. Chairman, you have to draw the line somewhere. I think you will find that in most of the social security legislation the one-year retroactivity period applies. I think the Americans, in their social security legislation, have also chosen the one-year retroactivity period. It is a question of how far you go back.

Senator Bourget: I think that is an important point, Mr. Chairman. I did not clearly understand the explanation given by Mr. Kelm.

Mr. Kelm: It is simply that one has to pick a cut-off date for retroactive payments. If an individual has reached the age of 70 years without having applied for the Canada pension, on application he is only entitled to one year's payment retroactively.

Senator Bourget: Does the same apply in respect of old age security payments? As I understand it, applicants for old age security should apply six months in advance of reaching the age of 65. If I am approaching age 70—which is not too far away in my case,—would I have to apply six months in advance?

Miss Campbell: In respect of old age security payments, on application at any time, there is a one-year retroactivity period after 65 years of age.

Senator Argue: That is in the statute.

Miss Campbell: That is right. In respect of Canada pension, before you qualify for any retroactivity, you have to be over 70, and then you only get one year.

Senator Bourget: I understand.

The Chairman: Senator Macdonald also raised a point in connection with section 64 of the Canada Pension Plan, as follows:

> The existing section 64 itself is a very good section. It provides that a benefit shall not be assigned, charged, attached, anticipated or given as security, and any transaction purporting to assign, charge, attach, anticipate or give as security a benefit is void. In effect, the insertion of subsection (2) will mean that this fine existing provision will not apply in cases where welfare is given to a person who has qualified but has not received his or her Canada pension.

Is that correct?

Mr. Kelm: There are two points I should make in that connection, Mr. Chairman. At the present time, in most of the welfare programs operated by the provinces, if there has been an overpayment, the province has to recover, and recoveries are taking place right now. This does not really institute a policy of recovery, but simply makes it possible for the recovery to take place out of the back-pay cheque.

The Chairman: Are the provinces compelled by law to recover?

Mr. Kelm: Yes.

The Chairman: And is that under a federal statute, or under the law of the province concerned?

Mr. Kelm: In respect of programs shared by the federal government, it is part of the agreement that they must recover.

The Chairman: Senator Macdonald, in his speech during second reading debate, went on to refer to remittance of overpayments and the discretion of the minister in that regard, saying that it was more or less limited to $50.

Mr. Kelm: There are several criteria on which recovery can be waived, one of which is where the amount owing is not worth recovering. A rule of thumb in that connection is that if the sum is less than $50, it is not worth recovering. In terms of the question of the minister exercising a discretion where recovery would apply hardship, there is no dollar limit.

The Chairman: There is no dollar limit where hardship is concerned?

Mr. Kelm: That is correct.

Senator Inman: What is the most advanced age at which you can apply for Canada pension?

Mr. Kelm: There is no upper limit, senator. There is a limit on retroactivity of one year on reaching the age of 70. In other words, a person applying at the age of 73 would only receive retroactive payments back to 1972.

The Chairman: Are there any further questions?

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

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 5

WEDNESDAY, APRIL 30, 1975
THURSDAY, MAY 1, 1975

Complete Proceedings on Bill C-33, intituled:

"An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states."

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

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REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

28357—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C., *Deputy Chairman.*

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Blois, F. M.	Inman, F. E.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Choquette, L.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, J.	Smith, D.
Fournier, S. (*de Lanaudière*)	Sullivan, J. A.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate, Wednesday, April 23, 1975:

The Order of the Day being read,
With leave of the Senate,

The Honourable Senator Grosart resumed the debate on the motion of the Honourable Senator Lamontagne, P.C., seconded by the Honourable Senator Connolly, P.C., for the second reading of the Bill C-33, intituled: "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

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 Lamontagne, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

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

Robert Fortier

Clerk of the Senate

Minutes of Proceedings

Wednesday, April 30, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9:34 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Carter (*Chairman*), Bonnell, Bourget, Cameron, Fournier (*de Lanaudière*), Inman, Lamontagne, Macdonald, McGrand and Norrie. (10)

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

In attendance: R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

After discussion and on motion of the Honourable Senator Fournier (*de Lanaudière*), it was *Resolved* to appoint a Steering Committee composed of the Honourable Senators Blois, Bourget, Cameron, Carter, Croll and Lamontagne.

On motion duly put it was *Resolved* that the Committee should hear witnesses who may wish to make representations on Bill C-33, "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

The Committee proceeded to the consideration of Bill C-33, "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

The following witnesses were heard in explanation of the Bill:

The Honourable Hugh Faulkner, P.C., M.P.,
Secretary of State of Canada;

Mr. Ian C. Clark,
Special Adviser,
Arts and Culture Branch,
Department of the Secretary of State;

Mr. H. A. Malcolmson,
Toronto, Ontario.

Messrs. Faulkner and Malcolmson both made an opening statement. The witnesses then answered questions.

The Chairman called Clause 1.

After debate, Clause 1 was allowed to stand.

Clause 2 carried.

Clauses 3 to 11, both inclusive, were allowed to stand.

On Clause 12, the Honourable Senator Lamontagne moved that Clause 12 be amended as follows:

Page 7: Strike out line 41 and substitute therefor the following:

"tion of the Review Board in which case he shall forthwith send a written notice to that effect to the applicant."

The question being put on the said Motion, it was agreed to.

Clause 12, as amended, carried.

Clauses 13 and 14 were allowed to stand.

At 12:05 p.m. the Committee adjourned until later this day.

AFTERNOON MEETING

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science resumed sitting at 3:40 p.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Carter (*Chairman*), Bonnell, Bourget, Cameron, Fournier (*de Lanaudière*), Inman, Lamontagne, Norrie and Smith. (9)

In attendance: R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

The Committee resumed consideration of Bill C-33, "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

The following witness was heard in explanation of the Bill:

Mr. Ian C. Clark,
Special Adviser,
Arts and Culture Branch,
Department of the Secretary of State.

The Chairman called Clause 15.

On Clause 15, the Honourable Senator Lamontagne, moved that Clause 15 be amended as follows:

Page 8: Strike out lines 32 to 40 and substitute therefor the following:

"(2) The members of the Review Board, other than the Chairman and two other members who shall be

chosen generally from among residents of Canada, shall be chosen in equal numbers

(a) from among residents of Canada who are or have been officers, members or employees of art galleries, museums, archives, libraries or other similar institutions in Canada; and

(b) from among residents of Canada who are or have been dealers in or collectors of art,"

The question being put on the said Motion, it was agreed to.

Clause 15, as amended, was carried.

Clause 16 carried.

Clause 17 was allowed to stand.

Clauses 18 to 22, both inclusive, were carried.

On Clause 23 the Honourable Senator Lamontagne moved that Clause 23 be amended as follows:

Page 11: Strike out line 19 and substitute therefor the following:

"notice of refusal under section 10 or a notice under section 12 may,"

Page 11: Strike out line 21 and substitute therefor the following:

"the notice was sent, by notice in"

The question being put on the said Motion, it was agreed to.

After further discussion it was agreed that Clause 23, as amended, be allowed to stand.

Clauses 24 and 25 were carried.

Clause 26 was allowed to stand.

Clauses 27 to 52, both inclusive, were carried.

After discussion, Clauses 3 to 7, both inclusive, carried.

At 5:20 p.m. the Committee adjourned until Thursday, May 1, 1975 at 9:00 a.m.

Thursday, May 1, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9:00 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Carter (*Chairman*), Bonnell, Bourget, Cameron, Fournier (*de Lanaudière*), Inman, Lamontagne, Norrie and Smith. (9)

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

In attendance: R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

The Committee resumed consideration of Bill C-33, "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

The following witness was heard in explanation of the Bill:

Mr. Ian C. Clark,
Special Adviser,
Arts and Culture Branch,
Department of the Secretary of State.

The witness made a short opening statement.

The Chairman called Clause 8.

On Clause 8, the Honourable Senator Bonnell moved that Clause 8 be amended as follows:

Page 6: Strike out line 18 and substitute therefor the following:

"Review Board and the Minister."

Page 6: Strike out line 47 and substitute therefor the following:

"copy of that advice to the Review Board and the Minister."

The question being put on the said Motion, it was agreed to.

Clause 8, as amended, carried.

Clauses 9 to 17, both inclusive, carried.

On Clause 23, the Honourable Senator Lamontagne moved that Clause 23 be amended as follows:

Page 11: Strike out lines 25 to 28 and substitute therefor the following:

"(2) The Review Board shall review an application for an export permit and, unless the circumstances of a particular case require otherwise, render its decision within"

The question being put on the said Motion, it was agreed to.

Clause 23, as amended, carried.

On Clause 26, the Honourable Senator Lamontagne moved that Clause 26 be amended as follows:

Page 14: Strike out lines 22 to 25 and substitute therefor the following:

"(4) The Review Board shall consider a request made under subsection (1) and, unless the circumstances of a particular case require otherwise, make a determination"

The question being put on the said Motion, it was agreed to.

Clause 26, as amended, carried.

The title carried.

The preamble carried.

Bill C-33, as amended, carried.

On motion duly put, it was *Resolved* to report the Bill as amended.

At 9:15 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

PATRICK J. SAVOIE
Clerk of the Committee

28357—2

Report of the Committee

Thursday, May 1, 1975.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-33, intituled: "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states", has in obedience to the order of reference of April 23, 1975 examined the said Bill and now reports the same with the following amendments:

1. *Page 6:* Strike out line 18 and substitute therefor the following:

   "Review Board and the Minister."

2. *Page 6:* Strike out line 47 and substitute therefor the following:

   "copy of that advice to the Review Board and the Minister."

3. *Page 7:* Strike out line 41 and substitute therefor the following:

   "tion of the Review Board, in which case he shall forthwith send a written notice to that effect to the applicant."

4. *Page 8:* Strike out lines 32 to 40 and substitute therefor the following:

   "(2) The members of the Review Board, other than the Chairman and two other members who shall be chosen generally from among residents of Canada, shall be chosen in equal numbers

   (a) from among residents of Canada who are or have been officers, members or employees of art galleries, museums, archives, libraries or other similar institutions in Canada; and

   (b) from among residents of Canada who are or have been dealers in or collectors of art,"

5. *Page 11:* Strike out line 19 and substitute therefor the following:

   "notice of refusal under section 10 or a notice under section 12 may,"

6. *Page 11:* Strike out line 21 and substitute therefor the following:

   "the notice was sent, by notice in"

7. *Page 11:* Strike out lines 25 to 28 and substitute therefor the following:

   "(2) The Review Board shall review an application for an export permit and, unless the circumstances of a particular case require otherwise, render its decision within"

8. *Page 14:* Strike out lines 22 to 25 and substitute therefor the following:

   "(4) The Review Board shall consider a request made under subsection (1) and, unless the circumstances of a particular case require otherwise, make a determination"

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, April 30, 1975.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-33, respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states, met this day at 9.30 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, before considering Bill C-33, there are one or two small preliminary matters I would like to attend to. The first has to do with a steering committee. As you know, a coordinating committee has been set up to make a survey of the work of Senate committees. It is the consensus of chairmen that there should be a steering committee, so, in consultation with the whips, I have selected the following members to constitute a steering committee: in addition to Senator Lamontagne and myself, the nominations are Senator Blois, Senator Bourget, Senator Cameron and Senator Croll. I would like to have the committee as a whole confirm those nominations.

Senator Fournier (de Lanaudière): I so move.

The Chairman: It has been moved by Senator Fournier (de Lanaudière) and seconded by Senator Norrie. Are all in favour?

Hon. Senators: Agreed.

The Chairman: The second matter concerns the hearing of outside witnesses. I have approached those whom I have just mentioned as being members of the steering committee, and they have agreed that we should hear outside witnesses who may want to appear. I would like to have that decision also confirmed by the committee as a whole. Is it agreed?

Hon. Senators: Agreed.

The Chairman: We come now to Bill C-33. Our first witness is the Secretary of State, the Honourable Hugh Faulkner. Mr. Faulkner, do you wish to make a presentation?

The Honourable Hugh Faulkner, Secretary of State of Canada: I have a short statement to make, Mr. Chairman.

Senator Lamontagne: Mr. Chairman, as a matter of procedure, when do you intend to call those outside witnesses?

The Chairman: We have one here this morning—Mr. Malcolmson. As far as I know, he is the only witness who is to appear today. Mr. Thompson, I understand, was unable to make it today.

Hon. Mr. Faulkner: Mr. Chairman and honourable senators, I would like first to express my thanks to all honourable senators who have taken a great interest in this particular piece of legislation to which I attach considerable importance.

If I may, I would like particularly to thank Senator Lamontagne and Senator Grosart for what I consider to be very knowledgeable and sensitive speeches in support of this legislation, which, I think we all appreciate, is by necessity complex but has the purpose of helping to preserve our heritage in movable cultural property.

The bill before us, C-33, has gained all-party support in the other place and has elicited a high degree of support in the country at large. I might add parenthetically that this interest is now becoming manifest from a variety of sources. Owners of cultural property are making inquiries of the Department of Finance, and some of our major institutions are wondering whether it is in place so that they can take advantage of it to make contributions to some of our institutions—which is what we hoped would happen.

I would like to emphasize, however, that if all the elements who are affected by this bill—and they are, as you know, the federal government and its agencies, provincial governments and their agencies, custodial institutions, the trade, collectors, and Canadians generally who are concerned about heritage conservation—are not in total agreement with every provision which may be necessary to protect the interest of some other group, all agree that the legislation as a package is fair and has been specifically designed to protect the legitimate interests of all concerned.

We have tried, and I believe successfully, to strike that delicate balance between constraints and incentives which Canadians expect and which is necessary to guarantee the successful implementation of this bill.

I should like to turn briefly to some provisions in the legislation, or purposely left out of it, which have been the subject of debate, or which may not have been fully understood and which require additional clarification.

First of all, may I say that Senator Lamontagne has spoken to me about one or two amendments he would like to see made to the bill. He has my full support in broadening the choice for professional nominations to the review board by proposing an amendment to clause 15. He also has my full support in widening the protection of owners, in the interest of individual rights, by proposing amendments to clauses 12 and 23(1). I take it Senator Lamontagne will be proposing these amendments later. If I may say so, I am very grateful to Senator Lamontagne for his very positive suggestions, which stem from his close and detailed examination of this bill.

I think Senator Grosart answered in spirit as well as I could many of the objections in principle voiced by Senators Everett and O'Leary. However, I should like to touch on one aspect of the bill upon which Senator Everett focused his concern, that being the age and value limits set out in the legislation upon which the control list will be based.

The control list to be established by the Governor in Council under clause 3 will be similar in purpose to the export control list established by the Governor in Council under the Export and Import Act. It can be varied as circumstances require, and it is intended that it should be so varied with time and changing circumstances. The categories of objects that may be included in the control list are set out in this clause, and certain minimum age and value limits are established beneath which the Governor in Council cannot go without an amendment to the statute. The Governor in Council can and may set the age requirements higher, if this is found necessary, and he will set value minimums higher, for instance, in respect of inflation, or if the limits finally decided upon for the control list prove with experience to be too low.

These values represent rock bottom minimums which, I repeat, cannot be lowered without new legislation. They have been drawn up in consultation with experts, and the consensus is that they are reasonable as a point of departure.

I should like to deal now with the 35-year rule, which has caused some comment.

I would like to speak about the principles that the bill incorporates in the case of objects imported into Canada which owners wish to export. Here the aim must clearly be to give collectors and the trade as much freedom as possible. It was clear that the only practical test is the length of time an object has been in Canada. In establishing criteria, it was recognized that too short a time would cause genuine hardship to owners and dealers, and if the time is too long, genuine national treasures may be lost without being given proper consideration.

Some collector-investors have questioned what is accomplished by including on the control list art of foreign origin, particularly given the relative pauciy of international art of high quality in the country. Some have stressed that Canada is a net importer of classical art, and that any restrictions on their future ability to export an object they have imported will inhibit them from acquiring international works, and that as a result our appreciation of art will become more insular.

The government has adopted the principle that objects which have in the past entered Canada, and which were not made here originally, should be allowed to become national treasures through association. Champlain's astrolabe was not made here, although it was found here; the portraits of Madame Mercier by the 18th century French painter, Jean-Baptiste Greuze, because it was formerly part of the Van Horne collection, was repatriated by the Emergency Purchase Fund in 1972 and will join other works from this famous collection in the Montreal Museum of Fine Arts on the ground of its association with Canada.

Are we to deny that the Reliquary of St. Jean de Brébeuf, made anonymously in France in the mid-seventeenth century, and now in the Hotel-Dieu in Quebec City, has become a cultural citizen? Or the fine 18th century "secretary" which belonged to Benedict Arnold and which is in a collection open to the public in Rothsay, New Brunswick? Should not a more recent artistic masterpiece from abroad which has found its way into the country—perhaps "the Archer" by Henry Moore, now mounted in front of Toronto City Hall—be allowed to become a national treasure? These are the questions, I think, which have to be posed under the 35 year rule.

Thus Bill C-33, as provided for in the British and French export control systems, among others, includes a time test. In Canadian terms, the practical test necessary for this "acculturation" of a foreign object to take place will be 35 years, and I would point out that this provision is not subject to arbitrary change without new legislation being required.

A permit is issued forthwith by the customs, if the person applying for a permit for an object on the control list establishes that the object in respect of which the application is made was imported into Canada within the 35 years immediately preceding the date of application.

I perhaps should interject here, begging the question, if you like, of how will the owner establish to the satisfaction of the customs officer that the object he wishes to export has been in the country less than 35 years? On the application form for an export permit the owner, if it is claimed that the object has been imported into Canada within the last 35 years, will make a declaration to that effect and attach any available supporting evidence. The customs officer would not question such information unless he suspected evidence of fraud. Otherwise, a permit will be granted forthwith.

Allow me to review with you those aspects of the bill which protect the interests of collectors of international art. In the first place, the object must be on the control list; secondly, it must have been here 35 years. After that it must be considered, in the opinion of the expert examiner and, perhaps, ultimately the review board, to be of a class or kind, the loss of which would significantly diminish our national heritage.

I would remind you that to be subject to control, the artist must not be living and the object must be at least 50 years old. As the bill is concerned with objects of a high degree of national importance, obviously, the review board, and prior to the board the expert examiner, will be demanding the highest standards for all objects, particularly those which are no of Canadian origin. Unless they are really outstanding, having some association with Canada, no institution will be interested in purchasing them.

In order for the review board to establish a delay period for an object as the result of an appeal, it does so, "if it is of the opinion that a fair offer to purchase the object might be made . . .", as is set out under clause 23(5)(a). Thus the first protection for the collector is that the control system is interested in objects of high quality and close association with Canada; secondly, that there is a likelihood of interest on the part of an institution to purchase it.

Once a delay period goes into effect, the object is eligible for tax relief, which makes the likelihood of the interested institution and the owner reaching agreement over a sale all the more likely. If, however, at the

expiration of the delay period, no offer to purchase has been made by an institution, the export permit will be granted.

It would seem that some collectors have not fully realized the extent to which the act protects them from undue interference in the matter of foreign cultural property. It is, therefore, difficult to see how the 35-year rule will discourage them in any way from importing objects from abroad in the future. On the contrary, those who are astute stand to gain by doing so, if they choose wisely and well, as an outstanding foreign object will be eligible for tax relief in the case of referral to the board when an owner and institution are negotiating a gift or sale, even when export is not involved.

Let me briefly touch on some other points which have been raised during debate in the Senate. Why did we not include an appeal procedure to a ruling by the review board? My answer is that if the review board, in arriving at a decision, denies natural justice, then the owner of the object may make application to a federal court to upset the decision on that ground. However, to provide an appeal for a decision with respect to the quality of an object would be unnecessary, in my opinion, and, I believe, misguided. My reasons for that position are threefold:

1. The delay period established by the board will likely have expired and the object either purchased or an export permit issued before an appeal would be heard.

2. A judge of the Federal Court, or the Supreme Court of Canada, would not, I expect, be a person qualified to overturn a decision of the review board as to the quality or national importance of an object. I ask whether a court would wish to be placed in that situation.

3. My third reason is really practical rather than juridical. Would the owner of an object really want decisions as to its quality and national importance made by persons who are not qualified to judge these objects on their merits, even though they are expert judges of the law? Or would they prefer the considered opinion of an independent body of professionals representative of those interests most closely connected to the matter, chosen for their competence to make such judgments?

I remind you that the review board is entitled to seek advice from the appropriate federal agencies and may obtain opinions as to quality and value from experts wherever they may be found.

Finally, I should like to turn to the question of ministerial permits. Some have questioned the purpose of the general permit and the open general permit. Under the British system the bulk licence and the open general licence will be defined in the regulations and will have specific purposes.

The general permit refers to a kind of bulk licence which can be issued to a reputable dealer specializing in the import-export trade, say of antique furniture, so as not to unduly and unnecessarily interfere with his business. Such a dealer, on application, and in accordance with the regulations to be established under the act, and on giving proper understanding, would be allowed to export objects which, although they might technically fall within the control, are not in themselves of such importance that an export permit would not be issued if applied for. Of course, the minister has the power to withdraw this privilege if it is abused.

The open general permit refers to a type of permit applicable to all persons, similar to the general export permits issued under the Export and Import Act. It would be published in the *Canada Gazette*. They, in effect, create exceptions to the control list while they are in force. For instance, a particular class of object subject to control might be in abundant supply, say sterling silver teasets, and the ability to exempt such a particular class of object, as under the British system, for a period which can be limited assures the necessary flexibility in the control system.

Mr. Chairman, I have tried to touch on some matters that I know have been of concern to honourable senators. There may still be some questions, which I would be pleased to try to answer. I conclude by thanking you for your very kind attention, and hope that my introductory statement has not abused your patience.

The Chairman: Thank you very much, Mr. Faulkner. Honourable senators, I should have mentioned that sitting on the minister's right is Mr. Ian Clark, Special Adviser to the minister. I apologize to Mr. Clark for not introducing him earlier.

I understand the minister's time is limited, so we should try to confine our questions to questions on policy as much as possible. If the minister has to go, Mr. Clark will be available to answer any other questions.

How do you wish to proceed? Shall I call clause 1 and ask general questions?

Senator Lamontagne: First of all, Mr. Chairman, I think we have the wrong bill. We have the bill that was reported by the committee in the other place, but it does not contain all the amendments that were proposed by the minister before third reading.

The Chairman: That will be rectified. In the meantime, I will call clause 1. Shall clause 1 carry?

Senator Lamontagne: I suppose it would be very difficult to make a distinction between policy questions and more or less legal or technical questions. If, in the process of examining different clauses, there are policy questions involved and the minister is not available, perhaps he may come back later on to deal with those questions.

The Chairman: I do not know how much time the minister has this morning.

Hon. Mr. Faulkner: My problem is one of caucus really. I could stay for a few more minutes, or senators could go through the bill with Mr. Clark here to answer technical questions, highlighting policy questions which I could come back to deal with specifically, if you prefer that. I could stay here for a few more minutes. I am really at your disposition. I think it would be more helpful to run through the bill now, when Mr. Clark can answer technical questions, and if as a result you feel there are policy questions that remain unanswered I would be delighted to come back and deal with those specifically.

The Chairman: Would you be available this afternoon after 3.30?

Hon. Mr. Faulkner: I have a session with the Native Council of Canada. I may not be as fresh as I ought to be after that! That will be quite a session. What about tomorrow or tonight?

The Chairman: Possibly tomorrow.

Senator Lamontagne: I am available then. I do not know about other honourable senators.

The Chairman: We have other committees. You mean tomorrow morning?

Hon. Mr. Faulkner: Can you start at 9?

The Chairman: I understood you would not be available tomorrow.

Hon. Mr. Faulkner: There is a Cabinet meeting, but I could be here at 9, if that is not too much trouble. I could spend at least an hour with you then. Cabinet does not start until 10. Or tomorrow afternoon, of course.

Senator Bourget: We could sit tomorrow morning at 9 o'clock.

Hon. Mr. Faulkner: If you decide to do that, having gone through the bill, I could be here then.

Senator Bourget: What time is the Cabinet?

Hon. Mr. Faulkner: Ten o'clock.

Senator Bourget: There are some other committees. I do not know how many committees are sitting tomorrow.

The Chairman: There were two committees set for tomorrow morning, but the Standing Senate Committee on Foreign Affairs has been cancelled. The Standing Senate Committee on National Finance will sit, but Foreign Affairs, which was clashing with the Finance Committee, has been cancelled. We could meet at 9 o'clock, if that is the wish of the committee.

Senator Bélisle: Suppose we go through the bill. As the minister has said, if there are some policy matters that need to be discussed we could have him here tomorrow. Let us go through the bill first. There are three meetings tomorrow.

The Chairman: I have called clause 1. On that clause you can ask questions on any clause. Is that satisfactory? Any clause you have a question on you can still ask on clause 1. Tomorrow we can go through the bill clause by clause, because I understand there will be some amendments proposed.

Senator Lamontagne: Shall we proceed to study it clause by clause right now?

The Chairman: Very well. Shall clause 1 carry?

Senator Bourget: That is the title. Perhaps we should deal with the title later on, when we are through with the bill.

The Chairman: Yes. Clause 2?

Senator Lamontagne: I have only one question on clause 2. I think I know the answer. It was raised in the Senate during the debate. I want to make sure that the definition of an institution includes private institutions, such as a museum or archives in a university, or institutions such as the Montreal Museum of Fine Arts, institutions that are private in the more or less legal sense but are publicly owned and at the disposal of the public.

Hon. Mr. Faulkner: I think the short answer is yes. The definition, though, is intended to ensure that only museums, art galleries, libraries and archives that will benefit from the bill and related amendments to the Income Tax Act are public institutions, publicly owned and opened to the public; I think that is the operative part of the definition.

Senator Lamontagne: This question was raised by Senator Hicks, who has a very direct connection with a well-known university in Canada.

The Chairman: Are there any more questions on clause 2? . . . Shall we let clause 2 stand until tomorrow, or shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Are there any questions on clause 3?

Senator Lamontagne: The minister has referred to this matter this morning, but I want to make it clear again that the minister cannot lower the minimums provided in this clause. However, the Governor in Council can, by order in council, increase those minimums so as to take care of inflation or changes in the value of objects of art in Canada.

Hon. Mr. Faulkner: That is right.

Senator Bourget: This has not yet been established; it will be established in the future. How long will it take to establish it?

Mr. Ian C. Clark, Special Adviser, Arts and Culture, Department of the Secretary of State: Not very long. These are the parameters. After more consultation with those concerned we will be able to set the prices at a more reasonable level. We will want to even this out and make sure that we are reflecting the market trend.

Senator Bourget: I understand that will be an open list?

Mr. Clark: That is correct.

Senator Bourget: Which could be added to from year to year, I suppose?

Mr. Clark: Yes.

Senator Bélisle: Clause 3(2) provides that the Governor in Council may include in the Control List objects the export of which he deems necessary to control in order to preserve the national heritage in Canada. Does that mean that if, for example, I have something valuable in the possession of my family I cannot export it? Does this apply only to institutions?

Hon. Mr. Faulkner: No, it would apply to—

Senator Bélisle: Every article?

Hon. Mr. Faulkner: No, ony to those articles which fall within the parameters of the Control List. It would

be an extraordinary piece of art that you would have at home. I have no doubt that you have several.

Senator Bélisle: For instance, suppose we are religious and we have a 500-year old Bible which has been classified as an important article, could we not take it to the United States?

Hon. Mr. Faulkner: Let us suppose for the sake of argument that this Bible would fall within the Control List. This legislation does not prevent you from eventually selling it. It provides that Canadian institutions must have a first crack at it. In other words, before you can export it, Canadian institutions must have a chance to decide whether they wish to buy it. If no one wishes to buy it in Canada, you are free to export it. This law does not prevent the export of our treasures, but provides a delay prior to export sale for Canadian institutions to decide whether they wish to buy the article.

Senator Bélisle: If one of the Canadian institutions offered me only five and the other party offered 10, would I be compelled to sell it for the five?

Hon. Mr. Faulkner: No, but it is important to recognize that this bill does provide an incentive, in addition to the delay period, for Canadian institutions to buy, because it contains tax provisions both from your point of view and that of the institutions.

Senator Bourget: But in such a case no one would be prevented from selling the object in the United States or Europe. Let us suppose there was a big difference in offers. Senator Bélisle refers to a Bible, but in respect of other articles there could be a difference of thousands of dollars in the offer. In that case would the government interfere and prevent the Canadian from selling?

Hon. Mr. Faulkner: No, the price would be determined by the market. In other words, if the senator has an offer for his Bible in New York for $1,000 and the Sudbury museum will offer him only $500, the price would no doubt be set at $1,000.

Senator Bourget: Suppose that you, as the minister, or the Review Board, considered that object to be very important for Canada, in view of the fact that it had a very great value could you contribute to that fund which would be created?

Hon. Mr. Faulkner: Yes, at the end of the bill you will find a provision for funds which will be available to assist, not only the national institutions such as the National Gallery or the Museum of Man but, in fact, other institutions throughout the country in cases in which it is deemed necessary or advisable to assist in the purchase of important works.

Senator Lamontagne: Suppose, however, Mr. Chairman, that I am a Canadian and I wish to go and live in the Bahamas and do not wish to sell my cultural property, but take it with me. Would I need an export permit and would I be subjected to all this because I did not wish to sell?

Hon. Mr. Faulkner: I am not sure of the exact procedures, but the provision would be that you would sign an undertaking to repatriate the articles.

Mr. Clark: That you would not dispose of them abroad. If you were taking the articles abroad to dispose of them, you would have to go through the procedure.

Senator Lamontagne: If I go abroad and stay there more or less indefinitely and two years after I have left the country I wish to sell such objects, would I have to return here and go through all that procedure?

Mr. Clark: Yes, sir.

Hon. Mr. Faulkner: In the case of those works of art contained in the Control List.

Mr. Clark: You would have signed a declaration that you would not dispose of them while they are in your possession, for instance in Boston, or while you might be living in England or wherever it might be.

Senator Cameron: What would be the situation in respect of articles on a ship that sank, assuming they were not damaged beyond repair or on an aircraft? This has happened from time to time.

Mr. Clark: If you would refer to clause 3.(2)(a)—

Hon. Mr. Faulkner: The only problem with that clause is that I do not know if it is entirely clear as to the extent of the territorial sea of Canada. However, assuming that question is resolved the clause will be clear. I take it, senator, that you are referring to an aircraft loaded down with pre-Columbian art which crashes in Banff, which is yours and none of it is broken. It is a somewhat hypothetical situation.

Senator Cameron: I will take a chance on that. My point referred to objects going down outside territorial limits.

Hon. Mr. Faulkner: Outside the territorial limits would not apply.

Senator McGrand: My question relates to the reference to archaeological objects. On the northern tip of Newfoundland there are excavations of an old Viking settlement. It is possible that someone who collects that type of object would come up and buy the materials, take them back to Kentucky or somewhere and display them in the same manner as was done with the London Bridge. What does this legislation provide in cases of the purchase and export of that type of treasure?

Mr. Clark: Almost all provinces have legislation or regulations concerning archaeological material. The purpose of this provision is to assist those provinces which wish to control pot-hunting and the erasing of archaeological sites. When the expert examiner is aware of this, and he no doubt would be the provincial archaeologist, he will be able to look into the question of any provincial law being broken by pot-hunting.

Hon. Mr. Faulkner: So, in fact, this legislation would be complementary to provincial legislation dealing with archaeological digs. Some provinces have legislation concerning archaeological digs, pot-hunting as my learned adviser terms it, and where that legislation is in place this legislation would complement it in the sense that the provincial archaeologist would monitor what was coming out of this Viking dig.

Senator McGrand: But if a province had material of this value and no particular law covering it, this does not interfere with the jurisdiction of the province. If it wished to sell its archaeological treasures, it could do it; is that correct?

Hon. Mr. Faulkner: It is binding on institutions also, with the consent of the provinces. We have letters from all provinces supporting this legislation, saying that they welcome its framework.

Senator Bourget: Following that particular question, maybe this should come under the Review Board, but will there be on the Review Board appointees from each province?

Hon. Mr. Faulkner: No, I do not think we have had any particular representations to that effect from the provinces. They were more concerned that the Review Board be made up of recognized experts on both sides of the equation.

The Chairman: Are there any further questions on clause 3? Honourable senators, I am a little concerned about carrying these clauses at this time, because we have another witness to hear and he may wish to raise some questions on these clauses. I think it would be better if we stand the clauses and at the end we can move the bill, if we wish, after we have amended any clauses which the committee wishes to amend. Is that agreed?

Hon. Senators: Agreed.

The Chairman: Shall clause 3 stand?

Hon. Senators: Agreed.

The Chairman: Clause 4—permit officers. Are there any questions on clause 4?

Senator Bourget: Does that mean that a permit officer will determine at each port of entry?

Mr. Clark: No. This would be a permit officer in the customs office. He has no aesthetic judgment to make.

Hon. Mr. Faulkner: He just has to read the list.

The Chairman: Shall clause 4 stand?

Hon. Senators: Agreed.

The Chairman: Clause 5—expert examiners. Are there any questions on clause 5? Shall clause 5 stand?

Senator Cameron: I presume that the qualifications of the examiner are spelled out somewhere?

Mr. Clark: Yes, in the regulations. In most cases the term "expert examiner" is used to cover an institution. The only case where it would be an individual would be where the institutional range of expertise was not sufficient to cover the bill, and you might want to take advantage of a university professor to supplement what the local custodial institutions would have as resources within that institution—the provincial archives, and that sort of thing.

The Chairman: Are there any further questions? Clause 5 stands.

Clause 6—Export Permits.

Senator Lamontagne: On clause 6, what happens if a foreigner—let us say an American—acquires a piece which is on the control list? I understand this legislation applies only to residents of Canada.

Mr. Clark: Yes, it does, in terms of the person who has to obtain a permit. If you will note clause 34, it says that all persons must obtain a permit. We are saying that a non-Canadian resident must apply for his permit through Canadian auspices, so that—

Senator Lamontagne: But he is not forced to, because he has no obligation under this legislation. He is not a resident of Canada.

Mr. Clark: If you look at clause 34. We have the resident of Canada here as the definition. It has to be a resident of Canada who applies for the permit. If you look at clause 34, I think it will tie it in for you. It says:

> No person shall export or attempt to export from Canada any object included in the Control List—

In the regulations it will be stated that those who are not Canadian residents must apply for a permit through a Canadian resident. This is so that we can control what happens afterwards.

Senator Inman: I was wondering what would happen if a Canadian had an object of art and wanted to send it to a relative in another country?

Mr. Clark: This would be in a case that was on the control list? Therefore if a person wanted to lend it to a relative there would be no problem. This would be in the regulations. It could go out and come back in. But if the question was to give it in perpetuity to that person, and it did fall within the control list, it would have to go through the review board process.

The Chairman: Are there any further questions on clause 6?

Senator Lamontagne: Again on clause 6, it seems to me there is a problem here, because if an object under clause 6(b) or (c) is loaned or sent abroad for purposes of an exhibition, it seems to me that the owners of the property would have to obtain a permit, and it would be an automatic permit under clause 6.

Hon. Mr. Faulkner: That is right.

Senator Lamontagne: But if they wanted to export it for the purpose of selling it, they would be penalized, because of subclause (a). They would have had a permit prior to the application for export and therefore they would not, because they had loaned it previously for an international exhibit, get an automatic permit under clause 6. As the clause stands at the moment, you would really discourage people from participating in international exhibitions or things of that sort.

Mr. Clark: Clause 6(a) contains the condition that the permit will be issued forthwith only if the object "was not exported from Canada under a permit issued under this Act prior to that importation". That is the point.

This provision was added to prevent people fraudulently exporting under the 35-year rule with the intention of reimporting, to start a count for the rule over again. It also has the effect that entry and departure from Canada of an object for exhibition or restoration does not break the 35-year rule.

We believe that the case you have described can best be handled under clause 14(1) where the minister can issue such an individual with a general permit after examining the facts. This will cause a brief delay beyond what is normally a "forthwith" situation, but it will be dealt with with despatch. Obviously it has to be.

Senator Lamontagne: You mean that if he had loaned the property before and had received an automatic permit, if he were to reapply for export or, for selling, he would not be able to get an automatic permit?

Mr. Clark: That is right.

Senator Lamontagne: He could then apply to the minister and receive a general permit, under clause 14?

Mr. Clark: That is right.

Senator Lamontagne: While it would not be an automatic permit, it could be dealt with fairly quickly.

Mr. Clark: With despatch—the only point being, as I am sure you understand, is that we would want to take a quick look at it, just to make sure.

The Chairman: Are there any further questions on clause 6? Shall clause 6 stand?

Hon. Senators: Agreed.

The Chairman: Clause 7—determination by permit officer. Are there any questions on clause 7? Shall clause 7 stand?

Hon. Senators: Agreed.

The Chairman: Clause 8—determination by expert examiner. Are there any questions on clause 8?

Senator Lamontagne: On clause 8(2), the examiner is asked, under this subsection, to send a copy of his advice to the Review Board, and the Review Board cannot de anything about it because it can act only on an application by an applicant. The Review Board can only look at that advice and more or less file it and perhaps forget about it. In other words, it has no obligation or even power to act on that advice.

On the other hand, the minister, under clause 12, is authorized to amend, suspend, cancel or reinstate an export permit. So it would seem to me that it would be much more consistent if a copy of the advice of the examiner were sent to the minister rather than the Review Board, or perhaps have a copy sent to both of them—to the Review Board and the minister—so that the minister would be in a position to exercise his powers under clause 12.

Hon. Mr. Faulkner: I have thought about this matter since you first raised it with me, Senator Lamontagne. I am rather reluctant to see set up within the Department of the Secretary of State what would amount to a bureaucratic secretariat second-guessing these expert examiners. I think we can meet your point, however, if the review board in fact gets a copy of the decision from the expert examiner concerned. The matter can then, on advice from the review board, be referred to me for action, and I can discuss it with the board.

Is there not some provision within the bill for this type of procedure, Mr. Clark?

Mr. Clark: Yes.

Hon. Mr. Faulkner: The assessment would take place at the review board where it should, in my judgement, and if the board feels there perhaps should be some action taken in a particular case, it can then refer the matter to me for my possible action.

I would prefer to have it done in that way, senator, rather than having someone in my office trying to second-guess the expert examiners. My intuition tells me that the incidence of dispute is likely to be very rare indeed.

Perhaps Mr. Clark has some thoughts on this as well.

Mr. Clark: I should like to put forward two points. First of all, at the level of object we are talking about, we do not want to be concerned with this level. We want to have confidence in the correct action being taken by the customs officials and the expert examiners. The whole philosophy of the act is concerned with objects above a certain level. There are decisions which will be made, and these people should be competent to make them.

The other point I should like to make is that the administrative services for the review board does not consist of setting up a new bureaucracy. The administrative services in respect of the review board will be supplied by the minister. So, in effect, you are doubling it by saying that the minister be informed. The minister will be informed in the sense that if the review board judges something to be wrong, it will inform him.

Senator Lamontagne: But by that time, it seems to me, the export permit will have been issued and the object will be out of the country. Even if the minister wants to retroactively cancel or amend the permit, it will be too late.

Mr. Clark: We want to put our emphasis on the really important objects. It depends on how tight you want to make the noose. We think that when there is evidence of fraud, or evidence of dishonest dealings, at the level we are interested in, we will know about it. At the level of objects which are not really contentious, we would rather not know about it. We want to keep the system moving as quickly as possible. The whole point is to have what bureaucracy we have carry out its activities with dispatch so as to cause minimum disruption in whatever the personal rights of the individual are. I think if we become concerned with objects that are below the level of our concern, we are just building a larger bureaucracy.

Senator Lamontagne: I am not as concerned in so far as subclause (2) is concerned, but under subclause (4), once the examiner has decided that the item in question is included in the control list, he must then apply these quite difficult and subjective tests. If the examiner's decision is to grant an export permit, there is no review in respect of that decision to determine whether or not there has been an error in judgment, whereas if the

examiner's decision is not to issue a permit, the review board, sitting with at least three members, has at least two months, and a maximum of four months, to review that judgment. It seems to me there is an inconsistency in this respect.

Hon. Mr. Faulkner: Would you not agree, Senator Lamontagne, that the incidence we are talking about would, first of all, be marginal? It is unlikely that there will be clear cases of something of that nature that fall squarely within the criteria we are talking about that the expert examiner allows to be exported. We are talking about a marginal error in judgment on the part of the expert examiners.

In all cases, the expert examiner will be the outstanding expert in this area in the region in which he is operating.

I would suspect, first of all, that the incidence of this happening would be relatively rare, but the review board, which will have notice of these things, will be in a position to detect this type of thing, and not only inform me, but make a judgment about the activity of the expert examiner in question.

Senator Lamontagne: But what happens if the board is not sitting at the time?

Hon. Mr. Faulkner: Given the amount of trade that is likely to be affected, as well as the incidence of this type of thing happening, it seems to me that it is likely to be sufficiently rare that further protection will really be at the expense of some form of efficiency in the operation. It would involve perhaps several people in my office in a monitoring process, as well as having people in place who are expert enough to make expert judgments about the failure of the expert examiners in the field.

I resisted your very reasonable persuasions on this largely because I feel, in looking at it in offset terms, I would not be accomplishing a great deal, but would be inheriting a fair amount of work. That is why I feel the protection we have with the review board monitoring the work of the expert examiners over a period of time is sufficient protection to prevent any serious loss at the margin, which is all we are talking about.

Senator Lamontagne: What you are saying, really, is that if there are to be errors of judgment on the part of the examiners, you want those errors to be in favour of the exporter rather than the public interest.

Hon. Mr. Faulkner: No, I do not think I would accept it in those terms.

Senator Bélisle: Mr. Chairman, my question is supplementary to Senator Lamontagne's. In reading through this bill, it is my impression that it is the intent of the government to have the last veto rest with the minister. For example, if an expert examiner uses a certain yardstick in arriving at a decision with respect to an object, and the review board, looking at the provincial view, uses a different yardstick in arriving at the decision, it is my understanding that the minister will have the final veto. Am I right in that?

Hon. Mr. Faulkner: No.

Senator Bélisle: The minister will not have the final say?

Hon. Mr. Faulkner: The final say will be that of the review board.

Senator Bélisle: In other words, if an export permit has been turned down by the review board, the minister has no further power with respect to that decision?

Hon. Mr. Faulkner: That is right.

Senator Bélisle: In other words, it is just the opposite of immigration.

Hon. Mr. Faulkner: This is even more difficult to make judgments about than immigration. We are really dealing with a highly specialized area. I think it would be difficult, if not presumptuous, for a minister of the Crown, even an enlightened Secretary of State like Senator Lamontagne, or some of his equally enlightened successors, whom I will not enumerate—

Senator Lamontagne: You don't want me to ask you any questions!

Hon. Mr. Faulkner: It would be difficult to sit in judgment in this very refined area after a group of the very best experts in Canada have made a decision. I have, out of natural modesty, decided to retire from the field as minister and set in place a formula that will work, drawing upon the very ablest talents we can have in the country. This question came up in committee discussions in the other place, and some felt, particularly from the New Democratic Party, that perhaps the minister should retain that ultimate sanction. I resisted it there, and I would like to resist it here, for the reasons I have just mentioned.

Senator Bélisle: May I say, Mr. Chairman, having travelled with the minister for 30 days in Africa, I know there is lots of modesty in what he has said, but I wish all the ministers would come to his conclusion.

Hon. Mr. Faulkner: I am afraid, honourable senators, I am going to have to leave. If you need me back tomorrow, I will be here.

The Chairman: I think Senator Bonnell has just one question.

Senator Bonnell: I wondered if the Review Board had any authority under this bill to review a permit, even though they have a copy of it, and advise the minister, unless somebody actually asked them to review it and somebody made an application. Section 18(2) says:

> The Review Board may sit at such times and places in Canada as it considers necessary or desirable for the proper conduct of its business.

Its business is later on described as being where they get an application for review. Therefore, they cannot sit just because they have a review and advise the minister. They have no power.

Hon. Mr. Faulkner: The amount of work the Review Board will be doing has still to be determined by the extent of the trade we are involved in. This is somewhat unknown right now, how much will actually be caught in this proposed web. The Review Board will, as part

of its responsibilities, having a secretariat working with it, monitor the work of the expert examiners. As I said earlier, if we see a pattern of laxity, if I could so describe it, things being granted export permits which probably should more profitably have been judged as falling within the control list and so on, they will deal with. My guess is that this is not likely to happen, because we are dealing with people making judgments whom we have designated as experts in the field. There will be the monitoring of that work by the Review Board.

Senator Bonnell: Under what clause do they get that power to monitor?

Hon. Mr. Faulkner: They get it because the work of the expert examiner is referred to them. I think it is implicit.

Senator Bonnell: It just says a copy will be sent to them. It does not give them the power to do anything about it.

Hon. Mr. Faulkner: It is implicit, if not explicit. That is the purpose of getting the paper. If it needed to be spelled out it could be spelled out.

Senator Bonnell: It is just a matter of filing it away. It does not say they can do anything about it, unless somebody makes an application for an appeal. Under this bill there is no authority that gives them power to do anything about it.

Hon. Mr. Faulkner: The way I envisage it is that they would get a copy of what the export examiner was doing.

Senator Bonnell: And file it.

Hon. Mr. Faulkner: They would review it; the secretariat working with the board would review it. If they felt something was happening that should be stopped they would refer it to me and I would stop it. That is where my ministerial discretion comes into play.

Senator Bonnell: Where does it give them power to review it?

Senator Lamontagne: Clause 12, is it not?

Hon. Mr. Faulkner: That is my power. I think Senator Bonnell is asking where it is specifically spelled out that the Review Board should in fact review. It is not. It is implicit.

Senator Bonnell: The Review Board has no power to review.

Hon. Mr. Faulkner: It has the power of review. I think your complaint is that it is not spelled out as part of its duties that it should in fact review.

Senator Bonnell: Where does it even get the power to review? Under this bill I see no clause that says they have the power. The only thing they can do is to receive an application; they file it away and that is the last power they have unless somebody appeals. Then they can look at it and make a recommendation. Before that the minister has the power to do something if he wants to. That is the way I see the bill.

Hon. Mr. Faulkner: That is an interesting point. We may want to pursue that a little further. I had approached it rather differently, that they would get this paper as a matter of course, and the reason they would get the paper is to monitor what is going on in the field.

Senator Bonnell: It does not say that.

Hon. Mr. Faulkner: I was planning to deal with it as part of the administrative arrangements around the work assigned to the Review Board and the secretariat, which come through regulations and so on. If they felt at that point that something should happen, they would tell me about it and I would exercise my power under clause 12. That seemed to me to be sufficient.

Senator Bonnell: Is there provision in the bill that gives the Governor in Council power to make new sections to give them more power than the bill now gives them?

Hon. Mr. Faulkner: The power is the power I exercise under clause 12. The Review Board would have the power; it would simply have the administrative responsibility of reviewing these things because they get copies of them, and advising me if they feel I should act.

Senator Lamontagne: There is no delay period there.

Hon. Mr. Faulkner: That is right.

Senator Lamontagne: As I said before, the object might be out of the country by the time you receive warning from the Review Board.

Senator Bonnell: Under clause 12 I do not think the minister has power to tell the Review Board they have power to do something that is not in the bill. Under clause 12 the minister is given power to amend, suspend, cancel, or reinstate any export permit that was offered, but it does not tell the Review Board, "You look them all over and report to me the ones you think I should change." In my view, the Review Board has no right to do anything other than file that letter when it gets it. It cannot even sit, because in order to sit and review it has to have an appeal before it. In other words, it cannot sit to make a recommendation to the minister. Therefore, two or three years could be wasted.

Hon. Mr. Faulkner: It is an interesting point that we should reflect on. I would like to reflect on that. I am still not persuaded that the administrative arrangements I have proposed as a way of getting at this problem cannot be achieved under this bill. I would like to check that out.

Senator Bonnell: Under what clause?

Hon. Mr. Faulkner: They could be asked to do it under the regulations, if they want to give me advice on these things. They get a copy of the expert examiner's work. Implicit in that is the idea that they would look at it. If you feel that for purposes of review they should have that spelled out in statutory terms, I would like to reflect on it. It is an interesting point.

Senator Bonnell: I have my doubts if even the Governor in Council has the power to make regulations that are more or less denied the board in this bill. This bill says the board can only sit when something is referred to it as an appeal. In no way does it say there is a review list there. If the Governor in Council decides to make a regulation that they are supposed to do these things and the bill says they cannot sit until they have an appeal, then they cannot overrule Parliament.

Hon. Mr. Faulkner: There is nothing in this bill that prevents the Review Board being called together, or examining a copy of the export permit issued by the expert examiner. What you are saying, I take it, is that unless that review process is really spelled out in statutory terms no administrative arrangements could accomplish it. I think the point is sufficiently important that I would like to look at it. My intention was to accomplish this through administrative arrangements. However, I think it may be a fine enough point that we should check it out.

Senator Bonnell: As long as you think about it it will work out all right.

Hon. Mr. Faulkner: Would you excuse me now, Mr. Chairman?

Senator Lamontagne: You might have to go back to my original suggestion.

Hon. Mr. Faulkner: I am always prepared to do that.

Senator Bourget: What about the amendments, Mr. Chairman, before the minister leaves.

Hon. Mr. Faulkner: I think Senator Lamontagne has them. I referred to certain amendments that I have already indicated I am quite happy with. The other ones I would prefer to argue tomorrow morning, if they arise.

The Chairman: Thank you very much, Mr. Minister.

Hon. Mr. Faulkner: Thank you very much, Mr. Chairman and honourable senators.

The Chairman: Shall we carry on as we have been doing and then come back to the other witness later?

Senator Lamontagne: I would suggest, Mr. Chairman, that in order to follow procedure we should perhaps, if my colleagues agree, hear the other witness before we proceed further. We would then know which clauses we have adopted.

The Chairman: I agree that we might save time if we heard the other witness now. Is that agreed?

Hon. Senators: Agreed.

The Chairman: I would like to introduce Mr. H. A. Malcolmson, who is appearing on behalf of several individuals who are interested in this legislation. I understand you have a presentation to make to the committee, Mr. Malcolmson.

Mr. H. A. Malcolmson: Yes, I do, Mr. Chairman and members of the committee. My principal role in appearing before you is that of counsel or solicitor for an informal group of Toronto art collectors with whom I have been associated over a period of years in relation to cultural export policy and the intentions of the government in that respect. Apart from that, it may be useful for me to mention that, although I am and have been in practice perhaps a dozen years, prior to that and in my first years of practice I had a dual capacity. That was the capacity of an art critic, being art critic and columnist for the lamented *Toronto Telegram*, the *Toronto Star* and, for a period, the CBC. I have been the beneficiary of Canada Council grants on occasions and have visited in my critical capacity, as a guest of the Council, various areas of the country. I am, as I mentioned, a solicitor. This has tended to bring me into contact with persons who collect art in substantial amount and substantial value and have major important collections in Canada.

I am familiar with the artists and happen to be involved and associated with the National Gallery of Canada and the Art Gallery of Ontario. I trust that the foregoing suggests that I do have some knowledge of the state of art in Canada from the institutional point of view, the legal point of view, the collecting point of view and that of the artists themselves. It is principally in those areas that I wish to speak to you and do what I may to provide the committee with some view as to how this bill is regarded by those persons who have not been consulted. That failure to consult, I am anxious to emphasize, I do not believe has been due to any lack of effort on the part of Mr. Clark, the department or the minister. It is simply that on occasion the act of consulting with some people is more difficult than consulting with others when consultation is desired in connection with legislation of this character—for instance, with provincial government and cultural institutions. There is always a party to answer the telephone. I should add that the professional art dealers form another such category and I know that they have been consulted by Mr. Clark and the minister. That is not a difficult process, it being necessary only to locate the president of a professional organization and consult with him.

Senator Lamontagne: I would like to know if you appear before us in your personal capacity, or on behalf of others. If you appear on behalf of others, who are they?

Mr. Malcolmson: I appear on behalf of other persons. My remarks as to my background are simply to amplify the comments I intend to make.

Senator Lamontagne: Could we be told who they are?

Mr. Malcolmson: Yes; since 1971 I have been in consultation with a group of Toronto collectors. One of the names is Dr. Murray Frum who, in Toronto, has a very well-known collection of African art. I have been in consultation and have a recent communication from Mrs. Ayala Zacks. She and her late husband were associated with the Art Gallery of Ontario and have made a major and marvellous bequest to that institution. I have been associated with and am directly instructed by Mr. Joseph Tannenbaum, who is a party, I believe, Mr. Chairman, to the remarks I have to make. He is a collector who in the past dozen years has collected an extraordinary group of nineteenth century French paintings, in the period after Delacroix and before the Impressionists, an area of art which had been neglected

by almost everyone. He had the foresight to collect in this area and has acquired in a short period an extremely important group of paintings, so important that Hilton Kramer of the *New York Times,* together with various American institutions and newspapers, write of it. Perhaps this is privileged information, but I know that national institutions of Canada are making special arrangements in relation to that collection, because they regard it as so important.

I suppose one of the points I wish to bring to your attention, gentlemen, in my representational capacity, is the position of Mr. Tannenbaum, who has acquired this distinguished and extraordinary collection in an area of which Canada did not previously possess anything. He says, rightly or wrongly, that he will cease collecting any work and that in his opinion persons of his character who would otherwise make acquisitions of that nature will be inhibited or discouraged by this legislation from making further acquisitions. I am sure you would like me to say why that is. It simply pertains to the fact that these gentlemen and many other collectors are extremely concerned by the inclusion in the Control List of work of non-Canadian origin, to which I believe the minister referred as foreign cultural property.

Senator Lamontagne: So, today you are presenting the views of these people, not necessarily your own?

Mr. Malcolmson: That is correct.

Senator Lamontagne: So we can take it that you are presenting the views of Mrs. Zacks? I know her very well and have great respect for her.

Mr. Malcolmson: I wish to be careful in saying that every word I say represents the view of every one of these persons and, because these are different persons, I can only offer a consensus of their comments to me. Obviously they will have different views, with different degrees of emphasis.

However, the consensus, put simply, is that one particular aspect of this legislation, the inclusion of work not of Canadian origin, may be harmful indeed for the collection of art and the welfare of art in Canada. I wish to emphasize at the same time that those I represent do not oppose this legislation, as such. It contains many positive virtues. The protection of indigenous Canadian art is a motive to which I have heard no objection in any way whatsoever. In fact, the regret has been that perhaps work of Canadian art is not better protected by the provisions of this bill than it is. This refers, obviously, to Eskimo art, for example, which is produced by living artists, less than 50 years old, and so forth, and is subject to free export. There is therefore no protection whatever for various forms of Canadian art which may be excluded from the limitations of the Control List. This may be necessary, as Mr. Clark knows better than I. It is felt that this lack of protection for certain types of Canadian art is unfortunate. In any event, in relation to the control of work of foreign origin, it is felt that the bill and its limitations will prevent the acquisition of African art, for example.

I am talking of the future and the reasons these persons tell me that it will discourage them from acquiring foreign art is that, rightly or wrongly, the collecting of art is not philanthropy. When persons are acquiring works of art of a value of $5,000, $7,500, $100,000 or $200,000, they are aware of the investment character of that acquisition in addition to its aesthetic character, and their ability to dispose of it under a variety of circumstances is fortunately, or unfortunately, in their mind. I am advised by these persons that the imposition of a control procedure over their right to dispose of such objects represents a discounting factor on their investment. It will make it less valuable in terms of their lack of ability to freely sell that work. You can appreciate, I am sure, that if you are a Toronto collector or a Montreal collector—it does not matter where you are—and you are telephoned by a New York dealer wanting to buy your work but, at the same time, that dealer in New York has available an alternative purchase from someone in Cleveland, and the Toronto collector has to say that he has to go to the government to get approval before making the sale, then in view of the speed of the marketplace, the New York dealer is going to make an arrangement with Chicago or Cleveland or elsewhere and leave the Toronto person to the side. These are obvious market factors, and if the Canadian work is of an exceptional quality, then other factors may come into that. But I think we can generally concede that there will be some limitation on the flexibility of Canadian collectors in disposing of their work. If a major and material benefit to Canada is achieved in limiting that person's flexibility, then that is thoroughly justified, and in the view of the people I am representing, that limitation on Canadian work—work that flows from the indigenous Canadian culture—is entirely justified. But in relating to foreign cultural property, it is not. And a major reason that they say it is not, honourable senators, is this: I wonder to how great an extent it is appreciated that the quantity of foreign cultural property that would be in the control or in the hands of Canadian private collectors is extremely limited. The minister conceded that to some extent when he referred to the paucity in this area, and it is true. I do not know what evidence or facts I can give you, but the extent of collecting of significant work in this area in Canada is such that our great need, as a coutnry, is to actively encourage the importation of important foreign cultural products in order to assess the work of Canadian artists. We need a context in which the work of New Guinea, Africa, Europe and Asia is available to the greatest extent possible, and the curatorial staffs assure me that when they wish to assemble an exhibition of Canadian collectors of work that is a little bit off the beaten track, it is extremely difficult. There are three Kandinskys in Canada and two works of importance of the 17th century. Here I am talking about work in private hands. So that we have a situation where our urgent national need is to encourage in every possible way the importation of important foreign cultural property, and I think it is most unfortunate that the effect of this bill will be to discourage persons who in the future—five years or ten years from now—might consider, and probably with a great deal of nervousness and anxiety, spending $200,000 or $300,000 on the purchase of a work of art.

I agree, honourable senators, that Mr. Clark has to recognize the difficulty and he with the minister have done what they could to attempt to define the limitations in the act so as to harm this object as little as possible

and so we have the rule dealing with 35 years, 50 years, and living artists. But my difficulty is that even after they are told very patiently and carefully that it is 50 years—and in fact I am starting to forget it myself—50 years and made by a living person, it is very easy to get the figures mixed up in your mind and transposed. As far as these questions are concerned, it is just a new government restriction. The people with whom I have discussed this are also concerned, rightly or wrongly, that once it is 50 years, then the government may reduce it to 35 or 25 years.

Senator Lamontagne: But the government will not do that. They cannot do it. They will have to come back to Parliament.

Mr. Malcolmson: I appreciate that. It is not susceptible to change by regulation. I have no reservations about your statement. My difficulty is that you are dealing with people who may not have the precise understanding that the gentlemen in this room have of exactly what the situation is, and we are dealing with how other persons will react in the future. So I suggest that prior to imposing a restriction that may in practice be a very limited benefit, we should gauge very carefully the inhibiting effect of that provision for the future.

I have one other area of representation that I am anxious to make, and that has to do with the question of consultation. Senator Lamontagne and the minister have emphasized in the formal remarks I have read, and the minister again this morning, that it is essential for this bill to work that there should be co-operation between the various bodies, and that the art community, as it were, should work together to make the principle and the philosophy of this legislation work. Under those circumstances, I would ask you to consider very carefully, in the first instance, the representation I make on behalf of collectors, but beyond that just to consider the consulting process.

The minister has stated, and I believe Senator Lamontagne did—in fact, I see in the opening paragraphs of his remarks in the Senate that there is a statement that as soon as the bill was introduced in the other place these groups, the custodial institutions, collectors and the trade, had an opportunity to consider it in detail and it had met with a remarkable degree of support from all quarters. I agree, and I believe that the provinces have been consulted, that the custodial institutions have been consulted and the Art Dealers' Association has been consulted, but I respectfully . . .

Senator Lamontagne: Later I mentioned some more associations.

Mr. Malcolmson: That may be the case, senator, but the underlining in my draft here is the word "collectors," and I am respectfully suggesting to you and to the committee that collectors have not been consulted. In fact, the precipitous way in which the bill has been brought forward has had the opposite effect, in my experience. The collectors feel that the bill is being brought forward with undue and unseemly haste, that they are having no opportunity to consider or assess the bill, and in this respect may I point out that I believe that the bill was introduced last fall in the House of Commons and, having received the appropriate reading, the Commons committee then considered it in February, and individuals in Toronto, other than myself, attempted to make this kind of representation to the Commons committee and were told, I think it was on a Friday, that they would have to come on a Tuesday and if they did not come on the Tuesday, then they, being a corporate collectors' group, and individuals including myself were simply not to be heard. I responded to the chairman of the committee and stated that, surely, the Commons committee did not intend to conclude its hearings on a matter of such importance to collectors without hearing them, and I was advised that that was exactly the case and that there was to be no hearing on the matter. Working with Senator Carter and with his great assistance, I have been able to come here this morning.

Senator Lamontagne: Mr. Chairman, I have to interject here. I have looked at the proceedings in the other place and I think that the committee in the other place was quite ready to hear you. You suggest today that they were not prepared to contemplate any hearings, but I think they were prepared to hear you, but that at that time you were not ready for them. You have just said that they were not prepared to contemplate any hearings, but I think that they were prepared to hear you and that at that time you were not ready.

Mr. Malcolmson: That is correct, sir. I have my correspondence here. I indicated to the chairman that, by virtue of the mail strike which was on at the time the committee was holding its hearings, I simply was not able to correspond with a diverse group and obtain their instructions, in the circumstances. I therefore requested that he give me a further period, when the mails had recommenced, so that I could meet with these people. The chairman advised that there were scheduling difficulties, and other problems that the committee had. I am talking, of course, about what has actually occurred, as opposed to anything else. Quite obviously, no one has any improper motives of any kind. However, it just was not possible for the committee to give me that opportunity.

There is, however, one central point that I want to indicate further. I realize Mr. Clark's difficulties, but my difficulty is that it is not easy to get the views of collectors. It is not like phoning someone close at hand to find them out.

In the course of Mr. Faulkner's remarks to the house, he said that he was considering having a conference convened across the country in various places to discuss the bill, though it is not in the bill. He said that he was considering convening a forum to deal with the various interests, institutions, trades, collectors, and so on, to discuss how the system was going to work.

Senator Bourget: Excuse me for interrupting, but what was the date when the minister made that statement?

Mr. Malcolmson: I am reading from the notes for a statement by the Secretary of State on second reading of Bill C-33 in the House of Commons on February 7, 1975. On page 12 of these notes, at the bottom, the minister speaks of his proposal to convene meetings throughout the country to discuss with various persons the effect of the bill.

What I would strongly and most urgently suggest is that that very desirable series of meetings across the country be held under circumstances where persons who attend the meetings could have some kind of dialogue with the minister as to what should go into the bill, so that there could be discussion with persons directly affected, as to whether, as I suggest, the inclusion of, say, non-indigenous art will harm art in Canada. That is a factual question. I do not purport to have the last word on it. It is a conclusion that I think the minister, or any other person, would come to after talking to collectors, assessing their motives and listening to the various objections that have been made in this area.

I cannot take your time today to mention all the people concerned, yet in discussion in various portions of Canada this can be forthcoming, though my efforts have been concentrated, obviously, in Toronto. I have heard from a gentleman I spoke to, namely, Mr. John MacAulay the distinguished Winnipeg lawyer, and one of our most important Canadian collectors and benefactors, who has strong reservations about the bill in this area, and who thinks it is a bad idea. Someone, you see, should ascertain whether other Canadians as distinguished as Mr. MacAulay share that view.

I would also like to mention, with due respect to Mr. Clark, that Mr. Clark wrote me at an early stage, mentioning the bill, and at the same time indicating in his remarks what the bill was to say. Perhaps I should be more specific. Mr. Clark wrote to me as early as February, 1974 indicating that legislation would be forthcoming.

Mr. Clark: I believe it was in fact 1972.

Mr. Malcolmson: Yes. This legislation has been coming, as it were, since the time of prior ministers, and I was first of all in touch with the department in 1971, which is four and a half years ago. I first met with my group and wrote to the Secretary of State's office in 1971. Between 1971 and, really, the fall of 1974, as far as outsiders are concerned, the matter was under consideration and something was going to happen or was not going to happen. I did hear from Mr. Clark in February of 1974, at which time he indicated that the matter would be, as it were, brought forward again, or was under more active consultation. Mr. Clark, however, properly advised me by letter of the provisions that would be in the bill when it became available, but he was not at liberty to indicate exactly what it would say except in general terms.

The difficulty I have had is that the bill was introduced in the fall, and frankly I never dreamed that five months later we would find ourselves with a bill practically passed.

Senator Lamontagne: You are not aware of the efficiency of our parliamentary institutions!

Mr. Malcolmson: I am aware of the fact that the government, when it comes to areas such as the competition bill, or the Corporations Act, or a variety of major legislation affecting the business community as a whole, have seen fit to introduce bills, have let a reasonably extended period of time go by, have re-introduced the bills on various occasions and, when a consensus has developed, the bills are finally enacted. I just cannot understand why a similar process cannot occur in relation to this bill, why the minister cannot take steps to ascertain the views of collectors, and also to determine that difficult, somewhat subjective area of what will be the effect of the bill.

You see, the minister consults the institutions. In the bill the institutions are to receive substantial additional funds and great assistance to their collecting procedures. Of course, the institutions will have no objection. The art dealers have a provision whereby they may get a general permit, but collectors have been so unkind as to suggest ways in which there may be some benefit to the collectors in the framework of the bill. That is not something I want to go into now, but that is something which a private consultation might review. These are areas which I think just must be given adequate consideration by the collectors.

Senator Lamontagne: But the collectors have a lot to gain under this bill, too.

Mr. Malcolmson: The collectors have a great deal to gain. It is an excellent bill, and I commend to the greatest extent Mr. Clark and the minister for bringing it forward. The tax benefits are of major material benefit, and they will assist art in Canada; conversely, however, sir, with the tax benefit the collectors will now receive, the motivation for a collector's selling outside of Canada any art is greatly reduced. In fact, it is probably the case, with regard to the tax benefit, that a collector would have to sell his work outside Canada at some kind of premium to a Canadian price to stay even with the tax advantages.

Senator Lamontagne: How do you explain that?

Mr. Malcolmson: Well, if a person sells to an American he receives no tax benefit by virtue of that sale. If he offers the same work of art to a Canadian institution, and the review board makes the determination that it meets the test of the act, he will receive a tax benefit for the transaction. He will not have to pay capital gains tax.

Senator Lamontagne: So he has a great advantage in importing.

Mr. Malcolmson: He has a great advantage in keeping it in Canada, precisely. So that then leads me to ask, if the act has wisely and constructively set up machinery whereby a Canadian collector has all kinds of motivation to have his works stay in Canada, why we need to have this cloud of inclusion of this kind of work in the control list, with the consequent inhibiting effect that will have on people acquiring these works in the future. It simply goes to the question of whether, in taking this major step and including African and oceanic art in this bill, we are as a country obtaining any benefit from doing that. I am strongly suggesting that it is going to inhibit future collecting in those essential areas in Canada.

The Chairman: Does that conclude your statement?

Mr. Malcolmson: Yes.

The Chairman: Honourable senators, we have dealt with clauses 1 to 7, which we have stood. We were at clause 8 when we asked our witness to make his presentation. How do you wish to proceed now? Do you wish

to continue as you were before, or do you wish to ask general questions of Mr. Malcolmson first?...

I would like to ask Mr. Malcolmson a question. He listened in on the minister's presentation and he listened in on the discussion of clauses 1 to 8. Was there anything dealt with this morning that you want to comment on?

Mr. Malcolmson: No, Mr. Chairman. The comment is on more technical matters and my comments go to the philisophy and approach of the bill.

The Chairman: Do you want to ask some general questions?

Senator Lamontagne: Your main objection is with respect to foreign objects?

Mr. Malcolmson: That is the case.

Senator Lamontagne: Apart from that, you have no objection to the bill.

Mr. Malcolmson: I think that is true; yes, I do. There are some persons who feel that it is bureaucratic and who have various objections of that nature; but the consensus is that the legislation is going forward and we are going to have this act in, essentially, these terms. It is really too late, I think, to get into my kind of technicalities. So I would rather eliminate that, notwithstanding that some persons have objections. The thrust of the comments has to lie in the two areas I have identified: first, failure to consult, which I suggest is getting the whole thing off on the wrong foot with people whose co-operation is essential; and, secondly, the inclusion of foreign cultural property.

Senator Lamontagne: Do you know the Council for Business and the Arts?

Mr. Malcolmson: Yes, I do sir.

Senator Lamontagne: Do they represent any elements of collectors?

Mr. Malcolmson: Here is my difficulty. I believe I saw a statement that they have been consulted. In half an hour, if I were in Toronto, I would be having lunch with Mr. Arnold Edinborough, the president of that organization. When I spoke to him and made the same kind of comments I am making to you, sir, he was extraordinarily interested. He wants to write an article for the *Financial Post*—and he was—I do not want to prejudge his conclusion—certainly sympathetic to the point I am making. So I think we can reasonably anticipate that there is some prospect that next week or the week after that an article may appear in the *Financial Post,* which certainly at least is going to quote me as saying that no proper consultation has occurred. And I just think, as a person interested in art and who wants art to be encouraged, that this is undesirable, if it can be avoided on everyone's part.

Senator Lamontagne: Mr. Chairman, I would like to put a question at this stage to Mr. Clark, because he is involved in this and more or less has views on failure to consult.

Senator Bourget: That is an important question.

Mr. Clark: Mr. Chairman, if I may speak of personal consultations with Mr. Malcolmson, I think I have had three or four opportunities to inform him at various stages in the process of preparing this legislation. He was sent the first public announcement that the minister made and that goes back I think to 1972.

He states that an official could consult concerning government proposals that were before cabinet. We could not consult on the details of the bill until the bill was tabled, but we carried forward consultation at various stages in so far as we could in the public domain as we progressed. I think Mr. Malcolmson would admit that he was aware of the 35-year rule in that letter I wrote to you, Mr. Malcolmson, in which I offered perhaps to come and see you and explain matters in the bill. I never got an answer to that letter. When the bill was tabled, as I had promised to you I sent it to you on the date, October 30, when the bill was tabled. You had the bill from that time. I sent you the amendments as they appeared in committee. I do not think it is fair to say that I have treated you in any way differently from any of the others who were consulted, other collectors, dealers, associations, or the provinces. I would like to make that point clear.

In regard to collectors in general, obviously I was not in a position, or my department was not in a position, to negotiate with every collector. We consulted with a large number of them. As a result of our consultations, we were able to have amendments to the bill which reflected this consultation. I would point out to you the amendment to the Income Tax Act whereby an object which comes into the country—let us say the bill was in force tomorrow—would be technically eligible for tax relief if it was referred to the board and the board decided that this object—after 24 hours—has some association to Canada and meets the criteria under the act and there is an institution in Canada interested in obtaining it. That tax relief is available. I could give you examples that I picked out of the paper just the other day of the kind of thing we are talking about.

Here is a former Governor General's pistol set, which sold for $65,000 at a London auction. Let us imagine that they had come into Canada. They belonged to Lord Jeffrey Amherst. They were made in Scotland. Let us imagine that some Canadian collector had them, that he had bought them at Sotheby's and brought them here. They would not be subject to control for 35 years. But during that 35 years, if a Canadian institution wished to purchase them and was negotiating with the owner, he would be eligible for that tax relief.

Is that not rather an encouragement to import the kind of quality objects that we are talking about because the owner is guaranteed, if it is of interest to an institution, he is going to get his money plus the tax relief. If it is not of interest to an institution he is at perfect liberty to export. He is going to be inconvenienced after the 35-year rule—and I would say that if you count back from 1975 you have a 40-year rule to start off, because between 1940 and 1945 not much was really coming into Canada.

So we—as the British, as the French, as the Japanese —have this provision for the acculturation of an object.

And if it is not of outstanding importance, when the person does want to export it he is going to get his permit. We are not expropriating, we are not preventing, we are causing a delay to allow institutions to take a crack at it. If the institutions are not interested in it, the export permit is granted.

The Chairman: Do you have anything to add, Mr. Malcolmson?

Mr. Malcolmson: I do not think there is any disagreement with Mr. Clark. He has been very helpful. But I think we would both agree that when Mr. Clark and I were communicating with one another under the most perfect arrangements, that is not the same thing as consulting fully with collectors. I do ont represent all of them and I am in only one geographic area. Nor am I suggesting for a moment that this bill is not helpful for collecting in Canada. In many respects it is, and the amendment Mr. Clark mentions is most helpful.

The issue, however, is wider than whether it is good for collectors. The issue, I am suggesting is: Is the bill in its present form—not 80 per cent of it but in its present, polished, final form—the best bill?

Senator Lamontagne: It is not yet in its final form.

Mr. Malcolmson: It seems awfully close. In this area of consultation, the Art Gallery of Ontario is convening a conference to be held next month. Mr. Clark is invited. I am invited to appear on the panel, and institutions are invited. The people in charge of that, at the Art Gallery of Ontario, are saying to me, "Why is the bill being passed before we can at least have our conference and Mr. Clark could get the benefit of the comments being made at the conference?" They ask me—and perhaps I am mistaken—what public opportunity there has been for people in Toronto or Montreal who are interested, to come in a public way and discuss the merits of the bill. They could advertise through a gallery, say, where persons who do not have the benefit of the time, as I might, could consult, or have particular better connected collectors speak to me and appear here, and so on. That is a very sophisticated process. I am suggesting that there should be consultation in Toronto, through the means of this conference, which will be held in the latter part of May, and then across the country.

Mr. Clark: Mr. Chairman, could I make some clarification? First of all, I would like to go back to the mention of Mr. Bovey's name. I have on file a letter from him to the minister.

Mr. Malcolmson: I was speaking of Mr. Edinburgh, the president.

Mr. Clark: He may be, but Mr. Bovey wrote on behalf of that group to say that the bill had the committee's full approval. I would also like to add that the minister had a proposal, but he did not include it in this legislation. He did mention in his speech on second reading that, after the bill became operative, he wanted to convene the people who were affected so that there would be a monitoring mechanism and so that the interested parties could be brought together on perhaps a biennial basis to look into the whole heritage question. They could then see how the bill was working, what matters might need to be discussed, and how the Review Board was conducting its activities. In other words, the consultation was not to take the form of a forum prior to the legislation's being passed, and it was not to be included in the bill. That was his intention once the structure was set up. Those were the two clarifications. So I can only say that we did carry out consultations with the collectors, the trade associations and the institutions.

Just to confine it to the area in which you are concerned, Mr. Malcolmson, although we have to look at it in terms of the whole country, we carried out considerable consultation in Toronto, because at the present time it is the headquarters of both the trade associations which are interested in the bill. We consulted also with members of the boards of the various institutions there and also with the collectors.

I am not suggesting we were able to consult with all collectors, but we consulted with what we considered was a sample to get the feel. Once the collectors understood, we felt that any antagonism to the bill began to recede because they saw the benefits. They saw the checks and balances.

There is a point you make which is important, and that is the public relations dimension of this bill. Once it is in effect, we will have a massive program to do. We will have to win co-operation. I say we can win it and that we have won it in terms of those I have consulted with.

You say there are some people who remain to be convinced, that they may be from Missouri. Well, we will just have to work on that. I would not like to leave the senators with the impression that all collectors take the attitude some have taken, and I say that you have to balance it against the needs we have for the kind of objective the minister mentioned in his introduction this morning. We do need to have some ability—the minimum; we have to have a time limit; but beyond that we must be able to consider that art or objects of cultural significance in Canada are not necessarily all made here.

The point we are trying to make is that whether we take in citizens who become Canadians or consider people who are born here, likewise we have to consider that objects, say, from Britain, or France or from the world at large, can have an important association with Canada. What is true of people will be the same for cultural property.

Senator Lamontagne: Mr. Chairman, can you tell me why Mr. Thompson chose not to appear this morning?

The Chairman: Mr. Hunter Thompson could not be here this morning, honourable senators, because he had engagements elsewhere. I had thought he was sending a brief, however.

Mr. Malcolmson: Mr. Chairman, Mr. Thompson represents a group of corporate collectors in Toronto. I have been in touch with them, and I can tell you that the difficulty has been that the meeting was scheduled for today. Senator Carter telephoned Mr. Thompson, I believe, as he telephoned me, and he advised us that today was the only day available. When I found that out last Thursday, I believe it was, it was only after considerable rescheduling and difficulty that I was able to manage to be here. I had proposed to bring with me a collector, so

that you would have the personal, direct flavour of the problems collectors experience, but today was a bad day for that gentleman. I take it that the chance of his appearing and Mr. Thompson's appearing before you after today is remote indeed. Not to put it too harshly, it would seem that this is the last chance those gentlemen would have to give any input on this important measure. All four of us attempted to appear before the Commons committee, rightly or wrongly, but without success.

It is our feeling with respect to the whole area of consultation, then, that we are chasing a bill which is moving through like a locomotive. I do not know how many bills would be introduced in the fall to become legislation the following March.

Senator Lamontagne: Mr. Malcolmson, just dealing with your main grievance about foreign objects being covered by this legislation, would you agree, concerning collectors who are really dealers at the international level, that most of their deals would not be covered by this legislation because, if they were interested in exchanges at the international level, they would not keep most of their objects in Canada for 35 years?

Mr. Malcolmson: Well, sir, their work is unlikely to be affected in the first instance.

Senator Lamontagne: Take the case of Mr. Tannenbaum.

Mr. Malcolmson: Speaking of 1975, the effect on collectors dealing with the art they own today and the art they are going to sell this year and next year, it is limited indeed because of the various aspects of the act. I do not think anyone is going to rush out and sell some work before the bill becomes law—or before it became law, if it became law in the fall or next spring instead of the spring of 1975.

Someone made the point to me that the change in the rules in relation to the English and French legislation, particularly the English legislation . . .

Mr. Clark: It is not legislation.

Mr. Malcolmson: Sorry. Whatever procedure is applicable. It was pointed out that cultural export legislation of this character is, in the North American experience, very unusual. Canada and the United States is one primary art market. Art flows across the border because there are specialists in art. It is only in the larger urban centres. I am talking about the work of large international character. So North America is one market. Obviously, the Americans are not considering any legislation of this type. I would be surprised if they passed anything of this character. The motivation for this kind of cultural-protection legislation in Europe has come from the fact that those countries have built up, either as indigenous art or by acquiring other people's art, collections of enormous importance. By virtue of their economic situation England and France are switching to a situation where the money is flowing from North America to Europe. There is a tendency for their treasures to be sold off. It is pointed out to me that there is no sign of that occurring here whatever: first, because we in North America tend to have the greater funds; second, because there are just not the number of works, not remotely the number of works, which would fall into this category in Canada. We do not have the stock to sell quite apart from the fact that we are tending to import rather than export.

It has also been pointed out that even in England, with the genuine strong needs there, the rules, which I believe here have been transposed as 50 years and 35 years, are 100 years and 50 years. If a work has been in England less than 100 years . . .

Mr. Clark: If it has been in England for at least 50 years.

Mr. Malcolmson: As opposed to 35 years?

Mr. Clark: As opposed to 35. The Titian, which any of you who were in London in the last few years may remember was purchased at auction by Mr. J. Paul Getty —Titian's "Death of Acteon". Titian was not an English painter. The English felt that this painting had been in the country and fulfilled their 50-year rule. The equivalent of our Review Board, which in England is called the "Reviewing Committee", decided the Titian was a national treasure. Institutions were allowed to bid for it. There was a general collection all over England to get money to meet the price of auction. The price was met and the Titian is now in the National Gallery in London. That is an example, in the British context, of a national treasure.

The minister mentioned the Greuze, a painting in the Van Horne collection, which we were able to repatriate on the same basis as the Titian which was in England for 50 years. The Greuze had been in Canada for a period of time which, if the 35-year rule were now in force, would mean it would fall under the Review Board's purview in the event of an appeal. At the particular auction when the Greuze was sold in London, there was a Goya, a Ruisdael, and a Romney. All four of those paintings happened to be from one major Canadian collection. Had the situation been different, with this bill in effect, Canadian institutions would have had a crack at those paintings, in the event that they were going to be exported and they met the criteria all along the line. I am just using that as an example.

Senator Lamontagne: I would like to go back to my original question, sir, and ask if you agree with me that, with this 35-year rule, most of the transactions in which collectors are interested would be exempt from this legislation.

Mr. Malcolmson: In the present and immediate future, yes.

Senator Lamontagne: The ordinary collector, in dealing with . . .

Mr. Malcolmson: My difficulty is that I strongly suspect that the ordinary collectors, even those who become reasonably sophisticated, will not be clear in their minds what are the limitations and rules. All they will know is that you have to get some kind of permit to sell your art from Canada, and then someone will say conversationally "Oh, I am sure that only applies to Eskimo art and Canadian works;" and some expert in the group will say, "Oh no it doesn't; it applies to works you buy

in the United States." People will say, "Gee, I didn't know that," and there will be confusion in their minds.

Perhaps it is unfair to suggest that people do not know the law better than they do, but I am very concerned that, before we apply this complicated piece of legislation and the bureaucratic machinery to an area, we be convinced that we are getting genuine protection, and help art in Canada.

I hope you appreciate the point Mr. Clark makes about tax benefits, and the funds available to institutions, which through the fund will make it easier to repatriate Canadian art both in and outside Canada. To my point of view, whatever need there may have been to cover foreign cultural property is substantially eliminated by the improved position Canadian institutions are put in by virtue of the tax aspects of this bill.

If we leave the tax benefits and simply take foreign cultural property off the list, we end up with an ideal situation. Nothing will be lost practically, but you remove the cloud over the possibility of people inquiring in the future.

Senator McGrand: I understood you to say that North America—Canada and the United States—was one market.

Mr. Malcolmson: Yes, sir.

Senator McGrand: You also said there is no evident desire on the part of the United States to interfere with this exchange of cultural products across the border. There is also no desire or action in the United States with respect to the takeover by Canadians of American industry.

Do you see any connection between the actions of Canadians who want to preserve Canadian industry—the talk about buying Canada back from the Americans—and this legislation which is aimed at protecting the takeover of Canadian art objects?

Mr. Malcolmson: I do, senator. In the bill, with which I do not quarrel, there is machinery to protect Canadian art. With that, I unequivocally agree. However, I should like to go beyond that and encourage Canadians to acquire the art of other countries. Taking the point back to your business analogy, senator, what I am suggesting is that Canadians should be assisted in acquiring the work of Americans, Europeans, and others. The amendment I am suggesting, which is simply the deletion of this one clause, would continue the preservation of Canadian works of art and encourage Canadians to acquire the art of other nations.

Senator Lamontagne: If I were a businessman, I would be more encouraged by this legislation to acquire foreign objects of art than I would be in the present situation. I would be guaranteed under this bill that I would be able to export that object, if I so desired, or sell it in Canada at a fair price and be exempt from the capital gains tax. There is some financial incentive.

You said previously that these people are not only in this business because of their love of art, but to make money. In my view, this bill provides a wonderful opportunity for them to make money.

Mr. Malcolmson: I may not be making myself clear, senator. I am not opposed in any way to any of the benefits contained in the bill. If my suggestion were carried forward—that is, if foreign cultural property were removed from the control list—none of the benefits to the collectors would be removed by virtue of that amendment. It is not necessary that a work be on the control list for the tax benefit to accrue, but that it be purchased by a Canadian institution.

Senator Lamontagne: They would be quite agreeable, in your opinion, to get public funds out of the sale, but have no control.

Mr. Malcolmson: That is correct.

Senator Lamontagne: That is a line of reasoning which I cannot accept.

Mr. Clark: If I may offer an explanation, Mr. Chairman, this legislation, in terms of the additional tax relief, has to be looked at as a package. As the minister said this morning, the purpose of this legislation was to balance the maximum of incentives against the minimum of restrictive measures. If you look at the bill, you will see that the tax relief was obtainable because we had the 35 year rule in the sense that it is a package deal that you are looking at. It is our philosophy that you cannot select one of the elements of interest without balancing the interests of 16 custodial institutions, the trade as well as the collector.

What you are saying, essentially, is that you want a bill which is absolutely ideal from the point of view of collectors, whereas we have inserted the 35-year rule because we want to afford the custodial interest an opportunity to purchase it.

As the minister tried to explain earlier, each of the sides at interest have something that they like in the bill and something that they, perhaps, like less, but they are willing to cooperate in the interest of the public good. It is the institutions, which are for all Canadians, to which the objects will go in the event that they go through the process, having the collector happy with his money.

We could not draft this bill with one element in mind. We had to look at all of the elements affected and, in a rather delicate way, try to give each element something as we took something away, and we took away the right of an individual to act immediately. The export permit in respect of the object under consideration will be issued forthwith under this 35 year rule, and it has to meet highest standards to get into the appeal procedure.

Senator McGrand: I did not get a chance to finish the question I asked earlier. There are many people who feel the decline of money; they hesitate to put money into bonds, stocks and things like that, but they will invest in what they think will maintain its value. One of those is art and antiques. This seems to be a method a great many people are using for their investment. Do you think this legislation would in future be detrimental to that type of investment?

Mr. Malcolmson: Yes, sir, precisely.

Senator Lamontagne: In what way?

Mr. Malcolmson: Because a person who is, as the senator points out, considering buying of an investment char-

acter, putting money into, in this case, fine art instead of stocks and bonds, or perhaps fine art instead of some other commodity which is not covered, or will not be covered under some other legislation, he will ascertain whether there is any restriction on his right to re-sell, particularly of a government character. Investors are watching for that these days and, right or wrong, if such a man is told, as he will be, "Stay away from the art market in Canada because they have got some kind of government thing on it" by somebody who will not know what the government thing is, he will make that investment elsewhere.

I realize it will be said, "That is too bad. That is a cynical motive. We do not need it." However, bear in mind that if that person buys that work of art and brings it to his home, which is one of the benefits of it—instead of putting gold in the bank he gets the pleasure of seeing it and prestige in the community—that work finds its way into the public at large, it comes to be exhibited in institutions where collections are exhibited; it becomes known to university scholars in the area; it becomes one more work added to the very few outstanding works we have in Canada.

I really want to resist a kind of situation where I am here trying to grab more for collectors. I do not think that is the issue. I am suggesting the effect will be, not that anyone will sell something. The effect will simply be that in the future persons who might buy art will move to other areas where there is no restriction, and the loss under those circumstances is not to that collector particularly, because he has bought something else. The loss is to the entire community—myself and all of us, all the people who go to institutions. It is not a question of trading off interest I think it is a question of working out what is in the best total interest of art in Canada.

Senator Lamontagne: I cannot understand the witness's reasoning. He agrees that if this bill is passed the investor in art will make more money out of it. On the other hand, he says that these people will stay away from that market because they will not know the legislation. It seems to me that if they are rational people, as they are, and well informed, they will very quickly know the provisions of this legislation.

Mr. Malcolmson: Let us be clear on that. It is not as simple as that. A person who buys a work of art may be aware of the function of the bill; he may even be aware that when he sells he may be able to fall back on the bill and get some benefit. What he wants to know primarily is that he will be able to sell it freely when he wants to, when the opportunity arises. He does not know when he is acquiring the work whether it will be determined by the agency to meet these particular tests, and only under those circumstances will he have the tax advantage. It falls into a series of questions. He will not know how it is being judged. The tests are also objective.

In my opinion, it is very difficult to give a person, who is thinking of buying a work, an absolute assurance that the review body will make a positive determination at some date 15, 20 or 30 years in the future. How can that person know that? When he makes his decision today all he knows is that if he wishes to sell the work at some time in the future he will not be able to compete with other sellers in other parts of the world on a free basis.

Senator Lamontagne: I do not agree with it, but we will let it go.

The Chairman: Are there further questions? Do you have representations with respect to other clauses, or are these your two main areas?

Mr. Malcolmson: These are the two main areas. However, if I could make one final comment, I hesitate to be drawn into a discussion as though my particular comments are exhaustive in any way of the comments which collectors as a whole might make with respect to this legislation. I know there is a tendency to deal only with the points which are made and the manner in which I put them forward is, I think, most unfortunate. Therefore my final request would be to urge the committee, Mr. Clark and the Secretary of State to consider my comments in the area of consultation so that not only will justice be done, but it will be seen to have been done with some degree of public consultation. I am sure that the bill will appear in an appropriate form, but such consultation might prevent it getting off on the wrong foot with the art community, particularly collectors in Canada.

The Chairman: Thank you very much.

I was speaking with Mr. Hunter Thompson, who desired to appear before the committee this morning, but found that his previous engagements prevented him from doing so. He planned to have his associate, Mr. Ball, appear in his stead, but he also was unable to attend. During our conversation, Mr. Thompson gave me to understand that he would send a written representation with you.

Mr. Malcolmson: I am sorry, sir. I may have something. I know that Mr. Thompson sent me a copy of a letter which he had written to Mr. Gordon Fairweather, M.P. I believe that the points outlined in this letter are those to which he wishes to draw your attention. I understand that he spoke with members of the Conservative caucus who had undertaken to delay third reading until some type of consultation had taken place. However, due to inadvertence or mistake, that was not arranged either. All I can do is leave his letter with you. It is addressed to Mr. Fairweather, signed by Mr. Thompson, and contains his comments with respect to the legislation.

The Chairman: That was not my understanding of the arrangement. I understood he was addressing a letter to the committee containing his representations.

Do the members of the committee wish to have this letter included in the record?

Senator Bonnell: Do you have Mr. Thompson's permission?

Mr. Malcolmson: I do have Mr. Thompson's authorization, I am sure, to have this letter introduced into your record.

Senator Bonnell: I would not like to have it included in our record without Mr. Thompson's permission, in

view of the fact that it is addressed to a member of Parliament and it might be beyond our duty or responsibility to take that into evidence.

Senator Lamontagne: If it were included in the record it might be unfair to the members of the committee and Mr. Thompson, as we would not be able to pose questions with respect to his points.

The Chairman: Shall we leave this in abeyance and decide its disposition later?

Senator Lamontagne: Since we will not be concluding today, do you know if we can attend tomorrow?

Mr. Malcolmson: I can ascertain that and advise you, Mr. Chairman. I will be happy to do so. Thank you very much.

The Chairman: Thank you very much, Mr. Malcolmson.

We were discussing clause 8. Is it the wish of the committee to proceed with the subsequent clauses? Are there further questions with respect to clause 8?

Senator Lamontagne: I have a question, Mr. Chairman, with respect to the test described in subclause (3) of clause 8. If I read it and understand it well, this would mean that an export permit could be issued under this legislation even if the loss of that object would significantly diminish the national heritage because it would not meet with the first test.

Mr. Clark: Well, senator, to reply to that may I look at the test with you? The first test is (a) in which we divide it into three kinds, the historical dimension, the aesthetic dimension or its value in the study of arts and sciences, to cover the waterfront, and what kind of importance or outstanding significance the object has. Then you stand back—that is if you have said yes to one of these—and you see, looking at (b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage. So, in a sense you look at the object closely and you make this judgment having placed it in one of those three categories, and maybe in all of them or maybe in only two of them, but it must meet with one of them, and then you stand back and bring in the national dimension. Because here again I am reminding everybody that we are talking of an object that is of national significance.

Senator Lamontagne: So in short the answer is that an export permit would be issued?

Mr. Clark: If it does not meet the test of national importance.

The Chairman: Are there any further questions on clause 8? Shall clause 8 stand?

Hon. Senators: Stand.

The Chairman: Shall clause 9 stand?

Hon. Senators: Stand.

The Chairman: Shall clause 10 stand?

Hon. Senators: Stand.

The Chairman: Shall clause 11 stand?

Hon. Senators: Stand.

The Chairman: Clause 12? Are there any questions on clause 12?

Senator Lamontagne: This clause deals with the power of the minister to amend, suspend and cancel an export permit, except an export permit which has been issued under the direction of the Review Board. I may have another amendment to present later on, which has not yet been accepted by the minister, which deals, really, with a point which was raised by my colleague this morning. The minister said he would reflect on it, but in case the minister is in a position to use these powers here, which are broad, there is no appeal provided from the decision of the minister, and irrespective of the way in which the minister will exercise these powers—and this is something we will have to deal with, presumably, later on—I would suggest that there should be an amendment to this clause, by adding, after the word "board", in line 41, right at the end of the clause, the words:

> in which case he shall forthwith send a written notice to that effect to the applicant.

This would allow an applicant to go before the Review Board and have the decision of the minister reviewed. I understand that the minister is agreeable to this amendment, and that is my proposal.

The Chairman: You are moving this amendment?

Senator Lamontagne: I am moving this amendment to clause 12.

The Chairman: Would you repeat the amendment?

Senator Lamontagne: This would appear after the word "board" at the end of clause 12:

> in which case he shall forthwith send a written notice to that effect to the applicant.

That is clause 12, line 41.

The Chairman: Is there any discussion on that amendment?

Senator Bonnell: How will the clause read now?

Senator Lamontagne: The clause will read exactly as it does at present plus, in the case of the minister suspending or amending a permit, the following words:

> in which case he shall forthwith send a written notice to that effect to the applicant.

Senator Bonnell: But that does not give the applicant the right of appeal.

Senator Lamontagne: But we will have a consequential amendment in clause 23.

Senator Bourget: That would give the applicant the right to appeal.

Mr. Clark: That is right.

Senator Bonnell: Would you think the word "approve" should be put in, so that the effect will be that the minister may approve, amend, suspend, cancel or reinstate?

Senator Lamontagne: Well, this would change the procedure completely, if we were to say "approve".

Senator Bonnell: If they turned something down he could overrule them.

Senator Lamontagne: Yes. If the examiner has given a notice to the customs officer to issue a permit, then the minister is empowered by this clause not to approve the permit but to amend, change or suspend it, and we want this decision of the minister to be the subject of an appeal before the review board. My amendment at this stage would partly accomplish that.

Senator Bonnell: There is another amendment coming later on?

Senator Lamontagne: Yes.

The Chairman: All agreed?

Hon. Senators: Agreed.

The Chairman: Clause 13. Shall clause 13 stand?

Hon. Senators: Agreed.

The Chairman: Clause 14—general permits. Any questions?

Senator Bourget: Mr. Chairman, on general permits, is this a kind of permanent permit to export?

Mr. Clark: No, sir. The minister gives this to a dealer who is, let us say, in the international kind of trade, and who is bringing material into the country to export it. He would apply for this kind of permit. On his understanding to play the game and meet with the regulations he would obtain it; but that permit can be taken away if it is abused. It is in effect, as long as the regulations will permit it to be in effect; then the minister can decide to withdraw that privilege if he wishes to, as I said.

Senator Bourget: Thank you.

The Chairman: Are there any further questions on clause 14? Shall clause 14 stand?

Hon. Senators: Agreed.

Senator Lamontagne: Mr. Chairman, could we stop there, because I have another perhaps little more complicated amendment?

The Chairman: You mean, stop our proceedings at this point?

Senator Lamontagne: Yes.

The Chairman: Is it agreed?

Hon. Senators: Agreed.

The committee continued *in camera*.

The committee resumed at 3.30 p.m.

The Chairman: Honourable senators, we resume consideration of Bill C-33, beginning with clause 15—review board.

Senator Bonnell: Mr. Chairman, I have a question first in regard to clause 8(3)(b), the loss of objects that "would significantly diminish the national heritage." That sounds very good and anyone could stand behind it, but I would like to know what that phrase means. By its description it seems that it could be interpreted very broadly and very loosely. There is no definition in the bill. Much would depend on who reads this, who the person is and how they would interpret that phrase, as to what "national heritage" means. Perhaps that should be defined under clause 2.

Mr. Clark: I will give you our thinking, as to how we brought in this sort of rule. We took it as a variation of the Waverley rules. We have adopted or have been inspired by the Waverley rules used under the British system. We have included the idea of the "national heritage" in 3(b) as opposed to "outstanding significance" in 3(a)—three categories. They are all subjective. We do not dispute that they are. We are trying to put together two words "national" and "heritage" talking about "heritage" in terms of "moveable cultural property." The expert examiner—or, later on, after an appeal, the review board—would stand back and examine the object and really reinforce their critical judgment to make sure that, before creating a delay period, this is at that kind of level that it is not only outstanding but it is really going to be a loss to the country. When you say "define the national heritage", well, the national heritage, in terms of this bill, is the control list, upon which the first selection is made, so the object is on the control list. That is what is meant in terms of the heritage in relation to the country's heritage in moveable cultural property. It might be a document, it might be a painting. It is a subjective judgment. We recognize that these are subjective tools, but with the expert examiner coming from the kind of institution which has the responsibility of curating our national heritage in moveable property—whether it is an archives or a library of a museum or an art gallery, that is the kind of institution which will be sending its curator to make that judgment and that is their responsibility, to curate our national heritage.

Senator Bonnell: Let us suppose that we know what the national heritage is, and let us suppose that we know that it diminishes the national heritage if it is sold, but then it has to diminish it "significantly."

Mr. Clark: It is "significantly" because it is to remind them of this at all stages. We heard a witness this morning, disturbed by the problems posed by the collector in terms of the bill. What we are trying to say is that if the state is moving into this area we are doing it at very high level. We do not want to disturb people for objects below a certain level of quality. We do not want to have to interfere with his rights to dispose of the things. So this bill does have this public relations dimension, to remind al the people involved, whether it is the customs officer, the expert examiner, the review board, the people who read the act. We say that we are doing this at a top level of material. We are coming into this at the level of object which really will be significantly obvious, that the loss of it will deprive the Canadian people of a chance to have it in their institutions and this process will allow the institutions to have a look at it during the delay period having made that judgment.

Senator Bourget: Do you think that a decision like this, one of some importance, should be left only to the expert examiner or be referred instead to the review board?

Mr. Clark: That is why, when the expert examiner makes that first judgment, that first selection, but when he denies that permit then the individual has that 30-day period to make an appeal. We want him to make that appeal. Then the review board repeat the test. The expert examiners have already made the basic selection. The review board sits down to examine the object with exactly the same test and either accept the appeal or deny it.

Senator Lamontagne: Mr. Chairman, I promise not to insist on this amendment, but I think you are quite wise in not relying on the judgment of the examiner when he refuses or gives advice to the customs officer to refuse a permit. I think that if you are really consistent you would not rely on his judgment also when he gives an advice to issue a permit.

Senator Bourget: Touché.

Senator Smith: There is a point which may have been made before, but I am sorry I could not be here this morning. Have any of the provinces legislation to deal with these questions of archaeology, Indian artifacts?

Mr. Clark: Most of them have. If you ask whether Prince Edward Island has or not, I am not quite sure.

Senator Inman: They have.

Mr. Clark: Nova Scotia does, Newfoundlnad does, British Columbia does, Alberta, Saskatchewan and Ontario do. I am thinking of the people whom we consulted. If I have answered the question, I do not want to take up your time.

Senator Smith: That is a good answer. Am I to understand that the kind of legislation they have, for example, in Alberta, is very similar to this?

Mr. Clark: It complements it.

Senator Smith: I understand that, but in the approach they make, do they have an expert examiner who does this preliminary work and then goes to the review board?

Mr. Clark: No, sir. The legislation in the provinces, with some exceptions, is basically to preserve the cultural heritage in the ground. We are talking about archaeology, the preservation of a site, because the scientific interest is not the object once it is out of the square where it has been dug. It is *in situ* that the scientist wants to analyze that material. So they have regulations concerning the protection of historic sites or Indian burial grounds. They have no way of protecting the material that comes out of that site and is taken over the border. So we fit into it, because the expert examiner whom we will be using in Saskatchewan, say, will no doubt be the provincial archaeologist, and he will be the person who is able to go back to his provincial authorities when there has been some funny business and also bring his judgment to bear on the value of the objects in terms of export.

The Chairman: Shall we go now to clause 15?

Senator Lamontagne: I have an amendment which is rather complicated, which deals with clause 15(2). I might as well start to read it first, because there are all kinds of new words inserted. I want to say that the minister has agreed to this amendment.

Mr. Clark: He welcomes it, sir.

Senator Lamontagne: That was after some discussion. I will read it first and ask my colleagues to look at this section while I am reading it, and then I will explain it, if you so wish.

Clause 15(2) would read:

The members of the Review Board, other than the Chairman and two other members who shall be chosen generally from among residents of Canada shall be chosen in equal numbers

(a) from among residents of Canada who are or have been officers, members or employees of art galleries, museums, archives, libraries or other similar institutions in Canada; and

(b) from among residents of Canada who are or have been dealers in or collectors of art, antiques or other objects that form part of the national heritage.

The Chairman: Is that the full amendment?

Senator Lamontagne: Yes. It would really involve the rewriting of subclause (2). The purpose of the amendment is to give more freedom to the minister in choosing from among people who would be qualified to be members of the review board. As it stands at present, only the chairman would be a so-called independent member of the board. I would like to add two other members, in addition to the chairman, who might be selected from among university professors who have no association with a gallery, or from among art dealers or art critics who have no such association. It would enable the minister to appoint at least two of those, in addition to the chairman.

When we turn to the other two categories of (a) and (b), as you can see from the wording of the bill, it is limited to employees of art galleries or to art dealers or collectors. Thus, another purpose of my amendment would be to enable the minister, if he wishes, to appoint a person who had at one time been associated with an art gallery but who is now retired. Such a person would have ample time to devote to the work of the board and at the same time would be highly qualified. Under the present wording of the bill, such people would not be eligible.

Senator Fournier (de Lanaudière): Would these people be hired permanently or temporarily?

Senator Lamontagne: As it is drafted, the bill enables the minister to make either permanent or temporary appointments. The minister has been given this freedom because at the moment there is no way of appreciating how much work will be involved in respect of the review board. If the minister finds that there is more work than had been anticipated, presumably he will make permanent appointments, but for the beginning at least the appointments will be on a part-time basis only.

The Chairman: Mr. Clark, do you have any comments to make?

Mr. Clark: No, sir. I am in entire agreement with what Senator Lamontagne has said.

Senator Bonnell: Mr. Chairman, is there something in the bill which says that the appointments are not permanent? Because it says nothing in the bill about how these people will be replaced. Other than for the chairman, there would seem to be no replacement procedure available.

Senator Lamontagne: When there is actually no term specified in a bill, it means that the appointments are during pleasure.

Senator Bonnell: In other words, the appointments would be for one year or for six months, or something in that order?

Mr. Clark: It would be at the discretion of the Governor in Council in making the appointments, sir.

Senator Bonnell: Mr. Chairman, there would seem to be the possibility of a conflict of interest under clause 15(2)(b). Apparently it is possible that the very person who has his application turned down because he is a dealer could be sitting on the review board judging his own case.

Mr. Clark: You mean, as an individual?

Senator Bonnell: Yes. Suppose a dealer did not get a permit and he appealed. He could be one of the members of the review board dealing with that appeal.

Mr. Clark: In that case the normal practice would be not to participate, if he was personally involved. The whole point of the review board is to have a voice from both sides in order to protect the interests of both sides and the rights of the person trying to dispose of the object. The idea is that between the two sides you are able to arrive at something that is fair.

Senator Bonnell: I can see the principle, but I cannot see an individual walking out in that situation just because he sees the possibility of a conflict.

Mr. Clark: That would be the internal rules as set up by the review board.

Senator Lamontagne: The purpose of my amendment would be to give more freedom to the minister under that clause, because we have added the words "who are dealers or who have been". The minister might then choose people who have been dealers or collectors and who would not be in the same position of potential conflict of interest that you are suggesting.

Mr. Clark: And yet would have the same kind of professional background.

Senator Lamontagne: Yes. They would have the same quality of expertise.

The Chairman: Shall the amendment proposed by Senator Lamontagne to clause 15 carry?

Hon. Senators: Carried.

The Chairman: Before I ask if clause 15 shall carry, shall clauses 1 to 14 stand?

Hon. Senators: Agreed.

The Chairman: Shall clause 15, as amended, carry?

Hon. Senators: Carried.

The Chairman: Shall clause 16 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 17 carry?

Senator Lamontagne: I think we should stand clause 17, in that it relates to the problem mentioned by Senator Bonnell this morning.

The Chairman: Shall clause 17 stand?

Hon. Senators: Agreed.

The Chairman: Shall clause 18 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 19 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 20 carry?

Mr. Clark: Mr. Chairman, I would draw your attention to the fact that the administrative services shall be provided to the Review Board by the minister. It is not a separate administration. The administration to the Review Board is being provided by the minister. That is how the Review Board ties in with the minister in acting on information which is not specifically stated to be within their duties. I just wanted to show you the tie-in with the department.

The Chairman: Honourable senators, shall clause 20 carry?

Hon. Senators: Carried.

The Chairman: Clause 21—rules and procedure. Shall clause 21 carry?

Hon. Senators: Carried.

The Chairman: Clause 22. Shall clause 22 carry?

Hon. Senators: Carried.

The Chairman: Clause 23—review of applications for export permits.

Senator Lamontagne: On clause 23, subclause (1), Mr. Chairman, I have an amendment which results from the amendment which was accepted this morning with respect to clause 12. We amended clause 12 so that the decision of the minister to amend, suspend, or cancel an export permit, should be the subject of a notice to the applicant.

Under clause 23 the applicant is empowered to make a request to the board to review the refusal. To be logical and consistent, I think that now we have to amend clause 23 so as to enable the applicant to ask the board to review the decision of the minister under clause 12.

Senator Bonnell: So we have that under clauses 10 and 12 now.

Mr. Clark: We have the wording, Senator Lamontagne. I have it here.

Senator Lamontagne: Yes. This is a very small amendment.

Mr. Clark: "or a notice under section 12" is what you want to put in.

Senator Lamontagne: Yes. After, "under section 10," add, "or a notice under section 12".

Senator Bonnell: "and/or".

The Chairman: On line 23?

Senator Lamontagne: No. Line 19.

The Chairman: And the amendment is? "or a notice under section 12"?

Senator Lamontagne: And then, further down in the same paragraph, at line 21, to delete the words, "of refusal", because the notice of refusal refers specifically to the notice given by the examiner, so we want to give a larger meaning to the word "notice" to include not only the notice of refusal by the examiner, but also the notice given by the minister to the applicant.

The Chairman: Yes. That is right. Any discussion?

Senator Bonnell: You get notice of refusal in line 2, subclause (1) as well.

Senator Lamontagne: That should stay there.

Senator Bonnell: On clause 10 it should stay there?

Senator Lamontagne: "notice of refusal under section 10, or a notice under section 12".

Senator Bonnell: I see. That is right.

The Chairman: How does this grammar go—"on which the notice was sent by notice in writing"?

Mr. Clark: We checked with the Department of Justice, sir, they accepted it. It was a result of consultation with Justice to help us with the drafting.

Senator Lamontagne: This is the Department of Justice's English.

Senator Smith: It makes for lawsuits!

The Chairman: I suppose it is clear enough, is it? Any discussion on the amendment? Shall the amendment carry?

Hon. Senators: Carried.

The Chairman: Shall clause 23, as amended, carry? Do you have further amendments, Senator Lamontagne?

Senator Lamontagne: No, but I have a question with regard to subclause (2), which says,

> (2) The Review Board shall, unless the circumstances of a particular case require otherwise...

I would like to know what that means, because we are setting up now the minimums required from the board to reach a decision, and the bill says, "within four months"; but I would like to know more about the "unless", because the "unless" might mean a year.

Mr. Clark: What the "unless" is meant for, sir, is the case where we might have an owner who himself requests an extension for some reason. This will be taken care of normally well within the four-month period. It would be an extremely exceptional case that we would think it appropriate to take into consideration as a possibility. The time limits are designed to ensure that a potential exporter can get his case heard and a decision rendered within a reasonable time. We wanted to have that flexibility for the kind of case, we could not predict them all, where there were special circumstances.

Senator Bourget: So the four-month period will be the extreme limit.

Mr. Clark: That is right, sir.

Senator Lamontagne: So that the "unless" would not enable them to extend the four-month period.

Mr. Clark: The "unless" enables you, in a particular case, for particular reasons, to extend it; but you are making it pretty difficult to do unless exceptional circumstances are concerned.

Senator Lamontagne: Well, it does not say "exceptional circumstances", it just says, "circumstances".

Mr. Clark: It says, "unless the circumstances of a particular case require otherwise".

The Chairman: Who decides that?

Senator Lamontagne: The board.

Mr. Clark: It might be the Review Board, it might be on account of illness, it might be because of the individual owner requesting particularly that the Review Board not consider it for some reason. We wanted to allow that flexibility so that an exceptional circumstance could be taken care of. That is the purpose of it. It is not in any way intended to get around the four months. That is a maximum, anyway.

Senator Lamontagne: What really bothers me, Mr. Chairman, with regard to this, is not only this "unless", which seems to me to be fairly general, but also, that while we require the board to reach its decision within four months, we ask the examiner to do exactly the same determination forthwith. It seems to me, and I have tried to convince the minister and Mr. Clark of this, that we should provide a little bit more time to the examiner, and probably less time to the board.

Mr. Clark: Do you want me to answer that? I will just use the same arguments, sir. The expert examiner is saying, "This object is not of importance; these ones are." When the review board comes into it, it already is dealing with quality, which has been selected, and they are no longer necessarily dealing with the problem of separating the dross from the gold. They are evaluating that gold quality. They are saying, "What karat is it?"

Senator Lamontagne: The examiner has to do exactly the same thing. He has to decide first whether the object is within the control list, and this, of course, can be decided forthwith; but then he has to carry out exactly the same tests. If these objects are deemed to be included in the control list, he has to go through these two tests,

which some colleagues of mine said were very difficult to apply, a moment ago, and I agree that this will be difficult; but we ask the examiner to determine on these two tests of outstanding significance, and part of our national heritage, and all that sort of thing, forthwith. Then we let the board go and make its own decision within four months.

Mr. Clark: Well, it is just the higher level of the selection process.

The Chairman: Would you not say that the examiner has to make the most difficult selection, because he has to decide not only what is to be included but what is to be rejected?

Mr. Clark: No, sir, I think he has an easier decision to make, because we have the feeling that it is going to be easier for the expert examiner because he is going to have more pressures to say no. It is more likely that the appeals coming up to the Review Board—and we have the experience of this happening in the United Kingdom—that the Review Board is in a position to make harder judgments. The expert examiner, if he has a doubt, is going to say no, and it is the Review Board that is going to have to look at the thing in its entire context, and with a group who are going to say, "Now, really, is it that important? Given the circumstances, is an institution going to be really interested in it? Do we have any indication?" And then make that judgment.

The Chairman: Any further questions on clause 23?

Senator Lamontagne: In subclause (5)(a) it says, if the board "is of the opinion that a fair offer to purchase the object might be made". I think that with the generous provisions of the bill in other parts the board will be more or less forced to come to the conclusion or to form the opinion that a fair offer to purchase the object might be made. Would that be your view if you were a member of the board? I ask this because we are dealing now with all the delays that have been complained about and if the board is of the opinion that a fair offer could be made, then there is another period which is provided for between two or six months.

Mr. Clark: Well, senator, I think I could answer your question by saying that I could imagine a situation where the Review Board has an object and is considering an appeal, and it might be a rather expensive and rather strange object in terms of the interest of custodial institutions. Let us say it could be quite expensive and that there are already three of them in some museum. Then it would be the Review Board's responsibility to ponder, "Now, are there any other museums who really want it, and at that price, even taking into consideration tax relief." Perhaps the chap has already gone around the museums beforehand because he is a public spirited citizen and is conscious of wanting to do the right thing, and no one has taken him up on it. That is where the Review Board is going to take into consideration the interest of that individual and say, "We are convinced that no institution is going to be interested in this object," and grant the chap his export permit to assist him and to prevent him from having to go through a useless further delay. That is why we have that clause there, to make sure that they remember that they have to have some indication of interest somewhere, or that it could be elicited.

Senator Bonnell: I notice that in clause 23(3) it says:

> (3) In reviewing an application for an export permit, the Review Board shall determine whether the object in respect of which the application was made
>
> (a) is included in the Control List;
>
> (b) is of outstanding significance for one or more of the reasons set out in paragraph 8(3)(a); and
>
> (c) meets the degree of national importance referred to in paragraph 8(3)(b).

But it does not say, and there should be a new subclause here, I think, "or will significantly diminish the national heritage." The fact that it is only of national importance does not give it the right to be exempted, it also has to diminish the national heritage.

Mr. Clark: That refers to (3)(b) and this refers back to clause 8(3)(b) where it says:

> (b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

Senator Bonnell: But it does not say anything about the national heritage being significantly diminished.

The Chairman: But that is what it means.

Senator Bonnell: But that is not what it says. At any rate you think it means the same thing?

Mr. Clark: Yes, sir. Clause 8(3)(b) says:

> (b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

So you are just referring right back to that clause, even though you are not repeating all the words. But when you refer to the clause, then this is the effect of the whole clause.

Senator Lamontagne: Then coming back to subclause (2) and looking at it as it reads now and coming back to the word "unless" there, I do hope that this cannot be interpreted as giving the power to the Review Board to refuse to consider or review an application.

Mr. Clark: Absolutely not.

Senator Lamontagne: Not being a lawyer, I would not know, but could there be that kind of interpretation?

The Chairman: Well, we have our counsel here.

Mr. R. L. du Plessis, Department of Justice, Legal Adviser to the Committee: In that interpretation I think we have to look at the word "otherwise".

Senator Lamontagne: It says "...shall, unless the circumstances of a particular case require otherwise, review...". They might say, "We do not like this request, so we will not review it." I want to make sure that in the legal language we are not empowering the board to refuse to review an application.

Senator Bonnell: The circumstances could be the fact that they don't want to hear it.

The Chairman: Could that interpretation be placed on this clause?

Mr. du Plessis: I do not think so. I think it is a question here of the word "circumstances" as well. It says, "unless the circumstances of a particular case require otherwise," and I cannot see that the circumstances would require that the board should not review the application.

Senator Bonnell: What would happen if, instead of reading it the way you read it, they were to read it in another way and said, "unless the circumstances of a particular case require," and, having a comma there, then continue "otherwise review an application". There is no comma in either place so if you stop after the word "require" you get altogether a different interpretation.

Mr. Clark: But is there not a comma after "otherwise" in the text?

Senator Bonnell: Yes, there is. I must say that I made a pencil mark which tends to obscure it.

Senator Lamontagne: I understand that commas are very important. So we are reasonably sure that the board is not empowered by this clause to turn down or to refuse to review an application.

Mr. Clark: Yes, sir.

Mr. du Plessis: I think we have the words "the Review Board shall review an application."

The Chairman: This really refers to the time required, that is to say to the time limit, and not to the review.

Mr. Clark: That is right.

The Chairman: The requirement to review is covered in other clauses, but this clause has to do with the time limit involved.

Senator Lamontagne: I think subclause (1) gives the right to an applicant to appear before the board, and then subclause (2) prescribes the duties of the board. So, provided that our legal people can guarantee that the board cannot turn down a request to review an application, I would be satisfied.

Mr. Clark: After you raised the question I checked it out and that was the opinion I was given and it gibes with your legal opinion here.

The Chairman: Is there any further discussion on clause 23?

Senator Bourget: I thought this clause was designed to expedite rendering a decision in a special case where a person would like to have a decision right away because otherwise he might not be able to sell. This is not clear. Of course, I am not a lawyer.

Senator Lamontagne: It would have been clearer if they had said, "shall review the application for an export permit and, unless the circumstances of the case require otherwise, render its decision within ..."

Senator Bourget: Yes, then the "otherwise" would apply only to the rendering of the decision, not to the review.

Mr. du Plessis: It applies in both respects now.

Senator Lamontagne: That is what the wording is.

Mr. du Plessis: I do not think I can give you a categorical guarantee on the interpretation of that section.

Senator Bourget: Let us stand it.

The Chairman: And try to clarify it.

Senator Bourget: Yes, because, as Senator Lamontagne has said it is not really clear.

Senator Lamontagne: I would much prefer if the "unless" would apply to rendering of the decision.

Senator Bourget: How would it read then?

Senator Lamontagne: It would read:

> The Review Board shall review an application for an export permit and, unless the circumstances of a particular case require otherwise, render its decision within four months.

The Chairman: That is better; that makes it clear; but that would be an amendment.

Senator Lamontagne: It is not necessarily good legal wording.

Senator Bourget: That is so.

Mr. du Plessis: I would agree with that, if that is your concern, about the qualification of the time of rendering the decision. I would think that with an amendment like that you would be accomplishing that end.

Senator Lamontagne: It would make it clearer.

Mr. du Plessis: Yes.

Senator Lamontagne: I do not think we should open up the bill for that, but since we have agreed to open up the bill you might consider this also with your legal advisor.

Mr. Clark: Yes, sir, indeed, I will.

Senator Bourget: Because you will still be left with that part of the sentence "unless the circumstances of a particular case require otherwise". What are the special circumstances and will the decision be rendered in advance of the four months, or expedite the decision? That is not clear in my mind.

The Chairman: It is clear as Senator Lamontagne has reworded it, to have the qualifying clause after "review," before the word "render"—that is:

> and unless the circumstances require otherwise, to render its decision within four months.

Then it is clearly related to the time period and not to the review itself. Shall we let the clause stand?

Senator Bourget: Personnally I have no objection, but if you have stood some other clauses I wonder if we could stand this one also and have the expert or advisor look into it, as far as the legal aspect goes.

The Chairman: I think our legal counsel agrees that that gives a clearer meaning.

Senator Bourget: Well, that is okay with me.

Senator Lamontagne: Especially if it is not your intention to give that power to the board to review or refuse, you might as well make it clear.

The Chairman: Shall we let the clause stand?

Mr. Clark: I do not see any objection if the legal advisor does not.

Mr. du Plessis: If it accomplishes the policy objective, I see no problems from the legal point of view.

Senator Bourget: Are you making that amendment, Senator Lamontagne?

Senator Lamontagne: Since we will have to come back, I would like to have this system of check and counter check and would not like to settle the wording on the spur of the moment. You have your own legal advisors. I have great confidence in our legal advisor, but I would really prefer if we had confirmation from them.

The Chairman: It all depends on what the intention was.

Mr. du Plessis: It is never a good thing to draft in committee.

The Chairman: Clause 23 stands.
Clause 24.

Senator Lamontagne: In this clause we are dealing with the cash offer and its determination. I recall that Senator Grosart made a point in his speech in the Senate, that he really did not know from the bill what was meant by this cash offer. Is this a kind of smaller Canadian price or is it an international price?

Mr. Clark: We had to leave this open to this extent, that obviously where there is an offer from abroad this is going to be the operative price as far as the review board is concerned. In the case where there is not, then you have the procedure of establishing a price within the board, because either the owner or the interested institution has applied to the review board for a ruling and you bring in valuation experts to help you decide this cash offer which is going to go back to the two interested parties. Then there is the question of tax relief. Tax relief is connected to the object so, in the public interest you are expecting the institution to get a little less, you are expecting the individual who is selling it is going to make more profit than if he sells it abroad. In other words, you are sharing this advantage a little bit. So we wanted to get that kind of flexibility without stating exactly what price it is, because each situation is going to be different. The question is, is it a fair cash offer? In clear cases where it does exist, you have not got a problem. But there are other cases where you might have a problem.

Senator Bourget: What happens in the event there is quite a big difference and the person who wants to sell an object says, "No, I will not sell it; I cannot accept that price"? Will the decision of the Review Board define it, even to taking into account the tax incentive?

Mr. Clark: If the Review Board has made a ruling, this is because either the institution or the individual has gone to the Review Board saying, "During the delay period, we cannot agree on a price." Then the Review Board establishes this fair cash offer. If the institution will not accept it and the individual does, then the chap gets his export permit.

If it is the reverse, if the institution accepts the fair cash offer but the individual does not, then he has the right to take the object home and he can dispose of it in Canada. But he will have to wait two years before he can re-apply for an export permit, to export it again.

Senator Bourget: Do you think it is fair?

Mr. Clark: We think it is fair because the point is that the Review Board has the expertise to come to this fair cash offer. They have made the decision and they are giving just a little bit of the edge to the institution to the extent that if they accept it but the individual does not, the chap does not have to sell to the institution but he must wait two years before he can re-apply and go through the whole procedure again. But there is nothing to prevent him from disposing of it in Canada or if he likes he can take it home or do anything else he likes with it.

Senator Bourget: During those two years he will have very little chance.

Senator Lamontagne: He will have to go through the same process and probably will get the same ruling.

Senator Bourget: From the same people.

The Chairman: Do you think that the fact that the seller who sold in Canada can get this tax exemption of his capital gains would have the effect of Canadian buyers making lower offers, taking that into consideration?

Mr. Clark: I do not think it will have an effect on the market really in that sense because you are not expropriating, you are not preventing the market place, you are delaying. You are only delaying it and if the price is in the market place the institution is going to be interested or not.

The Chairman: Supposing a person has an object which he can sell abroad for $1,000, that becomes the market price. Suppose somebody in Canada, says, "If this fellow sells it outside for $1,000 he does not get any tax exemption, but if we offer him $800 there will be tax exemption and he will be just as well off as getting $1,000 from outside". In actual effect he gets a lower offer than he otherwise would get.

Mr. Clark: To follow your analogy, it would be closer to $900 or $950, because he is obviously going to have to have a major benefit. The whole purpose of the tax relief is to give him the benefit, because it is encouraging the flow of objects of that certain quality into the institution.

The Chairman: I understand the intent. What I am questioning is whether that will actually be the result or whether somebody will make fine calculations as a result of which he will be no better off and will not get the full benefit of the act.

Mr. Clark: In that case he would not accept the institution's offer. He would appeal to the Review Board, which would then make a fair cash offer in the light of his explanation of why the institution's offer was not high enough.

Senator Bourget: Suppose the institution's offer is so low in comparison to a private offer that even with the tax incentives the return would be the lowest possible return; what would be the situation in that case? Would the decision of the Review Board be final?

Mr. Clark: Let me see if I follow you. Suppose an institution has offered $50,000. The owner says he wants $55,000. They cannot agree. They go to the Review Board for a ruling. The Review Board takes into consideration all the facts of the case. They hear from the owner. They hear from the institution. They listen to the people within Canada or outside Canada who are valuation experts. They reach the opinion that $53,500 is the fair cash offer. If the individual does not accept that, but the institution does, then the individual must wait. He can dispose of it as he likes in Canada. He can take it home. But he must wait two years to reapply for the export permit. If the situation is the reverse, he gets his export permit.

Senator Bonnell: Am I correct that if you apply for an export permit, are refused, and then appeal to the Review Board, the Review Board may declare a waiting period in order to see if an institution wants the object? If nobody wants it and it cannot be sold, it seems to me that the applicant must then reapply for a licence.

Mr. Clark: No. All he needs to do is to declare at the end of the delay period that he still wants to proceed. The owner may decide to stop the process altogether, in which case the Review Board would not know what had happened. This is the way of keeping informed. The chap has to reassert his interest in continuing with his export permit application.

Senator Bonnell: If he did not want to use his permit he would not use it, but it seems to me that after the Review Board has heard the application and cannot find anybody to buy the object, they still would not give him a licence unless he applied a second time.

Senator Lamontagne: He would not have to apply.

Senator Bonnell: It says here that he does.

Mr. Clark: It is not an application. He just has to alert the Review Board that he wishes to proceed. Otherwise the Review Board would not know what had happened. This is just telling the Review Board that no conclusion has been reached, that no one is interested and that the person is requesting that his permit be issued; and the Review Board does that forthwith at the end of the delay period. It is not a reapplication.

Senator Lamontagne: Under clause 24(3), when the board receives a request it is asked to determine the amount of a fair cash offer, but there is no time limit for that determination.

Mr. Clark: Yes. It has to be within one month and the six months in the application for them to apply for it.

Senator Lamontagne: Well, they have to wait for six months to issue a permit. If they receive a request to determine a cash offer and it goes beyond the six months, then what?

Mr. Clark: The request for determination must be made within the six months, but 30 days before its conclusion in order to allow for the board to act before the delay period expires. Obviously, when they are both negotiating, sir, the need for dispatch is less important because we have them already negotiating. So we can relax a little bit here in that the owner and the institution are both asking for the fair cash offer.

Senator Lamontagne: You would expect that within this 30-day period the board would determine what the cash offer should be.

Mr. Clark: That is right. Let me give you an example. Assume there is an expert in New York whose advice is necessary to both the owner and the institution. In that case there might well be a time period in order to get this absolutely right.

The Chairman: Shall clause 24 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 25 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 26 carry?

Senator Lamontagne: Mr. Chairman, the only reservation I have here is with respect to the word "unless." Does it apply to the delay or does it apply to the making of the determination?

The Chairman: You are referring to clause 26(4)?

Senator Lamontagne: Yes.

The Chairman: I see your point. Shall clause 26 stand?

Hon. Senators: Agreed.

The Chairman: Clause 27—income tax certificate. Any questions on clause 27? Shall clause 27 carry?

Hon. Senators: Carried.

The Chairman: Clause 28—report to minister. Shall clause 28 carry?

Hon. Senators: Carried.

The Chairman: Clause 29—financial.

Senator Lamontagne: I am going to ask what is perhaps a difficult question on this one. When is the minister going to determine when he will make a grant or a loan, and to what institutions?

Mr. Clark: These are guidelines that will have to be worked out. The point is, we want to be able to make both grants and loans. All institutions in all parts of Canada are not in the same financial position with regard to acquisitions. We are therefore going to have to set up some kind of an equalizer, so that if an object turns up in Prince Edward Island, and it really is a national

treasure, but belongs in Prince Edward Island, we are going to have to make it possible for Prince Edward Island to make the offer to the owner in a way that we might not have to do to an institution, say, in Toronto, Montreal or Vancouver, where there is readier access to funds either from the provincial government or from the private sector. As I say, we want to be able to indulge in both kinds of activity. All I can say is that we are aware of the problem which you pose, sir, and that we are going to have to work out a system, as we do with programs throughout the country.

Senator Lamontagne: The minister would offer grants to Prince Edward Island and loans to Montreal.

Senator Bonnell: That is right. I think we should put that right in the act.

Senator Lamontagne: And tax Alberta.

The Chairman: Senator Cameron would have something to say about that.

Senator Lamontagne: While I am not opposed to carrying clause 29, I think that both clauses 29 and 30 are more or less related, and I do have some questions about them. I have no amendments to suggest at all.

The Chairman: Perhaps we should let them stand for a while, then.

Senator Lamontagne: Yes, until we deal with section 30.

The Chairman: Well, clause 29 stands temporarily.

Clause 30—Canadian heritage preservation endowment account.

Senator Lamontagne: Under these two clauses the minister can choose, really, whether to give a loan out of this fund, which is supplied by private donations, or to give this loan or make grants through the appropriation that he will receive from Parliament under clause 29.

Mr. Clark: Sir, under clause 30 the purpose is for grants to be made. This account is a non-lapsing account, and this is the appeal to the private sector. Someone may say, "I would like this money to be used for the purchase of antique cars in the prairies," or it might be for the repatriation of Newfoundland's heritage. These kinds of conditions we fully intend to respect within clause 30. This is different from the funds which are being voted by Parliament, so that this is just a way of encouraging the private sector to participate in the heritage, only in the spirit of what the federal government is trying to do, to allow them to express their interest in the heritage by making donations of money as well as by making donations of actual cultural property to their institutions, with the tax benefits that come in that way, or through sale when it is a case of export, and having the capital gains advantage.

Senator Lamontagne: But where do you see in clause 30 that the minister is limited to making grants out of that fund?

Mr. Clark: He does not loan money out of the fund, sir.

30. There shall be established in the Consolidated Revenue Fund a special account to be known as the Canadian Heritage Preservation Endowment Account to which shall be credited

(a) all moneys received by Her Majesty by gift, bequest or otherwise for the purpose of making grants to institutions and public authorities in Canada . . .

It is restricted to grants purposely there, whereas above it is grants and loans.

Senator Lamontagne: But are you not afraid that if there are no specific conditions imposed by the donor that contributed to that fund, Treasury Board will say to the minister, "Well, you have money in that fund, so you are not going to get appropriations to make grants out of your own account."

Probably it is unfair to ask you that question, but it worries me because I was a member of Treasury Board myself at one time.

Mr. Clark: I would be most pleased to think we could collect the kind of money that would cause Treasury Board to make that judgment. I am hopeful we can make a healthy account. I doubt whether it is going to affect the kind of money that Parliament will, each year, in its estimates, be placing at the disposal of the minister for the purposes of repatriation or control.

Senator Bourget: But there are no guidelines established.

Mr. Clark: There will be, though, sir.

Senator Lamontagne: I am less optimistic than you are, but I hope you are right.

Senator Bourget: I think objections were raised in the other place on that particular point. I do not remember exactly what they were, however.

The Chairman: Do you want to stand these two clauses, in order to be able to discuss them further with the minister?

Senator Lamontagne: No, Mr. Chairman. They are future problems for the minister, not for us.

The Chairman: Well, are we in a position to carry clauses 29 and 30, then?

Senator Lamontagne: Yes.

The Chairman: Shall clause 29 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 30 carry?

Hon. Senators: Carried.

The Chairman: Clause 31—foreign cultural property. Shall clause 31 carry?

Hon. Senators: Carried.

The Chairman: Clause 32—designation of cultural property. Any questions?

Senator Lamontagne: Excuse me, Mr. Chairman. Could you wait for a minute, please?

Mr. Clark: Could I explain that clause to you, sir?

Senator Lamontagne: Yes, please.

Mr. Clark: The purpose is that a foreign state, with which we have signed a cultural property agreement, or which is a party to a multilateral treaty with respect to cultural property, in the event that we want to get something back from them, knows what our cultural heritage is. This is just to tie in with clause 31. It is the other side of the coin.

Senator Lamontagne: My only worry here is that there is no provision to empower the minister to take action to recover a cultural property which has been exported illegally from Canada. Perhaps it is not necessary I do not know.

Mr. Clark: It is not necessary because for a country to be a signatory to the UNESCO convention they have to do what this bill does, so that it is open to Canada to enter their courts in the same way as we have given them access to our courts. This is what they have to do before they can be a signatory to the treaty. In any bilateral treaty we would enter into, of course, we would demand the same right of access so that we could recover our property.

Senator Lamontagne: So the normal procedure, presumably, would be that the Secretary of State would receive information than an object has been exported illegally from Canada, and then it would go to the Minister of External Affairs.

Mr. Clark: In the usual way. That is right.

Senator Lamontagne: I hope he will not be away at that time.

The Chairman: Are you satisfied on clause 32? Any further questions on clause 32? Shall clause 32 carry?

Hon. Senators: Carried.

The Chairman: Clause 33—regulations. Any questions?

Senator Lamontagne: As far as I am concerned, Mr. Chairman, I have no further questions.

The Chairman: Shall clause 33 carry?

Hon. Senators: Carried.

The Chairman: Clause 34—offences and penalties. Shall clause 34 carry?

Hon. Senators: Carried.

The Chairman: Clause 35. Shall clause 35 carry?

Hon. Senators: Carried.

The Chairman: Clause 36. Shall clause 36 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 37 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 38 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 39 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 40 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 41 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 42 carry?

Hon. Senators: Carried.

The Chairman: Clause 43—general. Shall clause 43 carry?

Hon. Senators: Carried.

The Chairman: Clause 44—customs officers' duties. Shall clause 44 carry

Hon. Senators: Carried.

The Chairman: Shall clause 45 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 46 carry? This is "Report to Parliament".

Hon. Senators: Carried.

The Chairman: Clause 47—Copyright Act. Are there any questions on clause 47?

Senator Lamontagne: Carried. This is a consequential amendment following from other clauses.

The Chairman: Shall it carry?

Hon. Senators: Carried.

The Chairman: Clause 48—the Income Tax Act. Shall it carry?

Senator Lamontagne: That is another consequential amendment.

The Chairman: Shall it carry?

Hon. Senators: Carried.

The Chairman: Shall clause 49 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 50 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 51 carry?

Hon. Senators: Carried.

The Chairman: Then we come to clause 52. Shall it carry?

Senator Bonnell: Why does the act not come into effect when passed? Why does it have to wait to come into force on a day to be fixed by proclamation?

Mr. Clark: Because we have to set the thing up. We cannot do that until we are sure we know what we are going to set up. So we have to organize with the customs and with the expert examiners and have a Review

Board and go through that process so that we will be ready to roll with due despatch on a date that will be proclaimed for the act to come into effect.

The Chairman: Shall clause 52 carry?

Hon. Senators: Carried.

The Chairman: Then that completes the clauses, except clauses 1 to 14 which we stood.

Senator Lamontagne: And I think Mr. Clark understands very well the problem there because it was raised by Senator Bonnell and myself.

Mr. Clark: As I understand it, it comes up only in clauses 7 and 8. In fact it begins with clause 8.

Senator Lamontagne: Yes. I can review that with you when we adjourn.

Senator Bonnell: And then there is a suggested amendment to clause 12.

The Chairman: Shall we adjourn then to meet tomorrow morning to hear the minister on this?

Senator Lamontagne: Mr. Clark suggests, and I see no objection to this, that we could carry clauses 2 to 7, inclusive. That would be up to but not including clause 8.

The Chairman: Shall clauses 2 to 7, inclusive, carry?

Hon. Senators: Carried.

The Chairman: That leaves clauses 8 to 17, and clauses 23 and 26 be dealt with.

Senator Lamontagne: I do not think it will take much time to finalize matters. The minister has been aware of the proposed amendments, except for the one this afternoon, which is really just a matter of drafting.

The Chairman: The meeting will adjourn, then, until tomorrow morning at 9 o'clock, at which time we will meet in room 263-S.

The committee adjourned.

Ottawa, Thursday, May 1, 1975

The committee resumed at 9 a.m.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill C-33, and the clauses we have to deal with are the clauses that were stood yesterday. These clauses were 8 to 17, inclusive, plus 23 and 26.

We have with us Mr. Clark, who was with us yesterday, and who needs no further introduction.

I understand Mr. Clark has a statement to make, so we will start with that.

Mr. Clark: Honourable senators, I sought legal advice on the points raised by Senator Lamontagne and Senator Bonnell concerning the review board's ability to act with regard to clause 8 subclauses (2) and (4). It was explained that it was necessary to set out certain duties of the Review Board by statute, as in clause 17. This gives the board the statutory authority to make decisions that have a direct effect on persons, and which could not be made without such authority.

The review board informing the minister, as under clause 8, is an administrative matter, and no statutory authority is required. If the board receives copies of advice from the expert examiners, it can read them, and it might be the administrative secretary who does so. If something is amiss the minister can be informed. In fact, it would be expected that the board would take this action. However, if the committee feels strongly about the question the minister would not object to the words "and the minister" being added after "board" in clause 8(2), line 18, and clause 8(4), line 47.

Senator Bonnell: I so move.

The Chairman: Yes. It is moved by Senator Bonnell, seconded by Senator Bourget, that clause 8(2) be amended by adding, at line 18, "and the minister", after the word "board", and the same thing in clause 8(4), line 47.

Are there any more questions on clause 8?

Shall clause 8 as amended carry?

Hon. Senators: Carried.

The Chairman: Clause 9. Shall clause 9 carry?

Hon. Senators: Carried.

The Chairman: Clause 10. Shall clause 10 carry?

Hon. Senators: Carried.

The Chairman: Clause 11. Shall clause 11 carry?

Hon. Senators: Carried.

The Chairman: Clause 12. Shall clause 12 carry, as amended?

Hon. Senators: Carried.

The Chairman: Clause 13. Shall clause 13 carry?

Hon. Senators: Carried.

The Chairman: Clause 14. Shall clause 14 carry?

Hon. Senators: Carried.

The Chairman: Clause 15. Shall clause 15 carry, as amended?

Hon. Senators: Carried.

The Chairman: Clause 16. Shall clause 16 carry?

Hon. Senators: Carried.

The Chairman: Clause 17. Shall clause 17 carry?

Hon. Senators: Carried.

The Chairman: Clause 18 was carried yesterday. Now we move to clause 23. Mr. Clark has a statement to make on clause 23.

Mr. Clark: With regard to clause 23(2), and clause 26(4), the minister has no objection if the wording is changed in 23(2) to read, "the Review Board shall review an applica-

tion for an export permit and, unless the circumstances of the particular case require otherwise, render its decision . . ." et cetera.

Senator Smith: What is the purpose of the change?

Mr. Clark: To make sure it is the time period to which the "unless" phrase pertains.

Senator Smith: In the early morning light it seems clear to me.

Senator Lamontagne: The objection I raised yesterday afternoon, senator, was that I was afraid that the words, in 23(2), "unless the circumstances of a particular case require otherwise" might apply both to the reviewing of an application and to the rendering of a decision by the board, and I do not think that the word "unless" should apply to the reviewing of an application. I think the board should be forced to review an application . . .

Senator Bourget: . . . within the time.

Senator Lamontagne: Yes. To review the application, and then render its decision within the four months, "unless . . ."

[*Translation*]

Mr. Clark: Senator, can I ask a question in French?

Senator Lamontagne: Yes.

Mr. Clark: Is it clearer when you read the french text? For me, it's clearer.

Senator Lamontagne: It's exactly the same thing, Mr. Clark, because "sauf circumstances spéciales" applies to the whole clause, "sauf circonstances spéciales".

Mr. du Plessis: It is clearer in french.

Senator Lamontagne: It is clearer and confirms our understanding of the clause.

Mr. Clark: Yes, I agree with you.

[*Text*]

Senator Smith: Is this going on the record?

The Chairman: Yes. He is asking if it is as clear in French as it is in English. That is what I understood.

Are there any further questions on clause 23? It is moved by Senator Lamontagne, seconded by Senator Bonnell, that clause 23(2) be amended by moving the phrase "unless the circumstances of a particular case require otherwise" from its present position to after the word "and" in line 28.

Any further amendment to section 23? Any further questions? Shall clause 23, as amended, carry?

Hon. Senators: Carried.

The Chairman: Clause 26.

Senator Lamontagne: This is the same amendment, exactly, which would change paragraph 4.

The Chairman: It is moved by Senator Lamontagne, seconded by Senator Bonnell, that clause 26(4) be amended in exactly the same way as clause 23(2), by transferring the phrase "unless the circumstances of a particular case require otherwise" to after the word "and" in line 24.

Shall clause 26(4), as amended, carry?

Hon. Senators: Carried.

The Chairman: Are there any further questions on clause 26? If not, shall clause 26 carry?

Hon. Senators: Carried.

The Chairman: Now we come back to the bill itself. Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Chairman: Shall the bill carry, as amended?

Hon. Senators: Carried.

The Chairman: Shall I report the bill, as amended?

Hon. Senators: Agreed.

The Chairman: Thank you, honourable senators.

Mr. Clark: Mr. Chairman, I thank honourable senators for their kind consideration of the bill.

The Chairman: Thank you.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 6

THURSDAY, JUNE 12, 1975

First Proceedings on Bill C-37, intituled:

"An Act to provide for the control of dumping of wastes and other substances in the ocean"

(Witnesses: See Minutes of Proceedings)

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28359—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C., *Deputy Chairman.*

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Blois, F. M.	Inman, F. E.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Choquette, L.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, J.	Smith, D.
Fournier, S. (*de Lanaudière*)	Sullivan, J. A.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, 11 June, 1975:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macnaughton, P.C., seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-37, intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

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

The Bill was then read the second time.

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

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

Robert Fortier,
Clerk of the Senate.

28359— 2

Minutes of Proceedings

June 12, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 9:35 a.m.

Present: The Honourable Senators Carter (*Chairman*), Bourget, Denis, Fournier (*de Lanaudière*), Inman, Langlois, Macdonald, McGrand, Neiman and Norrie. (10)

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The Committee proceeded to examine Bill C-37 intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

The following witnesses, representing Environment Canada, were heard in explanation of the Bill:

Mr. Ian D. Macaulay,
National Ocean Affairs Officer,
Ocean and Aquatic Affairs,
Oceanography Branch;

Mr. Alan Willis,
Legal Services;

Mr. John R. Monteith,
Chief of
Hazardous Materials Management,
Environmental Protection Services.

At 11:15 a.m., the Committee adjourned until 1:45 p.m.

———

At 1:50 p.m., the Committee resumed.

Present: The Honourable Senators Carter (*Chairman*), Bourget, Denis, Fournier (*de Lanaudière*), Inman, Macdonald, McGrand, Neiman, and Norrie. (9)

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

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The Committee continued its examination of Bill C-37 intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

The following witnesses were heard:

Mr. Rémi L. Geoffrion,
Legislation Section,
Department of Justice;

Mr. Alexandre Covacs,
Chief,
Translation Bureau (Justice);

Mr. A. H. E. Popp,
Legislation Section,
Department of Justice.

At 2:05 p.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, June 12, 1975

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-37, to provide for the control of dumping of wastes and other substances in the ocean, met this day at 9.30 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Bill C-37, to provide for the control of dumping of wastes and other substances in the ocean. The short title of the bill is the Ocean Dumping Control Act. We have as witnesses before us representatives from Environment Canada. They are Mr. Ian D. Macaulay, National Ocean Affairs Officer, Oceanography Branch, Ocean and Aquatic Affairs; Mr. John R. Monteith, Chief, Hazardous Material Management, Environmental and Protection Service; and Mr. Alan Willis, Legal Services. Mr. Macaulay, I do not know if you wish to make a short statement. Usually we have one, but I do not know whether you are prepared.

Mr. Ian D. Macaulay, Division of Ocean Science Affairs, Oceanography Branch, Environment Canada: No, Mr. Chairman, I was not prepared to make one.

The Chairman: The witness is not prepared to make a statement. The sponsor of the bill is not here and I do not know who is taking his place.

An Hon. Senator: Who is the sponsor, Mr. Chairman?

The Chairman: It is Senator Macnaughton.

Senator Fournier (de Lanaudière): Mr. Chairman, I would like to hear a few words of general explanation about the bill, even though the witnesses may not be specially prepared. We would like them to deal with the bill and give us the substance of it.

Mr. Macaulay: May I proceed?

The Chairman: Yes.

Mr. Macaulay: Thank you, Mr. Chairman. Honourable senators, I think that by way of a brief introduction I can say that the bill is being used by Canada to ratify what is commonly referred to as the London Convention. This was a convention signed by Canada and some 80 other nations in 1972. It is more properly called the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

The most basic intent of the convention is that all dumping in the ocean should be regulated by means of a permit system in the countries which are signatories to the convention. Canada will use this legislation to ratify the London Convention. This permit system will give us authority to control dumping in the ocean of all substances.

There are certain substances enumerated in Schedule I and Schedule II. In Schedule I these are substances which are known to be particularly hazardous in the marine environment and those which we do not wany to dump except under rather unusual circumstances. In the second schedule you will find substances which are less noxious and less undesirable and which we will allow to be dumped under certain controls and certain conditions.

Canada has seen fit to provide for certain extensions in this country by adding the disposal of waste on ice. It was at the instigation of the Province of Manitoba, that this particular addition was made to the bill. We have also made one other addition which is not contemplated by the London Convention and that deals with the incineration of wastes at sea. It has become a practice in the United States in recent times to incinerate certain wastes at sea as a means of disposing of them. This is most commonly done with pesticides and compounds of that nature.

This bill will regulate, through this permit system, all dumping at sea except that which is incidental to the normal operations of a vessel, or dumping which is incidental to exploitation or exploration for mineral resources at sea.

Basically, the bill covers dumping from ships and aircraft at sea. It does not treat dumping from outfalls or structures attached to the land.

I think that is, in a nutshell, what the bill intends to accomplish.

The Chairman: Does the legislation apply to the Great Lakes?

Mr. Macaulay: No, it does not. The bill is intended to apply to marine waters. In clause 2(2) the sea is defined for the purposes of the bill. This is a rather complex definition which gives us some flexibility, allowing us to make some changes if there are things decided at the Law of the Sea Conference—for instance, an economic zone, and so on.

As you will notice in clause 2(3):

> ..."inland waters" means all the rivers, lakes and other fresh waters in Canada and includes the St. Lawrence River as far seaward as the straight lines drawn

and there are some lines defined there. So fresh waters are exempted from the provisions of the bill.

The Chairman: Does the act apply to ships dumping wastes in a harbour?

Senator Fournier (de Lanaudière): In inland waters?

The Chairman: In a coastal habour.

Mr. Macaulay: Our answer to that question at another time, Mr. Chairman, was, if the ship dumped while at its berth, the act would not cover dumping by that vessel. That would be covered by certain other statutes. For example, the Canada Shipping Act.

Senator Fournier (de Lanaudière): Is the London Convention the first such agreement or is it a correction or modification of some other previous agreement?

Mr. Macaulay: I would ask Mr. Willis to answer that question.

Mr. Alan Willis, Legal Services, Department of the Environment: Over the years, honourable senators, there have been a number of conventions, mostly negotiated within the context of the intergovernmental maritime consultative organizations which deal with disposal of wastes at sea, but only as an incidental part of normal shipping operations. Those conventions did not cover the kind of activity we are covering here, which is deliberate transportation of wastes to the ocean in order to use the ocean as a receptacle.

The year before the London Convention was concluded in 1972 the countries of Northern Europe met in Oslo to draw up their own convention on the dumping of wastes at sea. However, while that convention was useful to us in terms of a precedent for the London Convention, it only applied to the northeast Atlantic area and only to those European countries.

Senator Fournier (de Lanaudière): How many signing countries are there?

Mr. Macaulay: There are 82 signing countries to the London Convention. There were more nations present as observers, but they did not sign the Convention.

Senator Fournier (de Lanaudière): What is the position of those who are not part of the treaty? Are they free to do what they like?

Mr. Willis: With respect to a country which has not ratified the London Convention, it would be subject to Canadian regulations within waters under our jurisdiction notwithstanding that it had failed to ratify the Convention. However, with respect to areas entirely beyond national jurisdictions in the middle of the ocean they would not be under any legal constraints.

Senator Fournier (de Lanaudière): Is that 12 miles?

Mr. Willis: That is very much in the course of negotiation internationally. In the Canadian situation we have a 12-mile territorial sea which, in many cases, is drawn from straight base lines across headlands. In addition to that we have described under the Territorial Sea and Fishing Zones Act certain fishing zones which will be covered by this legislation. Those fishing zones include the Gulf of the St. Lawrence, the Bay of Fundy and the inland sea of the west coast—the Queen Charlotte Sound, the Dixon Entrance and the Hecate Strait.

We also cover in this legislation as Canadian waters the waters covered by the Arctic Waters Pollution Prevention Act, which is basically a 100-mile belt measured from the land.

Senator Fournier (de Lanaudière): What kind of controls can be exercised over dumpers at sea?

Mr. Macaulay: In answer to that question, I believe I can tell you that the fisheries and marine services have for some years operated research stations which are concerned with determining the effect on biological life of pollutants added to the sea. We also have oceanographic laboratories concerned with monitoring the conditions of the sea in terms of physical and chemical disturbances. Furthermore, we have in place a fisheries inspection service which is particularly concerned with monitoring the effect on biological life.

Senator Neiman: Mr. Chairman, Mr. Macaulay has been talking about how the government can monitor; but what can actually be done about overseeing the international waters? What action do the signatories to this Convention propose taking? It is one thing to check it afterwards and see that dumping has taken place; but how will you prevent dumping? How will you enforce this legislation and on what international basis?

Mr. Macaulay: The signatories have pledged themselves to co-operate with one another in putting arrangements into effect which will be used to regulate and deter ocean dumping carried out outside the permit system. There are various mechanisms which can be used to carry this out. The international organization, the intergovernmental organization which will be set up following the 15th ratification of the Convention is one.

Senator Neiman: What do you mean by the 15th ratification? Do you mean once 15 countries have signed?

Mr. Macaulay: Yes. The London Convention was subject to ratification. Thirty days following the 15th ratification the Convention is to come into effect or into force. The depository government, which is the government of the United Kingdom, is obliged to call an intergovernmental meeting in the 90-day period following the coming into force of the Convention. The intergovernmental meeting will concern itself with setting up an organization to be responsible for enforcement and secretariat duties on an international basis.

Senator Neiman: Have the countries which intend to ratify or have ratified the London Convention passed, or will they pass, the same type of law in almost identical terms?

Mr. Willis: A number of statutes have been passed by a number of countries. The Scandinavian countries have statutes on the books. The United States has had a statute on the books since 1972 to deal with ocean dumping. Certain other countries such as the U.K. have bills before their parliaments. The various bills to whcih I am referring are identical in their intention; however, they are all tailored to the various differences in the domestic legal systems of the countries concerned.

Senator Neiman: But the principal provisions are identical so that there will be no conflict of intent or purpose.

Mr. Willis: That is correct.

Senator Macdonald: Will the penalties be the same?

Mr. Willis: No. The penalties are not identical in each case.

Senator Neiman: Why not? Do you mean that we could fine someone $100,000, for example, but another country finding us at fault under the law could only fine us $10,000?

Mr. Willis: That is correct. There is no provision in the international convention for identical penalties or identical fines. Harmonization in this regard might be one of the matters which over the years will be discussed within the context of the international secretariat to be set up to consider problems that arise under the Convention, but because the Convention in its initial form contains no clauses on this subject, each country is at liberty to decide what the proper fine should be.

Senator Neiman: What will be the court of jurisdiction?

Mr. Willis: In the case of Canada, clause 19 of the bill covers that point. On page 14 in clause 19 we talk about any court of jurisdiction in respect of similar offences. This might vary from province to province but, basically, in any case you would within a given province look at the court which has jurisdiction to try summary conviction offences.

Senator Bourget: That means that you could use a provincial court and not just a federal court. That was a question asked by Senator Connolly of Senator Macnaughton yesterday when Senator Macnaughton sponsored the bill. At that time Senator Macnaughton did not know whether it would be a federal or provincial court. But who would decide how we should deal with clause 19? In other words, who would decide what court should deal with it?

Mr. Willis: The question would be resolved simply by looking to see what court has jurisdiction to try summary conviction offences under Part 24 of the Criminel Code, and of course that might vary from province to province.

Senator Neiman: But if a ship is caught on the high seas somewhere, I cannot imagine a court in Saskatchewan assuming jurisdiction in that situation. You see that is outside territorial waters.

Senator Macdonald: It says the territorial division nearest the place where the offence was committed.

Senator Neiman: But this could be complicated if a Canadian ship were caught by another ship violating the treaty in international waters, but it happened to be closer to, say, England or Denmark. Who then assumes jurisdiction?

Mr. Willis: If the offence takes place in waters under Canadian jurisdiction, which would include not only our territorial seas but our fishing zones and any additional zones to be prescribed under paragraph 2(2)(e) of this act, then under subsection 19(1) the nearest court would have jurisdiction. However, if someone were detected in a violation in waters entirely beyond the national jurisdiction of any country and were subsequently found and arrested in Canada, then, under section 19(2) the court where he was arrested would have jurisdiction.

Senator Fournier (de Lanaudière): But defence lawyers might very well make the point that a provincial court can hardly have jurisdiction over events happening outside their own territory. In my opinion this should be left to a federal court. It is an offence against the country and not simply against the province.

Senator Bourget: Well, you have the lakes also, and the lakes come under the jurisdiction of the provinces. So there could be complications there.

The Chairman: This does not apply to inland waters?

Senator Bourget: Yes it does.

Mr. Macaulay: The act is intended to prohibit dumping in the sea and for the purposes of the act the sea is defined as those areas mentioned in clause 2(2)(a) to (g). Then in subsection 3 you find the areas which are exempted.

Senator McGrand: Perhaps I am a little late in asking the question I want to ask. I understand that Norway has signed this agreement.

Mr. Macaulay: Yes.

Senator McGrand: Now if a Norwegian ship pollutes Canadian waters, then I take it it is the Canadian authorities who will impose a penalty. But what about a ship from a country that has not signed this agreement, say a Liberian ship.

Mr. Willis: If a ship that has not ratified the convention were to dump without a permit in waters under Canadian jurisdiction, this act would provide that that ship or its master could be prosecuted.

The Chairman: Can you tell us how many nations have ratified the convention?

Mr. John R. Monteith (Chief, Hazardous Material Management, Environmental Protection Service, Department of the Environment): Thirteen have already ratified it.

The Chairman: And it requires 15 nations. So you are two short of the requirement.

Mr. Monteith: That is correct.

Senator Inman: What kind of things are dumped in the sea? What are the things that are most harmful when dumped in the ocean?

Senator Bourget: There is a schedule to the bill.

Senator Fournier (de Lanaudière): That was explained by Senator Macnaughton yesterday, but it was quite a short explanation.

Mr. Monteith: Mr. Chairman, the list of substances considered to be most harmful will be found in Schedule I on page 23 of the bill. The first group includes organohalogen compounds and that would include pesticides such as DDT, dieldrin and other persistent materials. The second group includes mercury and mercury compounds, and the third group, cadmium and cadmium compounds. Then in the fourth group you have persistent plastic and other persistent synthetic materials. The fifth group includes crude oil, fuel oil, heavy diesel oil and lubricating oils, hydraulic fluids and any mixtures containing any of them. Also in group number 4 you could have fishing nets which have been cast adrift and which could continue fishing and remain in suspension indefinitely. Then the sixth category includes high-level radioactive wastes and the Canadian policy is such that no radioactive wastes shall be dumped.

Senator Fournier (de Lanaudière): Is there something that provides for the implementation of this law during time of war? I know it is good for nothing, but in time of war you can have pollution of the waters by bacteria which would be quite a serious offence. It would never be observed, but I think it should be in the law.

Mr. Monteith: I shall refer that question to our legal adviser.

Mr. Willis: One of the substances designated under Schedule I as a prohibited substance is any substance under whatever form which is produced for chemical or biological warfare. There is no exception in the act for wartime or peacetime. We make no distinction.

Senator Fournier (de Lanaudière): It applies in either peacetime or wartime?

Mr. Willis: That is correct.

Senator Inman: Is there any restriction as to how much of this stuff can be dumped? I know that at times quite an amount of it is dumped.

Mr. Monteith: Mr. Chairman, Schedule I gives a list of prohibited substances, that is to say that there will be no dumping whatever of these substances except under very specific conditions. The dumping of these substances is prohibited.

Senator Neiman: Are the restricted substances under Schedule II items for which you might, under certain circumstances, issue permits?

Mr. Monteith: In very restricted conditions.

Senator Neiman: Carefully controlled conditions.

Mr. Monteith: Very carefully controlled conditions. Some of these items might eventually find their way into Schedule I. The Canadian position would probably be such, internationally, that we would want some of these items in Schedule I.

Senator Neiman: Were these items set out in the schedules agreed on at the London Convention, or are these divisions in accordance with the London Convention?

Mr. Monteith: At the moment this is directly quoted from the London Convention.

Senator Neiman: I wonder, Mr. Chairman, if, for the record, we could have the names of the countries that have already ratified?

Mr. Macaulay: Mr. Chairman, I can indicate to honourable senators that the countries that have already ratified are: Iceland, The Philippines, The United States of America, the Dominican Republic, Sweden, Norway, Spain, the United Arab Emirates, Denmark, Jordan, Mexico, New Zealand and Afghanistan. That totals a number of 13 countries.

The Chairman: France and West Germany are not there. The USSR is not there.

Senator Neiman: Great Britain is not there.

Mr. Macaulay: No, they are not. I believe several of the countries you mentioned could be in a position to ratify the convention at any time. For example, with regard to the United Kingdom, I do not know if I am correct in saying that they have at least considered a bill, or have brought forward a bill, dealing with ocean dumping, but I gather that it has not been passed by their legislative body.

Mr. Monteith: I think I can answer to some extent on the United Kingdom situation. As I understand it, the United Kingdom signed the convention as the government of the United Kingdom. Their bill has gone through the house in the United Kingdom. However, as the government of the United Kingdom, they have to consider the parliaments in such places as the Isle of Man and the Channel Islands, and the bill has to go through these parliamentary seats in addition, before the convention can be ratified by the United Kingdom, as distinct from Great Britain.

Senator Neiman: May I ask about that strange conglomerate, the Liberian registry, and all the ships that seem to be registered under the Liberian flag? Is Liberia a signatory to the London Convention, so that the ships that are so registered can be controlled?

Mr. Willis: I am informed that the Liberian government has not ratified this convention. I have no information as to their intentions. The question of whether dumping practices by Liberian ships could be regulated, I think, goes back to some of the earlier questions asked by honourable senators. If the dumping took place in the waters under the jurisdiction of a country that had ratified, it would, of course, be caught by the various national statutes; but otherwise, the efficacy of the convention does depend upon ratifications.

Senator Macdonald: If the Liberian fellows dumped on the high seas, nobody could touch them?

Mr. Willis: No.

Mr. Monteith: I am looking at a copy of the convention at this time, and it is indicated here that Liberia has signed the convention. That is, they have indicated a desire to ratify the convention. They have signed it, but they have not yet ratified it. Some 80 odd countries signed with an intent, but they must have legislation in place so that they can issue permits and control dumping before they could be in a position to ratify the convention.

Senator McGrand: How are ships going to dispose of these waste materials? Are they going to let them accumulate until they come back to their home ports and dispose of them there? How is it going to be done?

Mr. Macaulay: I believe, Mr. Chairman, what we are addressing ourselves to in this bill is dumping which will normally be carried out following loading in some port. The bill does not address itself to such matters as disposal of, for example, residues of oil from tankers. This sort of thing is covered by other statutes, and other agreements.

Senator McGrand: Would it include sewage that accumulates on a ship?

Mr. Macaulay: I believe not, no.

Mr. Willis: The definition of dumping in this statute, which is inspired by the definition in the international convention, excludes operational discharges; that is, the discharges that arise out of the normal operation of the ship. That would include sewage, bilge discharge, tank washing, and so on. These matters are dealt with nationally under regulations under Part XX of the Canada Shipping Act, which was passed in 1970. Internationally they are being dealt with by various bodies in negotiations under the Intergovernmental Maritime Consultative Organization, and in November of 1973 there was a draft convention adopted in London to deal with the question of operational discharges.

Senator Fournier (de Lanaudière): In la belle province de Québec, with regard to meat, is it forbidden to throw such meat in the water?

Senator Bourget: I think it was Mr. Macaulay who said a few minutes ago that 81 nations have signed the agreement in London. When Senator Macnaughton was explaining the bill in the Senate he mentioned 91. Which is it? Is it 81 or 91?

Mr. Macaulay: I believe, Mr. Chairman, that the number of signatories was 82; but there were additional observer nations, and this may be what Senator Macnaughton was referring to in his speech.

Senator Norrie: In what common compounds do you find cadmium?

Mr. Macaulay: Cadmium is used very commonly as a plating compound, I believe. I do not know exactly which compound it is used in, but cadmium compounds in general are quite toxic to marine life, and for that reason are specified in the schedule.

Senator Norrie: Is it quite plentifully used?

Mr. Macaulay: I believe Mr. Monteith has something to say on that.

Mr. Monteith: Mr. Chairman and honourable senator, cadmium compounds are extensively used for plating in a number of industries. It is a corrosion preventive procedure. It is extensively used, for example, in the aircraft industry, and the aircraft maintenance industry.

Senator Inman: Mr. Chairman, with regard to those ships that belong to a certain country but are under charter to another country, how does the law affect them if they break any of these conditions? I am thinking of Liberian ships in particular, because on the east coast a lot of them come in under charter to Canadian firms.

Mr. Willis: The basic criterion that is used is that of registry, so one has to see whether the ship is registered in Liberia, or registered elsewhere, regardless of the principals who are actually running the ship, and regardless of what charter arrangement may have been entered into. I would reiterate, however, that any dumping by any ship, regardless of charter arrangements, and regardless of flag or registry, would be covered in Canadian waters by our statute.

Senator Macdonald: Would that come under the definition of "owner", on page 2?

Mr. Willis: Yes. Thank you, senator.

Senator Neiman: Mr. Chairman, could you not catch people—Canadians, for example,—who use a foreign charter to get around this, by including in the bill operators, or charterers, or whatever the proper term is, as well as owners of vessels?

Senator Macdonald: "Owners" is a wide definition, though.

Mr. Willis: One of the honourable senators pointed to the definition of "owner" on page 2 of the act, which I had overlooked in my earlier reply. This is taken from other Canadian legislation, and is quite extensive.

Senator Neiman: That gives you a wider range.

Mr. Willis: Yes.

Senator Neiman: I wonder, Mr. Chairman, if this gentleman could give us an idea if, say, any Canadian vessels would be offenders by definition under this act, because of their present practices? Do we have much of this type of dumping going on in Canadian waters today?

Mr. Monteith: Mr. Chairman and honourable senators, the dumping that is going on today is essentially dredge spoil material dumping or dredge material dumping. There are one or two instances of dumping of other materials, other than dredge spoil. To say whether it would be an offence—it would be an offence if they did not have a permit to dump, once the act is in force, and the conditions under which they get the dumping permit, and the materials they were dumping would have to be carefully considered at the time.

Senator Neiman: To your knowledge, you do not know of any vessels practising dumping that would be offenders under Schedules I and II?

Mr. Monteith: No, not under Schedules I and II.

Senator Bourget: Is this bill being brought into effect for offences in the provinces or are they concerned at all?

Mr. Macaulay: Yes, Mr. Chairman, the provinces were consulted at the drafting stage and they are aware of the contents of the bill and we have been in contact with them throughout the procedure. We intend to continue our contacts with them, in administering the act.

Senator Fournier (de Lanaudière): You do not need a ratification from the provinces.

Mr. Macaulay: No. That is correct.

The Chairman: Is it not so that the key word in this is not "dumping" but "deliberate dumping". You would have to prove that the dumping was deliberate, to get a judgment against them?

Mr. Macaulay: I believe Mr. Willis would like to make a comment on your question, Mr. Chairman.

Mr. Willis: Thank you, Mr. Chairman. Yes, I would confirm that the word "deliberate" appears in the definition of dumping. It is a very important word and it is meant to distinguish the kind of activity which we are regulating here, which is intentional disposal, from the kinds of activity which we regulate under the Canada Shipping Act which would include operational discharge and accidents.

The Chairman: So to get a judgment against an alleged offender you would have to prove that he dumped and that he deliberately did so.

Senator Macdonald: There are checks in clause 17 about proving the offence. They shift the burden of proof onto the accused.

Mr. Willis: Clause 17 deals with the responsibility or the liability of the employer or the master; but there would still be a requirement to prove that the actual occurrence of dumping was not an accident, that it was intentional.

The Chairman: There was a case reported in the press not too long ago. I am not sure that I remember the complete details. I believe it was an American naval ship, where the commander admitted that he had dumped a considerable amount of oil in the ocean because it was cheaper to do that than to bring it in and dispose of it on shore. Are you familiar with that? Where would a case like that fit under this legislation?

Mr. Willis: I believe I can answer that question, Mr. Chairman. This type of dumping or disposal would be covered by the legislation we are considering today.

The Chairman: But only because he admitted that he had done it? Suppose that no one saw him and he did not admit it?

Mr. Willis: That goes to the problem of detection.

The Chairman: If the facts of the case are as I stated, that was on the high seas, not in any territorial waters?

Mr. Monteith: Yes, Mr. Chairman. If this was the United States aircraft carrier which had on board as well as aviation fuel for turbo props, some gasoline type fuel for the smaller aircraft, the non-military type aircraft. When they come into port they have a very difficult and time-consuming procedure because of the operation. So rather than go through the operation it is usual to use their own authority and they ocean dump the gasoline. That was the basis.

The Chairman: But it would be an offence under this legislation if he admitted he had done it or if it were proved he had done it?

Mr. Monteith: That is correct.

Mr. Macaulay: That is, if he had done it without a permit to do so.

The Chairman: Yes. Senator Macdonald, you raised the question of burden of proof?

Senator Macdonald: Yes, I do not like the shifting of the burden of proof. I do not like that kind of thing. But it does not apply to the question raised.

Senator Bourget: Clause 14(7), on page 11, says:

> Subsection 450(5) of the Canada Shipping Act is not to be construed so as to relieve any person from any liability under this Act.

What does subsection 450(5) of the Canada Shipping Act do?

Mr. Willis: I believe I can answer the honourable senator's question. Section 450 of the Canada Shipping Act deals with regulations on the carriage of dangerous goods or hazardous goods. It describes the regulations to enforce methods of packaging, stowing and loading and it allows the master to dump dangerous goods overboard if they have been packaged or loaded or otherwise dealt with in violation of these regulations. We want to make sure that no ship would be able to escape liability by reason of the subsection which has been on the statute books for a number of years. The only escape clause we have therefore inserted is in clause 8, which deals with safety to life at sea.

Senator Bourget: Thank you.

Senator Fournier (de Lanaudière): Suppose a bomb was put on a ship and it was discovered and of course they had to get rid of it, what would happen?

Mr. Macaulay: I believe that would be a legitimate use of the emergency powers described in the section.

Senator Neiman: I hope so.

The Chairman: You mentioned that provision is made for permits. Would you give a little more detail on the permits? What do you have to do? Take the case of this naval aircraft we were talking about earlier. If he did not want to break the law, he wanted to keep within the International Convention, what should he have done? Just what process or procedure would have been open to him?

Mr. Macaulay: Basically the gentleman in question should not have carried out the dumping without a permit—if we suppose that this legislation has come into force. In clause 9(1) there is an indication that the minister may grant a permit subsequent to receipt of an application in prescribed form. One of the things we will take up immediately, under the regulations under the statute, will be the prescription of the form of application.

The Chairman: Where does he get this? At the customs office?

Mr. Macaulay: No. He will be instructed to write to a regional office of the Environmental Protection Service, Department of the Environment.

Senator Neiman: I am still concerned about the application and the enforcement of this proposed act as regards jurisdiction. For instance, you have set out certain criteria here of circumstances under which a permit may be granted. What if another signatory has an entirely different set of criteria or interprets it in a different way? For instance, if another signatory were to issue a permit under those circumstances but it is a type under which you or another signatory would not, how are you going to resolve this difference?

Mr. Macaulay: I think I can answer that by saying it is very possible that other ratifying countries will issue permits in circumstances which would be unacceptable in Canadian waters, but this would be as a consequence of local differences in marine environment. For example if the country was in a very warm climate, they might have requirements quite different from those we might wish to exercise in the Arctic.

Senator Neiman: You are referring solely to international waters, but I am talking about the common international high seas.

Mr. Macaulay: Yes, the international convention addresses itself to this question. It indicates that the international organization should set up a scientific body to deal with the establishment of criteria which are internationally acceptable.

The Chairman: Would you go on to tell us a little more about procedure? The person has come to the office of the environment to apply for a permit. Then what?

Mr. Monteith: The application must contain a variety of information including a detailed description of the nature of the waste, the chemical, physical, biological and biochemical properties of the material to be disposed of. In addition, the application will require that the location of disposal be noted. It will require that we be advised of the source of the waste so that we can evaluate the statements on physical and chemical properties, et cetera. It will require information on the routing, on the dates, on the quantities and on the concentrations of contaminants in the waste. Then at that stage it will be evaluated by the appropriate scientific authorities, such as oceanographers, fisheries management people, the environmental protec-

tion service and the appropriate provincial people, because consideration must be given to alternative disposal methods. The application will, moreover, be reviewed by other governmental departments as required. For example, if the waste included radioactive material, or was suspected of including radioactive materials, then the Atomic Energy people would become involved immediately. All that would take place prior to the granting of a permit.

Before the permit is granted the scientific authorities will set up the conditions under which the disposal is to take place. This involves a knowledge of weather conditions, the rate of disposal, the rate of discharge, the mixing which must be required and the location. Of course, all of this is to protect the resources of the ocean and the physical amenities and health of humans.

The Chairman: This applies only to waste that has been accumulated on land over a period of time. What of the disposal of waste which accumulates on ships?

Mr. Monteith: The operational waste as generated on a ship in Canadian waters is covered by various sections of the Canada Shipping Act. The operational wastes on the high seas are covered under a variety of treaties and organizations such as IMCO, the International Maritime Consultative Organization. This act does not cover ship-generated wastes.

The Chairman: Does it cover wastes which develop from cargoes?

Mr. Monteith: If the waste develops from the normal operation of a ship it is not covered. If it develops from the abnormal operation of a ship, then it would be covered.

The Chairman: So it envisages only wastes accumulated on land and disposed of at sea by ship or aircraft.

Mr. Monteith: Yes, if you include dredged materials as wastes accumulated on land.

The Chairman: If it includes dredged materials, would a contractor for dredging need to obtain a permit to discharge his dredged materials in the ocean?

Mr. Monteith: That is correct.

The Chairman: The procedure you have outlined would take several weeks at the least.

Mr. Monteith: It might, yes.

The Chairman: After which someone would then have to inspect the dredged material in order to okay it for dumping.

Mr. Monteith: You realize that dredged materials can be quite hazardous to the ocean, particularly dredged materials from harbours located in heavily industrialized areas. Such dredged materials may well contain hazardous materials like cadmium. We must therefore look carefully at where these dredged materials are disposed of.

Senator Neiman: Does the government intend to institute any positive method of surveillance in order to enforce this law? Will we depend on Canadian ships at sea to report infractions?

Mr. Macaulay: In general it is not our intent to set up a separate policing organization. We certainly intend to use the various measures at our disposal within the government, which would include the ships attached to this department—for example, the oceanographic vessels, and the ships which are attached to the fisheries inspection service. We would also envisage asking for the help of MOT captains, the RCMP and other federal government departments which conduct operations within the marine environment.

Senator Fournier (de Lanaudière): The coastguard would be another.

Mr. Macaulay: Yes.

Senator Neiman: I saw a report in the paper to the effect that the Ministry of the Environment had ordered two new ships. Is that true? If so, are they to be used in this type of work?

Mr. Macaulay: The department has an on-going ship acquisition program. I am not sure to which ships the honourable senator is referring.

Senator Neiman: The news report made it sound as if the ships could be used for some type of surveillance work. I just wondered if there was a connection with this proposed law.

Mr. Macaulay: I am not aware of the particular vessels to which the honourable senator refers.

The Chairman: I am a little confused. A while ago when I mentioned the example of an aircraft dumping high octane gas into the sea I thought the answer was that it would be an offence under this legislation. Now I get the impression that it would not be an offence under this legislation, although it probably would under some other piece of legislation.

Mr. Willis: Mr. Chairman, in a case such as dumping high octane aviation gas at sea, it would be impossible, in my opinion, to argue that that was excluded from the ambit of this bill in reference to the normal operations of a ship. Therefore, there is no doubt that it would be covered by this bill. What would be excluded from the ambit of the bill is the kind of operational discharge which arises out of the ordinary operation of a cargo ship or tanker; for example, washings or discharge of oily fills or sewage.

Senator Neiman: By definition could you bring that under No. 5 of Schedule I? I do not think so.

Mr. Monteith: Any dumping requires a permit, senator, so it does not have to be under one of the schedules. The person would have to have a permit to dump regardless of whether it was under Schedule II or otherwise. All dumping of materials requires permits.

Senator Neiman: In any case, the example the Chairman cited does not come within that particular definition.

Mr. Monteith: No, it is not covered in No. 5. That is correct.

Senator Bourget: Mr. Chairman, on page 4 of the bill, clause 7(1) says that:

> No person shall dispose of any ship, . . .

and so on. The French translation reads:

> Il est interdit d'abandonner en mer un navire, . . .

I do not think the word "dispose" means exactly what it says in French. "Dispose" here does not mean "abandonner". You can leave a ship without disposing of it. Should we say instead of "abandonner", "Il est interdit d'immerg-

er . . ."? That is in clause 7(1). In English it says, "No person shall dispose of any ship, . . ." and in French it says, "Il est interdit d'abandonner . . .". Now you can "abandonner" or abandon a ship without disposing of it. So the translation of the word "dispose" is given here as "abandonner" and I do not think the word "dispose" in that context has the same meaning as "abandonner". As a matter of fact in clause 6 they translate the word "dispose" by "rejeter" and that makes better sense, but in this case, "dispose" and "abandonner" do not have the same meaning. You may "abandonner un bateau" without disposing of it.

Senator Fournier (de Lanaudière): You are right, because you can "dispose" in many ways but you can only "abandonner" in one way.

Senator Bourget: I am not a lawyer, but it seemed to me when I was reading the bill last night that there is quite a difference. To "dispose" would mean to dump or to sink a ship, but to "abandon" which is a literal translation of the word "abandonner" does not have the same meaning.

Senator Neiman: All we have to do, Mr. Chairman, is to report the bill with a minor technical amendment, because that is all it is. It will be no problem at all. But I think Senator Bourget is quite right and I think it should be done.

The Chairman: Mr. Macaulay wonders if we could do this in the Senate after we report the bill.

Senator Neiman: When we report the bill we should report it with that amendment.

The Chairman: Yes, I think we would have to do it here.

Senator Fournier (de Lanaudière): I think it is the English text that should be amended.

Senator Bourget: No, not exactly. We are talking about the dumping of waste, and here in using "abandonner" we may leave the ship on the water and not sink it or dump it. But in French "abandonner" means to leave it alone. So, "dispose" to my mind should not be translated by the word "abandonner". As a matter of fact, as I have said before, in clause 6 it says in English, "No person shall dispose . . ." and it is translated as "Il est interdit de rejeter . . .". But then you have the word "dispose" in clause 7 and you translate it by the word "abandonner". To my mind there is a difference.

Senator Fournier (de Lanaudière): I still think that it is the English text that should be amended. I shall tell you why I say that; take the big ships like the *Michaelangelo* or the *Queen Mary* or the *France* that are disposed of in a particular way. They may be used as a hotel or as a casino, but they will not be "abandonné".

The Chairman: I would think this is meant to apply to derelicts. It applies to taking ships out to sea and perhaps sinking them or leaving them as menaces to shipping and navigation and that sort of thing. I think that is what is meant by "disposal".

Senator Bourget: That is what I thought. I thought that by "disposal" you meant sinking a ship or something like that.

The Chairman: Because we have the English term "abandon ship" which means that the ship is going to sink so we leave it.

Senator Bourget: If you use in French the word "abandonner" it does not have the same meaning. So to my mind, and I am no expert, it should be changed. It is only a minor amendment.

Senator Neiman: Mr. Chairman, I move that we make the amendment.

The Chairman: Do you have an alternate wording for it?

Senator Neiman: Yes, substitute the word "rejeter" for "abandonner" as shown in clause 6.

Senator Bourget: Then it will fit in with clause 6 where you translate the word "dispose" by "rejeter". I think it would be the better translation to use.

The Chairman: Perhaps we can hold this in abeyance for a moment while our witnesses consult with the Department of Justice.

Senator Bourget: I do not want to create any difficulties, but I thought this should be brought to the committee because to my mind as it stands now it does not have the same signification in French as it does in English.

Senator Denis: And why have the French word "rejeter" which means "to dispose again"? Why not have simply "jeter" instead of "rejeter"? Because "rejeter" means to do it twice.

Senator Neiman: Perhaps in clause 6 as well as in clause 7 the word should be "jeter".

Mr. Macaulay: We will take that under advisement, Mr. Chairman. We can ask the people in the Department of Justice how they feel about the word "jeter" as opposed to "rejeter".

The Chairman: We can deal with other aspects of the bill in the meantime. Do you have some more general questions? Do you want to proceed with the bill clause by clause?

Hon. Senators: No.

Senator Bourget: I shall move that with the appropriate amendments made the bill should carry.

The Chairman: Well we have an amendment before the house from Senator Neiman.

Senator Neiman: I am holding that for the moment, Mr. Chairman, because I would be prepared to withdraw it to make an amendment which would cover both clauses 6 and 7.

The Chairman: Yes, you would have to have two amendments, one to cover clause 6 and one to cover clause 7.

Senator Bourget: Perhaps we could leave it to the officials of the deparment to draft an amendment according to the English version so that it will mean exactly the same in French.

The Chairman: Well, one of our witnesses is telephoning the Department of Justice now, and he may be able to get a reply in a short while. Does the permit cover only territorial waters, or does it cover the high seas?

Mr. Macaulay: The permit, Mr. Chairman, would cover any area of the seas referred to in subsection 2(2).

The Chairman: It reads as follows:

(a) the territorial sea of Canada;

(b) the internal waters of Canada other than inland waters;

And so on.

(d) the arctic waters within the meaning of the *Arctic Waters Pollution Prevention Act;*

And then we have

(g) any area of the sea, other than the internal waters of a foreign state, not included in the areas of the sea referred to in paragraphs (a) to (f).

Does that mean that Canada could give a permit to dump in the waters under the jurisdiction of the United States, for example?

Mr. Macaulay: The only exclusion, Mr. Chairman, is the internal waters of a foreign state, which is to say, the waters inside that state's base line.

Senator Macdonald: What about those states who claim a 200 mile jurisdiction?

Mr. Macaulay: I believe that the exclusion is to the waters inside their base lines, as opposed to any other lines which they may draw.

Senator Fournier (de Lanaudière): What about the English word "abandon"? That would correspond to the French word "abandonner".

Senator Bourget: I think what the lawmaker had in mind when he used the word "dispose" was that he wanted to "send" the ship or the aircraft. In French, the usual word would be "se débarrasser", but "to abandon" is something different. You can abandon a ship on the sea and it will float, but that does not mean "to dispose of".

The Chairman: It does not mean it is disposed of.

Senator Bourget: Yes. That is the reason I would like to find a more exact word to replace the French word in clause 7, "abandonner".

Mr. Macaulay: I believe, Mr. Chairman, if we get into the use of the word "abandon" in English, the connotation might be that of abandoning a ship in time of distress. When the captain gives an order to abandon ship, it does not necessarily imply that the ship will be sunk at that spot.

Senator Macdonald: That is true.

Senator Neiman: Mr. Chairman, here is Mr. du Plessis. Perhaps he could help.

The Chairman: When you say in the English version of clause 7, "no person shall dispose of any ship, aircraft, platform or other man-made structure", what you really mean is that no person "shall sink" any ship or aircraft, et cetera. That is what you mean.

Senator Bourget: "Disposer" in French means that also. It means "se débarrasser", which means "to get rid of"; but the word "abandonner" does not have the same meaning.

Senator Neiman: Do you have a word comparable to "disposal"?

Senator Bourget: "Disposer", yes. But it has not got exactly the meaning of "dispose" in English. It is funny. It has about the same pronunciation—"disposer" and "dispose"—but in French the word "disposer" has not got exactly the same meaning. You can dispose of a thing, which means you can put it over there; but in this case I think that what the draftsmen of that bill had in mind, or what the committee of the cabinet had in mind, was "dispose", meaning "destroy"; here, in that case, "get rid of" means that, but "abandonner" does not mean "get rid of". "Abandonner quelqu'un", "to abandon somebody", means "to leave them alone"; but it does not mean that we should dispose of it. My trouble here is to find exactly the word that will give the same meaning, in French, as you have in English when you use the word "dispose".

Mr. Macaulay: Well, perhaps Mr. Willis will be able to determine what an appropriate word will be, in consultation with the department.

Senator Bourget: It is not a major correction, but I think it has some importance.

Senator Fournier (de Lanaudière): There is a shade in the meaning.

Senator Bourget: Yes, and an important shade, with regard to the meaning of the word "abandonner", compared to the word "dispose" in English. I wonder if Mr. du Plessis, who is an expert, and has corrected me many times, could help.

Mr. R. L. du Plessis (Legal Adviser to the Committee): This is the French language that we are dealing with and I am not an expert in that language. I am sure the people in the Department of Justice have given it a lot of thought, and will be able to explain the difference in the use of the word "rejeter" in clause 6, and the word "abandonner" in clause 7.

Senator Bourget: Yes. You see, in clause 6 they use the word "rejeter", and in clause 7 they use the word "abandonner", so there is a difference. I wonder if there are any experts in the back there. Have you got a word? "larguer"?

Senator Fournier (de Lanaudière): Not "larguer".

Senator Bourget: I am sorry to delay the work of the committee, but I thought it had some importance.

The Chairman: Well, that is why we have committees.

Senator Bourget: Yes, exactly. Unfortunately, there are no experts here. "Larguer"? No. You speak of "larguer les amarres". No. "Larguer" would not do.

Senator Denis: "Caler"?

Senator Fournier (de Lanaudière): "Immerger"?

Senator Bourget: "Immerger". "Immerger en mer"? The word "immersion" is used in the French translation in clause 4. I think "immerger" would be the right word.

Mr. Macaulay: The reason we have not used "immersion" in French, in clause 6, at any rate, is because it would correspond with the use of the word "dumping" in English, and we have been careful to distinguish here. We have been careful to use, in clause 6 and clause 7, the word "disposal", as opposed to the word "dumping".

The Chairman: You do not dump a ship.

Mr. Macaulay: No.

Senator Fournier (de Lanaudière): Who knows the English translation for the French word "épave"?

The Chairman: I am informed by the clerk of the committee that the word is "derelict".

Senator Bourget: "Derelict"?

The Chairman: Yes. A ship that has been abandoned at sea and is just a menace to navigation.

Senator Inman: Just floating around.

Senator Bourget: Mr. Macaulay raised a point there that interested me. You said you were very careful to say "abandon" or "dispose", but I think the word "dispose" there means "to get rid of." Perhaps I am wrong. If I am wrong, we will not have to change the word "abandonner"; but instead of saying "no person shall dispose of any ship," and so on, you could say, "no person shall abandon".

Senator Macdonald: That would not cover it.

Senator Denis: I think the spirit of the law is to cure pollution. Is that not correct?

Senator Bourget: To avoid pollution.

Senator Denis: To avoid pollution. Is that the spirit of the law?

Mr. Macaulay: Yes.

Senator Denis: But if it does not go into the water, there is no pollution. I think the word "dumping" is the right word, and it should be used throughout the bill.

Mr. Macaulay: Mr. Chairman, the word "dumping", I believe, was not used in clause 6 because one does not normally speak in English of dumping a ship. One would normally consider that the act of disposing of a ship at sea would not quite conform to what is understood by "dumping".

Senator Denis: The spirit of the law is in the title. «L'immersion en mer de déchets et substances diverses». That is the spirit of the law.

Senator Fournier (de Lanaudière): So it is "immerger".

Senator Denis: It has to be something put into the water, not on top.

Senator Bourget: It has to be "sink". That is the way I understand it. The word "abandonner" is there, and does not mean exactly what you are saying in English. I am sorry to repeat myself, but I think that is the crux of the question, unless the person who drafted that bill had something else in mind.

The Chairman: We are quite clear that what we mean by "dispose" is sinking a ship, getting rid of it.

Mr. Macaulay: I believe that in everyday usage "getting rid of a ship" is perhaps the connotation we are looking for here. It does not necessarily imply sinking.

Senator Fournier (de Lanaudière): "Immerger."

Senator Bourget: That is not what it says.

The Chairman: I do not know how you get rid of a ship without sinking it. How can you get rid of a ship at sea without sinking it?

Mr. Macaulay: You could, for example, cast a ship adrift at sea.

Senator Macdonald: That would be abandoning it.

The Chairman: Is that what you mean by "dispose"?

Mr. Macaulay: Some people might dispose of a ship at sea by abandoning it. I think that is a possibility.

The Chairman: Is that the intent of this clause?

Mr. Willis: I am not a linguistic expert, so I cannot reply on my own behalf. I have, however, consulted with the chief translator at the Department of Justice and with some of his colleagues. What we are talking about in clause 4 is scuttling, and they confirm that the best word that could be found in French is "abandonner." They considered a number of other alternatives, which they refer to as "false friends," as being superficially in accordance with the English text, but the most accurate term, they say, is "abandonner."

Senator Langlois: If you want to translate "scuttle" into French it is "saborder."

Senator Bourget: That is quite different.

Senator Langlois: You do not have the same meaning in both the English and French texts. "Dispose" and "abandonner" are not the same thing. "Saborder" is the word if you mean to scuttle. To scuttle a ship or an aircraft needs the word "saborder."

Mr. du Plessis: Do you wish to change the English to "scuttle"?

Senator Langlois: If that is what you have in mind you should say so in English and in French.

Mr. du Plessis: In English the word "dispose" is broader than "scuttle." In the context it would seem preferable to have a slightly broader word.

Senator Langlois: You cannot dispose without scuttling, of course.

Mr. Macaulay: I think this is probably the intent of the clause.

Senator Fournier (de Lanaudière): That is what I said. A ship can be put to another use, such as making a hotel or a casino out of it.

Senator Bourget: It all depends on what the draftsman or the committee had in mind in using the word "dispose." As I read it there, "dispose" should not be translated by "abandonner." Perhaps I am wrong, if you say you have consulted the experts and the lawyers. That is what the lawyers should have in mind, not only the translators.

Senator Langlois: In marine law you have the verb "to abandon" a ship; you abandon the ship if you figure the ship is a total loss. It does not mean you are scuttling the ship. You are merely abandoning the property of the ship to the underwriters.

Mr. Willis: The people I consulted are linguists and also lawyers. Their advice is that there is no literal correspondence between the word "dispose" in English and "disposer" in French, or on the other hand, conversely, between "abandonner" in French and "abandon" in English. There are subtle difference between the meanings of the words.

The Chairman: Senator Langlois is a celebrated marine lawyer.

Senator Bourget: The word "dispose" is translated by "rejeter" in clause 6.

Senator Neiman: How do they explain that? They use two different words in different clauses. It does not make sense.

Senator Bourget: In clause 6 the word "dispose" is translated by the word "rejeter." However, in clause 7 the word "dispose" is translated by the word "abandonner."

Senator Neiman: That does not make sense.

Mr. Willis: I think the apparent difference there is perhaps a matter of context. In clause 6 they are talking about disposal on ice, which is a different basic concept from the idea of disposing of a ship at sea.

Senator Langlois: I read the French text to mean that the master of a ship could not order his crew to abandon his ship at sea without getting a permit for it. You could not get a permit in a storm in mid-ocean.

Mr. Macaulay: On that point, clause 8 is quite clear in that where there is danger to a vessel or to a human life at sea the master is quite within his rights to abandon the ship or dump the cargo; this legislation contemplates dumping the cargo.

The Chairman: I think what you really mean is scuttling a ship, or taking it out and sinking it. That is the only way you can dispose of it at sea.

Senator Fournier (de Lanaudière): That is "saborder."

Mr. du Plessis: If that is the case, then we de-limit the meaning of the clause in English if we change it to "scuttle."

Senator Neiman: It is good English.

The Chairman: If you use "scuttle," you do not scuttle an aircraft. "Dispose" would apply to an aircraft.

Mr. du Plessis: It is certainly a broader term.

The Chairman: As far as it applies to a ship it means scuttling, but it is sinking the others, although it means sinking a ship too.

Senator Fournier (de Lanaudière): "Immerger."

Senator Macdonald: Does not "scuttling" mean "sinking"? This is broader. Suppose a ship were on fire, the fire went out by itself and the ship was still wandering around the sea abandoned?

Senator Langlois: I think the word "dispose" is really too broad. You can dispose of a ship by selling it to a third party. That does not mean you abandon it if you do that.

The Chairman: You would have to say "scuttle" for a ship and "dispose" for the others.

Mr. Willis: I think I would agree with the point just raised, that if we use "scuttle" it is used in the narrower sense, it would de-limit the application of the clause. Certainly we do not intend to limit the application to cases where the ship is sunk. With respect to the point raised by Senator Langlois, I think the verb "dispose" is not too broad, because we are talking about disposing at sea, so certainly transfering the ship to a third party would not be covered by the bill.

Senator Langlois: You can do that at sea too.

The Chairman: That is another angle. You could dispose of it by taking it to sea and turning it over to somebody else.

Senator Bourget: For an aircraft or a ship "couler le bateau."

Mr. Macaulay: On that last point, I believe the whole purpose of the legislation is to regulate dumping at sea or the disposal of substances at sea. The legislation does not really contemplate relations between two parties involving the transfer of property.

Senator Langlois: You have a different word for both sections. You should make up your minds about what you want.

Mr. Willis: If I might reply, the difference between the verb used in section 6 and that used in section 7 is a matter of context. One verb is "rejeter," which is correct when talking about disposing of things on ice. Another verb, for linguistic reasons, is correct when talking about ships. There are differences in the French which would not be apparent if we used the exact corresponding terms.

Senator Fournier (de Lanaudière): I like the verb "couler".

Senator Denis: Faire s'enfoncer dans l'eau.

Senator Bourget: Taking the case of ships or aircraft, if we want to dipose of them we sink the ship or aircraft. The word "couler" in French, I take it, would cover that.

Senator Denis: "D'abandonner".

Senator Bourget: I think the word "couler" would be a better translation of what is meant under section 7.

Mr. Willis: "Couler" would mean sinking.

Senator Bourget: Yes.

Senator Fournier (de Lanaudière): Perhaps uou could call your department and have the word changed to "couler".

Mr. Willis: The intention is not to limit the expression in the section to cases of sinking.

Senator Bourget: Then that is different.

The Chairman: Another word might be "rejeter"—getting rid of it.

Senator Fournier (de Lanaudière): For a ship?

Senator Bourget: Could not the word "saborder" be used there?

Senator Denis: To make a hole under the "ligne de flotaison".

Senator Fournier (de Lanaudière): The floating line.

Senator Denis: —So that the ship will go to the bottom of the ocean.

Senator Bourget: It all depends on what the draftsman had in mind.

The Chairman: Perhaps Mr. Willis could tell us what they had in mind, apart from sinking the ship. How else do you think it could be disposed of?

Mr. Willis: Certainly the normal means would be by sinking. But we would want it to regulate a simple case where they abandoned a ship at sea without bothering to scuttle it. We would want that to be covered.

Senator Macdonald: Why not take the crew off and let the ship go—abandon it?

Senator Langlois: There is an equivalent in French which might satisfy the drafters of the bill. It is "délaisser."—"Délaisser un navire en mer."

Senator Fournier (de Lanaudière): To leave it there—to get out of it.

Senator Denis: To leave it alone. But it does not necessarily sink.

Senator Langlois: Quit the ship and let it float as a derelict.

Senator Bourget: The bill has to do with dumping of waste, pollution. If you leave the ship there, it has no connection with pollution or dumping of waste. That is the reason why, when I read this last night, I felt the translation did not have the same meaning.

Senator Denis: It would not affect the pollution.

Senator Fournier (de Lanaudière): When you abandon the ship, it is left afloat. So there is no pollution.

Senator Bourget: But it could happen.

Senator Langlois: Fuel could seep out of the tanks. You would then have pollution.

Senator Bourget: It might or might not happen. Let us not take all morning about this.

Senator Fournier (de Lanaudière): Among the French-speaking members of the committee there would be no end to this discussion.

Senator Bourget: Let us leave the matter with the three witnesses and the one who drafted the bill to find the exact word. In the meantime we could move an amendment but not mention the word until the exact word, which gives the correct interpretation of the word "dispose," is found.

The Chairman: Is the committee rejecting this word "abandonner.« Are we seeking a substitute?

Senator Bourget: Not us. We leave it to you, Mr. Chairman, or to the witnesses and the drafter of the bill, to find out exactly what he had in mind. Then, Mr. Chairman, you could get in touch with the experts in translation and find out whether the meaning agrees with the English word "dispose."

Senator Fournier (de Lanaudière): We would have to convene again.

The Chairman: We could not pass the bill.

Senator Bourget: Perhaps we could return at a quarter to two. It should not take up much time.

The Chairman: Will you be able to be present, Senator Langlois? I would like to have your views.

Senator Langlois: I am not a member of the committee, Mr. Chairman, and I will not be available at that time. I suggest that the word "délaisser» would mean the same thing without going too far.

Senator Bourget: If we use the French word "délaisser,« we would have to change the English word "dispose." It does not mean the same thing.

Senator Langlois: It is much broader.

Senator Bourget: But it does not convey the exact meaning.

Senator Macdonald: Mr. Chairman, might I suggest that the discussion be brought to the attention of the draftsman and the translators, and that we have a report? We do not need to meet this afternoon. There is no rush about the bill.

Senator Bourget: If we could meet for about 15 minutes, we could dispose of the bill.

Senator Fournier (de Lanaudière): If we bring down an amendment, the bill would have to go back to the Commons.

Senator Langlois: Perhaps we could postpone this matter until next week.

The Chairman: It is a small matter. Is the committee prepared to move the rest of the bill?

Hon. Senators: Yes.

The Chairman: With the exception of sections 6 and 7.

Senator Denis: Not necessarily. If that word is changed, it might have to be changed in other sections.

Senator Neiman: Yes. The word appears in other sections.

Senator Fournier (de Lanaudière): Let us leave it to the experts.

The Chairman: We shall meet at the call of the Chair at approximately a quarter to two. If the matter is not resolved, we shall again adjourn.

The committee adjourned.

The committee resumed at 1.45 p.m.

The Chairman: Honourable senators, I am very sorry, I was delayed a bit.

Senator Bourget: Did you "dispose" of your guests?

The Chairman: I "abandoned" them!

Honourable senators, we have with us today Mr. Geoffrion, Mr. Covacs and Mr. Popp from the Department of Justice.

Mr. R. L. Geoffrion (Legislation Section, Department of Justice): Mr. Chairman and honourable senators, Mr. Covacs is chief translator and a linguist.

Mr. A. Covacs (Chief, Translation Bureau (Justice)): Mr. Chairman, I am Chief Translator. I am from the Department of the Secretary of State but am now working with the Department of Justice.

Le sénateur Bourget: Vous pouvez vous exprimer en français, vous savez.

M. Covacs: Très bien.

The Chairman: We had some translation difficulties this morning. It resolves around the meaning of the word "dispose". What did you mean by "disposing of a ship" or "disposing of a substance" in clauses 6 and 7? The word "dispose" has many meanings. It has several meanings in English and it is very difficult to apply them all to a ship. Senator Bourget and other discovered that the French translation was somewhat different, that it had a somewhat different meaning to the word "abandonner" which is not the meaning of the word "dispose" in French.

[*Translation*]

Mr. Geoffrion: Mr. Chairman, since it is a problem of translation and interpretation, I believe I will perhaps leave Mr. Covacs establish the nuances, if any, and explain why the word "rejeter" was used in one place, but "abandonner" used in another.

Mr. Covacs: The problem you are raising concerning the translation of this text, is that from the beginning and at a first stage, we had the English word "dumping", used in the meaning of "rejeter", to get rid of something, that was mostly considered as waste.

In the International Agreement on which the English text is based, the French version had the word "immersion". They have tried to keep the word "immersion" in most cases, but they have been faced with impossible translations like "immerger" wastes on the ice and "immerger" a ship. This was not adequate either. Then, according to the circumstances, they had to adapt different French words.

Subsequently, the word was deleted in the English text, that is to say they have not used the expression "dumping on ice" but they have spoken of "disposal" in those cases. From the beginning, the very definition of "dumping", and this proposition affecting the ice and the ships, has disappeared and the word "disposal" appears here, without any definition, which then allows us to use the words which according to the context will be thought adequate in French.

Now, in the first case, "disposal of any substance", they have taken the most generic term which is normally used in French, namely "se débarrasser de quelque chose", and which has a connotation of refuse, waste, and it is the verb "rejeter" and the corresponding noun "rejet". Then, we started from there.

Then subsequently we came to ships and planes, it was the language used in the International Agreement. I mean to say that the International Agreement used the word "scuttling", for man-made structure at sea. Now, it was difficult to use this word, then they discovered that even the French used in the International Agreement was not very adequate, concerning a platform, aircraft, etc., and there was no evidence that they really had to be sunk and they might very well, in a general sense, simply leave them there deliberately. It is for this reason we have chosen the word "abandonner", which seems to have a more general meaning.

Senator Denis: According to the title of the bill, it was to prevent pollution.

Mr. Covacs: Yes.

Senator Denis: You agree that the bill is designed to prevent pollution?

Mr. Covacs: Yes.

Senator Denis: If a ship is afloat, it is abandonned and is floating on the water, does it not pollute the sea?

Mr. Covacs: One could say so, if there are many of them.

Senator Denis: But they could be sunk or scuttled?

Mr. Geoffrion: If I may, in this case we should consider the English word, "dispose".

Senator Denis: Nothing shows that the word "dispose" is adequate. If they have made a mistake in another international law, or otherwise, you are not compelled to follow them.

Mr. Geoffrion: Then, we would have to start from the other text, in that case.

[*Text*]

The Chairman: I think the problem is that even the English word "dispose" is not the best word. The English word "dispose" could be used to mean to sell a boat, and this could actually happen.

Senator Bourget: Yes, it happened on the ocean where a ship was sold and it changed its name, right on the ocean. They did not know what the ship was, because the name changed, right on the middle of the ocean, and this is going before the Supreme Court next week. They changed the name. I agree with what this gentleman says, but we have to look at the two words, the English word first, because I have no objection to the use of the word "abandonner." I have no objection because it is related to "dispose". One of the two is wrong. Looking at the word of the law, the word as it is there, appears in clause 7. It does not have the meaning "abandonner" because if you wish to dispose of any ship I do not think that we could translate the word "dispose" in clause 7 by the word "abandonner." That is the way to look at it.

[*Translation*]

Mr. Geoffrion: No, I believe the word "abandonner" corresponds to the word "dispose."

Senator Fournier (de Lanaudière): It is a way of disposing, but it does not mean the same thing.

Mr. Geoffrion: In this case, you mean to say that the word "dispose" is broader than the word "abandonner".

Senator Bourget: That is it, it is broader. And there, if I understand it well, you have used words used in the international agreement, this is what has been said a while ago, it is possible, but I think, in the bill, it will creat confusion. In any case, I believe we cannot translate the word "dispose" as it is used, and in taking into account the intent of the act, by the word "abandonner". It is my impression but I may be mistaken.

Senator Fournier (de Lanaudière): If I may, we can speak French, en français ou en anglais?

Le président: Oui.

Senator Fournier (de Lanaudière): You can "dispose" in a thousand ways, but you can "abandon" in only one way.

Mr. Geoffrion: In this case, if, as I have said, the English word is broader, we must start from it and not from the French one.

Senator Bourget: You are absolutely right. It is exactly the difficulty we are facing. We have to find a word in French, which will give exactly the definition of the word "dispose", because the latter is used in several circumstances. In Section 6, they use the word "rejeter". Here, they use it, and they say it means "abandonner". This is why I say you are absolutely right, and that we must start from the English word, and at the same time take into account what they exactly mean by "dispose", because it may also mean "to sell", you can "dispose" of something by selling it. Then, in the context of the bill, this is what causes the difficulty preventing from fully understanding why the English word "dispose" is translated into French by "abandonner".

Senator Denis: I believe that both words, English and French, are inadequate, because the only intent of this bill is to prevent the pollution of the ocean. Do we agree? Then, if it is the only goal, why introduce into the bill words which mean something else, which would not generate pollution?

There might be barges on the sea, and it would not involve any possible pollution. Then, to pollute it must go into the water. Is it not true?

[*Text*]

Mr. A. H. E. Popp, Legislation Section, Department of Justice: May I be permitted to answer that, Mr. Chairman?

The Chairman: Yes.

Mr. Popp: I drafted this piece of legislation in the English language. First of all, I would like to say that the object of this legislation is environment protection, and not just the narrow issue of pollution.

Senator Denis: That might make some difference.

Mr. Popp: Secondly, the use of the word "disposal" in the English version occurs, of course, because that is the term that is used in the Convention. In using that term we had two essential operations in mind—one being the act of sinking the ship or platform, or whatever it is, at sea, and the passive act of actually abandoning the ship, I think the English word "disposal" includes both of those operations.

Senator Bélisle: Mr. Chairman, if I may be critical of the way you are handling this matter, the opposition does not seem to be getting an opportunity to criticize this bill.

In closing the debate on second reading yesterday afternoon, following my speech on this bill, the sponsor of the bill said, and I quote:

> Honourable senators, the honourable senator opposite has raised a series of very interesting questions. While I could attempt to answer them, I know I would be doing so in an amateur way. I do not see why you should be content with amateur answers, when you can get expert answers to your questions in committee. Therefore, I propose, if this bill receives second reading, to move that it be referred to the Standing Senate Committee on Health, Welfare and Science.

My criticism of you, Mr. Chairman, is that we were not informed sufficiently ahead of time of the meeting today. What is the rush in connection with this bill? I left my office at 4.15 last night to attend to another obligation and I was not informed that a meeting was to be held this morning on this bill. Again, what is the rush?

With your consent, I move that we adjourn consideration of this bill to another date.

Senator Bourget: Mr. Chairman, I must say, I cannot agree with what my good friend has just said. I do not think you should be criticized, or that there is need for criticism. You are doing your duty as chairman of this committee. Members of the committee did receve notice of the meeting this morning. In all fairness, Senator Belisle, I do not think there is any cause for criticism.

Senator Bélisle: Why were we not consulted before the decision was made that these witnesses would appear before the committee?

Senator Bourget: We did get notice, Senator Belisle.

Senator Bélisle: I see no reason why this matter cannot be adjourned to another date.

Senator Bourget: I am not opposed to the adjournment. What I am opposed to is the fact that you have criticized the chairman. In all fairness, I feel that the chairman has done his duty.

Senator Denis: Hear, hear.

Senator Bourget: He is not trying to railroad this bill through.

Senator Bélisle: He is not being fair to the opposition.

Senator Bourget: I would like you to state one instance when the Government side of the Senate has been unfair to the Opposition side.

Senator Bélisle: I am not accusing you or the Government side in the Senate. I am criticizing the chairman of the committee for not consulting the Opposition as to when this bill would be considered in committee.

Senator Denis: There were Opposition members present at the meeting this morning.

Senator Bélisle: He knew I was unable to be here this morning.

Senator Denis: You received a notice, just as all of us did.

Senator Bélisle: I did not receive it. I left yesterday at 4.15 p.m. and, I am told, it was delivered at 4.35.

Senator Bourget: Well, that is not the fault of our chairman.

Senator Fournier (de Lanaudière): Senator Bélisle, give me a minute. Do not leave now. Are you a member of this committee?

Senator Bélisle: Yes, I am.

Senator Fournier (de Lanaudière): Were you or were you not convened to attend this morning?

Senator Bélisle: I was only called at a quarter to twelve to be here at a quarter to two.

Senator Denis: But you did receive the committee notice yesterday.

Senator Bélisle: I received it at 11 o'clock this morning.

Senator Fournier (de Lanaudière): Well, you cannot hold the chairman of this committee responsible for your absences, senator. It is not his fault if you have to be out of the Senate.

Senator Bélisle: He should at least have had the courtesy to consult the Opposition.

Senator Fournier (de Lanaudière): If you had to be out of the Senate yesterday and you had to miss the meeting this morning, surely you cannot hold the chairman of this committee responsible for that.

Senator Bélisle: The point is that on your side you always have full knowledge of these committee meetings but we don't. Apparently you are not interested in hearing our voice or in having certain of the officials read the comments that we make.

Senator Bourget: Oh, no, senator, that is not right. Personally, I have no objection to adjourning this, if that is what you wish.

The Chairman: Order, please. Honourable senators, the bell has summoned the Senate. We have no authority to sit while the Senate is sitting and we have already had a motion to adjourn.

Senator Bourget: And that motion is not debatable.

The committee adjourned.

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1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 7

THURSDAY, JUNE 19, 1975

Second and Final Proceedings on Bill C-37, intituled:

"An Act to provide for the control of dumping of wastes and other substances in the ocean"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

28512—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C.,

Deputy Chairman.

and

The Honourable Senators:

Argue	Goldenberg
Blois	Inman
Bonnell	Langlois
Bourget	Macdonald
Cameron	McGrand
Choquette	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Smith
Fournier (*de Lanaudière*)	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate, June 11th, 1975:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macnaughton, P.C., seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-37, intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

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

The Bill was then read the second time.

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

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, June 19, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 9:40 a.m.

Present: The Honourable Senators Carter (*Chairman*), Bonnell, Bourget, Cameron, Denis, Fournier and Inman. (7)

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

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The Chairman explained to the Committee the reasons for holding the first meeting on Bill C-37 on Thursday, June 12, 1975 that is, the day next following the day on which the said Bill was referred by the Senate to the Standing Committee on Health, Welfare and Science.

The Committee then resumed its examination of Bill C-37 intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

The following witnesses were heard in explanation of the Bill:

Mr. Louis Martineau,
Translation Bureau (Justice);

Mr. Rémi L. Geoffrion,
Legislation Section, Department of Justice;

Mr. Ian D. Macaulay,
National Ocean Affairs Officer,
Oceanography Branch,
Department of the Environment;

Mr. John R. Monteith,
Chief,
Hazardous Material Management,
Environmental Protection Services,
Department of the Environment;

Mr. J. C. Carton,
Director of Legal Services,
Department of the Environment.

On motion of the Chairman, it was Resolved to report the said Bill without amendment.

At 10:50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Thursday, June 19, 1975

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-37, intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean" has, in obedience to the order of reference of Wednesday, June 11, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, June 19, 1975.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-37, to provide for the control of dumping of wastes and other substances in the ocean, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, I see a quorum and I call the meeting to order.

Before we proceed with our consideration of Bill C-37, there are one or two things I want to say arising out of our last meeting. Those of you who were here will remember that Senator Bélisle was critical of me as chairman for calling the meeting without having consulted with him to whether it would suit his convenience or not. Now, I agree that the spokesman for the Opposition deserves some special consideration, particularly having regard to the circumstances in which they find themselves, but how far one can go with that must be determined by the circumstances in which we operate.

I think I should put on the record, for the benefit of the committee and for the benefit of others who may read *Hansard*, the sequence of events leading up to the calling of that meeting. As you know, the bill was sponsored in the house by Senator Macnaughton, and as soon as the bill had received second reading and was referred to committee I got in touch with Senator Macnaughton and asked him when, in his view, the bill should come before the committee. He said he was not certain as he had no specific plan in mind. I further told him that we would have to see what time slots were available. That was a week ago Wednesday, immediately after the bill had received second reading. We found that the following day, Thursday, was open, and there was no other opportunity available to us until the next Thursday, which is today. Tuesday was filled up, as there was a meeting of the Science Policy Committee that afternoon. Then, the next day there was a meeting of the Committee on National Finance, together with a meeting of the Committee on Banking, Trade and Commerce, so there was no time slot available Wednesday, which was yesterday. Then, looking forward to the kind week, again there seemed to be no suitable opportunity either. So we were left with the three Thursday—that is to say, last Thursday, today and next Thursday.

Now, if you look at the bill you will see it is a fairly substantial one. It has 23 pages and the committee of the House of Commons found it necessary to spend six sittings in considering it. Therefore, I could not assume that our committee could dispose of it in one meeting. I think it was appropriate to assume that at least two meetings would be required. With that in mind, I decided that we should not pass up the opportunity of using the time slot available last Thursday, so I called the meeting for that day. When the decision was made, I got in touch with the Deputy Leader, and he gave the notice in the Senate before the Senate adjourned.

Furthermore, I called my secretary and asked her to get in touch with the members of the committee and with Senator Bélisle. I am sorry, but for some reason she did not get in touch with Senator Bélisle.

Senator Bourget: But he is not a member of the committee.

The Chairman: No, he is not, so she probably thought I had made a mistake. However, I did not know that Senator Bélisle had not been advised until he said so in committee. Those are the circumstances, honourable senators. As chairman, I felt it my duty to the Senate is to try to expedite the passage of legislation through the committee and to be as fair as possible to all other members of the committee because every senator is busy and has to serve on more than one committee. Therefore, when I found that a time slot was available last Thursday, I considered that I would be derelict in my duty were I to pass it up. I assumed that Senator Bélisle would receive the notice or that at least he would see the notice in *Hansard* and then, if it did not suit him, he would have the opportunity of letting me know and we could have made other arrangements. However, I consider it was still right to see what progress could be made on the bill in one sitting, assuming that more than one would ultimately be required. I felt I owed that explanation to the committee.

In setting the meeting for this week I approached Senator Bélisle, and because it was not convenient for him to go on earlier, I postponed this sitting until this morning. However, perhaps I should point out again, as Senator Bourget has done, that Senator Bélisle is not a member of this committee.

Senator Fournier (de Lanaudière): Who are the Conservative members of the committee?

The Chairman: Senator J. M. Macdonald, Senator Blois, Senator Phillips, Senator Flynn, *ex officio,* and Senator Sullivan.

Honourable senators, had Senator Bélisle been here I would have asked how you wished to proceed, because we have two problems. I understood that Senator Bélisle wanted to put some questions to the witnesses. Then we had the problem of translation which honourable senators were trying to deal with at our last meeting. Since Senator Bélisle is not present and we have the translators here, Mr. Geoffrion wishes to make a brief statement about the linguistic problem.

Senator Bourget: Before we proceed to that, perhaps it would be helpful if we had a copy of the Senate *Debates* because there we could see what kind of questions Senator Bélisle wanted to raise.

The Chairman: I will ask the clerk to get a copy of the Senate *Debates* in which this bill is dealt with.

So, honourable senators, shall we proceed with the questions dealing with translation now?

Senator Bourget: Yes, and then we can find out exactly what Senator Bélisle's questions were.

The Chairman: I think the experts made notes of those questions because they were in the gallery at the time that Senator Bélisle asked them.

I shall now call on Mr. Geoffrion.

[*Translation*]

Mr. Remi L. Geoffrion, Legislation Section, Justice Department: Honourable Senators, I looked at Sections 6 and 7 with Mr. Covacs, Chief of the Translation Service. More specifically, we have examined Sections 6 and 7 as far as the French vers "rejeter" and "abandonner" are concerned. We must examine these two verbs in light of the context, and with regard to the definitions of both words "immersion" "permis". My opinion is that the French version serves exactly that purpose sought by using the English verb "dispose".

Of course, as you know, in translation, and here Mr. Martineau can correct me, very frequently the source language, in this instance, English, can choose a verb which will apply to all circumstances where as in the translation in this case, to French two words are required. That is the reason why in Section 6, we talk of disposing of a substance at sea by abandoning it. We have tried to give it a specific meaning. Then, immediately after in Section 7, we use the verb "abandonner" within the same context. So, I think the translation is correct. It is good and sound as far as I am concerned. This being said with all due respect.

Senator Denis: There is the word "rejeter", why not use the word "immersion"?

Mr. Geoffrion: No, actually, we dispose from a ship, we dispose of something on the ice, we dispose of a substance from something on the ice. You cannot dump it in the ice.

Senator Denis: "Déposer" very simply.

Mr. Geoffrion: Listen, I think I will let you proceed for a while, but we have used the term "rejet", "immersion" which is valid, in order to try and use it everywhere later on in the legislation.

Senator Denis: The objection brought forward by Senator Langlois is that we use the word "abandonner" when the captain of a ship decides to abandon a ship because it is in distress or it will sink or is sinking. This can lead to confusion when we use the phrase "to abandon ship".

Mr. Louis Martineau, Translation Bureau (Justice): Senator, the answer we can give is that we must not take for granted that the words of the English language that resemble words in French have necessarily the same meaning. We have an example here with the verb "abandonner" and the English verb "abandon" which can have the same meaning in one context and a totally different meaning in another. In this same line of thinking, I can give you an example of the English word "eventually". It means that "tôt ou tard" a person will do a given thing. But, in French, if we say "éventuellement", in fact, we mean that maybe the person will do this thing or maybe not. If I say for example: Mr X "will eventually come", I mean that he will come for sure. If I say "il peut venir éventuellement" he may come and he may not. So, we must not take for granted that if we say "abandon ship", we must say in french "abandonner le navire" and that it means exactly the same thing. It may be so, in a context in particular. But in the context of section 6, since we say that we cannot abandon a ship without a licence, is totally impossible that we mean a ship in distress, because then, we would not go and get a licence.

Senator Bourget: As far as I am concerned, I have no objection if you think that this is the word we must use. You consulted the legal advisors of the Department. I raised this question because I thought that the English term "dispose" did not mean exactly "abandonner". But if from the legal point of view it is correct—I am not a lawyer—

Mr. Geoffrion: I for one, am satisfied.

Senator Fournier (de Lanaudière): With the explanation, I am also satisfied.

Senator Denis: It is valid.

Senator Fournier (de Lanaudière): Assuming that we have only one language, one or the other. The phrase we use in English is appropriate. Moreover, if we had only the French language, the way we proceed in French is also appropriate. So, I think that it is okay.

Senator Bourget: I agree.

[*Text*]

The Chairman: As I understand it, the English word "dispose", as used in this bill, and as it is intended to apply to a ship, covers three different actions that might be taken. One such action is taking a ship out to sea, opening the seacocks and letting her sink. That is sinking or scuttling the ship. Another action that might be taken, and which is covered by "dispose", is to tow a ship out to sea, chop the tow line and let the ship drift as a derelict or wreck. A third action that might be taken is that of taking a ship out of harbour and anchoring her, or putting her in such a condition that she may drift up on the shore and become a wreck.

We were told at the last meeting that the main purpose of this bill is not so much to prevent pollution as to protect the environment, and that it was in this wider context that we should be interpreting the language of the bill. The word "dispose", then, covers three different sets of circumstances that might arise, and when we come to the French language, they tell us that the word that has the widest scope, which would embrace all of these actions that are covered by the English word "dispose", is "abandonner", since it has the most general meaning and the widest possible application. Is that correct?

Mr. Martineau: Yes, Mr. Chairman, that is correct.

The Chairman: And am I correct in saying that the crimes or actions that the word "dispose", in English, is intended to cover, the word "abandonner" is intended to cover in French?

Mr. Martineau: That is right.

[*Translation*]

Mr. Geoffrion: In the Dalloz dictionnary of French Law, the first word to define "abandon" is "délaisser volontairement une chose", which means that for example, the individual who abandons a ship at sea renounces all his rights. This is the definition of Dalloz.

Senator Fournier (de Lanaudière): Is he an acknowledged writer?

Mr. Martineau: Yes, he is an acknowledged French writer.

[*Text*]

Senator Bourget: I have no objections, Mr. Chairman, so if the officers of the department concerned are satisfied with that word, it is all right with me.

The Chairman: Is everybody agreed?

Hon. Senators: Agreed.

The Chairman: Thank you very much.

Honourable senators, I wish to apologize to Mr. Martineau. I should have introduced him at the beginning. He is Mr. Louis Martineau, from the translation section of the Department of Justice.

Thank you, Mr. Geoffrion. I understand you have another appointment.

Honourable senators, we come now to the questions raised by Senator Bélisle. They will be found in Senate *Hansard* at page 1050. He says:

> Let me raise a few concerns which have occurred to me in relation to some of the provisions of Bill C-37. For instance, how overriding is the control exercised by means of these permits? What happens to substances not dealt with in the schedules?

Would someone like to deal with those two questions?

Mr. Ian D. Macaulay, National Ocean Affairs Office, Oceanography Branch, Ocean and Aquatic Affairs, Department of the Environment: Mr. Chairman, I think I can answer Senator Bélisle's question by saying that, although there are certain substances not mentioned in schedules—that is to say, the schedules address themselves only to a limited number of substances—all substances are covered by the bill. That is to say, a permit is required for the disposal or dumping of any substance in the sea. The schedules have single out for special attention substances which are either very dangerous or obnoxious to the environment—that is in Schedule I—or, in Schedule II, substances which the drafters of the international convention considered should b treated with special care before they were dumped into the sea. So everything is covered.

Senator Fournier (de Lanaudière): Mr. Chairman, I would like to raise a point of order. We do not need the French translator. We hear more of the translator than the one who is speaking. We do not need that at all.

The Chairman: We do not need the translation from now on.

Were you raising a point on that question, Senator Bourget?

Senator Bourget: No, Mr. Chairman.

The Chairman: Does anyone else have any questions arising out of the answer given by the witness? If not, we come to the next question:

> In the granting of permits, the factors to be taken into account are highly technical and require considerable knowledge in the making of a judgment as to whether a permit should be granted. To state another example, I wonder if we know how much dumping has occurred, where it has occurred, and of what kind and leading to what cumulative effect.

Have you a comment on that, Mr. Macaulay?

Mr. Macaulay: Thank you, Mr. Chairman. We do have records established of the quantity of dredge spoils which have been dumped into the sea and these constitute the largest volume of materials dumped. There has been for some time consultation between different federal departments concerned with dredging material and disposing of it into the sea.

To move just a little further into this question, we have also made every attempt to be aware of what other substances are being dumped at sea and where they are being dumped. We have concerned ourselves with monitoring the effects of these dumpings on the marine environment. Naturally, without a bill of this nature we have no right to know, as it were, just what people are dumping. There are activities going on we are quite certain we do not know about, but I believe Mr. Carton can probably tell the committee just how we have used the Fisheries Act in controlling some dumping in the sea in the past.

Senator Fournier (de Lanaudière): I presume that this bill is the consequence of an international agreement.

Mr. Macaulay: That is correct.

Senator Fournier (de Lanaudière): In other countries that have signed the international agreement, do they have a law corresponding exactly to what we have before us?

Mr. Macaulay: Mr. Chairman, their law would not necessarily correspond exactly to this one but in principle their law would do the same things, because their laws, as this one, are concerned with ratification of the London Convention and must incorporate certain features to be used for that purpose.

Senator Fournier (de Lanaudière): You do not have copies of those laws?

Mr. Macaulay: We have copies of some.

Senator Fournier (de Lanaudière): What about the question that we were discussing a few moments ago? Are we the only country using two official languages in our law?

Mr. Macaulay: I am not quite certain that I can answer with any certainty. I know that I have seen legislation of other countries with side-by-side translation—English and, I believe, Norwegian. It is quite common. I do not know if this is the official usage but it seems to be quite prevalent.

Senator Bourget: I suppose that the schedules are the same and contain exactly the same substances?

Mr. Macaulay: They would have to contain at least the substances which are specified in the London Convention. Signatory states are permitted, however, to make an addition to these schedules if they see fit to do so.

The Chairman: Are there any further questions on that point?

Hon. Senators: No.

The Chairman: The next point raised by Senator Bélisle was—and I am still quoting from page 1050 of Senate *Hansard*:

> Concentrations of substances may have already been introduced into the marine environment which, although far below the lethal level, may be responsible for reducing vitality or growth, or may be responsible for causing reproductive failures or for interfering with the sensory functions of sensitive marine life. Such changes would not be immediately apparent and, unless the tolerance levels were ascertained by a system of monitoring over a period of time, it would be difficult to attach the correct conditions to permit dumping.

In other words, what he is asking is, how do you determine the conditions under which dumping is to be permitted, unless you have some way of knowing the present level of pollution or the present condition of the sea? Do you plan to carry out a system of monitoring in connection with this?

Mr. Macaulay: Thank you, Mr. Chairman. The sicentific establishments of the Fisheries and Marine Service, Department of the Environment, have for some years been looking at this question of sub-lethal concentrations of materials introduced into the marine environment and their effects on marine life. There are programs of monitoring the sea carried out routinely by our oceanographic laboratories which monitor the condition of the water. The people on the Fisheries side are more concerned with looking at the marine life itself and what happens to it when certain substances are introduced into the sea. We have toxicologists on the scientific staff who concern themselves with just this question which was addressed by Senator Bélisle.

The Chairman: Are there any further questions on that point? If not, Senator Bélisle then went on to say:

> The minister has complete discretion in the power to issue, vary, suspend or revoke permits, so that an onus is placed on the interpretation by the minister as to the stringency of conditions attached to permits.
>
> Do we have enough scientific know-how to make these decisions, or should provision be made for back-up research and the monitoring and surveillance of changing conditions in our coastal areas? Otherwise, how would it be possible to judge the effects of dumping over time or to distinguish sensitive marine ecologies from less vulnerable areas?

Mr. Macaulay: Yes, Mr. Chairman. I think I have addressed myself to this in my previous reply. We do have ongoing monitoring programs and these are attempting to re-assess at all times the conditions under which permits would be made available to dumpers. The criteria which would be applied in one location would be somewhat different perhaps from those applied in others. Our scientists make every attempt to understand just which local conditions should be most relevant in making a decision on whether to grant a permit.

Senator Bonnell: Has the minister the power to suspend a permit?

Mr. Macaulay: Yes, the minister has.

The Chairman: Senator Bonnell, clause 10(4) on page 8 states:

> The Minister may suspend or revoke a permit or vary its terms and conditions where, having regard to the factors set out in Schedule III or in any report referred to in subsection 12(7), he deems it advisable to do so.

Senator Fournier: That is a question of administration.

The Chairman: The next point raised by Senator Bélisle had to do with alternate dumping. He said:

> An especially important technical factor is the availability of other landbased methods of treatment, because alternative disposal must be an integral part of dumping control, as the minister mentioned in committee discussions. However, it is not clear that this problem has been adequately dealt with. If a habitual method of dumping at sea is banned then, unless other solutions are made available, pressure will remain to allow dumping privileges. Small municipalities, for example, may initially experience hardship because of the removal of their customary system of waste disposal which, traditionally, has been to dump the waste at sea by means of barges.

In other words, he says that if there is some material which must be disposed of and if the ordinary system of disposal which has been at sea is to be prohibited, are we not then bound to provide an alternate method of disposal?

Mr. John R. Monteith, Chief, Hazardous Material Management, Environmental Protection Service, Department of the Environment: In answer to that, Mr. Chairman, I should say that within the Environmental Protection Service of Environment Canada there are two groups concerned with waste disposal. One is the Solid Wastes Management Division and the other is the Hazardous Material Management Division. Both of these groups have active programs going on in which they are involved quite heavily with international and provincial counterparts. The Hazardous Material Management Section has ongoing programs with particularly, at this stage, the coastal provinces.

We are aware of the facilities in these areas and we are making surveys to determine what additional facilities will be required, if any. At this time we have no definitive knowledge of municipal or village waste being taken to sea. This disposal on land would fall within the provincial jurisdiction.

We work quite closely with the provincial authorities and experts and all of the alternatives will be considered prior to any issuance of a permit. We see no particular problem at this stage, from the information we have.

The Chairman: Senator Bélisle then went on to say:

> This leads into my next question which concerns the provincial role. The bill is binding on Canada and the provinces. There is no provision for consultation although, as I have pointed out, some municipalities may initially experience difficulties in conforming to the new requirements. I understand there have been some discussions with the provinces. However, it would seem imperative that these be conducted on an ongoing basis so that isolated coastal communities at least know what is required of them. In some cases these communities may in fact be the victims of wastes

> disposed in the sea, but as victims they will have no automatic recourse to be heard or compensated under the terms of this bill. The dumper has the mandatory right of appeal from a ministerial decision, but in the case of the public that right depends upon ministerial discretion—it is only if the minister deems it advisable that complaints by the public are given a hearing by the review agency. It is my feeling that the public is entitled to the right of review where its interests have been affected or grievously harmed. The United States legislation allows for public participation in the conviction of an offender.

Would you care to comment on that?

Mr. Macaulay: Thank you, Mr. Chairman. Senator Bélisle is correct in his remarks that we have had consultation with the provincial people prior to drafting the bill. At the previous meeting of the committee I said that certain clauses, in particular clause 6, had been inserted specifically at the request of provincial authorities. We do, as Mr. Monteith has said, have every intention of carrying on a dialogue with the provinces in matters which relate to their jurisdictions and the subject of this legislation. As a matter of fact, we are currently in contact with provincial authorities requesting their input on federal-provincial matters concerned with this legislation. There have been requests for meetings with provinces and federal authorities, and we are following up on this at the present time.

Senator Bourget: Will there be any supervisory work done by the provinces or will it be done only by the federal government?

Mr. Macaulay: Mr. Chairman, since the Minister of the Environment is named as the responsible minister in this legislation, we would not normally expect that the provinces would undertake any supervision of a legal nature. But since the ocean dumping will sometimes affect provincial authorities, undoubtedly we will hear from them on some questions.

The Chairman: I am not sure I understood your answer correctly. How is the public right taken care of? The dumper has a right of appeal, but it does not seem that a community or persons who might become victims of dumping would have any right of appeal or a recourse in any way at all. Just what protection does the public have?

Mr. J. C. Carton, Director of Legal Services, Department of the Environment: Clause 12 of the bill contemplates the possibility that members of the public may conceivably object. Clause 12(3) states

> Where the Minister receives complaints from members of the public, in respect of
>
> (a) the granting of a permit or any terms and conditions thereof, or
>
> (b) any variation of the terms and conditions of a permit
>
> the Minister may, if he deems it advisable, establish a Board and may refer any or all such complaints to the Board.

In his comments, Senator Bélisle was perhaps speaking of the fact that clause 12(3) states that the "Minister may" rather than the "Minister shall".

You can appreciate why the word "may" should be used there. If it was made mandatory on the part of the minister to set up a board of review at the instance of any member of the public, inevitably there would be numerous useless complaints. Quite frankly, the administration of the law has to start with the assumption that ministers of departments will act responsibly. If any well-founded or rational complaints are made, the minister will do the things that are set out here in the act. But the whole procedure could be frustrated if it were made mandatory on the part of the minister to, at the behest of anybody who is a member of the public, immediately set government wheels in motion to set up the review board and go into all of the things that are required here, without a substantive reason for doing so. And that would be precisely the case if the act were to read, "the Minister shall" instead of "the Minister may."

So it is really not accurate to say that the public has no right of recourse, because the right of recourse is spelled out in the bill.

The Chairman: That was the next point raised by Senator Bélisle. He said:

> I can understand that as an appeal agency, the review board cannot be expected to exercise any supervisory powers, but I feel it is unfortunate that a regulatory body was not provided for under the bill to carry out administrative functions concerned with surveillance and enforcement, and to which enforcement officers could be attached.

Why is a regulatory agency not provided for?

Mr. Carton: Mr. Chairman, there is provision later on in the bill for certain types of regulation.

The Chairman: There are regulations, but that is a different matter; he refers to a regulatory agency, as distinct from a review board. The review board deals with an emergency after it has arisen, but a regulatory agency would endeavour to prevent it.

Mr. Carton: In my opinion the actual formality of a separate agency would not be necessary. A provision is contained later in the statute for the appointment of officers, whose functions and duties would be to administer and enforce this act. That is to all intents and purposes a regulatory agency operating as a part of the department, in a similar manner to fisheries officers.

The Chairman: Individual officers, whose job it will be to control?

Mr. Carton: Exactly.

The Chairman: I believe we can take the remainder of Senator Bélisle's remarks in one stroke and ask for comment. At page 1051 he went on to say:

> An independent dumping authority would be able to give its undivided attention to controlling dumping, since arrangements under existing agencies such as those under the Ministry of Transport and the Department of National Defence are not presently geared to the policing action that would be required.
>
> After all, honourable senators, the legal sanction of this bill depends on the enforcement function. It is also not clear how liaison will be provided by the Department of the Environment with activities connected with international control of dumping, I note that the Minister of the Environment is now the minister designated for administering the law, and I hope that the ministry will be able to exert a strong position on the national and the international scene.

I share the concern of my colleagues in the other place that the use of the word "deliberate" in the definition of dumping may pre-empt control over accidental dumping. What kind of assurances do we have that all "accidental" dumping will come to the attention of the authorities since the only requirement to report is in the case of "emergencies"? I question whether it will always be possible to differentiate after the fact as to whether dumping occurred as a result of emergency or was solely an expedient measure.

Have you any comments to offer with respect to these two points? How do you relate this to international control or local control? How do you determine whether a dumping was accidental or an emergency?

Mr. Macaulay: In ratifying the international convention Canada will gain the right to participate in the inter-gouvernmental organizations which will be established and have responsibilities for secretariat and other functions under the convention. This would take care of our liaison with the national authority.

I believe that Senator Bélisle also addressed himself to the question of how internationally the intent of the convention would be enforced. These matters have not been spelled out in detail, but in the London Convention there are provisions which indicate that the parties should co-operate with each other in the international organization. This would be, for example, to monitor the condition of the sea, discuss and develop scientific criteria concerned with making judgments as to whether or not permits should be issued. Article 73 of the international convention provides that the parties agree to co-operate in the development of procedures for the effective application of this convention, particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping in contravention of this convention. So these matters have been considered and will be considered further at meetings of the inter-governmental authority.

The Chairman: Thank you, Mr. Macauley.

Are there any questions with respect to this point? Are there any further questions on the bill?

Senator Bourget: No.

The Chairman: Do you wish to go through the bill clause by clause?

Senator Bourget: No, I think we have discussed the important aspects of the bill, but to move adoption of it I do not believe we have to go through it clause by clause.

Senator Bonnell: Does the reference to disposal on ice in clause 6 mean that in order for municipalities in certain areas of this country to dump their snow on the ice, the snow then melting and thawing in the spring, they must be granted permits for so doing?

Senator Bourget: It is not included in the schedule; snow is not prohibited.

Senator Bonnell: The clause reads: "No person shall dispose of any substance . . ."

Mr. Macaulay: I believe that in part there would be an exclusion, because the bill refers to dumping by ships, aircraft, platforms or other man-made structure at sea. With respect to the question of disposal of snow on ice—

Senator Bonnell: It says "any substance".

Mr. Macaulay: I do not believe that this question has been raised before and I do not believe anyone has considered it.

Mr. Monteith: I believe I can amplify Mr. Macaulay's statement. First of all, I should make it clear that this particular clause was requested by the provinces originally.

Senator Bonnell: That does not make it right.

Mr. Monteith: No, I agree, senator. In cases such as this we foresee that there would be very close liaison with the provinces with respect to this particular type of substance. Any disposal on ice, be it sewage, or snow, unless the snow was contaminated, would present no problem.

Senator Bonnell: But in my view there is a great educational problem involved. Most municipalities in my area of the country haul their snow by truck to dump it on the ice, where it melts and thaws. Unless a great educational program were mounted from coast to coast, people would be breaking the law before realizing it and, in my opinion, the bill should contain some exception.

The Chairman: That is an important point, really, because many communities do that.

Senator Bourget: In my view, snow would not be a prohibited or restricted substance.

Senator Bonnell: Provided a permit were obtained.

Mr. Monteith: There is the possibility that a blanket permit could be issued—and I refer this to the legal adviser—to the provinces specifically for this type of disposal of clean snow and ice.

Senator Bonnell: Could you ever get clean snow? That is a pretty broad definition of snow, when you include the word "clean", because as it falls through the air it picks up all the filth and soot and is full of bacteria.

The Chairman: It also accumulates bacteria on the ground.

Mr. Monteith: These are the normal bacteria, which would be washed out to sea. I will remove the word "clean".

Mr. Macaulay: Without referring to the specific nature of the problem, one other question was raised with respect to clause 6, disposal of substances on ice. This question was whether certain substances which proceeded from normal activities of persons hunting, the native peoples in the North, is the context.

Senator Bonnell: Yes, with respect to seal hunting.

Mr. Macaulay: Yes; whether they could be prosecuted for disposing of hunting remains on ice. It was suggested at that time that we could amend this clause to allow these people freedom from the provisions of the statute. While we felt that proposal had some technical merit, we felt really that the department would never seriously consider this sort of activity as being within the ambit of this legislation. We therefore left clause 6 as it was, feeling that people would not be applying to us for permits to dump normal hunting remains, for example, on ice. We would not, on our part, be interested in prosecuting them if they did not apply.

I think the same would apply to persons dumping snow on ice, unless, as Mr. Monteith says, the snow was contaminated with some material which was definitely deleterious to the environment. I am thinking more of persons who had contaminated snow for some reason in their possession, that would be snow to which some deleterious substance had been added, and we would not want to find ourselves letting people dump substances of this nature in the sea. But so far as normal snow is concerned, I would almost be prepared to say that we would let it pass.

Senator Bonnell: I tend to think, Mr. Chairman, that he would be a great man to have as a judge or as a fisheries officer, but I think you have to realize that there are some unfortunate officers and some judges who might not look at it the way he does. If you are putting snow on the ice which has other products in it, then you are guilty of an offence because of that other product which you are putting on the ice, and whether it is mixed with snow or mixed with butter makes no difference. So I suggest that we should put the exception of snow in there, because in my province every community is going to breaking the law. There is not much sense in making laws which everybody can break, with the idea that we will overlook them. I think we should make the laws to suit the times, the environment and the situation, and snow is just frozen water and the bacteria that it picks up is the same bacteria as falls on the sea anyway. I see no objection to make an exception of snow. This would protect the provinces that have to use this system all the time. Maybe there are provinces in Canada that do not have snow, but I am speaking for those that do.

Senator Bourget: Well, we certainly have snow in Quebec! But could it not be put in the regulations? Could they not be framed to take care of that?

Mr. Carton: I do not think you can put into regulations something to say that you can do something which otherwise you cannot do. I think it would be easier to provide for a permit where that was considered necessary. That would cover the type of situation you are speaking of, Senator, where some more zealous officer or some pettifogging judge might consider this as a serious offence.

Senator Fournier (de Lanaudière): Was this point discussed with the provinces?

Mr. Macaulay: Actually this clause was inserted following discussion with some of the provinces, and in this particular case they were concerned about people who trucked waste out on to the ice—garbage and things of that nature—and left it to sit out there so that when the spring breakup came it would sink and one would see no more of it. That is why we have this clause.

Senator Bonnell: Did you actually discuss snow with the provinces?

Mr. Macaulay: I did not myself participate in those discussions, and I do not know if snow was brought in particularly. I think the main concern was garbage.

Senator Bonnell: I think we would all be concerned about that. We would not want that dumped out there.

Senator Cameron: What about snow that has been salted? Very often salt is laid down and before the snow disappears as a result of the salting, the trucks come along and gather it up and so the salted snow is dumped in the water.

Mr. Macaulay: There would normally be no serious effects expected from the dumping of salted snow into the sea. I might say that most of the activities of this nature, such as dumping snow into the sea and so on, are done from jetties and wharves that are attached to the land and which municipalities use. It is probably not so often the case that municipalities actually truck things out on to the ice. If the dumping were conducted from the wharf or the jetty, it would not be subject to this legislation. This is concerned particularly with dumping at sea.

The Chairman: That is outside of the harbours.

Mr. Macaulay: Not necessarily outside a harbour, but certainly not from outfalls or from ships connected to the land by ropes. In other words, ships at berth would not be covered by this legislation.

The Chairman: But you can drive from the land right out on to the ice in a truck without making use of a jetty.

Senator Bonnell: In the definition of "sea" we find that:

> (2) For the purposes of this Act, "the sea" means
>
> (*a*) the territorial sea of Canada;
>
> (*b*) the internal waters of Canada other than inland waters:
>
> (*c*) any fishing zones prescribed pursuant to the *Territorial Sea and Fishing Zones Act;*

The fishery officers look after these waters, and the inland waters, to me, mean waters that run inland. I do not know any other definition of "inland waters."

Mr. Macaulay: "Inland waters" is defined in subclause (3) of the clause to which you have just been referring.

Senator Bonnell: And that is where they dump their snow, whether there is a wharf there or not.

Mr. Macaulay: If the senator is concerned with the dumping of snow in inland waters, then I can answer his question very simply by saying that inland waters are exempt from the provisions of this legislation.

Senator Bourget: You would not be concerned with sewage disposal?

Mr. Carton: No, this is concerned with dumping. Sewage disposal would not come under this.

Senator Bonnell: It says in clause 6 that this refers to paragraphs 2(2)(*a*) to (*e*).

Mr. Macaulay: It says in subclause (2):

> For the purposes of this Act, "the sea" means
>
> (*a*) the territorial sea of Canada;
>
> (*b*) the internal waters of Canada other than inland waters;

And that exempts the inland waters from the provisions of the statute.

Senator Bonnell: Well, what are internal waters then?

Mr. Carton: Internal waters would be the waters of the sea inside certain baselines in these areas that have been incorporated into the territorial domain of Canada—that is, those waters which form part of the country.

Senator Bonnell: Well, the St. Lawrence River, would that be an internal water?

Mr. Macaulay: The St. Lawrence River west of a line drawn

(*a*) from Cap des Rosiers to the westernmost point of Anticosti Island; and

(*b*) from Anticosti Island to the north shore of the St. Lawrence River along the meridian of longitude sixty-three degrees west.

West of these lines is inland waters.

Senator Bonnell: Well, where are those lines in cities? Never mind the meridians. I do not understand them.

Mr. Macaulay: Anticosti Island is an island in the Gulf of St. Lawrence between the Gaspé Peninsula and the North shore. The reference is to the westernmost portion of that island.

Senator Bonnell: So that that part that is east of that island is considered inland waters and to the west of Anticosti Island is "outland" waters. At any rate it is regarded as being some other kind of water.

Mr. Macaulay: Essentially, points west of the western point of Anticosti Island are inland waters. Everything east of that point is considered to be the sea.

Senator Bonnell: The Gulf of St. Lawrence is the sea?

Mr. Macaulay: Yes.

Senator Bonnell: Therefore the waters around Prince Edward Island, when it comes to considering this question of snow, would be considered inland waters. Therefore, that is what I am talking about, Prince Edward Island particularly. Inland waters are covered under this clause; therefore it is against the law.

Mr. Macaulay: If they were actually trucking the wastes out from shore and dumping them, we could consider that clause 6 would apply, I believe. I think Mr. Carton will agree with me.

Mr. Carton: Yes, that is correct in circumstances such as you speak of, senator, taking it out to sea so it can be disposed of.

Senator Bonnell: My thought would be that under legislation passed by Parliament, which is supreme, which says that you cannot put snow on the ice in the Gulf of St. Lawrence, I do not think the Governor in Council would have power by regulation to overrule Parliament, because I think Parliament is supreme over the Governor in Council. I therefore do not think this can be solved by regulation. I think it has to be solved by changes in the legislation. We can say, "Let it go and nobody will be fined; the enforcement officers will never do anything about it. If something happens, then a sound judge will say it was only foolishness and throw it out of court." However, that should never have to happen.

Mr. Carton: The clause itself provides for the issue of a permit.

Senator Bourget: That is it.

Senator Bonnell: But you have to apply for a permit, and there will have to be an educational program so that everybody knows they cannot put snow on the ice any more, otherwise people will be breaking the law and not knowing it until some enforcement officer comes along, who did not catch the fellow with small lobsters, or did not catch them fishing salmon out of season, but now he catches them putting snow on the ice so he says to himself, "I will get them anyway". I contend that it should not be there. We should not be making laws that we cannot enforce, and we should not be making laws that are not common sense. Therefore, we should exempt snow.

Mr. R. L. du Plessis (Legal Adviser to the Committee): If we do that, we also have to make an exception to that exception for contaminated snow.

Senator Bonnell: If you put contaminants in, that is a different kettle of fish. I do not think you should say whether the snow is contaminated, red, white or blue. You cannot put contaminants on there, whether it is in snow, water or butter. That is immaterial. If there are contaminants in the snow, you do not talk about the snow at all; you talk about the contaminants.

Mr. du Plessis: Some people could argue they were dumping snow, and that is it.

Senator Bonnell: That is correct. I am not going to argue the point any more.

The Chairman: Do you want to propose an amendment? Do you feel strongly enough about it to do that?

Senator Bonnell: I do not want to move an amendment. I think the departmental officials should look at it to see if they would accept an amendment along those lines. I do not want to propose amendments and start having them go back and forth between the Senate and the House of Commons. Perhaps the departmental officials could draft something now. I do not want anything drastic, but I think it should be brought to light, and I think the minister should be asked if he would accept such an amendment, rather than making an amendment now.

Mr. Monteith: The point is very well taken. I think the answer still is to leave the bill as it stands and consider a general permit to the province. From an environmental protection point of view, I would far sooner control it than let it go. I would recommend that the minister give a permit to each province allowing their municipalities to dispose of snow on the ice. This is the suggestion I would make, rather than change the bill.

Senator Bonnell: I would agree to that, if the minister would write to each province along those lines.

Senator Bourget: That would be one way out. I thought they could do it with a permit but, as Senator Bonnell said, everybody would have to know about that. If a general permit were sent out to the province, I think that would deal with it.

Mr. Monteith: Yes.

Senator Bonnell: Are the enforcement officers under this bill the fisheries officers?

Mr. Carton: No. Clauses 6, 20 and subsequent clauses provide for the appointment of officers to do the type of work contemplated by the bill.

Senator Bonnell: So we will have another group of civil servants; we are building up another administrative group.

Mr. Carton: I do not know whether some of these people might be those who are already appointed and working as

fisheries officers or something else. I really could not tell you what the administrative plans are for enforcement. Clauses 20 and 21, particularly, refer to the appointment of officers, the duties they are to perform and the authority they have. There is no reason why existing personal cannot be appointed to carry out these duties, provided they have the time and are able to.

Senator Bonnell: It seems to me that every time we pass new legislation we set up another administrative group. We have got all these officers going around, who are not the same people, to protect the seas and the waters of Canada. My goodness, it will take hundreds and thousands of them. The first thing you know we will all the civil servants, except a few senators and MPs, and there will be nobody left to put the money into the offers. I would suggest that the department might consider appointing the present environment officers as officers under this legislation, so that they could do both duties at once. When they are out there seeing if a seal was really dead when it was skinned they could also look to see if the water was polluted; they could do the whole job at once as far as the environment is concerned.

Mr. Monteith: That is the practice now.

Senator Bonnell: But there will be a whole lot of new officers appointed.

Mr. Monteith: They have multiple duties for both environmental protection and fishery service work, things like that.

Senator Bonnell: But is there any assurance that they will be the same officers, that there will not be a whole new slate of environmental officers going out to watch the sea for pollution?

Mr. Carton: I could not give that assurance.

Mr. Macaulay: We have said that there was no intent to set up a separate regulatory agency under the legislation. We will make every attempt to use people who are currently employed by the government, and also people who are not employed by the government. Actually the minister can designate as an inspector or analyst for the purposes of this bill any person who in his opinion is qualified to be so designated. It could be that in certain circumstances we would want to designate the captain of a vessel at sea as an inspector for purposes of the bill. The master might be in a position to report an offence take samples and so on. In those circumstances, we could designate him as an inspector for purpose of the bill. There was no intention to set up a separate agency to administer this statute.

Senator Bonnell: Thank you. I have no more questions.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Thank you very much, gentlemen.

The committee adjourned

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 8

THURSDAY, JULY 17, 1975

First and Final Proceedings on Bill S-28, intituled:

"An Act respecting Royal Canadian Legion".

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

28514—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C., *Deputy Chairman.*

and

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier (*de Lanaudière*)	Smith
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate, Wednesday, July 16, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator Buckwold, for the second reading of the Bill S-28, intituled: "An Act respecting The Royal Canadian Legion".

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

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, July 17, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 9:35 a.m.

Present: The Honourable Senators Carter (*Chairman*), Bourget, Croll, Denis, Phillips, Fournier (*de Lanaudière*), Inman, Macdonald, McGrand, Neiman and Norrie. (11)

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

In attendance: Mr. R. L. du Plessis, Legal Adviser.

The purpose of the meeting was to examine Bill S-28, intituled, "An Act respecting the Royal Canadian Legion" duly referred to the Committee under date of Wednesday, July 16, 1975.

The following witnesses were heard:

From the ROYAL CANADIAN LEGION:

Mr. Douglas McDonald (Brantford),
First Vice-President,
Dominion Command;

Mr. J. E. A. J. Lamy,
Dominion Secretary;

Mr. W. J. Gordon,
Administration Officer,
Dominion Command.

After hearing the witnesses and discussing the various clauses of the Bill, it was proposed by the Honourable Senator Croll that the said Bill be reported to the Senate without amendment.

The motion was *Resolved* in the affirmative.

At 10:20 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

Report of the Committee

Thursday, July 17, 1975

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill S-28, intituled: "An Act respecting the Royal Canadian Legion" has, in obedience to the order of reference of Wednesday, July 16, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, July 17, 1975.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill S-28, respecting the Royal Canadian Legion, met this day at 9.30 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill S-28, an act respecting the Royal Canadian Legion.

We have as witnesses Mr. D. Gordon Blair, counsel for the Royal Canadian Legion, whom most honourable senators know. I will call on Mr. Blair to introduce the officials from the Legion.

Mr. D. Gordon Blair, Q.C., Parliamentary Agent, Royal Canadian Legion: Thank you, Mr. Chairman and honourable senators. I would like to introduce the witnesses from the Legion. On the chairman's right is Mr. Douglas McDonald of Brantford, who is First Vice-President of Dominion Command. Beside him is Mr. Jean Lamy of Ottawa, who is Dominion Secretary; and beside me is Mr. William Gordon, Administrative Officer of Dominion Command, who has worked for a long time on this projected amendment.

The Legion wishes to thank the Senate for the special consideration shown in advancing the bill, as was done this week without the usual delays between readings and meetings of this committee.

Honourable senators might wish to decide simply to ask questions of the witnesses or have a brief statement before the questioning begins. I might say that the bill was well discussed in the house, and Senator Carter's explanation appears to cover all the main points in it.

Senator Croll: Mr. Chairman, may I suggest that Mr. Blair give us a rundown?

The Chairman: Or perhaps one of the officials.

Mr. Blair: I would suggest, Senator Croll, that Mr. McDonald might make a brief statement.

Mr. Douglas McDonald, First Vice-President, Dominion Command, Royal Canadian Legion: Mr. Chairman and honourable senators, the purpose of the bill is to clarify and upgrade the existing act of incoporation which, as you know, has been in existence for many years. There have been changes throughout the years in the Legion that require some upgrading, updating of wording, and so on.

The primary concern is the holding of real property, which has changed considerably over the years. This bill is the culmination of perhaps four or six years of resolutions, and so on, emanating from the branches to our provincial commands and our dominion convention, the latter being the supreme authority of the Legion. It was passed in principle last year in St. John's, Newfoundland, and the Constitution and Laws Committee was directed to draft these amendments and present them to the house. To date that is what has taken place. What is finalized today will go back and be put into our general by-laws, and so on.

Basically, that is the history of this. All the branches are aware, as are the provincial commands and the dominion convention of this procedure. The matter is then directed to the dominion executive council, which is the authority between conventions, to legislate as directed by the convention. That pretty well covers it, Mr. Chairman.

The Chairman: Thank you, Mr. McDonald. Are there any question?

Senator Bourget: Was there any objection raised by any branch in your organization?

Mr. McDonald: Not to our knowledge, senator. As I say, it has been placed before the various conventions at different levels. Actually it is on their behalf that we are doing this. They realize the problems involved, and on their behalf we are instituting the changes.

Senator Bourget: Can we say that all these amendments were unanimously approved by all the provincial branches?

Mr. McDonald: Yes. Of course, the dominion convention has approved it. The dominion convention is a delegate convention, a branch convention. It is the final authority, and it gave us the go ahead at the last dominion convention.

Senator Croll: What is the purpose of the amendment to section 11(2) requiring consent prior to disposal, except in the usual course of activities?

Mr. Blair: Mr. Chairman, earlier Senator Croll asked for a rundown on the bill. If I were to direct the committee's attention to the main parts of the bill, I would suggest that members of the committee might look at pages 3 and 4.

What the Legion is doing is dealing with quite an old act of Parliament, which incorporated it in 1948. However, that act reproduces a charter granted under the old Companies Act in 1925. As we got into particular situations, much of the language appeared unclear and confusing. Essentially, what was required was a restatement of the procedures which have heretofore been followed in respect of the dissolution of the branches, the revocation of charters and the handling of the property of branches which have been dissolved and gone out of business.

The purpose of the proposed amendment to section 11(2) is to put in statutory form the procedures which are now followed in almost all commands of the Legion. The property of branches really belongs to the Legion; it does not

belong to the members who happen to be members of the branch from time to time. It is contemplated that if there are major dealings affecting the property holdings, such as mortgaging of property, or the building of new buildings, or the sale of certain property in order to acquire new premises, or even in the course of going out of business, this kind of activity requires the approval of the provincial command. This kind of procedure would not apply to the ordinary business of the branch, whatever it may be involved in.

Senator Croll: Would a branch need consent from anyone if it were to give up the lease on its premises and take out another lease on other premises?

Mr. McDonald: No.

Senator Croll: If they sold a particular piece of property and took the money and put it into another property, they would need consent?

Mr. McDonald: That is right.

Senator Macdonald: To give you a particular instance, a branch wanted to put an addition on its building. The property was held by trustees. For some reason or another, the Legion discouraged the idea of having this branch incorporated. We put a mortgage on it. In fact, over the years we put several mortgages on it. We did not have to apply to Halifax to get permission, or anything else, prior to putting mortgages on the property.

It seems to me that this amendment would take away some of the local autonomy in respect of such decisions, placing it with the provincial or dominion commands.

Mr. McDonald: What we are really seeking through this amendment is protection for the branch members. We have had incidents where a branch president or an officer in the position of building chairman has committed a branch, on his own initiative and without the prior approval of the membership, to some project. The procedure that is proposed now is that the branch would transmit a notice of motion to its members to attend a special meeting for the purpose of discussing the building or acquiring of new property, the sale of existing property, and so forth, and if there was a majority vote in favour of such a project it would be submitted to the provincial command for approval, which would be forthcoming.

Senator Macdonald: I do not think it should be submitted to the provincial command.

Mr. McDonald: It is only to show that the proper procedure has taken place; that it is the wish of the majority of the members of the branch and not of just one or two persons in that branch. Actually, the branch notifies the command of the decision as opposed to submitting it for approval.

Senator Macdonald: That is not what the amendment says.

Senator Croll: That is good protection.

Senator Bourget: I think it is good protection.

Mr. McDonald: What prompted this amendment was an incident that took place six or seven years ago. In that particular situation, a branch got its membership down to around 15 or 16. It then sold the real property and the proceeds were divided amongst the remaining members. The branch charter was then handed in to provincial command and we were precluded from any action whatsoever in protecting the members of that branch. As long as the charter is maintained properly under the bylaws and the Constitution, the real property is under the jurisdiction of the branch. However, the moment the branch deviates from that situation, then the Legion feels, and rightly so, I suggest, that the provincial command should have some prior notice of what the branch intends to do, and that the members of the branch should be aware of what is happening.

Senator Phillips: A supplementary to Senator Macdonald's question, Mr. Chairman. What happens in the case where the membership of a branch votes to enlarge a building and then are refused permission by provincial command to do so?

Mr. McDonald: That would then constitute an appeal situation, senator, to a higher level, which would be the dominion command. However, I think there would have to be very genuine circumstances under which the branch command would not get approval.

Senator Phillips: But the proposed section 11(2) does not provide for an appeal procedure. There is an appeal procedure provided for in other sections of the act.

Mr. McDonald: Our general bylaws provide for appeals to a higher level on a decision made at a lower level. That is the procedure in the Legion.

Senator Denis: Clause 7 of the bill amends section 13(2) by substituting the word "command" for the words "executive council." Why is there not a definitions section at the beginning of the bill defining the word "command"?

Mr. Blair: In answer to your question, senator, there is a definitions section at the beginning of the act incorporating the Royal Canadian Legion wherein both "dominion command" and "provincial command" are defined. Perhaps I can read the two definitions in section 1. They are as follows:

> (b) "dominion command" means the supreme authority of the Legion, that is the dominion convention and, when it is not in session, the dominion executive council;
>
> (c) "provincial command" means the provincial convention and, when it is not in session, the provincial executive council;

When we were called upon to revise the statute it was decided that we might try to clarify some of the wording. As you can see from what I have read, throughout the statute we should refer to these organizations as "commands," rather than as the "executive council of commands."

Senator Denis: But the bill just talks about commands, not necessarily provincial or dominion.

Senator Thompson: Clause 3, on page 4 of the bill, talks about the dominion command and the provincial command.

Mr. Blair: There are two types of command, dominion and provincial. If our work has been done properly, every reference under the act will be specific as to whether it is dominion or provincial. When this bill is consolidated into the statute, the two words "dominion" and "provincial" are defined.

Senator Denis: Yes, but clause 7 does not refer to dominion command; it refers only to provincial command.

Mr. Blair: That is perfectly in order, because this deals with another feature of the Legion operation. Any command, which would be dominion or provincial command, could create a ladies' auxiliary, but it is highly unlikely, I take it, that there would be one at dominion command. Is that correct, Mr. McDonald?

Mr. McDonald: Yes.

Mr. Blair: However, we copied the old statute. I should say that Mr. du Plessis studied the statute with me and there would be a temptation after 50 years to re-write a number of sections, but we made a minimum number of changes.

The Chairman: I notice that the act itself refers to the dominion command. It says:

> "dominion command" means the supreme authority of the Legion, that is the dominion convention and, when it is not in session, the dominion executive council;

That passage continues with respect to provincial command, as follows:

> "provincial command" means the provincial convention and, when it is not in session, the provincial executive council;

Now the words "executive council" are to be removed. I would like you to clarify the reason for that, which I assume is that the act as it presently stands gives the dominion the same legal authority as dominion command. Dominion command is the dominion convention and when the convention is not in session the act gives the dominion executive council the same legal authority as the dominion command would have. However, now I understand you have removed the words "executive council", but the executive council will still exist. Therefore the dominion executive council now will derive its authority from provincial command and not from the act itself, is that correct?

Mr. Blair: If I can just go back to where we started, the head organization in the Legion is dominion command, and dominion command is defined in the statute as being the dominion convention, which is a delegated convention at which every branch is represented. However, in between conventions the authority of dominion command is vested in the dominion executive council. The same arrangement exists at the provincial level: the provincial command is really the provincial convention, at which all branches are represented, but in between it is the executive council. So that if you look at our statute as it is now, it is slightly wrong, because if refers to the president as being the president of the dominion executive council, or the president of the provincial executive council when, in fact, he should be referred to as the president of the command.

Senator Denis: Do you mean to say that provincial command includes dominion command?

Mr. Blair: No, they are separately defined.

Senator Denis: Section 13.(2) reads as follows:

> Ladies' auxiliaries shall be governed by the by-laws passed by such auxiliaries but such by-laws shall not become effective unless they conform to the purposes and objects of the Legion and only if they have been approved by the respective branch and the provincial command having jurisdiction.

No reference is made to dominion command, so it does not relate.

Senator Bourget: They come under the jurisdiction of the provincial command.

Senator Denis: There must be some kind of conventions or meetings. Why are the definitions of dominion command and provincial command given and this clause refers only to provincial commands?

Mr. Blair: The senator has raised a good point. May I say that there is no possibility whatsoever, I am sure, of a ladies' auxiliary of dominion command being formed. However, at provincial commands they could be formed, and I see now what is causing confusion in section 13.(1). It refers to auxiliaries being created by a command or branch. However, when it comes to their by-laws it says they must be approved by a provincial command. Of course, if there are auxiliaries at a command level, they will only be at a provincial command. From the standpoint of the operation of the Legion it is not something which causes any problem and the section as we put it forward has operated in the past and will in the future. As you can see, we have simply changed the word from "council" to "command".

Senator Neiman: I wonder if any thought has been given to changing that word "dominion"; it has a rather old-fashioned sound.

Mr. McDonald: It is worth about three bullet holes every time you attempt it. Even when we refer to committees as national committees we are immediately corrected and must refer to dominion command committees. The membership wishes to retain that dominion connotation in connection with their committees at the national level. When we speak of the national magazine we are corrected and told that we are dominion officers and it is a dominion magazine.

The interpretation by the membership of the Legion, of course, is that the dominion command convention is the supreme authority and it sets the guidelines, policy and so on, everything being regulated for that purpose. Our provincial commands may generate their own by-laws as long as they are in line with and not contrary to the dominion by-laws.

Going in the other direction the same process is carried on. Resolutions and so on emanate from the branches to the zones, districts, provincial command and dominion command. With respect to a ladies' auxiliary, this is a point. A ladies' auxiliary is chartered to a branch, not to a command. Therefore the formation of a command of the ladies' auxiliary in any provincial command is under the authority of the provincial command of the Legion, because really the authority for a ladies' auxiliary lies, starts and stops at a branch. It is the branch to which they are chartered in the Legion. For this reason we have not included dominion command, because some provincial commands have yet to form ladies' auxiliaries. The Legion is well aware of the requirements in this situation.

Senator Inman: Mr. Chairman, my questions have been pretty well answered in connection with clause 7. I happen to be an honorary president of the Canadian Legion and for most of the years of the war I was president of a ladies'

auxiliary. We used to make many of our own decisions; perhaps the wartime years made a difference. However, my question is, what authority do these ladies' auxiliaries have to make decisions of their own?

Mr. McDonald: We speak of branch autonomy, which is very jealously guarded in the Legion. This is where it was all based originally when the Legion was formed, more so than on commands. The branch has the autonomy up to a point to write its own branch by-laws and so on. The reason they are approved by a senior command is to ensure that they are not contrary to existing general by-laws. They still have the autonomy to pass their own branch by-laws, as long as they are not contrary to provincial or dominion command by-laws.

Mr. J. E. A. Lamy, Dominion Secretary, Royal Canadian Legion: The auxiliaries can also pass their own by-laws. It is a brave man who tells them not to do it.

Senator Macdonald: I should like to go back to clause 5. Under this I take it a branch could buy practically any kind of real property it wanted if it was necessary or useful to the branch. There is no limitation on what a branch may acquire, yet there is a limitation on selling it or getting rid of it. If you believe it necessary to provide that a branch cannot dispose of property without the approval of the provincial command, I think the same thing should apply to subsection (1), that they should not be able to acquire property without approval. It leaves it wide open.

Mr. Lamy: These provisions have been agreed to by the branches at a convention. Each item was proposed at the last convention; they were all debated and approved.

Senator Macdonald: I do not want to interrupt, but I have been to all kinds of conventions, such as these, and these things go through pretty quickly. Let's face facts.

Mr. Macdonald: Some things go through quickly, unless some of their branch autonomy is being taken away, which they guard very carefully.

Senator Macdonald: Subsection (2) says:

> —except in the ordinary and usual course of its activities.

That seems somewhat vague to me. If a branch wanted to dispose of a stove, for example, and get a new one, under that subsection they would have to get the approval of the district command.

Mr. McDonald: Under ordinary circumstances.

Senator Macdonald: It is not in the ordinary and usual course of its activities.

Mr. McDonald: I think basically we would define this in the ordinary procedures of a branch as the day-to-day business. Our interpretation would be that if the furnace blew up or the stove had to be replaced, or they wanted to buy some new furniture, we would consider this an ordinary situation. If they wanted to add a 50-foot addition to the branch, that would not be an ordinary situation and would require approval. This is the way we in the Legion would define ordinary and extraordinary circumstances.

Senator Macdonald: I see what you mean.

Senator Bourget: I think Senator Macdonald is quite right. Subsection (2) has been included, I understand, to protect the members. Why not protect the members in both ways, in subsections (1) and (2)? That is what you want to say, is it not?

Senator Macdonald: Yes. It does not seem logical to me that they have to approve one but not the other.

Senator Bourget: Exactly. I think it would be good protection for the members. I am no expert, but as I look at it they should be protected both ways, in acquiring and selling.

Mr. Blair: Perhaps I might respectfully suggest that the Legion is pre-eminently a democratic organization. Senator Macdonald, myself and others have been at Legion conventions, and we know that these decisions are worked out over a long time and represent the view of the convention. It is quite a step to insert in this bill a provision that any disposition of property by way of a sale, a mortgage, or whatever, must be subject to the specific approval of a provincial command. What the legionnaires did not decide to do at their convention was to put the same kind of restriction on the acquisition of property. I think we would have a great difficulty if that kind of addition were made to the bill. Let me add that if the purpose of a mortgage of property is to raise money to make an addition to the property, that kind of transaction would be reviewed by the provincial command. Much as I appreciate the consideration, as we all do, of the Senate for the welfare of members, I think it will be understood that we have no mandate here to agree to the proposal that has been made.

Senator Bourget: I will not insist on that.

Mr. McDonald: I think what will happen is that when these things are finalized the procedure will be to start to draft by-laws to coordinate with this bill, and you will find the by-laws of the provincial command will bring both parts of this into play for protection.

Senator Croll: What percentage of branches own their property?

Mr. McDonald: That is very difficult to say. I would say almost 80 per cent, but that is just a guesstimate. There are very few in rented or leased premises, that I know of.

Senator Croll: In some of the larger cities, such as Toronto, there are leased premises.

Mr. McDonald: This is one of our concerns. Property that they might have bought 30 or 35 years ago in the heart of Toronto is now worth $1 million or $1½ million for the property alone. This is a consideration we have to be very careful about.

Senator Croll: I know the problem. I agree with Mr. Blair that they would very much resent being told what to buy and what not to buy. What is there for them to do, run a beer parlour if they cannot even buy it?

Senator Macdonald: It seems to me that subsections (6) and (7) of clause 3 give a great deal of authority to the presidents of provincial and dominion commands. Subsection (7) says:

> The president of a provincial command may, with respect to his command, after inquiry and for cause clearly stated, suspend the charter or powers of any branch or auxiliary or any officer thereof, and such action is appealable.

I think there should be more protection than that, and it should perhaps say, "The president, after consultation

with the executive of the provincial command,—" I think this is an extraordinary power to give to one person.

Mr. McDonald: In my experience, this has been used only in extreme circumstances where it has been necessary. It is not abused by any manner of means.

Senator MacDonald: I am not saying it will be abused.

Mr. McDonald: I think it is necessary. I do not think it is merely a question of somebody 'phoning the president and saying, "So-and-so has done such-and-such," and the president takes the action to suspend.

Mr. Lamy: There have been occasions, although not too often, when action has had to be taken immediately; there has been no time to convene the council; something had to be done, because unless the officer or the charter was suspended it might be prejudicial to the Legion, the branch or the members. The president of the command is responsible, and if he does something wrong it will be appealed to the council.

The Chairman: I think it is clear from the subsection on the explanatory page that under the present act they do not even have to have an inquiry, so this clause gives a little more protection, because it can be done only after inquiry. Under the present act an inquiry is not necessary.

Senator Fournier (de Lanaudière): Do you have a figure for the total value of the properties of the Legion throughout Canada?

Mr. McDonald: We are now in the process of compiling this through what we call a branch profile; we are trying to put the whole picture together coast to coast. Some years ago we assessed it at somewhere around $100 million. I believe it is in excess of $200 million now, in real property owned by the Legion coast to coast. The branches being built today in the larger centres are now $500,000 or $1 million apiece, in the present-day situation.

Senator Croll: The one you are building here?

Mr. McDonald: Yes, the dominion command building.

Senator Macdonald: Are there any district commands any more?

Mr. McDonald: You mean charters?

Senator Macdonald: Yes.

Mr. McDonald: Just yours in Cape Breton; that is the only one. We are going to get it back one of these days, too!

Senator Fournier (de Lanaudière): Do you have subsidies from the federal government, or does the money only come from the members?

Mr. McDonald: Only from the members.

Mr. Lamy: We have $9,000 a year for our service bureau. This was allotted 40 or 50 years ago when $9,000 was a lot of money. We do a lot of work that by rights should be done by the Department of Veterans Affairs; however, we do it. I must say that honourable senators and MPs sometimes refer cases to us by preference over the Department of Veterans Affairs. In the 1930s they gave us $9,000 to help us run that bureau. They have given us $9,000 a year ever since, although costs have risen. At one time this was 50 per cent of the cost of operating a service bureau. It now costs us something like $225,000 a year to operate that bureau.

Senator Croll: But you still get the $9,000?

Mr. Lamy: We still get the $9,000, yes.

Senator Croll: Do you get any tax exemption?

Mr. McDonald: Some branches throughout the country, through a private member's bill provincially or the local council, may be given some relief on taxes; but that has gradually gone by the wayside.

Senator Phillips: I have one further question. In winding up or dissolution, the assets go to the provincial command. They are held in trust for a certain length of time. How long are they held in trust? Is there any specific length of time?

Mr. McDonald: That is generally legislated by provincial commands. I think in Ontario it is five or six years. If there is a possibility of organizing another charter within that time, the property, through mutual agreement, will sometimes revert to another community organization, or to the city itself, if it is felt that the property is better used that way.

Senator Phillips: After the period of time that the money is held in trust, for what purpose does the provincial command use it?

Mr. McDonald: It is used in the general process of the administration of the Legion, if that is their wish. You will realize that we accept the liabilities up to a point, equitable with the assets, when there is a disposition. So it is incumbent upon the command at that point to look after the liabilities.

Again, it works its way down through the command. We provide the general provision; the provincial command will then take it, and they will legislate and decide what to do with the funds that are available.

Senator Phillips: Earlier you gave us a figure for the work of Legion property, and said it is approximately $200 million. We can assume that in about 10 or 15 years it will probably be worth a great deal more. Under this section we seem to be passing on a great deal of money without any control being provided in the act.

Mr. McDonald: Our concern was very genuine five or six years ago. We could see, because of the age factor, that it would be quite a common situation in another 10 or 15 years. I think you are aware that we have opened membership in the Legion to the sons and daughters of members, which has more or less generated a very sound future for many years to come. I do not think this position will be a problem by virtue of branches surrendering charters. It will now be maintained, when at one time we had genuine concern over what would be done with it, because it had to wind up sooner or later because of the age factor of veterans. We no longer have that particular concern. Again, this relates to the particular cases where we have had problems. They are not numerous, but they do exist.

Senator Croll: Has membership increased?

Mr. McDonald: Yes. Our membership at present is 460,000. We hope that it will be 500,000 by our fiftieth anniversary convention next summer in Winnipeg.

Senator Croll: Is that the highest ever?

Mr. McDonald: Yes.

Senator Croll: Is there a fair percentage of young people?

Mr. McDonald: Yes; it is coming. We had a situation where we thought we might get something like 35,000 in the first years, and we got 49,000 in the first year. We opened the ranks. We still have to legislate their part in the Legion. They are associate members and not full voting members.

Senator Fournier (de Lanaudière): What is the fee for being a member of the Legion?

Mr. McDonald: The fee is set by branches and commands on their own jurisdiction. There is no set fee, other than the per capita that is paid to various commands by members.

Mr. Lamy: Senator, we at dominion command get $4.90 per year from each member.

Senator Croll: What does the provincial command get?

Mr Lamy: Somewhere in that vicinity.

Senator Croll: Then, $10 from each member goes up higher?

Mr. McDonald: Each provincial command is different. I believe in Ontario it is $2.60.

Senator Croll: I did not think it was that high. I do not remember paying such fees. Now it is about $10, $12 or $15. Do some pay more than that?

Mr. Lamy: Some do. In some branches it is now up to $20 per year, depending on what the branches vote.

Mr. McDonald: The administration throughout the Legion has kept the dues as low as they can, purposely, because of the diverse membership in the Legion.

The Chairman: Have you a question, Senator Phillips?

Senator Bourget: Put the question.

The Chairman: Before I put the question, I would like to clear up one question I asked earlier about the executive. In the old act the executive council had a definite legal status. What is the status now of the executive council? It is not mentioned in the act; they have taken out the words.

Mr. Blair: The words "executive council" are not deleted from the act. The executive council is referred to in the definitions section. What we are attempting to do is to make the act a little better in terms of its applicability. Wherever we had the phrase "dominion executive council" or "provincial executive council," we have called it by its proper name, which is "dominion command." That includes the executive council when the convention is not in session.

The Chairman: So, it is still contained in section 1. The bill only removes it from other sections.

Mr. Blair: Yes.

Senator Croll: You have a motion, Mr. Chairman.

The Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 9

WEDNESDAY, NOVEMBER 5, 1975

Concerning Proceedings on Bill C-23, intituled:

"An Act to provide for the payment of superannuation benefits to Lieutenant Governors"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

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28516—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C., *Deputy Chairman.*

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier (*de Lanaudière*)	Smith
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate, Thursday, October 30, 1975:

"Pursuant to the Order of the Day, the Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill C-23, intituled: "An Act to provide for the payment of superannuation benefits to Lieutenant Governors", 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 Senate Committee on Health, Welfare and Science.

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

Robert Fortier,

Clerk of the Senate.

Minutes of Proceedings

Wednesday, November 5, 1975.

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 4:15 p.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Bourget, Cameron, Carter, Croll, Flynn, Fournier, Inman, McGrand, Norrie and Smith. (10)

The Committee proceeded to examine Bill C-23, intituled: "An Act to provide for the payment of superannuation benefits to Lieutenant Governors".

Mr. H. D. Clark, Director, Pensions and Insurance Division, from the Treasury Board Secretariat, was heard in explanation of the Bill.

Mr. Clark made an opening statement; he then answered questions put to him by members of the Committee.

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

The Committee agreed, however, that certain observations relating to the above Bill should be made. The observations in question are contained in the Committee's Report to the Senate. (*The relevant report follows immediately these Minutes.*)

At 4:45 p.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Wednesday, November 5, 1975.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-23 intituled: "An Act to provide for the payment of superannuation benefits to Lieutenant Governors" has, in obedience to the order of reference of Thursday, October 30, 1975, examined the said Bill and now reports the same without amendment.

Your Committee, however, considers it important that the following observations be made:

The Bill models the pensions for Lieutenant Governors on the pattern selected for term appointments in the diplomatic service. The Committee felt that in view of the similarity of office and duties, legislation providing pensions for Lieutenant Governors should be patterned on the legislation providing a pension for the Governor General.

The Committee felt that the Bill should be made applicable to former Lieutenant Governors or at least to those in office when Bill C-23 was tabled in October 1974. Since then one Lieutenant Governor has died and his widow is not provided for.

Lieutenant Governors, who formerly were Members of Parliament, would not receive their pensions as such until Bill C-52 becomes law. This creates an unfair situation.

Your Committee was of the opinion that it would have been more just and equitable to base the pensions of Lieutenant Governors on their present salaries rather than on the five-year average.

Your Committee considered that it did not have authority to amend the Bill being reported on. However, your Committee considered that these matters should be called to the attention of the Senate.

Your Committee therefore recommends that the Government or the appropriate ministry consider the advisability of reviewing this legislation in order to remedy these defects at the earliest possible date.

Respectfully submitted.

Chesley W. Carter,

Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, November 5, 1975

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-23, to provide for the payment of superannuation benefits to Lieutenant Governors, met this day at 4.15 p.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill C-23, to provide for the payment of superannuation benefits to Lieutenant Governors. As you know, this bill is not a particularly controversial one. It was referred to the committee mainly because of the concern expressed about the adverse effects that it might have on certain lieutenant governors.

We have with us today Mr. H. D. Clark, Director, Pensions and Insurance Division, Treasury Board Secretariat, and Mr. B. Peacock, Pensions Officer, Treasury Board.

I will ask Mr. Clark to open the proceedings by explaining the bill.

Mr. H. D. Clark, Director, Pensions and Insurance Division, Treasury Board Secretariat: Mr. Chairman, this bill is a relatively simple one in so far as pension plans are concerned in that it is designed to provide a lieutenant governor with a pension equal to 30 per cent of his or her average salary over the last five years of service as a lieutenant governor. Towards that pension the lieutenant governor is called upon to contribute a basic 6 per cent of his or her salary, and an additional one-half of one per cent in respect of the pension escalation provision. This, incidentally, is the same rate at which honourable senators are called upon to contribute towards their pensions.

The bill would give present lieutenant governors the right to elect to contribute under the act in respect of prior service in order to make up the five years' contributions required for benefits. In other words, a lieutenant governor who had already served in the office for five years prior to the coming into force of this act could immediately pick up that complete prior service and, if he so chose, be entitled to a pension immediately, or he could opt for a shorter period, depending upon his prospective term of office, bearing in mind he or she must have contributed for five years before being eligible for benefits.

It is also open to a lieutenant governor who does not wish to participate in the plan to elect, within a limited period of time, not to do so.

Those provisions, I might say, are based generally on the provisions applicable to the Diplomatic Service (Special) Superannuation Act, which has provided over the last 28 years for the so-called non-career diplomat, who is often appointed from the Canadian public at large at more or less the same stage in his or her career as are the lieutenant governors.

Those are the main features of this bill, apart from adding that widows' benefits are also provided, as in the other plans to which I have referred.

The Chairman: Thank you, Mr. Clark. Are there any questions?

Senator Flynn: I think the Senate was unanimous in approving the idea of providing former lieutenant governors with a pension. I suppose this is not a question I should put to Mr. Clark, and he does not have to answer it. Why did they select the system provided for diplomats rather than the one provided for the Governor General? I do not expect an answer to that, but it seems to me that there is quite a difference, in that the Governor General does not contribute and is entitled to a pension after he has served one year, or his widow is after he has served only one year; if he became disabled he would receive a pension if he had served only one year. That is the first thing I want to point out to the committee, and I am not asking for Mr. Clark's comments.

Secondly, if I understand the bill correctly, a lieutenant governor who may have been replaced since October 11, when the bill was first tabled in the House of Commons, is not provided with a pension under this bill. It applies only to those who are in office at the time of the coming into force of the bill.

Mr. Clark: That is correct.

Senator Flynn: Do you know of any lieutenant governors who have been replaced or have died since October, 1974?

Mr. Clark: I know that just about the time or just after the bill was given first reading the Lieutenant Governor of, I think, Prince Edward Island died.

Senator Flynn: His widow will not be provided with a pension under this bill?

Mr. Clark: This bill would not apply.

Senator Flynn: If any lieutenant governor dies before royal assent is given to the bill the pension would not be paid to his widow, or if he were replaced before the coming into force of the bill he would not be provided with a pension.

Mr. Clark: Not under the bill as it stands; that is correct.

Senator Flynn: Of course, lieutenant governors who had been replaced before October 11 are not provided with a pension at all.

Mr. Clark: That is correct.

Senator Flynn: The main point is whether a lieutenant governor who was in receipt of another pension under applicable federal legislation, such as a former member of

the house or otherwise, would not be entitled to receive that other pension.

Mr. Clark: Under bill C-52, which is still before the House of Commons and which one would expect to be before the Senate within not too many weeks, contains a provision that would permit the payment of a pension under the Members of Parliament Retiring Allowances Act to a lieutenant governor while he is serving.

Senator Flynn: I checked Bill C-52 and I could not find this provision. Is it only an intention to amend the bill or are you able to give us the exact reference?

Mr. Clark: It is in the bill at the moment, although I agree it is not completely obvious. I am afraid I did not bring the bill with me. It is the elimination of the particular section or subsection in the present act that provides for the present abatement, as it might be called.

Senator Flynn: I think the provision in the present legislation is that this pension is not payable to anyone in receipt of another salary or pension from the federal treasury.

Mr. Clark: That is correct.

Senator Flynn: You are abrogating this provision?

Mr. Clark: That is correct.

Senator Croll: I am just wondering what you are saying.

Senator Flynn: The present legislation says that no pension to a former member of Parliament under the legislation applicable shall be paid if that person is in receipt of another payment from the Treasury.

Senator Croll: If he is in the Senate.

Senator Flynn: In the Senate or otherwise

Mr. Clark: Senator Flynn mentioned members of Parliament.

Senator Croll: That is wrong.

Senator Flynn: Former members of Parliament.

Senator Croll: I see. That is the difference. Otherwise Senator Bourget and I would be in for some money right away.

Senator Flynn: Agreed.

Senator Croll: But we are not.

Senator Bourget: I should like to ask a supplementary question on that, because it is not clear. When this bill was before the committee of the other place one member asked this question:

> Mr. Chairman, when the present Lieutenant Governor of New Brunswick retires, he will no doubt have the right to the lieutenant-governor's pension benefits, yet that will not prevent him from receiving pension benefits accorded to members of Parliament.

Mr. Chrétien, who was then the minister in charge, said, "Absolutely not". Then a member said: "At the present time, yes," and he referred to Bill C-52. Suppose Bill C-23 is accepted, receives royal assent and is in effect, if Bill C-52 is not passed would a lieutenant governor who has been a member and is entitled to a member of Parliament's pension be entitled to receive his pension as lieutenant governor and as an ex-member of Parliament?

Senator Flynn: If Bill C-52 is not passed.

Senator Bourget: That is it.

Mr. Clark: If Bill C-52 is not passed—

Senator Flynn: And until it is passed.

Mr. Clark: —and until it is passed it would not be possible to receive the member of Parliament's pension while he is lieutenant governor, but once he ceases to be lieutenant governor there is no barrier.

Senator Bourget: No barrier?

Mr. Clark: No.

Senator Bourget: I suppose it is the same for Senator Croll and myself, who have been members of Parliament and are entitled to that pension but are not getting it now because we receive a salary as senators. If we were to retire tomorrow would Senator Croll and myself be entitled to get our pensions from the Senate and also from the House of Commons?

Mr. Clark: That is correct.

Senator Croll: Escalated.

Senator Bourget: Yes, escalated.

Mr. Clark: Escalated, yes.

Senator Bourget: A member raised this question in the committee of the other place and I was not quite sure how to answer Senator Flynn when he asked me that. I remember that at a previous meeting, I think a caucus meeting, when you were a witness, you told us that we would be entitled to the two pensions when we retired.

Mr. Clark: That is correct.

Senator Fournier: I should like to clarify the situation in my own mind. From now on somebody who has been a member of Parliament and a lieutenant governor will not be entitled to receive two pensions?

Mr. Clark: Yes, he would be entitled to receive both pensions after he ceases to be lieutenant governor.

Senator Fournier: He will be entitled to two of them?

Mr. Clark: That is correct.

Senator Fournier: In spite of Bill C-52?

Senator Flynn: Not in spite of, because of.

Mr. Clark: That is correct.

Senator Fournier: He will receive two pensions?

Mr. Clark: He would be able to receive two pensions.

Senator Fournier: From the same source?

Mr. Clark: From the Consolidated Revenue Fund, yes.

Senator Fournier: There is no other regulation forbidding that?

Mr. Clark: No. The advantage Bill C-52 will give will be to permit him to receive his member of Parliament pen-

sion while he is still lieutenant governor. That is the real change that Bill C-52 brings about.

Senator Flynn: Why is he not entitled to get his pension as a former member of Parliament? I think that question was once before the courts some years ago with respect to a former Lieutenant Governor of Quebec, Mr. Carroll, who was entitled to a pension as a former judge of the Appeal Court of Quebec. I think the case went before the Exchequer Court, and I am not too sure that he did not win at that time. Was there any change in the legislation following that judgment?

Mr. Clark: There have been changes in the Judges Act and it would be in the Judges Act.

Senator Flynn: That would have prevented the payment of the judges' pension to lieutenant governors?

Mr. Clark: That would be the operative statute, that is correct.

Senator Flynn: I see.

The Chairman: Could we have a couple of points cleared up? The present lieutenant governor, a former member of Parliament, if he retires or if he dies before Bill C-52 becomes law, he is out of luck and his widow is out of luck?

Mr. Clark: That is correct.

Senator Norrie: She does not get anything at all.

Senator Bourget: She would be reimbursed.

Mr. Clark: He would not have contributed. He would not have made any contributions. He would have whatever benefit came from the Members of Parliament Retiring Allowances Act, of course.

The Chairman: His widow would get that benefit. Now, assuming that he does not die and he lives on, he serves out five years as lieutenant governor, and in addition he has had 10 years as a member of Parliament; does he get credit for 15 years?

Mr. Clark: Not under one plan.

The Chairman: He gets 10 under one and five under the other?

Mr. Clark: That is correct.

The Chairman: So, there are two separate pensions?

Mr. Clark: Yes, that is right.

Senator Flynn: Well, what we have to hope is that Bill C-52 is adopted quickly.

Mr. Clark: It is scheduled, I think, for second reading.

Senator Flynn: It has been there for a long time.

Mr. Clark: Yes.

Senator Flynn: It would be fairer, I think, if it applied to all former lieutenant governors. I am thinking especially of the case which you mentioned, that of the former lieutenant governor of Prince Edward Island. He died after, as I understand, October 11, the tabling of this bill, and his widow will not be in receipt of anything.

Senator Inman: Last year.

Senator Flynn: Yes. I think that could be corrected by a $1 item in the estimates. Would that be a solution that you would propose, Mr. Clark?

Senator Croll: I understand that Bill C-52 is on the immediate agenda there. They discussed it this morning.

Mr. Clark: It is scheduled for tomorrow, I believe.

Senator Croll: I understand Mr. Sharp to say they were dealing with immediately.

Senator Bourget: Bill C-52, yes. I do not know what the urgency is.

Senator Croll: I do not remember what the urgency was but I remember his saying that he was pushed by someone.

The Chairman: Senator Flynn asked why you modelled it on the diplomatic service rather than governors general. Did you do any research to find out the average term of lieutenant governors?

Mr. Clark: Five years is the normal term, subject to extension.

The Chairman: Some remain for ten years.

Mr. Clark: That is right.

Senator Flynn: Lieutenant Governor Lapointe was appointed in 1966.

Senator Bourget: It will be ten years next year.

The Chairman: How will he be affected? He will have a very small pension from Parliament.

Senator Flynn: That is one other point which we may raise, the fact that it is based on the last three years—

Senator Croll: Five years.

Senator Flynn: The last five years but in fact, since the lieutenant governors have received an increase in salary from $20,000 to $35,000, most of them who are actually in office will get a pension of about $7,000 at the most. Is that correct, Mr. Clark?

Mr. Clark: Well, the maximum would be 30 per cent of $35,000 or $10,500. If they served five years that is what it would be. Of course, as you say, it would be less for those with shorter periods of service.

Senator Flynn: It could have been based on the present salary.

Mr. Clark: Yes, it could have been.

Senator Flynn: I know it is not a problem for you, but I am just mentioning this to underline the deficencies of the legislation.

The Chairman: It is unfair in that particular case.

Mr. Clark: I suppose one can only say that a senator who ceases to be a senator this year, instead of having another five years, will get a substantially smaller pension than a senator who has another five years. There is a similarity.

Senator Flynn: You are touching on a point about which I would like to ask a question. Will these pensions be subject to an increase following the cost of living index?

Mr. Clark: Yes, they will.

Senator Flynn: If I understand correctly, for a senator who retired five years ago, the $8,000 has been increased according to the cost of living index?

Mr. Clark: That is correct.

Senator Flynn: Whereas if a senator retired today he would start at $8,000?

Mr. Clark: Until Bill C-52 is passed.

Senator Flynn: Is that corrected by Bill C-52?

Mr. Clark: Bill C-52 will substantially change that.

Senator Flynn: So that the pension that you will receive after Bill C-52 is adopted will have been adjusted up to the present year, with the cost of living index?

Mr. Clark: It is more than adjusted.

Senator Flynn: I am not speaking of the $16,000. What I am speaking of is, it is more than adjusted because you get two-thirds, as far as the senators are concerned, but I am just thinking of the fact that if a senator retired last year, for instance, he gets less than a senator who retired ten years ago.

Mr. Clark: Yes, that is so.

Senator Inman: Why is that?

Senator Flynn: The pension is adjusted to the cost of living index, whereas the one who resigns now starts at the bottom, and his pension will be adjusted—

Senator Inman: To ten years ago?

Senator Flynn: Ten years ago plus the increase in the cost of living index makes quite a difference.

Senator Croll: The salary was less too.

Senator Flynn: It has not changed as far as senators appointed before 1965.

Senator Croll: How far back do you escalate?

Mr. Clark: It goes right back to 1952. It goes back, really, indefinitely for anyone who has one of these pensions but the maximum adjustment is from 1952.

The Chairman: Are there any further questions?

Senator Flynn: No, I guess not.

Senator Smith: I am still just a little confused about the effect of Bill C-52 on the future pension prospects, particularly for two people whom I have seen around Ottawa for quite a long time. I thought from what had been said here, in one way or another, that if Bill C-52 passed it would solve the problem of the present Lieutenant Governor of the Province of Quebec and the Province of New Brunswick.

Senator Croll: No.

Senator Bourget: No, it would not.

Senator Smith: It would not, I am told by one of my colleagues. Could you straighten me out on that?

Mr. Clark: The effect that it will have on them is that so long as they continue to be lieutenant governors they will be able to receive their parliamentary pensions, in addition to their salaries as lieutenant governors. This is one of the things which they were seeking, and to that extent it would assist them.

The Chairman: That is not a great deal of benefit, is it, because a lot of that will go back in taxes, will it not?

Senator Croll: Everything goes back in taxes!

The Chairman: If he is getting $35,000 and he gets, say, a $5,000 pension, $40,000; so actually he is only getting perhaps a $2,500 pension.

Senator Flynn: That would be the case, in any event.

Senator Croll: That is better than what he is getting.

The Chairman: But when he retires he is limited to the pension he gets under this plus, in one particular case, a small pension from the House of Commons because of the short term of service since the pension became available.

Senator Smith: If these two holders of the office of lieutenant governor continue to stay in office for even a few more years, would they then pick up their eligibility for the lieutenant governor's pension?

Mr. Clark: For five years they would qualify for the maximum. They can qualify for a pension now, but it is not as large as it would be after five years.

Senator Smith: Five years from the date we mentioned before?

Mr. Clark: That is correct.

The Chairman: What is the minimum pension?

Mr. Clark: $20,000 is the former salary of the lieutenant governor in Quebec, so it would be 30 per cent of that, $6,000, which would be the minimum, but since he has already had a certain period of time at the $35,000 level he would start at somewhere in excess of $6,000, and each month it would get closer to the maximum of $10,500.

Senator Bourget: In the case of the lieutenant governor in Quebec, suppose he retired next year after ten years in office, he would still only receive $6,500 or $6,700; that is, four-fifths of $20,000 plus one-fifth of $35,000.

The Chairman: Which is a small pension.

Senator Bourget: When the bill was before the committee in the other place the minister said, "Let's pass the bill now, and we may have a chance to look at it later on." I wondered if in our report we could put in a recommendation asking the minister responsible, or the cabinet, to have another look at these two cases.

Senator Flynn: It is not only those two cases, Senator Bourget. It would apply to them all, in fact. The recommendation of the committee should be that the committee considers that the bill is not too generous and that some adjustments should be made. That is really the case, because it does not affect only Mr. Robichaud and Mr. Lapointe, because with respect to the pension payable under this act they are all put on the same basis. What is especially important to them is the fact that they will be in receipt of their pensions as former Members of Parliament as soon as Bill C-52 is enacted.

Senator Croll: That was of considerable advantage and is exactly what they wanted, as I understand it. Let us not mess that up for them. The government went some distance in helping them out by allowing them to take the

additional pension. I think we had better let it be for the time being.

The Chairman: Once we have passed the bill we can draft our own recommendation, if you like.

Senator Flynn: We might also mention the case of the former lieutenant governor of Prince Edward Island, whose widow is not in receipt of a pension although the bill was tabled on October 11, 1974, because this bill is not rectroactive to the date of its tabling, as is often the case.

Mr. Clark: Certain features are retroactive, actually, but what you say is true.

The Chairman: We can have a sub-committee draft the report after we have passed the bill.

Senator Croll: I think it would be more effective if the sponsor of the bill and the seconder were to make strong statements in the house. Once that was on record it could be brought to the attention of the minister, but as for our report, I doubt if anyone will read it.

Senator Flynn: That is a good point. Mr. Chairman, since it is not in our capacity to improve the bill, I move that we report it without amendment.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: Thank you very much, Mr. Clark and Mr. Peacock.

Senator Bourget: Just before we adjourn, Mr. Chairman, I would suggest that you, Senator Flynn and I get together to discuss the form our recommendation will take.

The Chairman: All right.

The committee adjourned.

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FIRST SESSION—THIRTY-FOURTH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 10

WEDNESDAY, NOVEMBER 19, 1975
THURSDAY, NOVEMBER 20, 1975

Complete Proceedings on Bill C-25, intituled:

"An Act to protect human health and the environment from substances that contaminate the environment"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

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29651—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C., *Deputy Chairman.*

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier (*de Lanaudière*)	Smith (*Queens-Shelburne*)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Wednesday, 12th November, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macnaughton, P.C., seconded by the Honourable Senator Cook, for the second reading of the Bill C-25, intituled: "An Act to protect human health and the environment from substances that contaminate the environment".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,

Clerk of the Senate.

Minutes of Proceedings

Wednesday, November 19, 1975
(13)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 3:42 p.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Bonnell, Bourget, Carter, Croll, Denis, Fournier (*de Lanaudière*), Macdonald, Neiman and Smith (*Queens-Shelburne*). (9)

The Committee proceeded to the consideration of Bill C-25, intituled: "An Act to protect human health and the environment from substances that contaminate the environment".

The following witnesses were heard in explanation of the Bill:

From Environment Canada:

Dr. J. E. Brydon, Director,
Environmental Contaminants Control Branch;

Mr. C. S. Alexander,
Legal Advisor.

From Health and Welfare Canada:

Dr. Peter Toft, Chief,
Environmental Standards Division,
Bureau of Chemical Hazards.

Dr. Brydon made an opening statement; the witnesses then answered questions put to them by Members of the Committee.

After discussion, it was agreed that further consideration of the Bill be postponed until Thursday, November 20, 1975 at 11:30 a.m.

Thursday, November 20, 1975
(14)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 11:37 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Bourget, Carter, Croll, Denis, Fournier (*de Lanaudière*), McGrand, Neiman and Smith (*Queens-Shelburne*).

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

In attendance: Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel.

The Committee resumed consideration of Bill C-25, intituled: "An Act to protect human health and the environment from substances that contaminate the environment".

The following witnesses were again heard in explanation of the Bill:

From Environment Canada:

Dr. J. E. Brydon, Director,
Environmental Contaminants Control Branch;

Mr. C. S. Alexander,
Legal Advisor.

From Health and Welfare Canada:

Dr. Peter Toft, Chief,
Environmental Standards Division,
Bureau of Chemical Hazards.

Mr. Alexander made an opening statement; the witnesses then answered questions.

On Motion of the Honourable Senator Croll, it was *RESOLVED* to report the Bill without amendment.

At 12:15 p.m., the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, November 20, 1975

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-25, intituled: "An Act to protect human health and the environment from substances that contaminate the environment", has, in obedience to the order of reference of Wednesday, November 12, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, November 19, 1975

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-25, to protect human health and the environment from substances that contaminate the environment, met this day at 3.42 p.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have two items of business, the first of which is Bill C-25. The bill is not controversial and I do not think we will take very long in dealing with it.

We have as our witnesses today: from the Department of the Environment, Dr. J. E. Brydon, Director of Environmental Contaminants Control Branch, and Mr. C. S. Alexander, Legal Advisor; and from the Department of National Health and Welfare, Dr. Peter Toft, Chief, Environmental Standards Division, Bureau of Chemical Hazards.

I will ask Dr. Brydon if he has an opening statement to make.

Dr. J.E. Brydon, Director, Environmental Contaminants Control Branch, Environment Canada: Thank you, Mr. Chairman, I have a short statement to make, if I may.

The bill, as many of you are aware, is designed to deal with the trace concentration of chemicals in the environment. In some quarters it has been called a disease of the twentieth century because of the problem of the chemical being, shall we say, released into the environment today, being disseminated in the environment and coming back to haunt us in delayed fashion in the future.

The second insidious part of the problem with such chemicals is that they may not show a direct serious effect at the time they are released or accumulated in the human body, or in the bodies of birds or wild life. The biological effect, the chemical effect, may show up a long time in the future. It is a difficult problem to deal with scientifically or medically, and it is that problem that the original government task force tried to deal with in deriving the precursor to this bill. This was some years ago.

The bill as it now stands has gone through a number of revisions. We think it has been improved immensely by discussions with the various people we have talked with from the provinces, from industry, biologists, other governments departments, and not the least contribution has been the discussion in Parliament.

The bill really has two parts to it. The first part deals with the derivation of information. It empowers the Ministers of National Health and Welfare and of the Environment to conduct investigations, not in just a scientific way but also in a detective way, to ask for information, to require people to supply information. On top of that, in clause 4 there is power for the minister to require that industry undertake appropriate tests, and, of course, supply information on use, distribution, production, chemical reactions, disposal practices and a host of similar things. That is the investigative part of the bill.

There is provision for consultation with other departments and the provinces. During and following the investigative part, when some decision has been made collectively action may be required to control a chemical by a variety of means. The consultation feature allows the federal government to find out whether, in fact, action to remove the hazard that such a chemical poses would be removed by action under another law, either federally or provincially. Having taken that step, the federal government then has the power to schedule the substance in question and introduce regulations under this bill to control its manufacture, import, release and use.

Finally, of course, there are the inspection and enforcement provisions in the latter part of the bill.

That is a rather quick summary of the background features of the bill. Perhaps, Mr. Chairman, I will leave it at that.

The Chairman: Thank you very much, Dr. Brydon.

Dr. Toft, do you have anything to add to what Dr. Brydon has said?

Dr. Peter Toft, Chief, Environmental Standards Division, Bureau of Chemical Hazards, Department of National Health and Welfare: I think Dr. Brydon has given a very good summary. I have nothing to add, unless there are any questions.

Mr. C. S. Alexander, Legal Advisor, Environment Canada: I think it would probably be easier to answer questions rather than say any more. Dr. Brydon has, I think, given a good capsule of what the bill is supposed to be about—information gathering and then subsequently the preventive powers if it becomes necessary to use them. It would perhaps be easier for us if you were to direct questions, which we will try to answer.

Senator Croll: How, under the bill, do you deal with a reluctant province? You have already experienced that, I think. Suppose one does not agree with your views or does not think you are proceeding on the right course and says, "No," what do you do? Of course, there is the consultation.

Mr. Alexander: There is. Perhaps I might try to answer that briefly by explaining that during our consultations with the provinces one of the things they were most concerned about was that we would attempt to deal with release. In the information gathering process it is necessary to try to identify where the controls should be exercised. When I refer to controls, I do not necessarily mean legislative controls at this point, because if these things are

dealt with on a voluntary basis it will never reach the point of a significant danger requiring regulations in order to arm the various offences created by the bill.

We have had discussions with the provinces on the question of release, and they said that release is really essentially a matter that can be dealt with by the provinces and we should not get into this. Basically our answer was that we hope we will never have to get into the release situation, but if there is a significant danger, and of course it has been identified, we must have power to deal with it should it become necessary. Nevertheless, the reason for having provisions for consultation with the provinces is because it is recognized that a certain problem may be merely local in extent. For example, because of the concentration of industry in, say, Hamilton, the province may want to deal with it, but it may not be a significant danger to the entire area. It is hard to talk in abstract terms, but this is the type of situation we envisage. The control powers under the bill are intended to be residuary to the extent that they will be used only if it becomes necessary to exercise them as a result of the information and what has been found out.

Senator Croll: Your control comes under the regulations?

Mr. Alexander: The provision for making regulations is in clause 18. These regulations would arm the various offences created by clause 8.

Senator Croll: I was looking at clause 5 and clause 8.

Mr. Alexander: Clause 5 has to do with consultation.

Senator Croll: Yes. Clause 8 is offences. Is it within your authority to identify an offence within a province? Is your jurisdiction clear here?

Mr. Alexander: So far as the jurisdictional aspect of the matter is concerned this, of course, was gone into, and, basically, we can say that the jurisdiction with respect to environmental contaminants, if we want to look at it in narrow terms, is the criminal law. In rather broader terms, environmental contaminants know no boundaries. If you are looking at it from the broader justification from the jurisdictional point of view you can say that it is really a matter of national and even international concern that these chemical substances and the dangers posed by them be identified and that controls be put in to prevent them from creating these hazards.

Senator Croll: What relief is there for the industry and what is the timing for the industry? After all, industry takes the position that it will take a long time—years—and will be extremely costly. What can you tell industry with respect to the timing under the act?

Dr. Brydon: There is no provision in the act specifically for that. That is a matter of negotiation between the Minister of the Environment and industry, and it would be taken into account in any cost—benefit analysis which might be done.

If a regulation is a hardship upon industry and if it feels it is incorrect, then industry has the right, under clause 6, to the formation of a board of review to hear the case with respect to proposed regulations to determine whether they are in fact appropriate or workable or whether they will meet the danger that is perceived.

Senator Croll: I understand the board of review consists of three people. Does that include representatives from both sides? Under the bill you appoint three people to the board. Does the manufacturer or plant owner have any representatives on the board to see him through it?

Mr. Alexander: Senator, this matter came up before and there was an idea that the board of review should be an antagonistic type of board in that there would be representatives of different people on it.

The conclusion was reached that what is really required of a board of review is to have people on it who are able to exercise objective judgment. In other words, they must be able to determine whether the potential hazards have been properly identified and whether the government's proposed measures will be sufficiently stringent or too stringent. Basically, the board of review only comes in when the point is reached where the Ministers will propose to the Governor in Council that regulations should be enacted in order to control these things. There is a kind of escalation in this bill. It starts off with clause 3 dealing with information. This only provides for the departments to gather information. If it is necessary, information can be gathered on a voluntary basis using world wide resources and local resources and anything else. It may never be necessary to move to the next stage, which is the compulsory disclosure stage.

It is at that stage that industry may be compelled to undertake tests and do things which you rightly categorize as expensive. Subsequently, as a result of these tests, there may or may not be a decision to make a recommendation to the Governor in Council that regulations be enacted to arm the various offences in order to deal with the problem identified, bearing in mind that there are three kinds of situations where regulations could be made. One would be to control releases directly; another would be, for example, to prevent substances from being sold or manufactured for certain purposes; the third would be to prevent substances from being used in certain areas where a problem has been identified. For example, PCBs could present some problems. Perhaps Dr. Brydon could comment on this.

Dr. Brydon: The PCB situation has been with us for about five years. The Monsanto company recognizing the environmental problems, limited sales unilaterally in 1972 of the PCBs to certain electrical installations. That was the philosophy at that time and it seems to have worked quite well. In other words, it was to shut off all dispersive uses—inks, plasticizers, flame retardants and that kind of thing which ultimately do get into the environment, and to limit the PCBs to electrical installations where they are enclosed and can be reclycled.

Recently there was evidence that there is an increasing problem with PCBs and it if not known now whether it is a hold-over from previous use four years ago or whether it is a problem with us today and needs further controls today.

We have a situation, therefore, where we need to bring in regulations in order to limit the use of PCBs to controlled uses, and we have to examine the situation further and perhaps eliminate the use of PCBs altogether. We have to examine the situation of unknown leakage of the manufacturing of electrical equipment. All of these things require investigation and information gathering which we anticipate doing when the act is proclaimed.

Right at this moment we intend to bring in regulations to limit the use of PCBs to certain products and to study

and examine further the situation in order to determine if, in fact, there are further restrictions required.

The Chairman: For the record, could you explain what PCBs are?

Dr. Brydon: PCB is the short name for polychlorinated biphenyls. It is a complicated organic compound. If you, Mr. Chairman, wished to design a good chemical for a variety of uses you would be likely to come up with, PCBs. It has a high boiling point. It does not decompose. It is stable. At the time it was discovered it had no direct health effects. Subsequently, it was found to have delayed action effects in certain eco-systems, certain parts of the environment, fish and fish-eating birds. More recently, a delayed action problem has been found with the human health and I should let Dr. Toft describe that. But this is a classic situation. PCBs were, in fact, one of the development of the nature of the features in the act to describe an investigatory and control system.

You, Senator Croll, inquired about the provinces and Mr. Alexander mentioned release. Really what this bill was designed to do in the initial instance is described in clause 8(4):

> No person shall import, manufacture or knowingly offer for sale a product that contains a substance . . .

It is the composition of products at which the controls in this bill were aimed. The release feature was put in to provide part of the umbrella effect of the act. There are other acts which can be used to control release. There may be gaps, there may be holes. That release feature was put in to cover those gaps and holes.

Senator Neiman: Mr. Chairman, I wonder if the witnesses could explain to me how this act improves upon the previous situation which must have obtained over the last few years with respect to any type of legislation with respect to mercury. How did you reconcile your jurisdictions with Ontario, for example, with which I am most concerned at this point? I understand that the Department of National Health and Welfare has known for some years that mercury was having serious adverse effects in certain areas. I still do not understand where the jurisdiction lies and how this bill will improve the situation. We read in the newspaper how the Government of Ontario says that it is a federal responsibility and yet the federal government, so far as I know, has not made many statements about the subject. Can you tell me what has happened in the past and how you feel this might improve that type of situation?

Dr. Brydon: May I make one comment and then perhaps Dr. Toft would speak about the medical aspects of mercury. One point I should like to make is that it is not many years ago that it was discovered that mercury could be converted naturally into the methylmercury form, which is the form that has been causing the problem. So there is a piece of new information which was found at a certain time.

Senator Neiman: How long ago was that?

Dr. Brydon: That would be five or six years ago.

Senator Neiman: I thought Japan knew about it before then.

Dr. Brydon: They had the problem with mercury in the bay, Minamata disease, but ot my knowledge it was not then shown that the methylation process was causing the problem.

All I am saying is that this act could not have caught that problem due to the fact that the scientific information was not available. If this act had required the testing of mercury some years ago methylmercury would not have been spotted.

Senator Bourget: Was that fact not brought out at the international conference of the United Nations in Stockholm two or three years ago?

Dr. Brydon: Yes.

Senator Fournier: Did you attend?

Dr. Brydon: No.

Senator Bourget: Mr. Chairman, I was interested in the question of jurisdiction, because that might create some problems. In your discussion with the provincial governments, was any objection raised or did you have their complete co-operation?

Mr. Alexander: If I may respond to that, in respect of jurisdiction, first of all we have had federal efforts to deal with mercury. For example, the chlor-alkali regulations were enacted pursuant to the Fisheries Act because of the effect mercury has on waters frequented by fish. That is an example of the power Parliament in relation to Fisheries which could be used to deal with the problem under a specific head of jurisdiction.

Previous efforts to deal with these environmental contaminants have been really when situations have been exposed. In other words, we have attempted to come up with a cure rather than prevention.

This bill looks at matters from a totally different point of view. We are not trying to say in this bill that we are going to try to control everything and take it away from the provinces. We do not want that. That is the last thing we want to do. It would be a total disaster. I think this bill makes it clear that we are not trying to occupy the field. It would be a complete disaster if it were to be said that the federal government had occupied the field so as to prevent the provinces from dealing with a problem which was a local one and obviously required special solutions.

When you look at this bill which was specially designed with that in mind, it cannot be said that the federal government is occupying the field and therefore putting the provinces out.

We want the provinces to deal with the problem. Furthermore, if the problem is identified as being one which, for example, happens to be in pest control products, then that is something that could be dealth with under a federal statute, namely, the Pest Control Products Act.

When the problem has been identified you see where you have to try to stop it; in other words, should it be a ban on importation or sale or should it be a ban on the use of a particular product or on release or control with respect to disposal. Then the place where that control might be put in, if it has to be put in by regulation, could be under another piece of legislation which might be federal or provincial.

As I said, the idea of the controls under this bill is that they are to be residuary, where there is a significant danger and it looks as though it can only be dealt with by a regulation under this particular bill. So that is what I

would say with respect to jurisdiction, and the provinces, basically, agree. It is true that we had arguments with them, especially on releases, as I mentioned before, because they felt that this was something they should deal with. Our answer was, "Yes, we agree, you should be dealing with them, and we hope you will, but we must have power under the bill, if there is a significant danger, to deal with it if the problem has not been dealt with".

Senator Croll: Explain this to me, then. You probably know better, doctor, what authority the City of Toronto Board of Health had in taking the action that they did in the courts for months and months, in order to impose upon a body there downtown.

Mr. Alexander: On the lead thing?

Senator Croll: Yes. By what authority did the city deal with that? It was not the province; the province stayed out of it, as I recall. It was the city. The board of health, under some authority they said they, had, took the thing to court.

Mr. Alexander: If I may say so, I do not know about the city, but I do know about the Ontario Act, where there are two sections that apply. One would be a statutory bar in respect to emissions, in section 5. I cannot remember how it reads, unfortunately. The other was where a stop order was issued under section 7, and that went to court, where they failed to establish, as I recall—it was a couple of years ago—that there was a danger to public health. I think the problem was the way the province approached it.

This other matter, as I understand it—and I only know what I read in the papers—was before the Ontario Municipal Board, and they are trying to establish certain regulations with respect to this metal company, which is really a secondary lead smelter, I think, is it not?

There was evidence, or rather, not evidence, but allegations, that it was bad for children, or something, who were attending a school close to the refinery.

Senator Croll: That is right.

Mr. Alexander: You mean, what is the jurisdiction of the province to deal with that? Civil rights?

Senator Croll: Emanating from the city, not from the province.

Mr. Alexander: I assume the city would have delegated powers under its charter from the province, and I suppose the jurisdictional competence would be under the heading of property and civil rights, or matters of a local nature. If a problem is provincial or national it may well be local as well, and may well be a matter of civil rights within a province. In other cases it may be national or international.

Senator Denis: I want to refer to clause 8, paragraph (5), page 12, relating to offences:

> (5) Every person who contravenes this section is guilty of an offence and is liable
>
> (a) on summary conviction, to a fine not exceeding one hundred thousand dollars; or
>
> (b) on conviction upon indictment, to imprisonment for two years.

Is two years the maximum, or is it the minimum? It says, "on summary conviction, to a fine not exceeding one hundred thousand dollars". With regard to conviction on indictment it says, "to imprisonment for two years".

Secondly, you cannot put a company or a corporation in prison, so you would have to charge it under (a), which is a summary conviction, and therefore a lesser offence.

Under (b), why do you not put, "on conviction upon indictment, to a fine not exceeding $100,000, or imprisonment for two years, or both", as we usually read in every bill?

According to this clause, it is impossible to bring a charge against a company under (b) because you cannot put a company in jail. You would therefore have to charge it under (a), which does not include imprisonment.

Mr. Alexander: Senator, obviously you cannot put a company in prison, and that is why, in the discussions before the House of Commons committee it was felt that the $10,000 that we had in there previously was not sufficient, and was therefore raised to $100,000.

Senator Denis: But it is not mentioned in (b).

Mr. Alexander: You mean the fine? You mean there is no provision for a fine?

Senator Denis: There is no provision for a fine. There is only mention of imprisonment.

Mr. Alexander: I have had discussions with people in the criminal section of the Department of Justice, who said that under the Criminal Code there is a provision under which, if you can be sent to prison you can also be fined, with no limit set, and I believe that was the reason that there was nothing put in with respect to a fine for a conviction upon indictment.

Senator Fournier: If you will permit me, I am completely of the opinion of Senator Denis, and I thank him for having raised the point. There it says in paragraph (b):

> (b) on conviction upon indictment, to imprisonment for two years.

But in most of the cases companies would be involved, and as has been said, and I am sorry to repeat it, you cannot put a company in jail. We should define the responsibility of a company.

Mr. Alexander: There is a provision in clause 14, if you would like to look at it, which attempts to deal with this point where people cannot hide behind the corporate veil, so to speak. This is a provision which has gone into quite a number of pieces of legislation.

Senator Croll: It is in the Income Tax Act.

Senator Macdonald: But then if you look at clause 15 you will see something there which I deplore and which has become all too common in our legislation. It says:

> 15. In a prosecution of a person for an offence under section 8, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

In other words we are shifting the burden of proof. You are in effect saying, "You are guilty unless you can prove yourself innocent," which is totally against our tradition that a person is innocent unless he is proven guilty.

Dr. Brydon: We have had a number of discussions on this issue, and I think what Mr. Alexander is doing now is getting the formal brief that was prepared at the time we were discussing this very feature with the Canadian Manufacturers Association and also with the parliamentary committee. We have explored this at great length in our discussions.

The Chairman: And you have come to the conclusion that there is no other way to administer the act effectively?

Dr. Brydon: This is the conclusion of the Department of Justice, that they wish to see this feature remain.

The Chairman: Senator Denis, you raised the point about corporations. Are you satisfied that clause 14 takes care of that?

Senator Denis: I am not. I say that, because in order to understand this properly you have to refer to the Criminal Code or to another bill. It should be quite easy to put it in here. But also the witness did not answer me so far as the question of two years was concerned. Does this mean that he could be sent to prison for only one year?

Dr. Brydon: I am no lawyer, but I would interpret the word "liable" in the preceding line as meaning that it can be anything from one day to two years.

Senator Denis: But "liable" applies to (a) also, so why do you put in "not exceeding $100,000;"? If we understand you correctly on (b), then in (a) it should be a fine of $100,000. Because in (b) you have "to imprisonment for two years."

Mr. Alexander: You are unhappy, senator, because of (b) which says, "on conviction upon indictment, to imprisonment for two years" and you think it should be made clear that it is for a maximum of two years. I think you are probably right.

Senator Denis: It should be "up to two years."

Mr. Alexander: Certainly it was not intended that it should be a mandatory two years.

Senator Denis: But you do not put the term regarding the fine in the same way. Is it more harmful to fine a company $100,000 than to say to the treasurer who ordered the sale, "You go to prison for one year"? The company at least should be liable to a fine of $100,000. Because a charge and conviction upon indictment is more severe and more important than it is in (a) which is summary conviction.

Senator Fournier: I share that point of view. A company might use a scapegoat and say to one of the officers, "You go to jail for a couple of years and don't worry," and then the company could skip the whole thing. So I think the company should be liable to the $100,000—the company and the person responsible.

Mr. Alexander: Well, senator, with reference to the point about "imprisonment for a period up to two years", I do not recall why the words "up to" were left out. There may have been a reason. I do not know. I would like to look into that. But I do certainly agree that there was never any intention that if somebody was found guilty on indictment that he would have to be sentenced to two years. Presumably the route of indictment would be taken because it was felt that the offence was much more heinous and that is the basis on which one should proceed. The other point is as to whether we should put a provision in there for a fine not to exceed, say, half a million dollars.

Senator Fournier: Or both.

Mr. Alexander: You mean that it would have to be more than $100,000. Is that what you mean? You have in mind that (b) should be changed to say, "on conviction upon indictment to imprisonment for up to two years or a fine of X dollars or both"?

Senator Fournier: Yes.

Senator Macdonald: You have to watch that you do not make the penalty on the individual more severe than that on the company, which I think is the case that Senator Denis is bringing out now.

The Chairman: Are you agreeable to letting this clause stand until Mr. Alexander can have some consultation on it? Can you do it by telephone, Mr. Alexander, while we are dealing with the other clauses?

Mr. Alexander: Well, I have to talk to my political masters.

Senator Bourget: There is no rush to pass this bill today.

Senator Denis: There is another little point that I should like to raise.

The Chairman: Well, Senator Denis, would you mind? Senator Neiman is next on the list.

Senator Denis: Certainly.

Senator Neiman: On that point alone, I wonder if it should say, in subclause (5) "Every person and corporation" because we don't use the word "corporation".

Mr. Alexander: It is in the Interpretation Act.

Senator Neiman: I should like to go back to the question of jurisdiction with regard to, say, the mercury situation. We know that the Dryden Paper Company has been one of the worst offenders in the area. Under this legislation, if the province does not take action to stop that type of pollution will you be empowered to move in and take action instead? Speaking just as a citizen, it seems to me that the province has been waffling on this and delaying on it for a couple of years. When the province does not go ahead and take some action on contaminants that you have defined, what authority will you have to go ahead and move, or will you have any authority?

Mr. Alexander: The bill contains provision to deal with emergency situations in clause 7(3). Generally speaking this bill requires consultation, because you are gathering information on things. We felt there might be situations such as you have described, where nobody is acting on something and there may be a situation of imminent danger. Therefore, clause 7(3) was inserted, which provides:

> Where the Governor in Council is satisfied that a substance or class of substances is entering or will enter the environment in a quantity or concentration or under conditions that he is satisfied require immediate action to prevent a significant danger in Canada . . .

Then he can act. That immediate action is important, because what is going on may require immediate action to prevent some disaster in two or three years time. It is not

necessarily an imminent hazard, but it is a situation requiring immediate action, either because there is an imminent hazard tomorrow, or if it is not dealt with immediately, what is perhaps more likely, with the nature of the beast with which we are dealing, is that there may be a danger two or three years down the road.

Under those circumstances this bill would, in exceptional circumstances, empower the Governor in Council to move without the necessity of consultation, and without the necessity of publishing in the *Canada Gazette* what he proposes to do. That clause was inserted, called "Emergency," to deal with precisely the kind of thing you have in mind.

Dr. Brydon: With respect to the power, if following consultation in the normal course of events it is found that a province will not take measures to relieve the danger, then the federal government has the power under this bill to move forward and take whatever action the Governor in Council, the Cabinet, decides is required. That is a residual power.

Senator Bourget: It is all right to have jurisdiction under this bill, but what about the BNA Act? What if the province objects? If the province objects you will have to go to court if you do not agree. If you insert into legislation federal authority over a province, it may raise a legal question. I am not a lawyer, but I imagine that could happen.

Mr. Alexander: The difficulty is that quite obviously Parliament is not clairvoyant and does not know what will happen tomorrow. In effect, it has to say it will give certain powers to the Governor in Council. There is a kind of progression in this bill. Under normal circumstances information is gathered, there is then disclosure, and then it may be said, "Here is something that we can see will, if it is not dealt with, become a serious problem five or ten years down the road." Hopefully, whatever is being done to create this danger will be dealt with voluntarily—for example, Monsanto no longer manufacturing PCBs except for certain particular uses. If this cannot be done, it could then be dealt with by whoever is best qualified to deal with it. Only when it reaches a certain point in time—in other words, time has been running and things have not been done—would it be necessary for the Governor in Council to set the mechanism at work to have consultations. There is a provision that he has to have consultations to see if something can be better dealt with under other legislation.

In the normal course of events, if this bill works really well there will be practically nothing on the schedule. I am sure it will not happen in this way, but in the best of all possible worlds it would all be dealt with before it reached the point of significant danger. Then it would be dealt with in the normal course of events only after consultation, but there could be an emergency situation such as Senator Neiman referred to, where something has to be done; therefore, you have to move. That would be where there was a situation of apprehended immediate action being needed in order to prevent this significant danger. I am sure there will be court cases arising out of this bill.

Senator Bourget: I imagine so.

Senator Fournier: This is more a comment than a question. Suppose the government undertakes a prosecution against somebody under clause 8 or clause 15, and the defence base themselves upon another clause. Then the government will be right and the defence will be right. What will be the outcome? No case. The law must be complete. The law must be applied in such a way that one clause cannot be used against another. We have seen that in Montreal in the case of Dr. Morgentaler. The law was not clear. The defence was based on one article of the code and the defence was based on another article. He was acquitted by the jury and the Appeal Court decided otherwise. No opportunity should be afforded to the government or to the accused to plead on separate clauses. I hope you grasp my meaning.

Mr. Alexander: I do not really know about the Morgentaler case. Wasn't the question whether the judge had applied the wrong article of the code?

Senator Croll: Exactly.

Senator Fournier: There were two articles involved.

Mr. Alexander: I thought the Court of Appeal said that the trial judge had wrongly applied the law. Here we would have a charge. For example, clause 8(2) says:

> —no person shall, for a commercial, manufacturing, or processing use prescribed for the purpose of this subsection, import

and so on. The charge would have to be framed to say that on such-and-such a day X imported such-and-such a substance for use as a cutting oil contrary to law. The charge would have to be in accordance with the provisions of the bill. I cannot see how one could wrongly apply the law. We are not dealing with a situation such as would arise under the Criminal Code, which has hundreds of articles. It is unlikely that could happen, I think, if I understand what you have said rightly.

Senator Fournier: With a clever lawyer it might.

Senator Smith: I am a little confused about the consultation aspect. I know there has been some consultation with the provinces in preparation of the legislation, which we normally expect. Has there been any consultation with the class or kind of industries you might expect in the future to be heavily affected as a result of this new legislation?

Dr. Brydon: The preliminary proposals were widely distributed to a number of trade associations. We had some excellent replies from them that went into the development of Bill C-3. In addition, most of the trade associations conceded to the Canadian Manufacturers' Association the responsibility of dealing with us face to face on the bill. We had, I believe, four fairly lengthy sessions with that committee of the Canadian Manufacturers Association. They were of great benefit to us in developing the bill and making sure certain features would work. There were differences of opinion, but that is natural. We expected that and we explored these features at great length.

Senator Smith: You had certain experiences in the past with respect to bills coming over here and to the Commons where organizations of industry had strong, violent reactions to the legislation. We always like to feel that they have been consulted before and during the process of developing legislation. It sounds as though you have done a good job in that respect.

Dr. Brydon: May I add, Senator Smith, that the Canadian Manufacturers' Association did testify at the House of Commons committee and they outlined at that session the

four basic points at issue which we had resolved in our discussions with them.

Senator Smith: I was just coming to that point. I am glad to know that, because I had not read up on what happened in the other place. Can you tell me whether there had been any particular consultation with the pulp and paper industry?

Dr. Brydon: Consultations? No. The association was circulated and we received comments from them on the initial working paper.

Senator Smith: It strikes me that you now have enough law to protect the public interest with respect to effluents and its influence on salt water as well as fresh water streams affected by that industry. They are now paying pretty heavy prices, as you know, to try to do something about the situation. You would have heard from them, because they have a powerful organization. I am satisfied on that point.

On another aspect, can you say whether we are leading in the field or are we falling behind other countries with respect to our industrial stature in the world, bearing in mind that we are now getting into this kind of legislation.

Dr. Brydon: Perhaps I could answer that question yes and no. There are some five countries in the world which have or have on the books legislation similar to this. The first was Sweden. They had a much simpler piece of legislation which is slightly different from Bill C-25 that we have here. Great Britain has one clause in one of its laws which empowers their Secretary of State to take the measures outlined in our clause 8.

France has just introduced a bill. I received a copy of it a week or 10 days ago. So far as I can gather, without having studied it closely, it is similar to the features of Bill C-25. Japan has a bill in operation. They have gone about it in a different way. They have identified all of the 20,000 chemicals used in commerce, and anything beyond that list of 20,000 must go through a simple screening process, after which there are further, longer term tests such as carcinogenesis tests. They are gradually going through the list of 20,000 existing chemicals to identify which ones need restrictions. That is their approach.

The Americans, as you are probably aware, have a toxic substances control bill which has been in the Senate and in the House of Representatives for some three or four years. They cannot get agreement on what features should be in it and they do not have their bill passed yet. My most recent information is that they are not optimistic that they will have one in the near future.

Switzerland has a slightly different approach linked with their food and health laws to a much greater extent, whereas Bill C-25 is concerned with the environment and the indirect threat to human health.

If you ask whether we are a leader, all I can say is that there is no such thing as a leader because this is breaking new ground.

I might add that the Environment Committee of the OECD in Paris has a group studying a mechanism for a multilateral study of chemicals. The philosophy is to try to arrange a method of screening, of testing, which is satisfactory to all countries being too restrictive in one and not enough in another, so that a test requirement in one country could be applicable in another. As I understand it, that problem exists internationally right now with respect to drugs.

Bearing in mind the huge variety of industrial chemicals and the possibility of having an advantage for one company in one country with more simple testing requirements than another, it is the objective of the committee I serve on to try to develop a more harmonized approach to the testing of chemicals.

If I can go back to my statement, then, I do not think there is a real leader. Our approach is one of half a dozen.

Senator Smith: It sounds like you have taken a pretty good step.

Dr. Brydon: It is certainly nothing to be ashamed of.

Senator Croll: Can you tell me how the United States, without an act, seems constantly to be talking about the steps they are taking—and I understand they do take steps—to clear up the environment? The United States seemed to be able to do it without any particular act that it can point to.

Dr. Brydon: I hesitate to discuss the problems of jurisdiction in the United States and which authority has the legislative power to control, say, the PCB's or fluorocarbons. There are two bills before Congress right now, one dealing specifically with the PCB problem and the other with the fluorocarbon problem. They do not have the legislative power under existing general laws to deal with those two items. They need the Toxic Substances Control Act to handle products such as—

Senator Croll: So do we, so there is no difference. How do they deal with these things, then, without an act? They seem to talk about it constantly. You can pick up any American newspaper and from what they are doing in respect of the environment you would think they were the world leaders in that respect. In some instances, they indicate that they have taken steps to bring to an end an abuse of one kind or another, and I specifically recall that having happened in Cleveland and Pennsylvania. How do they do it without an act?

Dr. Brydon: With respect, senator, I think what you are talking about is using a variety of related acts to tackle a piece of the problem. For example, they do have water pollution measures and environmental protection measures in the United States, as we have environmental protection measures in the provinces, but inevitably there is a gap in that these measures do not cover the entire problem.

Mr. Alexander: In more general terms, senator, it would be fair to say that this whole problem of industrial environment, because of the nature of the beast in the United States, manifested itself sooner than it did in Canada. There are tremendous concentrations of industry in the United States and they had the experience of rivers catching fire. I think you will probably remember the incident of the river in Cleveland catching fire. They had terrible problems of environmental pollution and, of course, this has resulted in the United States in general being one of the first to move on these things. They identified the problem and have been moving on it both with state and federal legislation.

Certainly, the Environmental Impact Assessment Act was the first to be passed by Congress, and that was in 1970, and many things have been done under that act. As

Dr. Brydon said, they have not actually armed themselves, because they have not yet passed this Toxic Substances bill, to actually focus on environmental contaminants as we are seeking to do through this bill, so that when they get a problem such as the PCB's, they have to try to deal with it through special legislation, which is really, essentially, cure-type legislation rather than preventative legislation.

Senator Croll: If we were to throw this bill out today, we could continue, under various bits and pieces of other acts, to do almost what we are attempting to do through this bill.

Mr. Alexander: It would be entirely media oriented, though. In other words, we would have to do it, for example, under the Fisheries Act as it applied to fish. It would not be a holistic approach. It would be a bits and pieces type of approach.

Senator Croll: Well, our history of legislation has been bits and pieces. We are good at that.

Dr. Brydon: As I mentioned earlier, senator, clause 8(4), which deals with the composition of products, is the one major gap in our various legislative tools. The Hazardous Products Act deals with an immediate hazard to human health. It does not deal with an indirect threat, a long range environmental threat, such as the freons are alleged to pose.

Senator Macdonald: Would this bill, when passed, apply to the atmospheric pollution caused by the operation of a steel plant?

Dr. Brydon: The various clean air acts, provincial and federal, are the legislative acts designed to deal with gross pollution. If the emissions from a steel plant contain a specific substance of concern and that substance was entering the environment in an uncontrolled fashion, then Bill C-25 would be one vehicle that might be used to control that—perhaps by preventing its use in the process, thereby preventing it from getting into the environment. Generally speaking, however, Bill C-25 would not be used for that kind of local problem.

Senator Neiman: I want to deal with one specific problem, and that is the problem of aerosol cans, or the chemical component in aerosol cans. Is that what you have referred to as the fluorocarbons?

Dr. Brydon: Yes.

Senator Neiman: What, specifically, are we doing in that area today? I understand that the United States has recognized this as a great potential hazard and is dealing with it through special legislation. What are we doing in this area?

Dr. Brydon: We are doing two things. First of all, as far as research is concerned, the Atmospheric Environment Service has a fair sized research project, the purpose of which is to determine the stratospheric chemistry and the impact of the alleged mechanism.

I have been involved with the Canadian Manufacturers of Chemical Specialties in determining the uses and amounts used, to determine the amount released in this country and to prepare for the time in the future when a decision will be taken as to whether or not there is a definite hazard.

Senator Neiman: But the United States has decided, as a result of research carried out, that there is a definite hazard, or has that not yet been proven?

Dr. Brydon: Not yet, no. They have expressed the concern, as has our Atmospheric Environment Service, that the model which was developed a year and a half ago seems to be correct, but requires further information. If the model is shown to be essentially correct,—shall we say, by next summer—then they shall take measures to control the use of fluorocarbons by January, 1978.

That is the kind of hypothetical decision they have taken, and that is about the style of the statement that Madam Sauvé has made in Canada. Our attitude is a "watch and see" one, until some information is available to either substantiate or refute the model, because there is no way we can test that. It is a long range affair. The effect of liberating fluorocarbons now occurs 20 years from now. If we wait that long and the model is shown to be right, then it will be too late. We have to operate in a predictive way now in order to prevent a problem 20 years from now. It is the classic situation of the time bomb.

Senator Neiman: So you are working within a prescribed time limit. You are trying to make a determination within a much shorter time period?

Dr. Brydon: That is right.

Senator Fournier: Dr. Brydon, a few moments ago you mentioned that Canada, Sweden, Great Britain, Switzerland, Japan and the United States were attempting to do something about these things. Would it be possible to bring this matter before the United Nations and have it settle on the general principle which the countries signing the agreement would then apply under their own conditions? After all, this is a world problem.

Dr. Brydon: Which agreement are you speaking of now, senator?

Senator Fournier: I am speaking of an agreement that could be reached in respect of the environmental contaminants.

Dr. Brydon: Perhaps the best response I can give to that, senator, is that the United Nations environment program really only began since the Stockholm Convention.

Senator Fournier: That was two or three years ago.

Dr. Brydon: Yes. The Nairobi people have geared up. They now have environmental programs and they are in close cooperation and coordination with other organizations, such as the World Meteorological Organization, the European Economic Community, the OECD Environment Committee, and so forth. There are many organizations now that are involved in the matter of pollution. Fortunately, what we are seeing today is that they are not each re-inventing the wheel. There is a measure of cooperation between them.

Senator Croll: Dr. Toft you have been sitting back there; we will let you earn your pay today. Where do you fit in the Department of National Health and Welfare? What particular branch? Do they have an environment branch in Health and Welfare?

Dr. Toft: Yes, Environmental Health Directorate, Health Protection Branch.

Senator Croll: What authority do you have?

Dr. Toft: It is a joint bill and both ministers named on the bill have certain responsibilities. The Department of the Environment has a responsibility of looking after the environmental aspects of the bill and also the administration and compliance aspects of it. We will advise them on the health aspects of any problem which they refer to us. We also initiate any act independently of them which we feel is of more interest to Health and Welfare than the Department of the Environment.

Senator Croll: So the health aspect of it, which is important, is your task and you advise them from time to time as to how it is to work out in so far as it affects health?

Dr. Toft: Yes.

Senator Croll: Are there any other elements involved besides health?

Dr. Brydon: Narrowly speaking, no; those are the two departments.

Senator Croll: That is all there is?

Dr. Brydon: Yes.

Senator Croll: It is your initiative and they advise your joint effort, with you carrying the ball?

Dr. Brydon: We already have a joint committee to look at that very situation, to try and determine priorities—after all, human health is a high priority—and determine where we should put our efforts. While we are dealing with the environment, we are also dealing with an indirect threat to human health. Does that answer your question?

Senator Croll: No, it does not. It does not answer my question for this reason, that I have always found these joint committee efforts to be worthless. Someone has got to take responsibility. I am of the view that it is your responsibility and you have got to do what needs to be done, but you do consult Health and Welfare? That is what I am trying to get at. Is it your responsibility?

Dr. Brydon: Yes.

Senator Croll: Your bill?

Dr. Brydon: Yes.

Senator Croll: The other people may come in on it collaterally and that is all?

Dr. Toft: I think it is fair to say that the Minister of National Health and Welfare can take action independently of Environment Canada, although acting through their department, but if he perceives a problem which is a pure health problem rather than an environmental problem, then the initiative would come from Health and Welfare. However, we would still act through the Department of the Environment.

Senator Croll: They can take action on their own, whereas you cannot, is that what you are saying?

The Chairman: On that point, I have noticed a number of clauses in this bill—there must be half a dozen—that start out by saying, "The Minister and the Minister of Health and Welfare" may do such-and-such. That means that two of them must act together. Can one initiate action, or can no action be taken unless the two of them agree to it?

Dr. Brydon: I will let Mr. Alexander deal with that.

Mr. Alexander: Mr. Chairman, the bill starts out with an information section, section 3. I suppose, basically, that this is really only there to try and set the stage. In other words, it provides for the gathering of information.

Then, in section 3, subsection (3) it indicates the kind of thing that they will be gathering information on. This sets out about four or five things which deal with the kind of problem that you are looking for, when you are dealing with environmental contaminants. They should make use of the services of other departments. This is to try to save the taxpayer and not, as Dr. Brydon said, to invent the wheel. We are trying to make use of what information is available so we do not go throwing around a lot of money unnecessarily. This is the information stage.

When you get down to the disclosure stage, that is where you can have mandatory disclosure. You can require people to give information and you can require people to do tests.

In the best of all possible worlds, I suppose nothing would ever be done until everything had been really carefully looked into and checked out, et cetera. Obviously that is impossible. Therefore, various priorities have got to be worked out as to what you are going to look into. So, when you get down to this disclosure stage, you have, as you mentioned, Mr. Chairman, an "and" situation. The minister and the Minister or National Health and Welfare at this point in time have to agree what it is they are going to look into, or require disclosure on.

This whole thing is so inter-related, human health and the environment. After all, the world is for men, I suppose. At least, that is what a lot of people say. My daughter thinks trees are more important. At any rate, human health and environment are essentially interlocked. It does become necessary for the two departments to work together.

Senator Croll: Yes, yes, but you start to use the word, by the time you get over on page 6, "Minister" and not "Ministers."

Dr. Brydon: That is correct. At the beginning of section 4 the two ministers must have reason to believe, et cetera. Beyond that, it becomes the responsibility of the Department of Environment to carry out those activities of gazetting, obtaining information, that sort of thing, as in section 4(1)(a), 4(1)(b), 4(1)(c) and 4(2) and 4(3), et cetera.

Senator Croll: And is section 5 you are back to "Ministers".

Mr. Alexander: They have to agree on recommendations to the Governor in Council. This is necessary. I do not know how these things would be resolved in cabinet, but if one of them felt desperately strongly that something should be done and dealt with it because it is a health hazard, and the Minister of the Environment did not think it was that important, presumably the matter would have to be resolved in cabinet. As far as the legislation is concerned, it does require them to agree on priorities and to agree in so far as possible on what recommendations they are going to make to the Governor in Council.

If they cannot agree the Cabinet will have to decide.

The Chairman: If there are no further questions, I have one small question I would like to ask.

You have two review boards, one set up under section 6 and another under section 7. Are these boards *ad hoc*

boards? Do you just set them up when you need them, or are they continuing boards?

Dr. Brydon: *Ad hoc* boards.

The Chairman: Why do you need to have two separate boards under two separate sections?

Mr. Alexander: There is only one board.

Dr. Brydon: The reference in section 7 deals with a requirement to have a board of review on demand after emergency action. In the normal course of events the opportunity for a board of review comes before scheduling and regulation. In an emergency, the government can schedule and impose regulations but they must then have an opportunity for a board or review afterwards, to give the same privilege to industry or to other interested persons to object. The intention is that they would be the same, philosophically.

The Chairman: The boards would be set up as needed?

Dr. Brydon: That is right.

The Chairman: We have just about covered the bill. Do you want to go through it clause by clause? We have covered it except this one on clause 8(5)(b). We have to wait until you can have further consultations with the minister, before we can decide whether that should be amended.

Mr. Alexander: I can say that as far as the question of imprisonment is concerned "up to" certainly was the intention. On the other matter, the question of receiving a fine, I would have to check that and perhaps, Mr. Chairman, we could simply get in touch with you if that would be acceptable to you and the committee.

The Chairman: It has been suggested that we sit tomorrow at 11:30 a.m. Is that agreeable to honourable senators?

Hon. Senators: Agreed.

The committee adjourned.

Thursday, November 20, 1975

Upon resuming at 11:37 a.m.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable Senators, this morning we are continuing our discussion of Bill C-25. Although we dealt quite thoroughly with it yesterday, we did defer until today further considerations of clause 8(5), with particular emphasis on paragraphs (a) and (b). Senator Denis raised two points yesterday: first, that paragraph (b) made the punishment mandatory imprisonment for two years without any option; second, that since indictments were more likely to involve corporations than individuals, and because corporations cannot be imprisoned, a heavier penalty was thus being placed on the individual than on the corporation. Senator Fournier raised the third point, that under the present wording it would be possible for a corporation to make a deal with one of its employees to take the rap for two years and thus avoid the penalty altogether.

Those were the three points we were not sure about yesterday and about which Mr. Alexander felt he needed further consultation with the minister and officers of his department.

We have here this morning again Dr. Brydon, Mr. Alexander and Dr. Toft. I understand Mr. Alexander has a statement to make.

Mr. Alexander: Mr. Chairman, last night I had a look at various other acts in which this kind of offence provision exists and I also looked at the Criminal Code. I spoke with Mr. Sommerfeld, who is the Director of the Criminal Law Section of the Department of Justice, to see what he had to say about it. It is his recommendation, with which I entirely agree, that no change should be made.

First of all, clause 8(5) provides the following:

> (5) Every person who contravenes this section is guilty of an offence and is liable
>
> (a) on summary conviction, to a fine not exceeding one hundred thousand dollars; or
>
> (b) on conviction upon indictment, to imprisonment for two years.

It says "is liable." That does not mean that the maximum of two years has to be imposed. It is exactly the same kind of language as used in other statutes of similar nature. For example, in the Hazardous Products Act and the Food and Drugs Act, although the wording is not identical, it is obviously similar. The Hazardous Products Act says in section 3:

> (3) Every person who violates subsection (1) or (2) is guilty of
>
> (a) an offence and liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months, or to both; or
>
> (b) an indictable offence and liable to imprisonment for two years.

In that particular instance the word "liable" is used in both paragraphs (a) and (b) whereas in this particular one it is used before them. But the word "liable" applies in each instance.

Furthermore, in the interpretation section of the Criminal Code, Section 645, appears the following:

> (2) Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, . . .

So this makes it clear that, in fact, there is a discretion.

The other point related to the question of there being no fine in paragraph (b); it just says "on conviction upon indictment," and there is no provision for a fine. Again this is standard, and the reason for that is that section 646 of the Criminal Code applies. Section 646 reads in part as follows:

> An accused who is convicted of an indictable offence punishable with imprisonment for five years or less may be fined in addition to or in lieu of any other punishment that is authorized,—

And I will read it just to complete it.

> —but an accused shall not be fined in lieu of imprisonment where the offence of which he is convicted is punishable by a minimum term of imprisonment.

That last part does not apply in this particular case.

So therefore, as I have said here, this is the way in which it is normally done, and this fits in with acts of a similar nature such as the Hazardous Products Act and the Food and Drugs Act; and it is further covered by these two sections of the Criminal Code. To recapitulate, section 645 gives the discretion to impose a lesser term of imprisonment, but only up to two years; section 646 permits the court to impose a fine in addition to or in lieu of imprisonment.

Senator Denis: In that case, then, why in paragraph (a) are the words "not exceeding one hundred thousand dollars" included? They put the words "not exceeding" in paragraph (a), but they do not say in paragraph (b) "not exceeding two years." Why use the expression in one and not in the other?

Mr. Alexander: The reason for that, Senator, is that in a summary conviction offence or prosecution it is the suggestion that there should be a maximum fine imposed. In other words, it should be not more than one hundred thousand dollars. However, where it is taken by indictment, the court would have, under this provision which I have mentioned to you, the discretion of imposing in lieu of or in addition to imprisonment a fine in an amount which would be entirely in the discretion of the court. It could be anything the court thought ought to be imposed, from ten dollars to half a million dollars. This is deliberately flexible.

Senator Fournier: Mr. Chairman, does this bill have in it anywhere the words "notwithstanding any other law to the contrary, the provisions of this bill will apply"? If so, that would have the effect of excluding the provisions of the Criminal Code.

Mr. Alexander: Senator, the Criminal Code definitely applies. This clause has the effect of creating a crime and the provisions of the Criminal Code would then apply. Of course, it would be perfectly possible to write a provision into this bill which would be much more specific than the provisions of the Criminal Code.

Senator Fournier: We would not want that.

Mr. Alexander: In that case, the provisions of this bill would override the provisions of the Code because the particular would override the general. However, as this has been left open, the provisions of the Criminal Code would apply. Obviously, the courts will have considerable discretion in meting out punishment, depending on how serious in the judgment of the court the offence is.

Senator Smith: Mr. Chairman, it would be helpful to the members of the committee who have no legal training if Mr. du Plessis were to give us his views on the matter.

The Chairman: Mr. du Plessis, do you have any comments to make?

Mr. du Plessis (Acting Assistant Law Clerk and Parliamentary Council): Mr. Chairman, until you called me to this meeting a few moments ago I had not had an opportunity to look into this matter at all, but, having heard Mr. Alexander's explanation, I must say that I concur in what he has said. Mr. Alexander quoted sections 645 and 646 of the Criminal Code. Those sections certainly apply in this case. He also referred to sections of the Hazardous Products Act and the Food and Drugs Act and certainly we would want to see consistency in legislation. So, having heard what he has said, I would concur in the views he expressed.

Senator Denis: But how would you explain the other bills then? In other bills it is expressly set out that there is a fine or a sentence of imprisonment or both. Then you refer it to the Criminal Code and you say that it could be applied that way. But why is it that they actually put it in other bills and not in this one?

Mr. Alexander: Well, senator, let me read to you what is said in the Hazardous Products Act:

> (3) Every person who violates subsection (1) or (2) is guilty of
>
> (a) an offence and liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months, or to both;—

I cannot really explain why that was selected for that particular bill, and why we have selected this, except that I suppose these things would have to be somewhat arbitrary. Originally we had only ten thousand dollars for summary conviction, and it was pointed out to us in the Commons committee that it was felt that ten thousand dollars as a maximum was too low, and that it should be raised. So it was raised to one hundred thousand. Now you may say, "Why not ninety thousand?" and I would have to say I do not know. But it still allows the court to have discretion and it was also felt that this one hundred thousand dollars was more in line with punishments in other legislation of an environmental nature. That is the only answer I can give you.

The Chairman: If I understand you correctly, the amendment made in the other place raising the penalty from $10,000 to $100,000 was not really necessary because the argument you are applying to this would apply to the earlier reading, would it not?

Mr. Alexander: Except that the maximum would have been $10,000 and that is now raised to $100,000.

The Chairman: That would have been the maximum?

Mr. Alexander: Yes, and the $100,000 is now the maximum.

The Chairman: So what is set out specifically in the bill becomes the maximum?

Mr. Alexander: On summary conviction the maximum is set and it is now $100,000. This was amended from $10,000. As far as indictment is concerned, nothing is said about the fine, and therefore under the provisions of the Criminal Code it is open to the judge to decide, if a person is convicted of an indictable offence, as to whether or not, in addition to sending him to prison—and obviously if it is a corporation he cannot do that—he would have to impose a fine on the corporation, and he would have a discretion as to the amount of the fine.

Senator Denis: With no maximum?

Mr. Alexander: With no maximum.

The Chairman: He is not limited then by the $100,000?

Mr. Alexander: That is correct.

The Chairman: One other point, the connecting link between Bill C-25 and the Criminal Code is this word "liable," is that right?

Mr. du Plessis: No, it is the word "offence".

Mr. Alexander: What "liable" means is "liable up to"; in other words, it is not a maximum.

Senator Croll: It is the word "offence" which provides the link.

The Chairman: But if you had an offence and the word "liable" was left out, what would be the situation then?

Mr. Alexander: Well, he would be guilty of an offence and the judge would simply say, "You must not do it again", but he would not be able to impose a sentence.

The Chairman: So the penalty in the Criminal Code would not apply if the word "liable" were left out.

Mr. du Plessis: There is no real option to leave out the word "liable"; it has to be there.

The Chairman: So that would be the connecting link.

Senator Croll: No, the offence is the connecting link; the liability would be there otherwise.

Mr. du Plessis: The word "liable" is there because a person who contravenes the section can be found guilty of an offence and then becomes liable to a penalty.

The Chairman: I know you cannot fine a person if he does not commit an offence, but he might be able to commit an offence and you still might not be able to fine him.

Mr. Alexander: But he has to be proven guilty beyond a reasonable doubt.

Senator Croll: I will move the preamble and I will move the bill.

Senator Bourget: And I will second it.

The Chairman: Before we finish with the bill, I received a communication from Senator Quart who spoke for the Opposition on this bill in the Senate. She has asked me if I would put some questions that she would have asked if she had been here today. She is unfortunately unable to be present. So, with the committee's permission, I would like to go ahead and put these questions to the witnesses.

The first question is as follows: According to this bill—and I am presenting this question on behalf of Senator Quart—manufacturers will have to notify the minister of all new substances within three months of their manufacture or import, and the government is also authorized to require the manufacturer to supply information on these new substances. Would our witnesses not agree that this falls far short of what we should be after in the way of protection? Reporting the existence of a substance is definitely not the equivalent of monitoring a substance and disclosing potentially hazardous side effects. Is this not what we should be imposing by way of safeguard?

Dr. Brydon: I think the answer ideally is "yes". We would all like that kind of provision for the host of chemicals in commerce. But then when you look at the situation from the practical point of view the question arises as to just how we could respond and handle that kind of a project, quite apart from the expense it would put on industry. As I mentioned yesterday afternoon I believe, the Japanese have identified 20,000 chemicals in commercial use. Then if you multiply that by the number of users and the number of companies, particularly where we have an unknown but huge number of uses by individuals, you get an idea of the difficulty involved. The philosophy of Bill C-25 was to move away from the registration scheme involved with, say, the Food and Drugs Act and the Pest Control Products Act, and go towards a selective approach whereby priority substances would be identified and they would be investigated by the government to determine the risk involved. On top of that, in order to add to the early-warning system and to trigger the identification of a potential problem, you move to clause 4(6), which Senator Quart refers to in her question, and which is designed to require that any company involved in any substance for the first time must notify the government.

Senator Bourget: Even if it is not in the list?

Dr. Brydon: That is right, and the reason it is done that way is because an individual company or person will know what is new to him, but he may not know what is new to commerce or what is a new chemical because he does not know what his neighbour is doing, but he does know what is new to him. Therefore, information on substances new to that person must be reported. We think it will be a valuable part of an early warning system and that it will be manageable in the first instance. May I add to my first response, "ideally, yes." We would like to have a more far-reaching approach to testing and reporting. One senator inquired yesterday whether this was a leading piece of legislation. I think it was obvious from my remarks that different countries are approaching it in a different way. We are all on a learning curve, and as we gain more experience and information on how these things work in different countries, we may require a different response in, say, five years from now. We think that at this moment Bill C-25 provides the best way to do it from a practical point of view.

The Chairman: The next question is: What sort of evidence will the manufacturer be expected to produce if the government asks for it?

Dr. Brydon: The kind of evidence that the manufacturer must produce will depend entirely on the substance and the intended use. If a substance is intended for an enclosed use, or a narrow range of uses, where the likelihood of getting into the environment is slim, the degree of testing would not be as elaborate. Where a substance is going to be used in a much wider way—for example, as a detergent—where it will be used all across the country, where individual people will be exposed to it, and there is a possibility of it getting through the sewage system into the environment, this is, by definition of its use, wide dissemination and it would require much more elaborate testing for that particular use than for others. I repeat, the answer to that question will depend upon the use to which the chemical is to be put and the amount to be used.

The Chairman: Another question is: What about the testing requirements, if any, to be imposed on the manufacturer? Is there any provision here for government approving these techniques before they are used, in order to ensure they are adequate?

Dr. Brydon: That has deliberately been left open to the discretion of the minister, in section 4(1)(c); that from time to time the minister may require individual companies to carry out specific tests. There is no requirement built into this legislation to name the kind of test or the extent of the test at this time. It will vary from time to

time and will change with time as we become more expert in our knowledge of what the tests should be.

The Chairman: The next question is: When all the information comes in on a new substance, does the government have the facilities to do a competent job of assessing it? What arm of government is equal to the task? Where will this be done?

Senator Fournier: To what is she referring?

The Chairman: Information coming in on a new substance. Does the government have the facilities to assess this information and appraise it? What branch of government will do that?

Dr. Brydon: Perhaps I could answer part of it, and perhaps Dr. Toft might also respond. There are two parts to this. One is evaluation of the ecological and environmental impact. The other is evaluation of the health impact. There is a parallel right now, with the Pest Control Products Act, the registration scheme under the Pest Control Products Act, managed by the Department of Agriculture, as you know, and evaluated by the Department of National Health and Welfare and various arms of the Department of the Environment, such as the Wildlife Service and the Fisheries Service.

One of the problems is a shortage of competent people, competent toxicologists. Because environmental toxicology is relatively new, we are faced with a shortage of experienced and competent environmental toxicologists. Do you have any comments to make, Dr. Toft?

Dr. Toft: I think we outlined yesterday the processes whereby the two departments interact. This would apply to advice which we give to Environment Canada regarding any health impact of substances being considered. Regarding the question of resources, I think this question remains open at the moment. Both departments would need some extra resources to handle it.

The Chairman: That leads to the next question: Will the government be able to judge the potentially hazardous quality of new chemicals without an independent research facility specifically geared to that purpose? You are saying that in some cases special research facilities will be needed.

Dr. Toft: It will depend on the compound and the hazard.

The Chairman: The next question is: New substances present impressive "unknowns," such as cumulative effect, persistence, reaction with other chemicals, side effects, by-products, waste disposal characteristics, et cetera. Knowledge of these factors depends on a good research program. Do we have one presently in place? Do we have an adequate research program in place?

Dr. Toft: The Department of National Health and Welfare has a research program in place, but there is certainly room for enlargement of it.

The Chairman: The final question is: How will we avoid any conflicts with provincial governments over jurisdiction in the field of pollution control? If we get embroiled in jurisdictional questions every time there is a problem, will that not make it rather difficult to handle the problems that require urgent handling? I think you dealt with that to some extent yesterday, but you may want to make a further comment.

Mr. Alexander: The only thing I could add to what was said yesterday is that we are looking here at a substance and its effect. The first thing, of course, is to gather information on it. It would seem, from a logical point of view, that it is better that it be done by one person than have 11 people gather information, although there may be information that the other 10 people may have which could be used by the federal people in gathering the information. This I think is not so much an argument in jurisdiction as an argument in common sense. There is a provision in the bill that where you are gathering information you should make use of any information obtainable from other departments of government or anywhere else—other provinces, internationally, or wherever it may be.

The Chairman: Arising out of these questions, I am not absolutely clear how the legislation will work on new substances. I can see how it could work with respect to substances that we already know are dangerous or suspect to be dangerous. For example, yesterday we were talking about fluorocarbons and aerosols. We are not sure yet whether or not they are sufficiently dangerous. It takes time. Some time ago we had legislation concerning phosphates in detergents. There was special legislation to ban certain phosphates because of the algae that was polluting our water. These things take time. What is the mechanism for dealing with new substances, where you do not know and it will take a period of time, or where there may be a cumulative effect, or you do not know whether or not there is a cumulative effect until a certain time has passed and you can do these tests? How will this legislation work in those circumstances?

Dr. Brydon: There are two or three responses to that question. Perhaps, first, I could deal with the definition of class of substance in the bill. The government can investigate and can schedule classes of substances based upon knowledge of the biological effects of one, and extend the regulation to all of that class of substances whether or not they are known.

The Chairman: Whether or not they are dangerous?

Dr. Brydon: Whether or not they are dangerous. Potentially they can be dealt wit as a class. That is one of the first preventive measures. Chemists and biologists have a term called "structure-activity relationship"; in other words, there are certain groupings of atoms in chemical compounds which have been determined to have a specific biological effect. Therefore, any compound with that particular group of elements, or that moiety as defined here, can be included. One of the reasons for this approach of "class or substance" is to identify that grouping, that moiety, on the basis of structure and its biological activity relationship.

This is a very difficult field, and more and more physiologists, chemists and biologists are refining the information in that area. The chemical companies in particular are quite sophisticated in the field of determining structure-activity relationships. Up until the recent past they have considered that information to be trade secrets. If they are developing, say, a pesticide, they know that a given group of atoms is capable of controlling fungi. They are continually looking for similar compounds incorporating that group of atoms. They are looking at it from the point of view of efficacy—that is, whether it will work as a fungicide. However, the environmental and human toxicologists look at it from the opposite direction: if this particular group of atoms or moiety has this side effect on human

beings, then what about all the rest of the class of substances? It is our intent ideally to use that kind of philosophy. Our information is not too elaborate yet, so it may not work that well in the first instance, but as we go along we hope it will.

The Chairman: With respect to new substances, you would require a company to supply you with the chemical formula, the molecular structure and the process.

Dr. Brydon: That is right. The power is in the bill for the government to demand that kind of information.

Senator Croll: Is there confidentiality?

Dr. Brydon: Yes. Clause 4(4) was very carefully introduced into the bill in the early stages following our negotiations with the Canadian Manufacturers Association to protect a company's proprietary information.

Senator McGrand: Does what you have just discussed get into the body mostly through food or through the atmosphere? Do we ingest these dangerous elements with food or breathe them in through the atmosphere?

Dr. Brydon: The objective of the bill is to cover all avenues. There are many, many avenues through which substances get into the environment, and there are many impacts on us, through our drinking water, our food, the air, through evaporation, skin contact or whatever. The idea of the bill is to give power to the government to apply a control at the key link in the overall release in order to cut down on the many avenues of leakage of the chemical into the environment.

Senator Bourget: I have one technical question on clause 4 (6). It says:

> Where, during a calendar year, a person manufactures or imports a chemical compound in excess of five hundred kilograms.

Why the figure of five hundred?

Dr. Brydon: It is not a magic number. I suspect probably the reason for it is that in the United States one of their agencies requires reporting of the use of a chemical when more than five hundred pounds of it a year have been used. Since we are moving into the metric age we have now gone to five hundred kilograms.

Senator Bourget: I am asking about the figure of 500. Suppose they import 450 kilograms. It could be as dangerous as 500 kilograms, because it depends upon the compound, upon the kind of chemical. I was wondering why you have the figure of 500 rather than 50 or 100.

Dr. Brydon: It is just an arbitrary number to trigger in our system of information gathering the fact that that substance is being used.

Senator Croll: I suppose for statistical purposes it is easy to affiliate with the United States.

The Chairman: It may have to be revised in light of experience. Are you ready for the question?

Senator Croll: I move that we report the bill.

The Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Chairman: Shall the bill carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Thank you very much, Dr. Brydon, Mr. Alexander and Dr. Toft.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 11

THURSDAY, DECEMBER 18, 1975

Complete Proceedings on Bill C-75, intituled:

"An Act to increase the rate of return on Government Annuity contracts, to increase their flexibility and to discontinue future sales thereof"

REPORT OF THE COMMITTEE

(Witness: See Minutes of Proceedings)

29653—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C.,

Deputy Chairman.

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier (*de Lanaudière*)	Smith (*Queens-Shelburne*)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, December 17, 1975:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Barrow, seconded by the Honourable Senator Riley, for the second reading of the Bill C-75, intituled: "An Act to increase the rate of return on Government Annuity contracts, to increase their flexibility and to discontinue future sales thereof".

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 Barrow moved, seconded by the Honourable Senator Lefrançois, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, December 18, 1975
(15)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 11:15 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Argue, Carter, Inman, Macdonald, Phillips and Smith (*Queens-Shelburne*). (6)

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

The Committee proceeded to the consideration of Bill C-75, intituled: "An Act to increase the rate of return on Government Annuity contracts, to increase their flexibility and to discontinue future sales thereof".

Mr. D. J. Steele, Executive Director of the Services Branch, Unemployment Insurance Commission, was heard in explanation of the Bill. Mr. Steele answered questions put to him by members of the Committee.

After discussion and on motion of the Honourable Senator Macdonald, it was *RESOLVED* to report the Bill without amendment.

At 11:23 a.m., the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, December 18, 1975

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-75, intituled: "Act to increase the rate of return on Government Annuity contracts, to increase their flexibility and to discontinue future sales thereof", has, in obedience to the order of reference of Wednesday, December 17, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, December 18, 1975

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-75, to increase the rate of return on Government Annuity contracts, to increase their flexibility and to discontinue future sales thereof, met this day at 11.15 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Bill C-75, and we have as our witness Mr. D. J. Steele, Executive Director, Services Branch, Unemployment Insurance Commission.

Would you please introduce the officials accompanying you, Mr. Steele?

Mr. D. J. Steele, Executive Director, Services Branch, Unemployment Insurance Commission: On my right, Mr. Chairman, is Mr. E. Meyers, Director, Annuities Branch; next Mr. T. Hall, Actuary, Annuities Branch; next, Mrs. M. Kolokoski, Chief, Contracts Division, Annuities Branch; and Mr. J. A. R. McCuan, Chief, Program Evaluation and Administration Division, Annuities Branch.

I do not have an opening statement as such, Mr. Chairman, but we have made available to all members of the committee a booklet setting out a clause-by-clause explanation of the bill. I should point out that because clause 6 of the bill was amended in the House of Commons, the booklet is not quite correct as it relates to that clause, although the explanation is still basically a valid one.

The Chairman: Thank you, Mr. Steele. Senator Barrow will lead off the questioning.

Senator Barrow: Mr. Chairman, as you know, I moved the second reading of this bill in the Senate. Senator Grosart spoke on second reading and asked a number of questions which he, in turn, seemed to be able to answer himself. There were, however, one or two other questions put to me privately that I should like to put to the witness.

To whom would one write to determine the effect of this legislation on individual annuity contracts?

Mr. Steele: Mr. Chairman, we plan to write to every annuitant individually, explaining the effect of this legislation on his or her particular annuity. With 280,000 annuitants, all of them having different arrangements, we felt it would be better to write to them individually, setting out the effects of this legislation and how it applies to that particular annuitant. Assuming this bill is passed into law in the next week or so, we expect to be able to have these letters in the mail by the end of January.

If someone wanted to make general inquiries, perhaps they could call or write the Director of the Annuities Branch, which is located at 355 River Road, Vanier, K1A 0J8.

Senator Barrow: The other question which was raised was whether or not an annuity could be deferred. I suppose that by writing to the Director of the Annuities Branch one could find out that kind of information.

Both Senator Flynn and Senator Forsey suggested that because of the increase in the rate of return, it might be worthwhile to continue the Annuities Branch. Do you have any comment to make on that?

Mr. Steele: The explanation that has been given, of course, is that annuities of the type the government has been providing are freely available from the private sector. This is a case where it is questionable whether the government should be in competition with the private sector, particularly as the private sector has a wider range of annuities available than does the government at this time.

Also, if you look at the retirement situation, the Canada Pension Plan, the Old Age Security and GIS are really better equipped, from the government's point of view, to look after the needs of our elderly people in that they are indexed and have the ability to use current revenues to raise the benefits, whereas with annuities one is tied into the group of people—and it is usually by age—on which the annuity is based. What you put into an annuity is really what you get out, with accrued interest, whereas with inflation rates, and so forth, one would probably be better off with an indexed type of plan, such as the CPP or Old Age Security. That, I think, is the area in which the government should concentrate its efforts. It is true, too, that the private sector is going through a great deal of re-appraisal in terms of pension plans, in view of current inflation rates.

The Chairman: This bill would increase the rate of return on annuities to 7 per cent?

Mr. Steele: That is correct.

The Chairman: There are some private plans, I understand, which are paying up to 10 per cent, are there not?

Mr. Steele: Yes. If you bought an immediate annuity from a life insurance company, you might be able to get 9 or 9½ per cent.

The Chairman: But this bill applies only to annuities that are already in effect?

Mr. Steele: That is correct. The majority of them were purchased many years ago. The government feels that a 7 per cent return is fair treatment of these people, particularly when you consider the situation of those people who bought stocks and bonds with interest rates of 5, 6 or 7 per cent.

Senator Smith: Or perpetual.

Mr. Steele: Yes.

The Chairman: Senator Barrow, you mentioned that Senator Grosart raised some questions.

Senator Barrow: Yes, but he answered them himself.

The Chairman: Are there any other questions?

Senator Macdonald: No.

The Chairman: Is it the wish of the committee to go through the bill clause by clause?

Senator Macdonald: Mr. Chairman, I move that we report the bill without amendment.

The Chairman: Shall the bill carry?

Hon. Senators: Carried.

The Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Carried.

The Chairman: Thank you, Mr. Steele.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 12

THURSDAY, FEBRUARY 19, 1976

First Proceedings on:

The Study of the feasibility of a Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society.

29655—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C.,

Deputy Chairman.

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perreault
*Flynn	Phillips
Fournier (*de Lanaudière*)	Smith (*Queens-Shelburne*)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,

Clerk of the Senate.

Minutes of Proceedings

Thursday, February 19, 1976
(16)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 10.05 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The honourable Senator Carter (*Chairman*), Blois, Bonnell, Bourget, Croll, McGrand, Neiman, Norrie, Smith (*Queens-Shelburne*). (9)

Present but not of the Committee: The Honourable Senators Lang and McElman.

In attendance: Messrs. Hugh Finsten and Gary Tait, Research Officers, Research Branch, Library of Parliament.

The Committee proceeded to the consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

On motion of the Honourable Senator Croll, it was *RESOLVED* that this days Minutes of Proceedings and evidence be printed.

The Chairman made a brief introductory statement after which he read the Committee's Order of Reference dated Thursday, December 18, 1975. The Chairman then expanded on his introductory statement and gave an outline of the events which had occurred since the Order of Reference had been referred to the Committee.

A research paper entitled "The Causes of Crime and Violence: influence in early childhood" jointly undertaken by Messrs. Hugh Finsten and Gary Tait was distributed to members present. Messrs. Finsten and Tait both made comments on certain aspects of their paper and then answered questions put to them by members of the Committee.

The Honourable Senators McGrand made a statement and expanded on his thoughts for a Senate Committee enquiring and reporting upon crime and violence in Canadian contemporary society.

A discussion ensued. It was *AGREED* that before the Committee comes to a conclusion on its Order of Reference, it should seek further advice from experts and additional research should be made on the subject matter referred to the Committee.

At 11:00 a.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, February 19, 1976

The Standing Senate Committee on Health, Welfare and Science met this day at 10:05 a.m. to look into and report upon the feasibility of a Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, the first decision we have to make is about the proceedings. Do you wish to have the proceedings of this meeting printed or just recorded? When I say "printed", I mean published as in *Hansard*.

Senator Croll: There is no reason why it should not be recorded. This is an ordinary meeting, is it not?

The Chairman: Yes, it is a regular meeting. It is an internal matter; it is not on legislation; it is more or less of an internal nature. That is the reason why I asked the question.

Senator Croll: It is all right with me, whichever way you wish to proceed. I have no views on the matter.

The Chairman: Everyone is agreed that the meeting should be recorded?

Senator Neiman: Yes.

The Chairman: Will someone make a motion?

Senator Croll: I will.

The Chairman: It is moved by Senator Croll and seconded by Senator Neiman that the proceedings of this meeting be published.

Hon. Senators: Agreed.

The Chairman: I will open the meeting with a brief statement giving the background of what has transpired so far.

Honourable senators will recall that just before the Senate recessed for the Christmas holiday, the Senate passed a motion giving certain instructions to this committee. If you will look at the copy of the notice, you will see that the instructions arose out of Senator McGrand's motion which went before the house, to which there were amendments. The amendments cover two phases. The first is to determine the feasibility of proceeding with Senator McGrand's motion. Then, if we determine it is feasible to proceed, we are further instructed to make recommendations as to the procedure to be adopted.

I will read the instruction, if for some reason you do not have it before you. This is taken from the proceedings of the Senate of Thursday, December 18, 1975, page 685:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire into and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science.

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

> "and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

Therefore, the question before us this morning is the first part of the amendment, namely, to inquire into and report upon the feasibility of carrying out a study such as that contemplated in Senator McGrand's motion. As soon as that motion was passed by the Senate, I got in touch with the Parliamentary Librarian, Mr. Spicer, and asked him if he would be good enough to put one of the research officers on his staff on to this job to inquire into and determine what already exists by way of studies on this very subject.

We have here this morning Mr. Hugh Finsten, on my right, and Mr. Gary Tait, the two research officers who have been working on this matter.

Mr. Finsten conducted his study while Parliament was in recess. As soon as the Senate reconvened, I called a meeting of the steering committee to discuss the parameters of our study, the criteria we should set up, et cetera. We also have before us the study prepared by Mr. Finsten.

Senator McGrand was not present at our steering committee meeting but I contacted him afterwards, as the committee instructed me to do, and I discovered that the study which had been carried out by Mr. Finsten was not on the exact points which Senator McGrand's motion encompassed.

Senator McGrand's motion, while it referred to the causes of violence and crime, addressed itself mainly to the symptoms which can be spotted at an early stage in life—in infancy and childhood. It concerned itself with preventive measures which might be taken at an early stage in the individual's life, and suggested that at least the tendencies in individuals should be kept in mind by teachers, parents and so on.

Following that, I asked Mr. Finsten to carry out another study along the lines indicated by Senator McGrand in his speech in the Senate, and also in a brief, which, I understand, he has distributed to all members of the committee.

This morning I received a copy of the second study jointly undertaken by Mr. Finsten and Mr. Tait. As we have not yet had an opportunity to read it, let alone study it, I suggest that we call on Mr. Finsten and Mr. Tait to elucidate the main points in their brief. Is that agreeable?

Hon. Senators: Yes.

The Chairman: Mr. Finsten, are you prepared to do that?

Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament: Yes, Mr. Chairman.

Honourable senators, we found that not too much work had been done in this particular area, and since we had only a short time in which to prepare the material, we made a few calls to find what we could and we looked at the books which were available to us.

Our paper examines just a few areas. Part A looks at the pregnant mother and the influences on the fetus which might cause behavioural disturbances in the child. It considers the aspect of birth trauma such as might occur when a child's birth is surrounded by problems—for example, the use of forceps to drag the child out of the mother's womb.

I would suggest that Mr. Tait comment on the second part of the brief.

Mr. Gary Tait, Research Officer, Research Branch, Library of Parliament: Honourable senators, the second part of the paper is concerned with the basic tendencies towards aggression in the infant and very young child. The theory outlined proposes that these tendencies are basically biological and cannot be negated in any sense but must be channelled. The important persons involved in channelling aggressive behaviour in the child's life are essentially the parents and the people in close contact with the child who are responsible for his upbringing.

Where a parent is absent from the family, where there is a definite lack of love and affection for the child, such conditions can lead to hostility in the child and, perhaps, to later problems, such as juvenile delinquency and criminal regression, although the criminal side of it is not that clear; but certainly the child may become hostile.

We then look at the mechanisms for the socialization of the child, stressing the point that in the socialization of the child the parent has a very important role and the family has a very important role. Obviously, environment is a key factor here.

Finally, we conclude that criminal behaviour may be the result of defective social training in early family life. The point to be stressed is that it "may be"; there is no clear-cut causal link. No one factor is responsible; there may be a multitude of factors which show throughout the life of the child.

I mention studies concerning child delinquents where there is the absence of a father. Many studies show that the absence of a father is crucial in determining the future anti-social patterns of behaviour in the child.

Those are the main points raised in the paper.

Mr. Finsten: I should add that from my discussions with people on the telephone I found that really few studies have been done in this area. In the last five years some work has been done in Europe, but not too much has been done in North America.

The Chairman: I gather from what you have said that your brief is the result of studies which had already been made, but that few of them had been done.

Mr. Finsten: I should point out, Mr. Chairman, that we have noted most of the sources we have used.

Mr. Tait: Most of the sources are American. The literature does seem to concentrate on American material or American efforts.

Mr. Finsten: Nor is this study exhaustive, Mr. Chairman. A few of the people we tried to contact in the criminology department at the University of Ottawa were away both last week and this week. If you would like us to do further work on the subject, we would be happy to do so.

The Chairman: Honourable senators, perhaps we should now call on Senator McGrand for an outline of what he feels the study should comprise. What kind of study does he envisage? What type of people would he regard as witnesses, and what would the number of witnesses be? We should also bear in mind considerations of cost, and in terms of the feasibility of such a study we must consider not only cost, but manpower, space and time slots. There are a number of things to consider, which we will not be able to make a decision on until we have a picture of what Senator McGrand himself had in mind when he placed his motion on the Order Paper.

Senator McGrand: Honourable senators, I had hoped I had made it clear what I was interested in when I made my initial remarks. I certainly do not feel there is a need to attempt to investigate the whole field of crime. I am particularly interested in those fields which involve cruelty and sadism. What causes cruelty and sadism? That is what I am interested in.

I should like to quote the words of Dr. Menninger, one of the most outstanding men on this continent and perhaps in the world on this subject: "How can we explain man's lust for cruelty in a world in which violence in every form seems to be increasing?" I think that question, for example, would be a good starting point.

I should like to say to Mr. Finsten and Mr. Tait that, in going through the research material which they placed at my disposal, I found that I had already read that material between eight and ten years ago, but on the particular subject I am interested in the research is only beginning to be done. I refer to a particlular aspect of the battered child syndrome—not what is and can be done for the battered child, but what causes the battered child. Why do parents develop a hostility to their children? So far I have found work being done by only one person on this aspect of the problem. I am referring to the recent work of Dr. Lenoski, who is a paediatrician and head of a large hospital, a paediatrics service, in Los Angeles. In his research into the

reasons why parents batter their children, he found that the babies of women who batter their children are usually born when the mother is under sedation, as, for example, in a Caesarean section, and where she is not exposed to the sight, sound and smell of the baby at the time of birth. He considers this to be very important. That is one man.

The next one I want to mention is a Japanese researcher who has been investigating children that cry incessantly. When an infant that is a day, two days, a week or a month old cries incessantly it is because there is some disturbance that we are not aware of. This Japanese investigator attached an electrode to the uterus of a woman who was nearly nine months pregnant, and recorded the sounds that went on inside it. He then took 500 children that cried incessantly and played the tape to them, individually, one at a time. All of those babies went to sleep immediately they heard the tape. This reveals something that research has not been done on. I do not think you will find this published in our libraries even yet.

Another man I want to mention is a doctor practising in Paris. I have forgotten his name. He is an obstetrician. He has recently been doing research in this field. What he does is to deliver babies in silence, with no bright lights to offend their eyes and no voices in the delivery room to offend their ears. There is only a little blue light, not a bright light, there. When the baby is delivered there is no talk, no noise, and it is then placed across the abdomen of its mother. The first voice it hears is that of its mother, and their relationship is set up in this way.

Another important aspect of this method is that the child is not beaten to make it cry immediately after delivery. I slapped many a backside because the youngster did not cry the minute he came out of the womb, but that was wrong obstetrics. In those days, too, we thought nothing of delivering a baby with forceps on its head.

A lot of the things we know about the human body are derived from what we have learned from the study of the physiology of animals. I am thinking of Claude Bernard Helmsholt, and other such people. What they know about physiology is derived from their study of animals. Then we have our friends in Toronto producing insulin from the pancreas of a dog. Animals, of course, have been used for a long time in psychological research—rats, monkeys and so on. There are even people who feel that the more we know about the psychology of animals, the more we are going to know about the psychology of people. Take, for example, the gulls that build their nests along the shores. They hatch their eggs, and when the little gull comes out of the shell it knows its parents because it has been talking to them through the shell. Animal psychologists maintain—of course, I do not know whether this obtains in the case of humans—that animals inside their mothers' uterus communicate because they hear her. An animal psychologist told me that the only organ that is fully developed in a colt a month before it is born is the ear. Why would the ear be the first organ to be completely developed? I do not know how well the ear is developed at the time of the birth of a child—this is an area of research that has been neglected—but I would like to see research done in this field. None has been done in Canada. The Japanese have done some, but there has been no research done in Canada that I know of.

I would think that we would stimulate this kind of research in Canada and in our universities if we were to have a committee bring in the proper witnesses and then come to a conclusion. In this connection, I would perhaps start with Arthur Maloney; he knows something about criminals. Then there is a Dr. Richmond, who was for 40 years associated with the prisons in British Columbia, and who wrote a book on this subject. I would also suggest Dr. Carl Menninger, who is the outstanding criminologist on the continent. I could think of half a dozen people.

The Chairman: Do you think half a dozen witnesses would be sufficient?

Senator McGrand: I do not think you would have to bring in the man from Paris, for example, to tell us what he did in obstetrics, but you could get a record of his work. Similarly, you would not have to bring in the man from Japan, either; you could get a report of his work and study that. Once such a study was started, we would begin to open up nooks and corners of the subject that we were not aware were present. That is the way I would go about it.

The Chairman: Senator Neiman has some questions.

Senator Neiman: Mr. Charman, Senator McGrand knows that I am very sympathetic towards his interest in this area, and, of course, anything to do with the problems of criminality and crime has always been of the greatest interest to me. I regard this field as one of my specialties. On the other hand, though Senator McGrand asked me if I would speak in support of his motion, I said I would not. I firmly believe that this subject is far beyond the ambit of a Senate committee, certainly of this committee, and I must say that I am even more convinced of it after hearing Senator McGrand's comments this morning. We are not doctors, we are not psychologists, we are not sociologists, here is this room, and I think that a Senate committee, really, could do so little in return for the time, money and effort involved in such a study that it would be useless. In my opinion, this is not what we in the Senate are here for.

I cannot, I am afraid, go along with the suggestion that our having even a superficial inquiry, which is all it could be, would stimulate research. Today, everyone is looking for research grants. Our medical schools are complaining to the government that they have been cut back on such funds. We hear of this problem constantly in our other committees. We are constantly asking the government for more money for research and are not getting it. It would be one thing, surely, to stimulate an interest in this matter, if we were to go ahead with this suggestion, though I am not convinced that we could; but it would certainly be another problem entirely to get the funds for it.

The areas it is proposed to examine are highly specialized. I have read about the Japanese experiments and about the work of the doctor in Paris who is experimenting with these new methods of childbirth; but they are not connected solely with criminality. Any child can be born hyper, but he will not necessarily become a criminal.

These are very specialized areas. As Mr. Finsten and Mr. Tait have said, the research material in connection with them is negligible, and to imagine that a Senate committee could study this vast area and succeed in putting together anything useful would be futile.

In my view, we are here to help the legislative process. I would be willing to concede that if research had been done on, say, 1,000 criminals as they are to be found in our jails and prisons today, and if thorough research had been done on their backgrounds from the day they were born, on the backgrounds of their families, their school histories, their social histories, and on the causal events leading from one

prison sentence to another, then we might have material that we as a Senate committee could examine, and as a result recommend appropriate changes in our laws and systems; but we do not have anything of the kind at our disposal, and we are not equipped to do that kind of study.

I repeat: I am thoroughly sympathetic towards Senator McGrand's interest and concern with regard to this subject. I share in it, and I agree that a great deal has to be done, but I do not think we in the Senate could do anything effective and I do not think we should attempt it.

Senator McGrand: May I ask, if we do not trigger that interest, who will?

Senator Neiman: Well, I think we have, as you say, our doctors, our gynaecologists, our obstetricians, our psychologists. We also have criminologists. All these people are experts. Surely we have to wait. We can express our concern and say that we wish that these particular experts would get on and give us some more information to work with, but we cannot do it for them. We are simply unequipped to bring all that information together and do anything effective. We are working with government money, and we are restricted, and we have to do things that we can be assured will be effective. We have to do things that we know are worthwhile, and I do not think we can do anything worthwhile in this area.

Senator Norrie: I am inclined to agree with certain of Senator Neiman's points, but I think that as a committee we can lend great stimulus to this sort of thing and perhaps promote deeper studies in other fields and really be a lever to legislation in this regard. I think we have a real field here, and I do not think we should turn it down. I know it is very much a specialized field and I agree with everything that Senator Neiman says, but I do think that we are not picking it up and giving it the push that it should be given. If we were doing so, then we would not have so much crime. I feel these studies should be promoted. No matter how little it lends to the solution of the crime problem, we should try to promote everything we can in this regard.

The Chairman: I do not think anybody would disagree that a study is desirable, but what we have to decide this morning is as to the feasibility of having it done at this time.

Senator Croll: Mr. Chairman, anything we want to do is feasible. I do not think we should worry about that aspect of the situation. If we want to do it, then we simply do it. Within certain limitations, we can do anything that we want to do, but the major questions are as to how we do it and what we are looking for. I have been giving consideration for weeks to trying to decide what one can do in this field which is a great unknown, and what ran through my mind was this. I thought it would be a good idea if we drew up a strong resolution pinpointing what we had in mind and sent it over to Mr. Lalonde and said to him that the committee feels that this study should have been done long since, and that he should do it. We should let him know that if he does not do anything about it within a reasonable time, then we intend to do something about it.

Senator Norrie: How is Warren Allmand going to make any advances in his parole system or in his crime program if we do not assist him? These fields are just as important to him as they are to us.

Senator Neiman: But he does not have the facts.

Senator Norrie: But somebody has to get the facts and somebody has to give him the facts.

Senator Neiman: I am saying, and I am certainly subject to correction, that a birth trauma does not necessarily make a criminal. That comes forth from every bit of research that has ever been done on this. So how broad are we going to sweep this area?

Senator Norrie: We could find out whether it is good or not good.

Senator Neiman: The birth trauma? I think we would look like a bunch of idiots, quite frankly, if we were to sit around here discussing birth methods. I say that because even the doctors don't know a great deal about this. Of course, there are problems arising from brain damage, we all know that, but brain damage in itself does not make a criminal; it can cause problems. All I am saying is that we could get into a subject that would make us look silly because it it so vast.

Senator Bourget: Mr. Chairman, I agree thoroughly with what Senator Neiman has said. I have the greatest respect for what Senator McGrand is trying to do, but I think Senator Neiman has explained the problem very clearly, because as we were told by a researcher in the library, not too much research has been done on this particular subject and I don't know who among our senators here would be a specialist on that.

Another question arises as well: What about the manpower to do the work in the Senate? We already have three joint committees—the Special Joint Committee on Employer-Employee Relations in the Public Service, the Special Joint Committee on the National Capital Region, and the Standing Joint Committee on Regulations and other Statutory Instruments. Besides that we have, as you know, the Special Senate Committee on Science Policy. Yesterday in that committee we were told that they are cutting the expenses on research, so if this committee should need some money, where are we going to get it? I am all in favour of research, and I think that this is a very important problem that has been raised by Senator McGrand, but I do not think that we are the people who can do that kind of research at this time. From what I have heard and from what I have read, there has not been enough research done on that, so we would have to rely completely on witnesses or on experts, and where are they? There are not too many of them.

Senator McGrand: Mention was made a few moments ago of the question of head injuries. I am sure I can agree with this, but in my time in practising medicine, I remember coming across four mentally disturbed, hostile people who created a number of problems. The history in each case showed that they were delivered with forceps, and I could still find the indentations in the skull which the forceps had left there 20 years previously. This is a field that has not been researched, and it should be researched.

Senator Croll: This is a field that has not been touched. It is a very important field, but I have never followed it up closely. If we were to get into it, then we would really be jumping into the darkness, but there are facilities in this country, and if we were to say that the committee had decided not to proceed with this at this time but that we wanted the department to make a special study of this and to let us know what the findings were, we might find that some progress had been made on this.

Senator McGrand: Let me reply to that for a moment. The Department of National Health and Welfare, and the people who have been running it for years, should be aware of this, but they are not. If we do a little research and call it to their attention, then perhaps we will get action, but the stimulus has to come from outside the Department of National Health and Welfare.

Senator Neiman: Senator McGrand, the other point is that this is not just a question for the Department of National Health and Welfare. You are touching on all kinds of areas here that are totally provincial in nature. We would be touching such a very broad spectrum of problems that I can understand why that department has not gone into it in great detail, with the background and all the problems, because it crosses many boundaries, provincial and federal. It would be practically impossible for them to do it. Perhaps the Solicitor General's department can stimulate a study in that area, but if they do they will certainly have to go back and get the co-operation of their provincial counterparts to get the material and the background. It is a vast subject, and I agree that there have been many people who obviously have suffered brain damage and have become hostile as a result of, shall I say, forcible entry. On the other hand, there are many more who have simply become disturbed or a little hyper as a result of these birth defects and traumatic experiences, but they do not all result in criminality.

Senator McElman: Senator Neiman's comments concerning a conflict and crossing lines with the provincial authorities, in my opinion, are not too relevant. If that were the case, in the field of agriculture, for example, we would not be doing any of the rather terrific work that is being done by our agriculture committee. There is a responsibility for agriculture at the federal government level, which is co-operative with the provinces and seems to work well. The same applies in the field of health, of course, and a great deal of the activity on the part of the federal health department is totally in co-operation with the provinces. We are not talking health here, but criminality and its causes.

Senator Norrie: But that involves sick minds, just the same.

Senator McElman: Yes, but the basis is that we are talking of criminality and the causes of it. There are many causes, one of which is in the very broad field of health. From what Senator McGrand has said, the focus of the study at which he was looking carries us to the health department, largely, although it would also entail as it went on, I am sure, studies and information to be obtained from the Department of the Solicitor General and perhaps, the Department of Justice. It would not be restricted to one field and would be a very broad study.

Although I am not a member of this committee, I was involved in the debate in the house. However, in my opinion, the committee is not in a position to make a decision. I do not believe you have sufficient information before you. The suggestion which I put forward in the house was that there must be research information available, at least in some of these areas. It is fine for this committee to obtain a summary of what may have been done, but it seems to me that before it can make any real decision now the committee must have the summary prepared by the staff. It has been suggested by Mr. Finsten that he knowns of further information that could be obtained for the committee. It seems to me that that information should be brought before the committee or, again, a subcommittee of the main committee, and a determination made as to whether there is useful information now available which would support the proposition of Senator McGrand to motivate, if you will, the Department of National Health and Welfare and whatever other departments of the federal government need to be motivated in this direction.

The Chairman: Yes; I was about to make a comment earlier, following Senator Neiman's comments. I had formed a different interpretation of Senator McGrand's motion, my understanding being that he wished a subcommittee to be appointed to find out what research has been done and is now available and the findings that would enable people to spot the criminal potential in children at a very early age, at which time it could be channelled off and prevented. So my understanding was that he desired to see what already exists that could be used in that manner, and determine the gaps which need to be filled. That would not be our job. Perhaps it would encourage the Department of National Health and Welfare to do what they could along those lines and find out what is already being done and who is working on this type of problem now, so that we would have some sort of picture to place before our own people who are wrestling with the crime problem. As I understand it, it was aimed at prevention, not wide research, nothing that we would do, but I would think that we would be sufficiently intelligent to understand the findings of those who have conducted research. We do that in science policy and other areas. That is a slightly different understanding from that of Senator Neiman.

Senator McGrand: Why does a boy of four years of age with frustrations become a psychopathic killer at the age of 24? What happens? There are people such as Margaret Mead. While I understand she should not be invited, she could give us a good deal of information on the history of this subject. With respect to the development of cultures and their growth, Menninger is available. I could think of half a dozen of the top people who could give us the direction we need, and if they were to state that this is too broad in scope for us, I would not disagree.

Senator Croll: Mr. Chairman, in my opinion the meeting can deal with this. We are a committee here. Suppose you appoint a subcommittee of three of four for the purpose of filling these gaps. They could sit around, call witnesses and determine what exists. It would be inexpensive. We are sitting here every day and it is simply a matter of reporting. The rest could be done with one secretary and witnesses could be invited. The subcommittee could feel the now, whom and what in precise terms, then bring it to the whole committee for the purpose of reporting their findings as to what could be done and how it should be done. Senator McGrand can present anyone he wishes to this subcommittee, which would report to the whole committee, and we would have made progress.

The Chairman: The only problem is that if Senator McGrand wishes to have Dr. Menninger appear, that involves money.

Senator Croll: No, it is not that; once we decide on a certain expense, we have the funds for that. This would not be a great expense. There are three or four persons he can bring down here, and it would cost maybe a couple of thousand dollars. No one is worrying about that sort of money; we are worrying about big money.

Senator Lang: Mr. Chairman, I am not a member of the committee but I am here this morning because Senator McGrand inflamed my interest in this subject matter due to the proximity of our offices. I know even less about this than about fisheries and agriculture. I was interested enough to come this morning and have been interested to hear the various points of view expressed by the members of the committee. I am afraid that maybe this area of inquiry falls outside the ambit of the functions of a legislative committee. In other words, a committee of the Senate is a committee of Parliament involved in law-making or government policy-making. With respect to an inquiry of this nature, I find it difficult to see how any results of such an inquiry could bring forward proposals for legislative changes, or changes in government policy. In my opinion, the danger we are in, in this situation, is that of slipping over the bounds of the jurisdictional parameters of a legislative committee into an area of either research or publicity for a very worthwhile concern. That is why I would be opposed, I am afraid, at this time, to the use of a Senate committee as a vehicle for this purpose, worthwhile as, I agree with all the members present, the concern is for this very real problem.

Senator Smith: Mr. Chairman, if I may say just a word. This is a subject that the older colleagues of Senator McGrand have heard about for as many years as he has been here. We have allowed all those years to go by and, according to the report that we have had and a reading of the speeches in the Senate, Senator McGrand does not see any doors opening up to expose more knowledge of the subject now than have opened during quite some years. I did not think the intention of the motion in the first place, and in its amended form, as I understood it, was to have this standing legislative committee undertake a study. Reading from the source of this material—that is, the agenda—it says:

> To look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence . . .

and so on and so forth. It did not mention this particular committee.

I think this is a very appropriate committee because of its title and the fact that all bills relating to health, welfare and science, pensions, and a number of other things that are enumerated in the rule book, go through us. This committee should go only so far as it now appears to be going, which is to see how big the subject is and whether a Senate committee should look further into it.

I would suggest that we adopt a holding technique for the time being. I understood clearly from both Mr. Finsten and Mr. Tait that they regretted that several experts in the field, who are Ottawans and attached to the University of Ottawa, are not in the city right now and are busy with other projects. In my view, we should delay making any kind of decision until we can obtain the opinion of local people who are considered experts by others who are expert in this field, and until we can assemble more information.

This is a very useful document, and I am sure that both Mr. Finsten and Mr. Tait would be the first to agree that it is not sufficiently complete to give us an opportunity to understand how heavy a task this will be or to judge the amount of information that might be available.

I would look for experts who have opinions of their own which they might wish to express at another meeting of this committee; or we should perhaps adopt the suggestion of Senator Croll that the matter be referred to a subcommittee.

Senator Croll: I like your suggestion better.

Senator Smith: Then, for the time being, I would suggest that this be the vehicle through which this matter should be sieved, and whatever comes out through the sieve we should either throw away or recommend that someone at some time undertake this study. It might be a special committee of the Senate or we might find the subject to be of such importance that we will point out, not only to the Minister of National Health and Welfare but also to the federal government in general and other governments in Canada, the great need for this kind of research.

I would hesitate to start now to convince taxpayers that a little extra money to be spent in this area of research is completely unobtainable at this time. Apart from the inflationary situation, my understanding is that medical research in this country has not been cut back but is being held at more or less its present level for the time being. A great deal of federal money is going into research in this country. Of course, a number of jobs are involved, and that is important. People who are studying medicine are like those who are studying any other subject. They become their own pets too, and they are like those who produced those glossy representations for the Public Service and came up with the kookiest kind of—I am not referring to the LIP grants, they were not so bad, but some of the OFY grants involved some pretty bad material.

If someone does not start to take the cover off the pot and see what is in this, we will have a worse society than we would otherwise have. I did not intend to go that far.

Senator Croll: Mr. Chairman, I do not need to move, but I suggest that we adopt the suggestion made by Senator Smith. Until we obtain some further research along the lines indicated, I suggest that the committee adjourn at this time.

The Chairman: It has been suggested that we defer any decision until we have more information.

Senator Neiman: Mr. Chairman, I wonder if it would be helpful to call in people from the School of Criminology, or some area like that, and have them point out the areas in which they think our research is deficient, where the government should be spending more time. We should perhaps obtain their opinions on how we should be going about something like this, or hear what kind of recommendations they have that we should urge upon the government regarding research in this area.

Senator Croll: Mr. Chairman, once we have the result of this research, that might be helpful; but let us first see what there is.

Senator McElman: As has been done by the Special Senate Committee on Science Policy—which is not made up of scientists, by the way.

The Chairman: Is it the wish of the committee that the researchers continue their research and that we now adjourn until the call of the chair?

Hon. Senators: Agreed.

The Chairman: Before we adjourn, I would refer the committee to the two briefs which have been prepared by

the researchers. Should they be appended to the minutes of today's proceedings?

Senator Croll: It is not usual.

Senator Neiman: No.

Senator Croll: We have never done that before.

Senator Smith: At the bottom of page 1 of the brief it says "Not to be published." This is for the use of the committee.

The Chairman: The meeting is adjourned.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 13

THURSDAY, MARCH 4, 1976

Second Proceedings on:

The Study of the feasibility of a Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society.

(Witnesses: See Minutes of Proceedings)

29783—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C., *Deputy Chairman*

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier (*de Lanaudière*)	Smith (*Queens-Shelburne*)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter;

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,

Clerk of the Senate.

Minutes of Proceedings

Thursday, March 4, 1976
(17)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 10:00 a.m., the Chairman, the Honourable Senator Carter presiding.

Present: The Honourable Senators Carter, Croll, Denis, McGrand, Neiman, Norrie and Smith (*Queens-Shelburne*). (7)

Present but not of the Committee: The Honourable Senators Fournier (*Restigouche-Gloucester*) and McElman. (2)

In attendance: Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken".

The following witnesses from the Department of Criminology, University of Ottawa, were heard:

Dr. Michael Langley;
Professor Bryan McKay.

Mr. Finsten introduced the witnesses; each made a statement and then answered questions put to them by Members of the Committee.

At 12:35 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, March 4, 1976.

The Standing Senate Committee on Health, Welfare and Science met this day at 10 a.m. to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are fortunate to have with us this morning Dr. Michael Langley and Professor Bryan McKay from the University of Ottawa Department of Criminology. We also have Mr. Finsten, our researcher whom you have already met. I will ask Mr. Finsten to introduce our witnesses. I understand that they will be making an oral presentation. I would suggest, to save time, that we hear from both of them and then proceed with questioning. Is that agreed?

Hon. Senators: Agreed.

Mr. Hugh Finsten, Research Assistant, Research Branch, Library of Parliament: Mr. Chairman, I do not think the two gentlemen have had sufficient time formally to prepare anything, but they are certainly prepared to answer any questions. Next to me is Dr. Micheal Langley, and on his right is Professor McKay. Perhaps, Dr. Langley, you would like to describe your background.

Dr. Michael Langley, Department of Criminology, University of Ottawa: I have a B.S. degree in psychology, an M.S. in clinical psychology, and a Ph.D. degree in sociology. I worked for a year as an administrator of a childrens' home in the United States. I am from the United States. I am in my second year in Canada on a working visa. I say that I have received my degrees from the United States and gotten my education in Canada. I have worked for a year as director of a childrens' home for dependent and neglected children. I have worked for two years in a postgraduate school with youngsters with learning disabilities, in an educational-medical-clinical centre. I have done research and publications in the area of juvenile delinquency and justice. I have tought at the community college level and at undergraduate and graduate level. And I have done some consulting at juvenile courts. If I have any qualifications, that would be it.

Professor Bryan McKay, Department of Criminology, University of Ottawa: I am Toronto born. I spent five years in the Royal Canadian Air Force and on leaving the Air Force went to university. I have just completed 10 years at university. In the interim I have been involved in projects such as working for five years in the Ontario training school system. My research interests vary from adolescent sociopathy, psychopathy, through theories of social justice and, more recently, predictions of problems at institutions such as regional detention centres. That has been my most recent research interest.

The Chairman: Dr. Langley, I assume that Mr. Finsten has explained to you that our general terms of reference are to look into and report upon the feasibility of a Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society. However, in our meeting this morning we are concentrating on the narrower concept of what are the possibilities of recognizing criminal potential or diagnosing the possibility of criminal tendency in the very young, perhaps even before the child is born but certainly at a very early age, in order that some remedial action might be possible. You might confine your remarks within the framework.

Dr. Langley: Yes, Mr. Chairman. Perhaps one of the first things we have to come to grip with in this country at this point in time, despite the fact that we have a very high desire to predict criminality, delinquency and control, both our knowledge base and our technology—and I would go so far as to say our clinical system and political ideology—probably do not allow us to match that kind of desire with effective intervention in the following sense specifically.

Mr. Finsten forwarded to me the previous deliberations of the committee on the topic of crime causation and violence in Canada which I read with considerable enthusiasm and interest. In reading the committee's proceedings, several things came to my mind, in particular that it appears that your committee, at this point in time, is interested in the whole issue of dangerosity, the dangerous offender or, if you will, the dangerous pre-offender, and what kind of interventions might be developed, what kind of knowledge base might be developed to constrain this type of dangerous offender, within our midst.

The dangerous offender, in the committee proceedings I have read, is referred to as a psychopath or, to use Professor McKay's term, a sociopath.

Something that we have to be very concerned about and very hard-nosed about is that in the whole area of crime control, it is extremely important to look behind the labels that we use. It is one thing to say we have to have crime control, or that we have to have peace and security, but we have to know exactly what those terms mean. One of my major concerns in relation to your concern about predicting dangerosity at the childhood level for purposes of predicting subsequent criminal behaviour, be it homicidal or whatever in nature, is that we simply do not enough at this point in time to be able to make those kinds of predictions.

I was very impressed with a recent letter to the editor of the *Globe and Mail* by a criminologist at the University of Toronto, in which the writer cited some literature which indicates that the best we apparently are able to do right now in predicting dangerosity is about one in three, which is to say that for every person that we accurately predict as being a dangerous criminal, we are in danger of mispredicting two. That is not a very good percentage. I think

we have to be willing to live with a good deal of restraint in this area, simply because we do not have the knowledge base right now that allows us this kind of governmental intervention.

Senator McGrand: You are familiar with the work done by Dr. Barry Boyd at the hospital for the criminally insane at Penetanguishene, are you?

Dr. Langley: In general terms, yes.

Senator McGrand: I take it you followed, as did everyone else, the recent inquest in Ottawa regarding the high school shooting. Looking at what was revealed at that inquest, what areas of human behaviour do you feel should receive first priority? Looking back at that inquest and what we got out of it, what are the areas of human behaviour that require priority in terms of investigation? Would you, for example, look at the area of gun control?

The Chairman: Senator McGrand, before you came in we agreed that we would hear from both witnesses before starting on a general line of questioning. Perhaps Dr. Langley can think about his reply to your question while we hear from Professor McKay.

Professor McKay: Thank you, Mr. Chairman. My comments will be restricted to my reading of the text. I was very interested in Senator McGrand's comments during the previous committee meetings. Obviously crime and violence concern all of us, seemingly more so as time goes on. I think we are to some extent living in an element of fear. Fear, as psychologists will tell you, usually stems from uncertainly, which again tends to have an anxiety factor in fear of the unknown or the uncertain. We are wanting to know what causes crime, how to control crime.

One thing in defence of the social sciences, as Dr. Langley pointed out, is that we really do not know a lot. We do a lot, but we have not yet had many answers. It must be remembered that the social sciences are really in their infancy, very much in an embryonic stage, and just beginning to develop. As Senator McGrand pointed out in one of the debates, work on sociopathy has gone on for over 100 years. It goes back to Dr. Benjamin Rush in New England. People like Dr. Benjamin Rush began to work in the 1870s and 1880s and an enormous amount of research has been done on that. We still have not had any solid answers on sociopathy.

Crime, as Dr. Langley pointed out, is a very complex phenomenon, it is multi-faceted. We have sought causation for approximately one hundred years, if not more. One of the things we have begun to realize is that causation tends, in many cases, to be misleading, because crime is in fact a very complex phenomenon, as are criminals and criminal behaviour.

One of the problems we have had, which is now beginning to dissolve a bit, is that we are just beginning to develop the tools, technology and statistical sophistication to be able to understand this complex phenomenon; we are beginning to develop models.

Let me give you an analog to the position we are in. It was said that Professor Einstein perceived the theory of relativity many years before he had the tools to present it to people. It took him something in the order of ten years to be able to develop the expertise and present his theory of relativity, but he had some comprehension of the problem before that.

My reading of the text—unfortunately very cursory because of time considerations—indicates that it is very interesting in its terms of reference. I would like to take you a little bit aside from this just to give you my approach, and suggest that we have done a great deal of work in this area over 100 years or so. I would suggest that one of the things the committee could do is perhaps let *us* continue to do the work, but help us. I think you can help us in several ways. Right now the attractiveness of being involved in research in activities like this is not very high. The salaries for professors and so on are atrocious. I do not make as much as a bakery truck driver, and it required ten years of deprivation of myself and my family to get to the position I presently have. The number of graduate programs in this area that encourage research is very limited. In fact, there is only one Ph.D. program for criminology, right now in Canada, and that is in Montreal. We are working towards getting more, of course.

Senator Croll: Not in London, at Western?

Professor McKay: There are no Ph.D. programs in criminology in those areas. We must make research and teaching in this area attractive. For example, we must at least provide "bread and butter" for those who would like to continue at it. The prevailing political climate appears to be one in which, perhaps traditionally, the universities are suffering the axe on budget priorities and so on. Grants for research are being cut back; support of all kinds is in fact being cut back. In the province of Ontario the Ministry of Corrections has a freeze on hiring right now. It is very difficult to attract students in this area, and there are very many students who would like to continue doing research in these kinds of areas. What I think we have to do is get support for the funding of research, especially risky research, the kind of research, as Senator McGrand pointed out, done by the Japanese investigators.

These methods tend to be used sometimes because people want to take risks in research. It tends to be a handy item.

There was a recent case in the United States where Senator Proxmire used an issue of a grant that had been given to a very respected person in the aveu of the social sciences, Dr. Ellen Berscheid, of the University of Wisconsin. This was a grant given to study romantic love and that was seen as a waste of the taxpayers' money. She is a very respected investigator in her profession. Incidentally, Dr. Berscheid's position has been, along with many other new investigators, by the way, that we can learn a great deal by studying the healthy, in health, welfare and science, rather than seeking pathology and illness. We can, in fact, learn a heck of a lot by studying these kinds of things.

Another area that I would suggest is one of the ways of reducing fear and uncertainties would be to fund an educational program. That tends to have a very ameliorative effect. Understanding the issues, understanding what crime is all about, understanding the data and understanding what these effects really are would have an enormous effect on the community. Institutions do this as part of their service. They try to go out and educate the community wherever possible.

We would suggest, again, that we encourage groups, community interested groups and so on, to develop a "find out" philosophy, if you will. As a example of this, I saw a recent television commercial by the American association of retired persons who put out an anti-crime handbook on how to minimize the possibility of crime occurring to them.

In conclusion, I would say, let us learn from our neighbours to the south. Ten years ago, law and order became an issue. They declared a war on crime, and in retrospect it appears that crime has won. I do not think that the "war" was terribly successful.

We appear, from recent legislation before the house right now, to be heading in the same direction. I am somewhat concerned about that because our American neighbours learned one lesson out of their ten-year war on crime, and that is that they must set priorities.

There are statistics, for example, where 70 per cent of the people in Quebec prisons right now are there for non-payment of fines, and 50 per cent in Nova Scotia in 1974 were there for non-payment of fines. We have to learn to set priorities with respect to crime. I think that then we will resolve a lot of our difficulties.

Senator McElman: Did you say 70 per cent in Quebec?

Professor McKay: That was a 1974 statistic.

Senator Smith (Queens-Shelburne): Seventy per cent of the people in prison or in jail, incarcerated in other words, for not paying fines, and 50 per cent in my province of Nova Scotia?

Professor McKay: That is what I have been told was the case for 1974. It is a rather striking statistic.

Senator Smith (Queens-Shelburne): I must find examples of that. I do not know of any.

Professor McKay: I will go back and check.

Senator Smith (Queens-Shelburne): That is all right. I was very interested in that.

Senator McGrand: Mr. Chairman, I do not think we really have the time to have answered all the questions that I would like to ask. I understood you to say the uniqueness of the work you are doing needs the support of this group. I understand that for every dollar spent in cancer research there is about one cent spent in the type of research that you would like to carry on. I think that is about right.

Now, going back to the Poulin inquest, the question of war games was brought up. These boys are playing war games. What connection do you see between target practice and war games? A lot of people consider target practice to be a war game. It is common for these people, who go out on shooting sprees and kill half a dozen people, to have just come back from target practice. Some time ago I read an article on this, and the author said, "A man's eyes grow dark when he looks down a gun barrel." Now, have you anything in the research that you have read that deals with this field, target practice and people going out and committing mass murders?

Professor McKay: I am in no position to summarize the work of this particular man. Dr. Leonard Berkowitz has done considerable research on the accessibility of guns or even having guns in the immediate area, or, in fact, the firing of guns leading to later aggression. Again it is difficult to summarize all of his findings. It is complex. One of the major determinants is not the personality determinant at all; the situation appears to determine the events more than the personality variable. I do not think he has found any real personality differences in those who tend to use guns when they are available as opposed to those who do not.

Senator McGrand: I had the impression that in the case of some murders something triggered the person's desire to kill, as, for example, having been out target practising the day before. Have you read any papers or done any research on that subject? In your paper you discuss the article on the importance of infancy, and the possibility of damage to an infant because of lack of oxygen during birth. That article was written in 1966, ten years ago. What research has been carried out as a follow-up in the intervening time?

Professor McKay: I believe you are referring to Mr. Finsten's paper.

Senator McGrand: Yes.

Professor McKay: There is research being done right now at the University of Waterloo. There is a doctor from Sick Children's Hospital—I cannot remember his name—who has been conducting research on primates. If you are referring to the oxygen transfer through the placenta, that arose out of the concern with the consistent correlation—which tends to crop up in the literature—between low birth weight and later delinquency. Is that what you are referring to?

Senator McGrand: That is part of it.

Senator Neiman: Mr. Chairman, I feel the remarks of our witnesses this morning confirm what I have felt all along about ourselves as a group trying to conduct this type of inquiry. If I may put the question again to Dr. Langley: Does he feel that there is any useful supplementary role which a Senate committee could play in this field? I am sure you realize how a Senate committee is constituted. Apart from our ability to encourage—and I thoroughly agree that as legislators and leaders and parliamentarians we should perform that function—do you feel there is anything else we can usefully contribute?

Dr. Langley: Yes, but you may not like my answer. In the last ten years in North America there has been a fairly quiet but quite dramatic revolution in the social sciences approach to criminality and crime control. As with any progress, there are costs—assuming that what we have done in the last few years has been progress.

One of the major changes in the focus of emphasis, senator, has been away from an interest in criminal causation, research and theory, to an interest in the societal reaction towards crime and criminality. As with any movement, there are excesses. Right now we seem to be at a point where the pendulum has swung far away from criminal causation as a high yield area of information and has moved very much towards the whole issue of the current response to criminality in Canada and in the United States. Much criminological thought is encouraging us to take a look at some of the assumptions, some of the procedures, some of the cost benefits and some of the effectiveness associated with the current response to criminality in Canada and in the United States.

That response at this point, is a combination of economics (fines), incarceration, imprisonment, restraint on physical freedom, probation, parole, and things like that. So that I would very much like to see a group like this, the Senate committee, develop for themselves some kind of educational forum. You people, potentially, have a tremendous role to play in public education, and the way you could play it would be by asking questions that are in line with what the social sciences are doing in the mid-seven-

ties. It works both ways. Not only do we need your kind of support, politically, economically, or otherwise, but we think you need our support in terms of expertise, in terms of a coalition, if you will, between people who know and people who do, if I can make this distinction—incomplete though it may be.

As I was sitting here talking, I was thinking how neat it would be for me to volunteer my time and my energy to run, say, a six-week course on the sociology and psychology of crime, here on the Hill, just meeting somewhere and letting you know where the social sciences are right now, in terms of what we know, and what we do not know, and what we can realistically expect from this body of knowledge and research in the next five years. You see, I fear we may be looking to the social sciences for things that the social sciences cannot give us. I do not see a committee of this type having much of a role to play in, say, the direct delivery of services, or research; but I think the need for education of public officials is almost paramount with me.

Senator Neiman: I agree.

Dr. Langley: I would be willing to engage in such an endeavour because I think there is a lot I could learn from you all.

Senator McGrand: You would have to have something settled on this first, however. You could not come and just wonder around the corridors looking for a group to talk to.

Dr. Langley: That is true. I would like books, bodies and commitment—"B.B.C.", if you like.

Senator Norrie: Live bodies or dead bodies?

Dr. Langley: Looking around the roon, I see only live bodies here.

Senator McGrand: I wonder if I could ask this . . .

The Chairman: Excuse me, Senator McGrand. I do not think we gave Dr. Langley a chance to answer the first question you put.

Dr. Langley: I cannot recall the question; I am sorry.

Senator McGrand: It was about the inquest in Ottawa.

Dr. Langley: Could you tell me a little more about that?

Senator McGrand: It was the inquest conducted here on the Poulin case.

Dr. Langley: The high school youngster. Yes?

Senator McGrand: Anyone following that inquest in the newspapers would naturally come to some conclusion, and what I wanted to know was, what area of human behaviour would you feel you should investigate and give priority to?

Dr. Langley: Follow my answer very carefully, because I am going to try to document what I said to Senator Neiman about what I meant with regard to where the social sciences are going in terms of criminality research.

The first thing that I would investigate with respect to that inquest would be the investigators. I was alarmed, I was chagrined and I was disgusted with what I thought to be an incredibly politicized inquest in which certain vested interests, all the way from gun control to more coercive containment of youngsters, used that inquest as a political podium. I felt that that inquest was more concerned with the development of a political atmosphere conducive to subsequent legislation than it was with developing a broad-based, fact-finding, well-substantiated report. In the whole area of criminology, some of the things we are becoming increasingly interested in are those actually served by criminological-related legislation. That is to say, the kind of environment that has to be created to get that legislation passed, the kind of environment needed to fund the kind of legislation in crime control programs that we want, so that in terms of your question, I am less concerned with the behavioural correlates, behavioural associates and the behaviour related apparently to the Poulin youngster's homicidal and suicidal acts, and I am more concerned with the community climate that was generated by a combination of a highly politicized inquest hearing and the mass media exploitation of that hearing. That is the kind of research, that is the kind of analysis and study I see us being able to do. That youngster is dead and gone, and I am not sure what an inquest, after his death, into his behaviour can really tell us a out effective crime control, for example.

Senator McGrand: That is right, but going back to the question of guns and the number of guns we have in Canada, what sort of gun control do you think we should have that would help to eliminate this sort of thing? Do you think there is any research which should be done into the use of guns? That goes back to what I mentioned earlier, that a man's eyes go dark when he gets a gun in his hand.

Dr. Langley: I can only answer that question with my opinion, and I am not at all sure how valuable that will be. If you want my opinion on gun legislation, I shall be glad to offer it, carefully paraphrasing it and qualifying it with the comment that it is only my opinion.

I do not believe that gun legislation can purchase for us the security and protection we want. When you compare that with the loss of freedom of individual citizens to make their own decisions about gun usage, gun possession and things of this nature, I think that one of the things that we are coming to grips with in criminology is the inherent limitation on the criminal sanction. This is best paraphrased, if you will, by the old saying, "You can lead a horse to water, but you can't make him drink." For my own purposes, I would not turn to the government to protect me from my fellow citizens' indiscriminate, if that is the appropriate word, use of guns or any other instrument that can maim me, because the thing that always intrigues me is that on a per capita basis automobiles constitute a much greater danger to me and to many of our citizens than do guns. No one is suggesting that we outlaw cars. The emotional atmosphere surrounding guns, gun usage, gun legislation, I believe—and it is only my opinion—deflects concerned attention from deeper issues related to criminality. That is to say, in summarizing, that there is a large area of criminology concerns no longer associated with what caused the Poulin boy to do what he alledgedly or actually did, but rather what caused the Ottawa community to react the way it did.

Senator McGrand: Well, neither you nor I nor anybody around here can control how the press will exploit something like that. But both guns and automobiles are part of our culture, have been part of our culture for a long time and will continue to be. Did you mean that you would like to see something grow into our culture, to become part of our education system, that will enable people to train

themselves toward the less violent existence, or something like that?

Dr. Langley: I did not say that, but I surely agree with your position.

Senator McGrand: Most people refer to it as humane education. Are you familiar with the work done at Tulsa University by Dr. Stuart Westerlund?

Dr. Langley: No, sir, I am not.

Senator McGrand: I get all his material. There is a feeling that if you are going to develop a culture that is worthwhile, you have to introduce it into the school system in the early life of the child. I would define the words "humane education" as ecology plus morality. Is that not so?

The Chairman: Do you have anything to add, Professor McKay?

Professor McKay: In support of what has been said, I was a product of the Ontario school system a number of years ago. When in Grade 10, I was taken out, as part of my compulsory education, and put into a uniform, given a gun and marched up and down the school yard. It was also compulsory, in Grade 12, to do the same thing. It was part of the education process at that time.

I mentioned, in my opening remarks, that I joined the military at a very young age. I was about 17 years old. I spent a lot of time in front of targets, shooting. I have not had any real desire to go out and kill as a result of that. I am not even sure that I did not really enjoy the experience. It might have been the little amount of adrenalin that rushed through me, but I quickly got over that.

I am in agreement with what Dr. Langley is saying, in terms of the early education process, or in terms, if you will, of more humane education.

Senator McElman: Mr. Chairman, may I make one point? I am one of those who are highly critical of our education system across the country, in some of its aspects. One fact has come through to me in recent times, which has a bearing here. When I went to school in New Brunswick, I did my stint with the rifle, as did the witness. I lived in a rural community. Guns were a part of family life. One might say that one gained the impression when very young that hunting was a good thing to do. Having been raised in that milieu, I enjoyed hunting very briefly. I still do shoot birds—partridge; but that is fhe full extent of my hunting.

For many years I felt it was a very bad thing if I did not shoot two deer every fall. I now have six grandchildren and they started first by asking embarrassing questions about my hunting. They have asked me—and this, I assume, has come out of the school system—why I should shoot deer. I have not hunted deer now for six years. However, I used to feel almost that I had to hunt deer.

Althouth I am a strong critic of the school system, there has to be something coming out of it, through my grandchildren, which has, first, embarrassed me, secondly, forced me to think about the whole thing, and, thirdly, brought me to the point where there is no circumstance under which I would shoot a deer today unless I were forced to do so because my family was starving. Perhaps that has some bearing on what you are talking about.

Senator McGrand: Mr. Chairman, Senator McElman referred to something coming out of the school system. I do not think this has come out of the school system. It has come from something outside the school. I started my schooling in 1900. In our school books there were a lot of references to kindness, about doing good things. That disappeared about 40 years ago, when a different type of reading was introduced. I recall that about 1948, when I was active in New Brunswick politics, I spoke about this with the director of the curricula of the New Brunswick Department of Education. I asked him why the school books omitted emphasis on kindness, and so on. He replied that the references to kindness produced a very inferior type of man. He said that the new system was introduced to produce a move aggressive type of male, that that was the purpose of it. I think that is still going on. There may now be a turning around.

Senator McGrand: I would like to get your opinion on the humane aspect. Our schools will not develop unless some central body, such as a parliamentary body, goes out and does the footwork, to prove that this sort of thing is worthwhile.

Professor McKay: My immediate response is that that is one of the things which the school system has very much been oriented towards. There tends to be a great change, I agree. My wife has worked in the school system now for five to seven years. There is some recognition that the school system could provide much more than simple content information; that there are other things to be learned, such as social relationships, inter-personal skills, how to get along with people, how to treat people. I would like to see a course, for example, on altruism behaviour. Why not? It is certainly part of our human existence. There are a number of strengths that we would like to build into people—how to help other people. That should receive the same kind of emphasis in early school training.

It appears there has been some notion on the part of educators, and others, that somehow this should occur in the home. There appears to be an assumption that an adult, by definition, is an adequate parent and knows how to transmit inter-personal skills or to train in social relationships. We know in retrospect that is clearly not true. The tendency has been to turn to the state for the training of children, as adequate parents. Unfortunately the state does not always come up with the best answers either.

One of the things it can lead to is training programs for parents on how to be parents and how to handle children. If the state is going to play a role with children, perhaps it is that kind of support one can provide parents in the educative process without attaching a stigma to it

Senator Norrie: The reason I am interested in this project is because I believe that behind every crime there is a reason. I think we should try to find out just where the biggest danger point, if there is one, lies. I have been studying the Dutch reform system. They have got down to 21 in 100,000 in prison. I guess that is the lowest in the world. They have no maximum security prisons at all. They take their inmates out in groups. I do not think they even call them inmates; probaly they call them gentlemen.

Senator McElman: And ladies.

Senator Norrie: There are no prisons for women in Holland; there are no women prisoners.

Dr. Langley: They apparently use capital punishment on them!

Senator Norrie: I did not say so. Whatever their system, they have proceeded with it for the last ten years. You probably know all about it anyway. I was very interested in it. Why cannot we accomplish the same experiment, which has not been conducted as successfully in any other country? They take these men out in small groups. This is where your field would be so applicable. They try to keep the taint of prison off these men so that when they come out they are not "jail birds" for the rest of their lives. It seems to me that in our prisons we create criminals; we make criminals, because the longer they stay the worse they get. I think our objective should be to erase this in our country, to remove the taint of "prisoner" and "jail birds" from these people. I grant you it will be a slow process. The Dutch system looked very good to me. Could you comment on that?

Professor McKay: I certainly could. I am speaking from my training as a psychologist; I am a criminologist by inclination. There is almost a belief in our correctional system that if you build an institution you are going to fill it; it tends to be a "law" almost that the institutions will fill to their capacity, that the more you build the more you fill. The correctional system and the criminal justice system, certainly in Canada, has been considered by most people to be very progressive, in the sense that, for example, Ontario is working very much towards community orientation, community-based institutions and so on.

I hope I am not raising any political hackles here, but we find it frustrating that we cannot predict a new piece of legislation from one day to the next, as to what will occur. When the legislation comes out, it does not do so on the basis of any systematic knowledge in our field, but tends to be based on considerations of the politics involved. Included in the package, I understand, is a recommendation for building more fortress prisons, which, even the United States, law enforcement agencies in Illinois, for example, are trying to abolish. We are going back to the fortress concept. Most penologists say that we have to get away from that concept, that they are just not effective, they do not work. The failure rate is tremendous; the failure rate is a constant. We just have not improved on what we can do with fortress prisons. If we are working towards building more fortress prisons, I pity the people in, for example, detention centres, which will be the weak link in the chain. I hate to think what will happen to them in terms of people facing 20 to 25 years. If you think think they have problems with their maximum security units now, you have not seen anything yet.

Senator McElman: I understood the trend was just the opposite, that what we now know of as the fortress type prisons are to be eliminated; that the "Dorchesters" and "B.C. pens" of the world are not acceptable; that the purpose now is to build some maximum security prisons but to minimize the numbers there; that it is the intention to reduce the capacity of each one of that type of maximum security for dangerous criminals to something of the order of a maximum of 180 rather than getting up to the present 600 and 700; that the new type of institution will be very different from the "Dorchesters" and "B.C. pens," which everybody accepts are dreadful in concept and in physical aspect; that, indeed, there is a different approach to the training of guards and so on within those prisons, making available more staff in the psychology field, and so placing these institutions geographically, that there will be a high level of community input into the rehabilitation process. Now, that is my understanding of the package, that the trend is definitely away from the fortress type of prisons that we now have.

Professor McKay: I may have been incorrectly quoting. My source was one of the local newspapers, which I believe used the term "mini-fortress". Perhaps I am using incorrect terminology.

Senator McElman: From long experience, I say to you that today not only should you not accept what is in the newspapers, but I am beginning to believe that the less we read in the newspapers and the more we go for factual information the better off we will be.

Senator Norrie: I took my information from the Dutch Embassy. They keep only their extreme, hardened criminals in prison for longer than two years. To me, that is simply outstanding. I do not know what they do with their hardened criminals. I suppose they keep working on them. I have not gone into that thoroughly. It seems to me that they are trying to eradicate their minimum security prisons. They have eradicated all their maximum security prisons and now they are trying to get rid of more and more of their minimum security prisons. Some of their criminologists have been told, "You have an easier country to govern, not so many criminals are created here as in other countries." They say that that is absolutely false, that their country was one of the worst in the world to handle, that they had bigger and harder problems to handle than other countries.

Dr. Langley: Let me pick up on that and focus this discussion to the response, if you will, on the political-social system of children in trouble with the law. You have quoted the Dutch experiment, which is in process right now, and we will have to await its outcome. The personal conviction I now have is substantiated pretty well by the facts I have been able to locate, and has led me to take the position that I now have in class, over a glass of beer, and in print advocating the total abolition of all training schools for children. The information in the social science literature and the criminology literature is undeniable. Youngsters in these storehouses—and I am being charitable when I call them "storehouses"; if I were speaking in private I would use a much more vulgar term . . .

Senator Norrie: Do you mean foster homes?

Dr. Langley: No, I mean training schools, these large institutions of congregate care, where there may be anywhere from 30 to 300 youngsters.

Senator Norrie: Orphanages?

Dr. Langley: No.

The Chairman: Are you talking about juvenile delinquents?

Dr. Langley: I am talking about training schools for youngsters who have broken the law.

Senator Norrie: At what age?

Dr. Langley: I am talking of reform schools, training schools. Depending on the part of the country you come, from the terminology may be different.

Senator Smith (Queens-Shelburne): Industrial schools.

Dr. Langley: Industrial schools of an earlier era, very much so. I am speaking of training schools where youngsters are removed from their homes, from the community, from the school, and stored in a large institution because of violating the law, for the purpose of rehabilitating them—that kind of institution. The evidence appears to be undeniable that under our care in these kinds of situations youngsters get worse, not better. They get worse on the dimension of the greater likelihood of subsequently violating the law. So my position now is that we should shut these things down. We should shut them down overnight, because what we now khow is that youngsters are, in fact, being brutalized and criminalized within these institutions. But yet, you see, what has happened is that we have refused to bite the bullet. We refuse to take a stand which can be based on the fact that youngsters in these places are in fact becoming in many instances more dangerous.

I am then left, therefore, with the question: which set of interests is being served by maintaining these institutions? Clearly, they employ people, they employ adults, they provide a place to isolate youngsters who are anywhere from embarrassing to disruptive to allegedly or actually dangerous to community life as we now live it. But the thing that concerns me is that despite the availability of social sciences and criminologically-based information that these institutions constitute clear and present dangers to the best interests of youngsters and to our own interests of private security and well-being in our homes, we continue to utilize this form of community response to control of delinquency.

Senator Norrie: Is this not one area in which a committee such as ours could obtain information and almost publicize it, thus having a great influence?

Dr. Langley: This is one place where someone like me could work together with someone like you. The information is there. We could bring it together and we could use your public forum to take a stand, advocating the total abolition of training schools immediately because they are constituting clear and present dangers.

We have moved beyond the mere gathering of fact, number one. Number two, much of current criminology deals not one iota with criminal causation or delinquency causation. All we are talking about is the information related to the ineffectiveness of a delinquency control response (large institutions for delinquent youths) which has been available in this country for some seven decades. The time has now come to remove the myth that these institutions provide security, protection, well-being, rehabilitation or anything decent.

Then we move to the whole issue of costs. I am sure you know that to store a youngster in one of these institutions for a year costs in the neighbourhood of $10,000. Just incredible! Look what we could do with $10,000 if we had the political, moral, humanistic courage to keep these disruptive youngsters in our communities. I am intrigued with the suggestion also that they are always other people's disruptive youngsters. If we had the courage to keep them in our communities and develop a lifestyle, a social order that would tolerate the kinds of wild oats, property damaging, sometimes person-violating behaviour—which many of us in this room engaged in in our formative, growing-up years—it would be of tremendous benefit. I know for a fact that I committed acts which, had they been detected, were the equivalent of felonies. I could have been sent up to the hoosegow, and instead of having a Ph.D. behind my name I could have had a number behind my name. But I was lucky.

I am suggesting that a greater tolerance, as one concrete example of community response to the illegal behaviour of children, could move us out of the 19th Century in the area of delinquency control and youth alienation.

Senator Norrie: In doing this work you could take children at an even younger age than those in the industrial schools. How do we know it does not start before that?

Dr. Langley: We do not know, but what we do know is that when we, the state, intervene in the lives of children and send them to a training school, there's odds on even that those youngsters will be recycled through the criminal justice system in a later year. The recidivism rate, the tendency to repeat an illegal act, is in the order of 50 per cent for youngsters coming out of the training schools in the United States, in terms of the studies I am familiar with, whereas with respect to youngsters coming out of the juvenile court it is less than 16 per cent who are likely to come back. So, taking 16 per cent at the front of the system and 50 per cent at the back end of the system, on the basis of those facts people say, "Heh, they are getting worse under our care. We are part of the problem, not part of the solution." I do not know how many of us can really come to grips with that, but, you see, it is not a causation question. It is a reaction question, a delinquency control reaction question. That is where it is at for me. That is why I think you all could be of tremendous help in terms of a public forum, in terms of public education, to say, "Look! We are part of the problem, not part of the solution right now."

The Chairman: I am not quite clear, Dr. Langley, on what you would have for an alternative. If you do away with the industrial schools and the training farms and all of these devices we have for dealing with juveniles, what is the alternative? What do we replace them with?

We have the problem of the teenage gangs creating terror at an early age. Society is unable to deal with them. The only thing we have been able to come up with so far are some of these farms and institutions. Surely, some of those farms have had a good rate of success? At least, they claim to have had. I cannot vouch for the accuracy of that, but it seems to me that, when we brought in this method of dealing with the problem, it was considered to be an enlightened approach to the problem of juvenile delinquency.

Dr. Langley: The history of juvenile justice has convinced me that yesterday's reform is today's brutality; yesterday's reform is today's outmoded response to the whole area of delinquency control.

Your question, Mr. Chairman—which I think is fair and which someone with either my opinion or my arrogance, or both, needs to respond to in terms of what is an alternative to warehousing away delinquent youths—deserves a response.

First of all, I disagree that we are unable to make an effective response to the illegal behaviour of disruptive children. I say we are unwilling. I read delinquency literature, I read the issues about gang delinquency, youth violence, the collective or group response of young thugs, if I may use that term. I really come away sometimes with the impression that these kids are running society. These kids have the upper hand, to put it in power terms. I think we have to realize that within the natural order there is apparently a real ability, a real set of resources for young

people to live under the authority wings, the authority resources of their parents, of their adults, of their elders. I think we find the ineptness which we show towards disruptive youth very convenient. It does not require that much effort to support a training school, to ship out of the community a youngster who is disruptive. On the other hand, it requires an alteration of my lifestyle to become involved with my church youth group, to become involved with the Boys' Club, to become involved with the PTA, to become involved with my children, to become involved with my children's friends and to become an effective adult role modeller, We are so stratified, so divided in this country by age groups that we may have removed the effective supervision, the effective role modelling, the effective authority resources from the daily lives of the children so that we are now being tyrannized by a youth sub-culture which believes in hedonism, in irresponsibility, in immediate self-gratification and in the exploitation of those around them. (There are positive dimensions also to the youth subculture.)

The alternative is to "not build" a brick-and-mortar facade to protect ourselves from our youngsters by placing them in side. But I think, senator, we are talking about a basic change in the relationships between adults and children, between adults and adolescents, because, as I believe Father Flannigan once said, "I never saw a bad boy," or something to that effect.

Senator McGrand: He said that there was no such thing as a bad boy.

Dr. Langley: That there was no such thing as a bad boy? Well, I have never seen a youngster who would not respond to attention, interest, warmth, direction and supervision from involved adults. I do not mean that in a punitive sense, but in a guiding sense, in a humane sense. The whole nature of delinquency control in this country is suppressive, regressive, punitive and damned ineffective, and, last of all but most of all, it is expensive.

Senator Norrie: You know, we can train our children but how are we going to change the parents?

Dr. Langley: The name of the game may be to stop thinking of this in terms of "either/or"—and here I am thinking, senator, in terms of my own thinking—"either parents or delinquent youths". Perhaps the name of the game is to put the two together. How do we make parent-child, adult-youth relationships more effective, more growth-oriented, more productive and more fulfilling? How do we make it more safe to walk our city streets? In other words, delinquency control may need to evolve to the point where we are thinking of effective intergenerational relationships. I don't know, but I think we are going to have to do some very, very hard rethinking of our whole delinquency problem. My research is taking me far, far, far away from some of the concerns that you have mentioned here in your testimony about crime causation and in a few years from now I may have to plead that it was the wrong trail, but at least it may provide an alternative, a consciousness-raising set of ideals.

Senator Norrie: And what about the battered child?

Dr. Langley: What about the battered child?

Senator Norrie: Well, it seems to me that a child, no matter how young, can remember being beaten around pretty badly. It remains a very vivid memory. I have seen them—and I am not even a social worker—and I think that they must carry these impressions right through life. I have never followed through completely on any individual case, but I cannot believe that they would ever forget such experiences.

Dr. Langley: Perhaps I can relate to you an incident of which I heard this week. This goes back to the comments made about our training schools or "storehouses". Alfred Training School, not very far from here, has a youngster in it because of under-age drinking. We can presume that there are other reasons why he is there, but the legal reason given is under-age drinking. The youngster was put out to work in the community because of having surpassed the available educational resources in that training school. He was put to work in the community, in a factory. He was under 16. The second or third day that he was there he lost three fingers. That is a case of being "battered and abused" while under our care. That youngster suffers a permanent physical disfigurement. That concerns me. The whole issue of battered and abused children, frankly, I think, unless we are dealing with a specifically delinquency-related youngster has to be separated out from the specific concerns that this committee is now dealing with. Once you start talking about battered and abused youngsters, then you start talking about run-away youngsters, dependent neglected youngsters and then you start talking about a whole range of things that ultimately muddy the waters in terms of how we react to this type of youngster (delinquent) in terms of policy, programs, et cetera.

Senator McElman: At the present time, Mr. Chairman, and for several months now there has been a committee of the House of Commons doing a study on this question of the battered child. Therefore I think it is an area that we should not get into because anything we would hear would simply be a repetition of what they have heard over there. I have some of the testimony. They are hearing some highly professional witnesses, and it is to be hoped that they will make an invaluable contribution.

Senator Smith (Queens-Shelburne): Do you know of any good institutions for the care of young offenders who have been sent to an industrial school, or whatever the term might be, by a juvenile court judge? Are there any such good institutions? I am speaking now of institutions that will not fall into the kind of categories which you have described and which you said should be burned down and that we should not have any more of.

Professor McKay: I think what you will find, senator, is that, like the parliamentary system, there is much debate even in our profession with regard to this. Having worked in one of these 'warehouses' Dr. Langley mentioned for over five years, I think I am familiar with some of the problems within these institutions. First of all, let me point out, if you remember Diogenes, who was very much in search of the truthful man, I went on a search of these institutions for the evil man, and I never found one. The intentions of the people involved in the system are very honourable. There is no doubt about that. They suffer great deprivation to pursue their profession and are very concerned about the care of the children. The system itself, unfortunately, does not lend itself to effective delinquency control, only to the extent of removal of such people from the community. I am doing some work now, with one of our students, on tracing the history of our training schools in the Province of Ontario, and one of the things you will find is that many of our problems evolved out of the

inability of small urban communities to deal with their offenders. The rural communities appeared to be taking care of them within their own community. Then the municipalities began to get involved. Then if you trace what happened over 100 years you find that we eventually went up the stages of government; the provincial government got involved and the municipalities from which the problem children came took less responsibility both financially and personally. Then at some moment the federal government began getting involved with young offenders, and we are now at the stage where the whole state apparatus is involved with young offenders, and the onus is being shifted from secretariat to secretariat and from ministry to ministry. Nobody seems to know what to do with it. One suggestion put forward by a number of people has been to return to community responsibility. The municipality could very conveniently send the so-called problem children out of the muncipality and no longer had to see them. So the tendency was to build training schools in remote areas where you would not have to see the children. The experience in Massachusetts, which abolished training schools, was quite unique in that one of the responses from the community where they wanted to provide alternative residences for the children was, "We don't want them in our community; they will contaminate our children!" Those of us who worked in training schools can tell you that any one time you can probably open the door to about 85 per cent of these children, if you can find accommodation or foster homes for them. I have talked on hundreds and hundreds of occasions to people, groups, community associations, church groups, and everybody is sympathetic to the problem. But then I turn and say, "Will one of you take those children?" And the answer is no. It is almost impossible to get people to accept these children, possibly because they are around the age of 14 to 16 and nobody wants them. The community has been terribly unresponsive.

Senator Norrie: They do not want their own, let alone somebody else's.

Dr. Langley: I found in my year of running a home for dependent youngsters, not youngsters who violated any law but youngsters who had inadequate parenting, and in my cynicism I came to view these youngsters as instances of a surplus population, victims of societies such as those in Canada and in the United States who are given to excesses, and we are apparently developing surplus populations of youngsters that are economically and otherwise irrelevant and will have nothing to do with them in terms of providing decent child care. In responding to the question as to whether I know of an institution or "warehouse" for youngsters that is good and effective, my answer is absolutely, categorically, unequivocally no. I would like to suggest, along a couple of lines of logic, why I find them inherently dangerous to the best interests, health and welfare of children. They put this health warning on the sides of cigarette packages, but I would like to put it on the side of every building of every training school across this wide and wonderful country; because if you take the simple elementary legal principle, "Equal before the law," and if you take the next principle of, "Would you place your youngsters in that training school for the summer?", most people to whom I have raised the second question say rather quickly, "No, I would not. That is not what they are for." In discussing this, you invariably find that the reason parents will not place their youngsters in those training schools is because they constitute a clear and present danger to their youngsters in the minds of the parents.

My next question is, what is it then, in our thinking that allows us to give that second-class kind of child care to youngsters who violate the law? I am sure that honourable senators know that there is a legal principle—the *parens patriae* doctrine—which indicates that the state is the ultimate guardian of all children. That principle, in terms of its quality control nature, suggests that the state must give care roughly equivalent to that which would be provided by the natural parent. But when the parents have faulted on their legal obligation, the state must pick up on it.

The reason why I cannot justify training schools for any youngster is that I would not put my own there, and I do not know of many people who voluntarily would. I see it as an absolute violation of the basic constitutional principle of equal protection under the law for the youths subjected to them.

So, no. I then go ahead and cite research on recidivism, indicating that youngsters get worse under our care. I then have logic in law and research to back me up. That is why my stand is unequivocal and uncompromising. No; close them down.

Senator Smith (Queens-Shelburne): I must have an early opportunity to visit one. There is one not too far from where I live. There was the decision, after the war, to take the Nova Scotia Industrial School, as it was then called, out of the city of Halifax. It was located on one of the main streets, back off the street. I suppose it was hidden because there was a long path up to it. That school had a bad reputation for turning out criminals. I recall there was quite a lot of discussion about it. The decision was made to move it to a small town. It was a matter of convenience and it was done for economic reasons. They took over former facilities and property owned by the Department of National Defence. It was naval property. They had a temporary arrangement, but they have since built a new institution. They call it the Shelburne School for Boys. They may be sentenced by a judge handling juvenile cases in a private hearing, where no member of the public can hear them described as criminals. The reports I have indicate that apparently it is fairly well staffed and that there is an important community development in the town where the school is located. It is on the outskirts of the town. The hospital is located in the area and there are other facilities which have moved to that formerly publicly-owned property.

The boys in the school compete at basketball and hockey with boys from other schools in the area. Looking back, I cannot help feeling that that is a better atmosphere than for a parent who can afford it to send his rambunctious boy, who could not make out at high school and was cought a couple of times shoplifting, to a private school. Because of the change in atmosphere and the chance to participate in better athletics, the kind of program the boy likes, they almost all turn out all right. I am hoping that the kind of student they have at this particular school will eventually turn out to be all right.

Perhaps I am over-exaggerating the point. I must talk to those who can tell me what the percentages are.

Senator Norrie knows the small university I went to at one time. It had a ladies' college associated with it on the campus. I know of another small university on the campus of which there was another ladies' college. It was called a seminary, for some strange reason. At both of those institutions no young lady was permitted even to speak to a boy

on the street; she was not even allowed to go down the street without a teacher.

Senator Norrie: That is the reason we landed in the Senate.

Senator Smith (Queens-Shelburne): That is the reason I went to Dalhousie. I have spoken to people of my own age group who were in those institutions, and they look back at those places with anything but pleasure, because they regard them as a sort of prison. They were punished for the slightest step out of line. That was a worse atmosphere than the old industrial school in Halifax, but the girls did not turn out to be streetwalkers.

Professor McKay: There is a point, in the sense that both those institutions represented alternatives to the family. If you had an option between the three, would you prefer the family environment as opposed to one or other of those institutions, the one for the more wealthy and the one for the poor?

Senator Smith (Queens-Shelburne): If you were a tough parent you might like to throw the book at them. They would not want their son to be labeled "criminal". If they can get them into a hockey or basketball program, at one of those schools where they wear the kilt, and the boy feels proud of his good knees and the girls like him, he is a happy boy and he does not get into trouble. I am hoping that the boys in the small town have a chance to become part of that community when their six months or year is up.

Senator Norrie: I would like to bring out one small point. Do the delinquents come from rich areas or poor areas? Do we have more from the poverty areas than the rich areas? I have read articles that indicate that we create more delinquents from the rich areas than from the poverty areas.

Dr. Langley: What do you mean by "delinquent"?

Senator Norrie: Troublesome individuals.

Dr. Langley: Perhaps you could be more specific. What do you mean by "troublesome individuals"?

Senator Norrie: I do not know.

Dr. Langley: Yes, you do. Excuse me, I do not wish to be impolite, but you have in mind a conception, a class of individual. I want to bring that out, if you will allow me.

Senator Norrie: I mean the ones that are daring. They do not mind trying drugs, or pilfering here and there. They do not mind joining a gang around the town or of being vandals.

Dr. Langley: Are you talking about youngsters in the public school system, or what?

Senator Norrie: The articles that I read seem to indicate that it is due to boredom or rich parentage that we are creating young children who are looking for excitement—for something, but they did not know what. I have heard that contradicted, the theory that it came more from poverty than riches, or more from riches than poverty. Which do you think?

Dr. Langley: You know, again that is a causation question. Before I tell you what I think, let me be sure that I tell you what we don't know. What we don't know is the relationahip of the economic system of the social class position to illegal behaviour.

Having said that, let me suggest to you two classes of delinquency: "Delinquency", or "delinquent", as you well know, is like a rubber yardstick; it is different strokes for different folks in terms of what it really means. Are you talking about youngsters in a public school classroom who have responded to delinquency self report? I expect you are familiar with the phrase, "delinquency self reports". Youngsters are given questionnaires, which they fill out anonymously, indicating what kinds of illegal behaviour they have committed. We are talking also about delinquent youngsters who have been taken into custody or arrested by the police. We may be talking about youngsters who have appeared before the juvenile court, who we say are delinquent. We may be talking about delinquent youngsters who have appeared before a juvenile court and been ajudicated delinquent: We may be talking about youngsters who are ajudicated delinquent and put on probation, or put in a training school, or adjudicated delinquent and have had nothing done to them. I am just identifying six or seven different classifications or categories of what the term "delinquent" means. It is a rubber yardstick; it means anything.

Having said that, let me just take two classes of youngsters—those who report anonymously the kinds of behaviour they engage in, which is illegal but for which allegedly they did not actually get caught, and the youngsters who are in training school. What the research appears to indicate is that there is a phenomenal social class bias, such that youngsters who report anonymously their illegal behaviours—if you do not understand what I am saying, tell me and I will repeat it—these behaviours are distributed rather envely throughout the social class structure, all the way from the lower class to the working class, middle class and upper middle class. The social class cannot predictably tell us which youngsters are engaging in illegal behaviours if they are undetected by the juvenile justice system. To a large degree, all these classes engage in behaviours that are fairly serious in terms of their law violation nature.

When we come to training schools, we find a disproportionate number of lower class children there, creating the myth that in fact delinquent behaviour is closely correlated and associated—which in our minds becomes causative but it is not, it is just associated—with delinquent behaviour, so that we are left with the visible part of the iceberg only, those youngsters costing us the most money, viewed in our myth to be the most dangerous, as being from the lower class in a disproportionate number.

In fact, if we look at what youngsters in the study halls are telling us when they fill out these delinquency self reports it is, "Listen, we are all cutting capers. Some of our capers are pretty serious." When we start talking about delinquents, I think I am going to have to start putting an adjective in front of that noun, so that we get this garbage term "delinquent" specified, so that we see delinquency in the proper perspective. This goes back to my earlier theme, that official delinquency, only delinquent behaviour, is disproportionately located in the lower class. Official delinquency in its occurrence is actually contaminated or created by the social reaction—that is, the juvenile justice system disproportionately selecting youngsters from one class and labelling them as training school youngsters, labelling them in the judicial process and storing them in training schools, for example; thus hiding the hidden part

of the iceberg that illegal youth behaviour is actually widespread, leading me to say that we have not yet heard the terrible news.

The Chairman: The thesis you have just proposed, that delinquency is not confined to any one stratum of society, but that it permeates all strata, is contrary, is it not, to the findings of the investigation carried out in the United States under President Eisenhower? If I recall, their report specifically said that being born poor, from a poor family, being deprived of education and the necessities of life, of good food and good environment, being unemployed because of lack of skills produces a group in which one finds a greater proportion of criminals, delinquents, than in any other group. At the other extreme, as you get families who are more prosperous and better off, with a higher level of income, the proportion is smaller. If I am correct, that was the finding of that commission, which is quite contrary to what you have just said.

Dr. Langley: Yes, it is. If you are talking about the President's Commission on Law Enforcement and the Administration of Justice, under the late President Johnson in 1967, I can respond to that. I frankly admit to being unfamiliar with such a study done in the "fifties under the late President Eisenhower's administration. I had better duck commenting on that, because I am not familiar with the government commission you are talking about.

The Chairman: He set it up.

Dr. Langley: I now understand it was a study done in the 'sixties.

The Chairman: Yes.

Dr. Langley: What I think resolves itself into an apparent contradiction, instead of a real contradiction, is that if you look at the population of youth being talked about, what you will find—and I say that without even having the specifics of the report, but being willing to dig into it if you would like me to verify this—is that those comments of the Commission are directed towards youngsters who have been involved in the juvenile justice system where the societal reaction has already been initiated. However, the best available evidence is that, without the contamination of the reaction of the juvenile justice system to the behaviour that is illegal, just taking the illegal behaviour of youth alone, the delinquency self report questionnaires on delinquency involvement, this is what reflects no class bias.

But the evidence of every government commission, every study in this area that I know of, is unanimous in the viewpoint that there is a disproportionate number of youngsters in the juvenile justice system at all phases who live with poverty, unemployment, unstable family, doubtful or disruptive school careers, large families, the whole set of indicators that creates the term "social disorganization." I think the contradiction is dissolved when you specify the population of delinquent youngsters to which you refer.

The Chairman: You say that crime is prevalent in practically the same proportion in all strata of society.

Dr. Langley: No, I said delinquency. I am making the distinction.

The Chairman: Illegal behaviour.

Dr. Langley: Illegal behaviour.

The Chairman: That is what I want to get at. I can understand that illegal behaviour such as going through a red light is not confined to any one social stratum; you will find the same proportion of illegal behaviour of that sort in every stratum. But when you come to the violent type of illegal behaviour, mugging and the destruction of property, I cannot buy the idea that you find the same proportion of that in every stratum.

Professor McKay: Perhaps I might reply. When the honourable senator was describing his concept of "troublesome," I suspect that a number of people in this room were thinking, "Gee! I remember doing little things like that myself."

Senator Smith (Queens-Shelburne): No, never!

Dr. Langley: You must be from New Brunswick. The air is still pure out there.

Professor McKay: Have you never turned over an outhouse, never played truant?

Senator McElman: Senator Smith is from the valleys of Nova Scotia. There is a big difference out there.

Professor McKay: As a youth in Toronto I came from a very poor family. We could have been classed as poverty stricken. Well, I engaged in most of the illegal behaviour mentioned here today at one time or another. The only difference between what happened to me and to many of my friends was that different kinds of decisions were made by individual police officers who picked us up. In my case they used discretionary power to prevent me from going through the criminal justice system. The same was true of the truant officers. I ended up as a Grade 10 dropout basically because I had to work to maintain myself. Today that would have resulted in my being placed in a training school, or at that time it could have put me in a training school, in which case I suspect there would have been quite a different end result in terms of where I am sitting now versus where I would have been sitting had I entered that criminal justice system. Again, it was a question of discretion on the part of the truant officer. She and I worked out a system, more or less. She knew I had to work and we worked out the system that she would arrive at my house at exactly the same time each day, and I would take off from work and go home and hop into bed. She would ask me, "Are you sick?", and I would say, "Yes," and then she would go. She used her discretion. But that is not the case today. In order to help juveniles today we put them into the criminal justice system. But that is not necessarily helpful. As Dr. Langley underlined dramatically, that is not necessarily the case. It often takes one down a completely different road.

So in response to what you were suggesting, Mr. Chairman, I think that over the years many of us were at one time or another engaged in similar kinds of behaviour.

The Chairman: But to the same extent?

Professor McKay: In many cases, yes, sir.

Senator McGrand: Up until the latter part of the 1930s and the beginning of the second world war nearly all women nursed their babies. Then in that period all of a sudden they stopped breast feeding. At that time a well-known psychologist suggested that the resultant lack of intimacy between mother and child would lead to problems later on. Has any research been done on the number of criminals who were not breast fed as compared to those

who were? Again, before the days of television a great many men who carried out holdups and burglaries would, when confronted by a policeman, give themselves up rather than shoot the police, even though they were armed. They would give up rather than shoot because there was a respect for life and the dignity of life. They would not take a life. But the average criminal today holding up a bank will shoot without hesitation. Has anyone done the amount of research needing to be done on those two things? I do not mean to put you on the spot so I am not asking for your personal opinions. I simply want to know if anyone has done the research.

Professor McKay: If I may try to respond to both of your questions, first I should say that work with respect to breast feeding, and I suspect related to other kinds of concerns, has been done. One psychologist who talked about this in the 1940s was Harry Stack Sullivan. Sullivan believed that to some extent the learning process took place as a result of contact with the mother, whether it be through breast feeding or otherwise. He believed that the child learns discriminative responses to the environment by that kind of close contact with the mother. In other words, one learns from the mother to recognize anxiety-provoking situations because of the cues given by the mother.

With respect to present research I cannot think of the name of the person off-hand, but in terms of the mother's preference for holding a child on the heart side versus the other side and in terms of the child's responding to the heartbeat, which may be what you were getting at, Senator McGrand, apparently there is in fact a correlation between that and later problems the child might have. In other words, there is a correlation between the problems and the mother's preference for holding the child. That kind of research has suggested that there appear to be differences in training discrimination at various states—conditions to be afraid of or where we should be anxious, states in which we should not be concerned about anxiety. There has even been some research going back to prenatal environment in terms of the mother's transmission of information through the heartbeat so that the child learns to recognize anxiety states or to recognize a rate of heartbeat.

With respect to your question about television violence, there have been a number of studies from the late Dr. Richard Walters, Chairman of the Department of Psychology at the University of Waterloo, a most distinguished scientist who did a number of studies on laboratory aggression and violence. Recent studies have been done by a group of persons by the name of Erron, Houseman et al who have looked at the problem over a long period of time as a longitudinal study. The difficulty with most of this research is that it tends to be correlational. It is difficult to pick out in correlational research just what are the casual factors.

As I pointed out to someone this morning, correlational studies tend to be misleading. For example, you may find a correlation between the number of oranges dropped in Florida and the number of priests who leave seminaries in Boston, but one could hardly draw a causal relationship between the two.

Senator McGrand: So you cannot say that there is any proved or pretty well proved theory. Returning to the idea of the mother nursing the baby on the left side or right side, that goes along with Lenoski's conclusions with respect to people who batter their children, in which he suggests that mothers who did not see, smell or hear their babies at the time of birth are more likely to batter them. Has anyone followed up on Lenoski's work?

Professor McKay: Only to the extent that people are beginning to become more interested in pre-natal environment and the effect on the fetus and the extent to which dietary deficiencies have had a real effect on, for example, black children as opposed to white children.

We do know that even looking at a simple reponse like that presents a real complex phenomenon. For example, the mother's lack of training or some physiological change in the acidity of her milk might have some effect. The way in which the mother carresses or handles the child may also.

Senator McGrand: And her mental attitude at the time.

Professor McKay: Yes. What she has learned and knows about handling and care of the child; the environment around them; the stimulus bombardment of the environment around them; it is a complex factor. It is almost impossible in many cases to pull out the components which go into making up any one of those situations.

Dr. Langley: If I may respond briefly to your question, Senator McGrand, there are a couple of things we need to keep in mind. First, we need to keep in mind that given early childhood behaviours, socialization and experiences, the current level of the sociological and psychological sciences at this time is such that we can make no predictable statement about behaviour ten or twenty years later based on what happens in terms of early socialization experiences in children. That is to say that we cannot now, with the current level of knowledge, build social policies or criminal legislation or any other public guides to controlling behaviour or generating behaviour, based on what we now know about early childhood behaviour. Secondly, why I strongly recommend research in this whole area of early child correlants of delinquency and crime be totally deemphasized, is because there is a basic scientific principle called Occam's Razor which says that of two competing explanations you should settle on the simpler of the two. That is to say, if you can find something that happens in early childhood related to criminality and delinquency and you can find something later that relates to criminality and delinquency, of those two explanations the event that occurs later is going to give you a simpler explanation and that is the one that should prevail.

Senator McElman: Mr. Chairman, there have been anomalies in our society deserving of some consideration. For example, the incidence of violent crime is absent from the Hutterite communities of western Canada. I think there is something to be learned here. That is a rural situation, but then we turn to urban Canada, where we find our Jewish communities, and up to a couple of decades ago there was a certain ghetto status about them—and probably there still is in some instances—but the incidence of crime, and here I am speaking of violent crime, in the Jewish community has been extremely low in comparison to the rate for the rest of the community. I have given this matter a great deal of consideration myself, and I know that one of the factors involved is that in both of these religious communities there is a very heavy responsibility on the mother in the character-building of the child, and it is regarded quite properly as being a very heavy responsibility. This same thing applied not too many years ago, and to a greater degree then than it does today, to the rural

French-Canadian community in Canada. There again the incidence of violent crime was very low, and again we have the mother-impact as a responsibility from church and indeed from the whole community, and her input into the development of the character and the morals of the children was extremely high, as was her responsibility. In my view, there is something that we can learn from this. Although our society has changed dramatically in the last 25 years, the Jewish community is still largely an urban community but is producing fewer problems of violent crime.

Senator McGrand: You also have the Quakers.

Senator McElman: I chose these two examples because one was strictly a rural community while the other, the Jewish Community, was largely an urban one. This relates very much to what we are talking about, the incidence of violent crime. But today, even within Canada in the rural situation, the incidence of violent crime is still comparitively low but in the urban situation it is very high and is growing each year.

The Chairman: But to supplement your question and before Dr. McKay answers, it is fair to say that crime is increasing in rural Canada as well, although it is still largely concentrated in urban areas.

Senator McElman: I am speaking now of violent crime.

The Chairman: So am I. For example, we have a summer home in Nova Scotia, and perhaps Senator Smith can bear out the point I am making. Compared to five years ago, the number of break-ins, the number of thefts that have place is much higher.

Senator McElman: But that is not violent crime.

The Chairman: But there is violence involved too; and it has increased tremendously in the last five or ten years.

Senator McGrand: But you are talking about two different things.

Senator McElman: You are talking about crime against property and crime against people, and really it is a case of apples and oranges.

The Chairman: But crime is increasing, and it is increasing even in my own province. We were practically crime-free 20 years ago.

Senator Smith (Queens-Shelburne): Are you sorry that Newfoundland joined us?

Senator McElman: That is because you are destroying the outports!

The Chairman: But coming back to the example of the Jewish community, I think that what you have said is perfectly true, but I think it is also true of the Chinese community and others. I do not know whether the mother-theory that you advance applies to the Chinese community as it does to the Jewish community, but I think you can pick out certain segments of society where they have a very low incidence of crime even in urban areas.

Senator McElman: I was not taking these two to the exclusion of others. I simply wanted to take two examples, one from a rural community and the other from the urban context. I know there are other ethnic and religious communities which would fall into this framework as well.

Professor McKay: I would like to respond to this along the lines suggested in one of my initial statements. This is the kind of research that I prefer to have done, that is on the healthy and stronger aspects of society. What makes up or constitutes what we consider to be a reasonably healthy group? Let me give a word of warning and that is that crime statistics can be very misleading. It may well be that the rise in rural crime so far as it is documented may be a function of better reporting systems as well as the hiring of more police officers resulting in more contact. There are a number of factors that go into crime statistics which we have to be aware of in interpreting them. But I agree with your observations. In my years of working on classification in training schools in which all the children coming in from Ontario passed through my hands, I did not find one Chinese child. I think if my memory served me correctly, there were two Jewish children and I believe there was one Italian but no Mennonite. I became concerned about that aspect as well and I gave it a great deal of thought and I began to realize in talking to various members of these communities that it was not that the children were not involved in activities that were classified as being delinquent for other children, but when the child became identified as a problem child the resources of that community came to bear and there were in fact sanctions for the parents for not keeping the child at a level of performance regarded as adequate within the community. It became almost a social stigma to have a problem child, and the support of the family was enormous and the support of the extended family was enormous and even the support of the community at large in that particular ethnic group or community. I felt that that was one of the major factors in not having these children enter the criminal justice system. It was not necessarily that they were not involved in the same kind of delinquent activities as others, but they were not adjudged delinquent, and that makes a difference.

Senator Norrie: Do you have any statistics about the difficulty in handling children experienced by working mothers as compared to a complete family home when the mother is at home?

Professor McKay: I am afraid I don't. I wish I did.

Senator Norrie: It is too soon to obtain those figures?

Professor McKay: We should have some data.

Senator Norrie: Do you think at this stage it has some bearing on delinquency? Have you any opinion?

Professor McKay: I would be very surprised if it did. I would have to look.

Dr. Langley: If I might respond to that, Mr. Chairman. The latest thinking on the whole issue of working mothers and delinquent behaviour is that what we seem to be coming down to is that the amount of contact between a mother and child is not a critical dimension. The critical dimension is quality of contact. At this point in time we cannot substantiate our belief that working mothers are correlated with or cause delinquent behaviour. The evidence is just not there. This continues to be one of the basic beliefs we have, but the evidence I am familiar with does not support it.

Senator McElman: You are not prepared to say that the mother's place is in the home?

Dr. Langley: No. I am prepared to say at this point that if she is there it will probably be unrelated to what her youngster are doing as it relates to illegal behaviour.

Senator McElman: For a certain type of mother, it is on the deficit side if she is at home.

Dr. Langley: That is well phrased. That apparently is where our level of knowledge is at the moment.

The Chairman: Has any research been done into sadism, as to what are the characteristics that lead to sadism, and the teenage gang phenomenon? It usually starts out with a tough leader, possibly a sadist, who dominates a group in the neighbourhood. He may have some feeling of deficiency in his life or makeup and they are more or less led into gangs, being challenged or dared to do certain things. They are brought into this type of life step by step. Has any research been done as to the causes of that phenomenon and the different stages in which it progresses?

Professor McKay: My response to that is yes, an incredible amount of research has been done over the past 50 years or more. It would be impossible to give a simple answer as to the reason for the phenomenon. Gnerally I think you will find some agreement that it provides an alternative to the family; but again there are so many competing theories. I do not think we have any simple answer.

The Chairman: Is any work going ahead on this?

Professor McKay: Yes.

The Chairman: But there are no definite findings as yet?

Professor McKay: Perhaps we are asking the wrong questions. We are now developing the sophistication to ask the right questions.

The Chairman: In fact, we do not know what questions to ask?

Professor McKay: That is always the problem.

The Chairman: Dr. Langley, do you have any comment?

Senator McGrand: That is really what I was intending to ask. I wanted to talk about sadism and cruelty. We allow a person to go out into the world for a week or 10 days, and we do not know, when he is on parole, whether he will commit another murder. A lot of work has been done, I believe, at Penetanguishene, and they now feel that they are getting closer to where they can identify the fellow who is likely to commit a second crime.

Dr. Langley: I find the discussion very stimulating. First, I want to challenge the comment that we in Canada are getting closer to isolating the dangerous offenders, which is the point you are talking about. I would love to have a closer association with that institution. I can assure you, senator, the scientific identification and the political control of dangerous offenders now is not a science. I do not think it is even an art form. It may just be at the hobby stage. That is one thing we have to keep in mind. Secondly, we should keep in mind that we are talking about adults, not children. With regard to sadism, the whole issue of sadism as it relates to a child perpetrating homicide—which is one of the concerns—centres around the fact that part of the problem, from my point of view of this research, is that if you look at the juvenile justice statistics with respect to children who engage in homicidal behaviour—more specifically who engage in murder—taken in the context of Canadian life, of the number of Canadian youths around, the incidents are so rare. For instance, the incident that occurred in Ottawa in October, the Poulin case. The incidents of childhood sadism in terms of the delinquency-related issue—I emphasize the words "deliquency-related issue"—are so rare that once we have identified the correlates of sadism—the personality correlates and whatever other kind of correlates—I wonder what they are going to tell us in terms of fashioning effective delinquency control policies and laws. Looked at in the total perspective of the delinquency iceberg, childhood sadism is highly visible, highly dramatic and is a highly infrequently occurring kind of incident. As we move into an era of scarre resources, we will have to establish our priorities and research very carefully, and for the collective good I would strongly encourage the devaluation of delinquency-related research around childhood sadism.

The other thing you asked about was group violence, the collective base of delinquency behaviour, youth gangs, and the whole trip. I am not prepared to comment on that right now. As Professor McKay has said, there has been a lot of research on the subject—more thinking than research, more analysis that research.

One of the things I am intrigued with is that looking at delinquency as a group phenomenon may tell us more about group collective life that it does about delinquent behaviour. I am worried about the information yield of looking at the collective nature of delinquency behaviour, because most delinquent behaviour occurs in groups, be it two, three, four, five or six or more. They do not occur in isolation. Once we know that, what do we know? I am not sure.

Senator McGrand: I do not disagree. I am not qualifying. The point is that all the major criminals have been sadists.

Dr. Langley: I would challenge that statement, but go ahead.

Senator McGrand: Certainly. In my opinion, all great criminals have been sadists. We could go back to Jesse Pomeroy, ot the more recent Boston Strangler who murdered 13 women. Nearly all those people stand out. Jack the Ripper and such people stant out. They were all sadists. I suppose what you mean is that they are a small percentage of our population. Nevertheless, they are too numerous. How do they develop into sadists? That is the point.

Professor McKay: I would respond, not necessarily facetiously, by saying that if we decide what great criminals are, they are people who have been adjudged criminals in the process, such as Mr. Hoffa in the United States. There is a point underlying that. If we are talking about criminals as dangerous offenders . . .

Senator McGrand: I am thinking about criminals such as murderers, sadistic murderers and that sort of thing. I am not talking about people who cheat the income tax, although they have some big criminals there too.

Professor McKay: If we get into the are a of dangerousness, we come up against a problem. Dr. Ciale of our department has conducted a number of studies on the prediction of dangerousness. Incidentally, he is also a member of the Parole Board. He is willing to acknowledge that in many cases our best predictor is no prediction at all; that if we looked at it statistically, if we did not make a

prediction we would be better off than in making a prediction, if that makes sense to you. Very frequently the variables going into the prediction are so complex that it is impossible to pull out any one or two specific variables. You suggested, I think, cruelty to animals, enuresis, and setting fires as a triad of predictors. Some people would feel that tatooing, for example, is one indication. Many who work in institutions suggest that people who get tatooed can be identified as people who will eventually end up in a life of crime. Those in the navy would perhaps disagree with that.

Senator McGrand: Being tatooed is something you do to yourself. If there is any danger, you are going to be on the receiving end. When you set fire to someone or torture young animals, you are handing out the punichsment, you are not getting it. That is different altogether. You cannot compare that. That is apples and oranges.

Professor McKay: I agree that might be a risky predictor, and that kind of work is certainly worth pursuing.

Senator McGrand: There has not been enough work done. Blackman and Hellman did that in 1967, I believe.

Dr. Langley: Two sources of information may help you. I meant to look one up before I came here, but unfortunately I forgot to do so. In a very recent journal there is a study of childhood murderers. I believe it was done in England. I would be very happy to Xerox a copy and mail it to you or have it delivered to your doorstep.

Senator McElman: Could you provide a copy to every member of the committee?

The Chairman: If Dr. Langley sends me a copy I will have it distributed.

Dr. Langley: I will send a copy to the chairman, who can distribute it to the members of the committee.

Another source of data which I know to be around but have not had access to yet, is Justin Ciale, our colleague, who has done an absolutely comprehensive study on childhood murderers in Canada. The last ime I talked to him about it it was, I believe, classified as not available to consumers like myself. I was particularly interested in pulling data on youths who murdered out from his pretty massive study of Canadian childhood murderers, simply because I thought it would provide no useful information, but I wanted to check it out. I have not been able to get access to the data yet. Maybe I will ask Justin to see if he could share some information about what he found in his study on Canadian childhood murderers. Apparently it is the most comprehensive thing yet done in Canada in the area of murderers. That might really help you zero in on the sadism variable.

Senator McGrand: The boy who did the shooting in Ottawa and the other boy at Brampton were both 18 at the time they committed those murders. These boys must have shown evidence of this sort of thing when they were six, seven, eight or ten, but it was not recognized until they reached the age of 18. That is the story of so many murderers; they are hanged at 30, but when you go back over their history you find they were abnormal children, but it was not recognized at the time.

Dr. Langley: Let us take those two fellows and see what is the best available evidence we have. Our batting average on the identification of D.O's, dangerous offenders, is no better than one out of three. Let us take the Brampton and the Ottawa youngsters. Given our level of scientific knowledge with respect to the identification of dangerous offenders, what we would have to do—I am simplifying this, but I want to stay within existing knowledge—is identify three yougsters in Brampton who have characteristics that, when put together, add up to what we call dangerosity, the dangerous offenders. Then we find three youngsters such as the Poulin youngster in Ottawa, who have these characteristics that could make up what we are calling dangerous offenders. This youngster, given what we know now about him or have heard, has the predisposition in subsequent years to commit homicidal or sadistic acts. We know that in 1976 the youngsters are four or five years old. Which one of those six youngsters, or which two of those six youngsters, are you going to put under state supervision, state control, state treatment? On four of them you will be wrong.

Senator McGrand: You have not convinced me yet.

Dr. Langley: One of the things that intrigues me about criminology is, when facts and belief conflict, which goes out of the window first? The facts. I do not think I am going to convince anybody in this room of anything different from what they believe currently.

Senator McGrand: We are just not on the same wavelength.

Dr. Langley: I think we are.

Senator McGrand: If you take ten children, you cannot tell how they are going to turn out. There are people who show certain evidence at the age of five, six, seven or eight; they show more at six, more at eight, and even more at ten. There is some place along the way where you should be able to say, "That fellow is going up and up," or "That fellow is going down and down." Not enough research has been done there.

Dr. Langley: I agree we should be able to say it.

Senator McGrand: That is it.

Dr. Langley: But we cannot.

Senator McGrand: Not at the present time.

Dr. Langley: Not at the present time, unless we are willing to mis-classify every two youngsters for every one that we accurately classify. I suggest to you that for the moment we should stick with those six youngsters, and just to make it more appealing, let one of those six youngsters be yours.

Senator McGrand: Sure.

Dr. Langley: Then I think you begin to see the dynamite we are playing with in terms of the threat to the Canadian way of life with respect to individual freedom and protection from governmental intervention. The problem then becomes one, not of delinquency causation but one effective societal reaction. That is the serious problem, not delinquency causation. That is the bullet we have to begin biting on, and biting hard. Then dealing with the facts, we are not going to stand around living in fear and trepidation of marauding groups of youngsters, youngsters prowling our neighbourhood with guns, or sitting in trees taking pot shots at us. All of these are involved in the form of mythification about the threats of delinquency to our way of life. We have to come to grips with the fact that our fears exceed our knowledge for dealing right now with

delinquency problems. Maybe we ought to start dealing with our fears, because that may be the ultimate threat to a secure and peaceful way of life for Canada—along with the current ineffective societal reaction to delinquent behaviour.

Senator McElman: In the meantime, is there not an intermediate step? Sticking strictly to the type of discussion Senator McGrand raised, is there not an intermediate step—and perhaps this is not with the schools—where prior to a crime actually being committed there will be qualified persons in the schools who can recognize these symptoms before they actually flare into some act of violence or crime against property?

Dr. Langley: The best study on the prediction of delinquency that I am familiar with in English North America was done in the Boston area by Glucks, a psychaatrist, and lawyer I believe, a husband and wife team. You are familiar with it?

Senator McElman: Yes.

Dr. Langley: There was also the Cambridge Sommerville study, 1949, which was also an effort under fairly controlled conditions—and you always have problems with controlled conditions—to predict subsequent delinquent behaviour. Both of these studies have overpredicted, based on childhood currelants and childhood characteristics. Both have overpredicted subsequent criminal behaviour. They are predicting, but they are overpredicting.

I do not know fur sure that expertise educators have that parents do not have for identifying dangerosity in young people. In our criminology program, which is a graduate level program, we are not able to teach, much less learn, these skills.

There are people who have a feel for other people's dangerosity, but I do not think we want to base policy and law on a "feel" for something. So that intermediate position is appealing because it is compromising and it is appealing because it seems feasible, but I do not think we should confuse effectiveness with feasibility.

Senator McElman: I do not agree with you entirely. I think it is appealing because it enters the field which I sense Senator McGrand wishes to move into, and that is the field of preventive criminology. In Canada, as in most other western nations, we spend immense amounts of money in reaction, and only in reaction, to crime, as we describe crime today. Many of the things we describe as crime today really are not crimes against society, but that is another very involved subject.

Dr. McGrand has had a lifetime of experience and knowledge in the field of preventive medicine. Over the very many years, hundreds of years, which society has devoted to medicine, we have devoted a disproportionate amount of our worldly wealth in reaction to disease and illness, but, finally, enlightened people such as Senator McGrand began to realize that savings in human lives and in the wealth of any society lie not in reacting to illness but in finding the causes of illness and in having mass immunization and so on.

I sense that this is the same sort of thing Senator McGrand and others would like to see Canada, as a leader in this field, starting to devote itself to in both physical and financial resources: preventive criminology as opposed to corrective criminology, which has been so unsuccessful.

We are struggling in Parliament now with a new approach. Many of us appreciate that it is perhaps a step forward but that it is only another palliative when compared with what should be done in terms of preventive criminology, in terms of finding the causes.

I have found, as you have apparently found, Dr. Langley, this whole discussion quite stimulating, but I should hope we can return to what Senator McGrand said in initiating this whole discussion, and that is, what usefully can this committee and Parliament do in stimulating within Canada, be it financially or otherwise, some really useful work in preventive criminology, and perhaps with most particular attention to the causes, the causation at the infancy level and those levels which Dr. Penfield studied so closely over the years in his immense activity, when the mind, as I think he used to say, is like a blotter?

Professor McKay: I am in complete agreement with you, Senator McElman. I believe I suggested in my opening remarks that I feel the educative process is probably one of the most important areas. I do not necessarily agree that we are in a total state of ignorance as to symptoms or possible areas of identification of problems.

Where Dr. Langley and I tend to disagree is on what possible effects intervention at that stage might have in the long run. It is clear that there are so-called behavioural problems which can be identified at a reasonably early stage. What we tend to agree on is what constitutes a behavioural problem. I think Dr. Langley's major concern is the range we would wish to incorporate in that, in terms of getting pwople into the school system at a young age or in terms of at least identifying some possible problems on which we can bring resources of the country to bear.

But I am certainly in agreement with you, senator, in respect of getting the community involved with the child rather than pushing the child off into a system which inevitably ends up in a criminal justice system. I agree with you that the corrective measures have not worked successfully. I should like to see us going to the preventive stage. It is risky for us in terms of suggesting research funds for preventive measures, however. We simply do not get them. When we want to study the health aspects as opposed to the pathology aspects we run a risk, but that is a risk we take as a matter of course.

The orientation must, of course, change. Studies of the various family groups, for example, do not appear to be producing the same adjudged delinquency rates. Perhaps the king of thinf we should better understand is what is going on in early life, and there are some areas in which I find myself in complete agreement with you.

The Chairman: Do you have anything to add to that, Dr. Langley?

Dr. Langley: No, sir.

The Chairman: Honourable senators, before we close I should like to thank Dr. Langley and Professor McKay for coming here this morning. As I stated at the outset, our committee is charged with the responsibility of looking into and reporting upon the feasibility of the Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society. I think we are all agredd that it is "feasibility" as distinct from "desirability." The committee examined the question and came to the conclusion that there would not be much point in duplicating investigations which had already been carried out in the United States and other places. We then came to the

decision that we should investigate whether there were any areas of concern for us, such as early recognition of symptoms, diagnosis or early preventive steps which might be taken, which would warrant such an inquiry. Now, if I have gauged what you said correctly, you do not think there is a sufficient body of knowledge available at the present time that would warrant that type of inquiry. However, I should like to get your reaction to that before we go.

Senator McGrand: Mr.Chairman, I do not think you put that question right.

The Chairman: I am asking their opinion.

Senator McGrand: But you are going to put them on the spot in asking them what we should or should not do.

The Chairman: Well, that really is our decision. But the point I wanted to establish was whether, in their opinion, there is a sufficient body of knowledge available at the present time to make such an inquiry feasible.

Dr. Langley: I will state it in terms of research policy priorities. My position before this group of people this morning has been that I would not recommend it as a top priority research item. For me, the top research priority item should be that of reaction, not causation. That is my position.

Senator McGrand: Mr. Chairman, you pinned them down to this, you have asked them to give an opinion whether we should go on with research into early signs of delinquency, but that is only part of the problem, and that is not the whole story by any means. The whole story is this, should this Senate committee make any attempt to add to our present knowledge, or lack of knowledge, of these things that are going on? I understood you, when we came in here first, to say that there was some sort of field we could occupy.

The Chairman: Yes, and if they have suggestions to make in that respect, they would be very acceptable.

Professor McKay: I certainly made my suggestions at the beginning as to where I thought energies could best be directed. In terms of literature on causation I can provide references for you. There is a book I brought along, for Senator McGrand in particular, involving a 30-year study, and the kids identified certainly had problems. There is an incredible body of knowledge, but how to make sense out of it in terms of policy formulation in working towards a preventive aspect or working towards information transmission in the preventive aspect, I would certainly agree and I would highly recommend working in that field very strongly.

The Chairman: You think a Senate inquiry into that field would be worthwhile?

Professor McKay: In terms of illuminating and educating the difficulties in the area, I think most definitely that it would be, but I am in a terrible position, as Senator McGrand pointed out, in that I am not sure where you are going to go. We have made some recommendations here today—contrasting recommendations in many cases—but I think the decision obviously is yours.

Dr. Langley: I would add another appendage to that on the causation versus reaction emphasis, and my concern is that education does not begin with the public, but it begins with us in this room, and I would strongly recommend some kind of more permanent liaison between the Hill and the universities. I find this kind of educational forum incredibly constraining. The young people talk about a rap session, and once I decided I had something to offer this subcommittee, I was absolutely thrilled to have the opportunity to get near people who are themselves or who are near policy makers and the people who control fiscal allocations. I myself have some expertise, but I have no political power. You people have political power, but I do not know how much expertise you have because of the forum we are in. But I think that if we got together the addition of our resources would produce a geometric outcome with respect to fashioning an approach by this subcommittee, for example, towards a study of crime causation, crime reaction, but I think the education needs to start with us, both ways. What kind of resources are available? If I want to submit a research proposal, how would I do it, where would I do it, who would I do it to, and what kind of sponsorship would I get? Secondly, would you not want to learn a bit about my proposal before you sponsored it, for example? I would be glad to give my time freely—I believe deeply in voluntarism. I do not think it should be done in prisons, and to me this is not a prison. It could be done within these walls, and you all have a lot to teach me. So that is the forum of education I would like to see. I see this as an intermediate between causation and reaction research, and if you don't drink beer, which I do, if you drink coffee, great, start talking over coffee. Come out to my class; come out to Professor McKay's class; just come out and meet some people who are criminology students and who will be the criminologists of the future. Let them know where Parliament stands on some of these issues, and see the kind of Canadians, the exciting Canadians, we are attracting into this field, a field that may be drying up its very resources at precisely the time in this century when we need them. So, for me, education can and should be right in this room. There ought to have been a lot more people here than are here. So, I guess, that would be my approach.

The Chairman: On behalf of the committee, I want to thank you very much for taking time out to come here and give us your views, your experience and your research, all of which have been very, very helpful to us.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 14

THURSDAY, MARCH 11, 1976

Complete Proceedings on Bill S-47, intituled:

"An Act to amend the Quarantine Act"

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

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Issue No. 14

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Complete Proceedings on Bill S-31 intituled:

"An Act to amend the Quarantine Act".

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

29785—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C.,

Deputy Chairman.

AND

The Honourable Senators:

Argue, H.
Blois, F. M.
Bonnell, M. L.
Bourget, M.
Cameron, D.
Croll, D. A.
Denis, A.
*Flynn, J.
Fournier, S.
(*de Lanaudière*)
Goldenberg, H. C.
Inman, F. E.
Langlois, L.
Macdonald, J. M.
McGrand, F. A.
Neiman, J.
Norrie, M. F.
*Perrault, R. J.
Phillips, O. H.
Smith, D.
Sullivan, J. A.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate of Wednesday, 25th of February 1976:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Basha, for the second reading of the Bill S-31, intituled: "An Act to amend the Quarantine 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 McGrand moved, seconded by the Honourable Senator Basha, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, March 11, 1976
(18)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 10:05 a.m., the Chairman, the Honourable Senator Carter presiding.

Present: The Honourable Senators Bonnell, Bourget, Carter, Denis, Fournier (*de Lanaudière*), McGrand and Smith. (7)

The Committee proceeded to the consideration of Bill S-31 "An Act to amend the Quarantine Act".

The following persons were heard in explanation of the Bill:

Mr. Bob Kaplan, M.P.,
Parliamentary Secretary to the
Minister of National Health and Welfare;

and from *The Department of National Health and Welfare:*

Dr. Lyall Black, Director General,
Programs Management,
Medical Services Branch;

Dr. R. A. Sprenger,
Senior Consultant,
Quarantine and Regulatory,
Medical Services Branch.

Mr. Kaplan made an introductory statement. The witnesses answered questions put to them by Members of the Committee.

After discussion and on motion of the Honourable Senator Bonnell, it was *RESOLVED* to report the Bill without amendment.

At 10:40 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, March 11, 1976

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill S-31, intituled: "An Act to amend the Quarantine ACt", has in obedience to the order of reference of Wednesday, February 25, 1976, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

C. W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, March 11, 1976.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill S-31, to amend the Quarantine Act, met this day at 10.05 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Bill S-31, an act to amend the Quarantine Act, which was referred to us by the Senate. We have as our witness, Mr. Bod Kaplan, M.P., Parliamentary Secretary to the Minister of National Health and Welfare, and Mr. Kaplan has some of his officials with him. I will ask Mr. Kaplan if he wishes to make a preliminary statement, and if he would introduce his officials.

Mr. Bob Kaplan, M.P., Parliamentary Secretary to the Minister of National Health and Welfare: Mr. Chairman and honourable senators, I would like to make an introductory statement, if I may, but before doing so I would like to introduce the officials of the department who are with me this morning. Dr. Black is on my immediate right; on his right is Mr. Mullane; and at the end we have Dr. Sprenger.

I expect that honourable senators already understand the basic purpose of Bill S-31, from the introduction given by Senator McGrand. The bill adds provisions to the Quarantine Act, to deal with communicable diseases which are a grave danger to public health but which are not presently specified in the law. The concern is that a traveller who has, or is suspected of having, a dangerous communicable disease, may spread it to others unless he is promptly detained.

To ensure fairness to all, the additional authorities sought is subject to approval by the Minister of National Health and Welfare, who, in turn, has to show cause to a superior court judge within 48 hours as to why a person is being detained.

The need for Bill S-31 is a reflection of the rapidly changing times we live in. We hear almost daily of new advances in medicine, but at the same time we hear of more and more new concerns for which there is not yet adequate personal protection or treatment. Some recent concerns involve our environment, such as pollution of water and air by all kinds of wastes. Other concerns arise from the possibility that recently discovered dangerous communicable diseases could be spread from other continents to Canada. Indeed, some dangerous communicable diseases were not even identified in the medical literature as recently as six years ago. Today, travel by air makes it possible for diseases to be spread very quickly to far distant shores once an outbreak occurs.

In the past, all countries have been especially concerned with diseases such as smallpox, cholera yellow fever and the plague, which are well known to result in epidemics, unless outbreaks are immediately ringed off. Accordingly, international sanctions have been drawn up by the World Health Organization, and acts and regulations on quarantine control have been passed to further protect national interests and public health.

Under the International Health Regulations proclaimed by the World Health Organization, signatories must limit quarantine control and detention at ports of entry to the four major quarantinable diseases I just mentioned. The existing Canadian Quarantine Act observes this limitation. Canada applied two years ago, however, to have the World Health Organization add a dangerous communicable disease, namely, Lassa fever, to the listing of notifiable major quarantinable diseases. The application was rejected on the grounds that not enough was known at that time about the disease, and that it was doubtful that including Lassa fever in the International Health Regulations would be effective in controlling the spread of the disease. While Canada accepts that no regulatory sanctions can be expected to guarantee that the disease will be kept where it is presently confined, in West Africa, it is nevertheless important that Canada take the measures necessary to protect our own national interests. The Canadian public has a right to expect an effective enforcement of quarantine control.

Urgent action is vital in cases of newly identified contagious diseases, in order to minimize the risks of importing the disease into Canada. A deficiency in the present Quarantine Act prevents urgent isolation of an international traveller arriving in Canada who is believed capable of spreading disease of serious consequence to the public health, if such disease be other than smallpox, cholera, plague or yellow fever. In other words, the guarantine officers at our ports of entry do not have the authority to deal quickly with any other dangerous communicable diseases for which detention in isolation is the only practicable solution.

The types of diseases alluded to as "dangerous diseases—a grave danger to public health in Canada—are those which are recognized as highly communicable, and which could potentially cause an epidemic. They are also diseases for which specific treatment is lacking, which carry a high mortality, and for which there is no known immunization protection. The term "dangerous diseases" in this context also implies that quarantine action would be useful. It is not intended that such highly communicable diseases as epidemic influenza, for example, be included, because no regulatory measures are possible that could effectively stop entry of the disease.

The Canadian Quarantine Act was amended in January, 1972. It is remarkable that in such a short space of time, that further amendments are now urgently needed to include provisions for quarantine control of a number of so-named "dangerous diseases," which are not presently listed in the schedule of the act; but as I said, Mr. Chair-

man, this is a reflection of the rapidly changing times we live in.

I have introduced the officials who are with me, and we are prepared together to attempt to answer any of your questions. Thank you, Mr. Chairman.

The Chairman: Thank you, Mr. Kaplan.

Honourable senators, do you wish to proceed generally on the bill, or would you like to go through it clause by clause?

Senator Bourget: There is one question that I would like to ask, Mr. Chairman. How will this work vis-à-vis the international health regulations? Have the international health people been advised, or do you have to advise them, or what?

Mr. Kaplan: The World Health Organization, of which we are a member, is kept informed of all activities, including this activity, and there are precedents for our move. The United States and the United Kingdom have already taken measures to provide for dangerous diseases not included in the quarantine schedule, so we are confident that ours will not be objected to.

Senator Bourget: There will not be any breach of protocol, or whatever you call it?

Mr. Kaplan: No. The precedents that are available indicate that this will just be accepted by the World Health Organization.

Senator Bonnell: What makes it so urgent this year? Is it the Olympic Games? How is it that this became all of a sudden so urgent?

Mr. Kaplan: Two events of international importance are being held in Canada: the Habitat Conference, which will bring three or four thousand people from all over the world, is one; and, as you noted, the Olympic Games is the other. So it seems appropriate, in the light of our present state of knowledge, to act now so as to be prepared for events that might arise this year.

Senator Bonnell: So these are the two reasons making it so urgent. It is not that there is a lot of Lassa fever, or some other contagious disease at our doorstep; it is a matter of the Olympic Games, and people coming from all over the world?

Mr. Kaplan: Yes. This is something that is anticipated in the future, but it is not a present crisis, or a present danger.

Senator Bonnell: I notice in clause 1 of the bill, in proposed section 7(1), you would now add "or any other disease". If a disease is not contagious, what are you worrying about it for? If somebody has a non-contagious disease like cancer or diabetes you would not put him in isolation for three days, or hold him in detention, or send him back to where he came from, would you?

Mr. Kaplan: No.

Senator Bonnell: Then why do you put those words in there?

Mr. Kaplan: The words are underlined because they are new words.

Senator Bonnell: But why do you need them?

Mr. Kaplan: The expression, "infectious or contagious diseases" sounds pretty general, but actually, if you look in the definition section of the present statute, that is limited to only four diseases that are listed in the schedule.

Senator Bonnell: Why not change the definition, then?

Mr. Kaplan: If we did that, we would be directly violating our undertaking under the international agreement that we signed with the World Health Organization, because in that agreement we undertook that no diseases would be routinely treated as scheduled diseases other than the four internationally agreed upon. So what we are doing is introducing a parallel stream of legislative control over other diseases.

You will notice that the full expression is actually:

> "or any other disease, the introduction of which into Canada would, in the opinion of the quarantine officer, constitute a grave danger to public health in Canada."

Cancer would not constitute a grave danger to public health because, as you noted, it is not an epidemic type of disease; so far as we know, it is not communicable.

Senator Bonnell: I cannot understand why this expression is there. You already have infectious diseases and contagious diseases included.

Mr. Kaplan: "Infectious or contagious" only means the four scheduled diseases that I referred to, so we need extra language to cope with others.

Senator Bonnell: And that is in the act itself?

Mr. Kaplan: It is in the schedules of the act, but the answer to the question, of course, is yes.

Senator Bonnell: And you cannot change the schedule of the act, rather than including that awfully broad term, "any other diseases," which seems to give an awful lot of power? Take diabetes, for example. Does it mean that no more diabetics will be allowed into Canada?

Mr. Kaplan: It is not "any other disease—period." It is, "any other disease—comma—which ... would, ... constitute a grave danger to public health".

Senator Bonnell: I cannot, for the life of me, understand why you want the "any other disease" in there. That gives an awful lot of power. Any disease in the world can now be thrown in under this clause.

Mr. Kaplan: Any disease, provided that in the opinion of the quarantine officer, and subject to the safeguards prescribed, it constitutes a grave danger to public health in Canada.

Senator Bonnell: Well, you say influenza is not one, but more people die of influenza today—and this has been the case in Great Britain and the United States—than of any other disease. In fact, more people have died there of influenza than died in the Vietnam war.

Mr. Kaplan: But the opinion of our medical advisors is that quarantine is not an effective method to control this.

Senator Bonnell: But you don't go to your medical advisor; you go to that man who is not too well trained out there at the gate at the airport.

Senator Bourget: But surely they must have a doctor there too?

Senator Bonnell: Do you have a quarantine officer at every port of entry?

Mr. Kaplan: There are 17 quarantine stations in Canada, and provision is made for a quarantine officer to be available on call at all ports of entry. If a customs official has any ground for suspicion, then his responsibility is to call a quarantine officer, and the quarantine officers are backed up by a staff which includes medical doctors; but not all quarantine officers are medical doctors.

Senator Bourget: But I think there is a doctor located at every station, because how could somebody judge if he is not a doctor?

Mr. Kaplan: Even more than that, after the doctor or the quarantine officer has made his determination, he needs the minister's approval, and this is an additional safeguard, and that approval has to be confirmed within 48 hours by a judge; the judge has the power to refuse the order or to amend it or to confirm it.

Senator Bonnell: Meanwhile the individual is many miles from Ottawa; he is stuck in Vancouver perhaps for 48 hours.

Mr. Kaplan: Senator, you have made the point very well. There is the question of the liberty of the traveller visiting our country, but on the other hand there is the interest in protecting the health of all Canadians.

Senator Bonnell: I agree with protecting the health of all Canadians, and I agree with measures taken in connection with those contagious diseases which we have listed, yellow fever, cholera, the plague, smallpox and the others; but "any other disease", that is a different matter.

Senator Bourget: It says "any other disease" but they are classified.

Senator Bonnell: But they are not specified. That is the problem.

Senator Bourget: But if they create a danger.

Senagor Bonnell: But who makes that decision?

Senator Bourget: Well, I suppose the doctor does, and he has some knowledge.

Senator Bonnell: But the doctor is not going to be sitting there at Vancouver Airport waiting for somebody to come in who has some disease.

Mr. Kaplan: If a person is held because a disease is suspected, as I mentioned there are two levels of safeguard. One is that the minister has to authorize the detention, and then a judge has to approve it within 48 hours. If you go through the bill, you will see that the individual has to be informed of his rights and that he is entitled to have counsel present at the hearing. Everything is being done to confrom to the Bill of Rights and to respect the civil liberties of the individual.

The Chairman: What factors would alert an officer at a port of entry that a person may have been in contact with a disease? I am not speaking of somebody who comes in and who is actually sick. If somebody comes in and he is actually sick, that is a different matter. But somebody may come in with no appearance of being sick but who is still a carrier.

Mr. Kaplan: Well, let me give part of the answer, and then I shall ask the officials to continue. One factor is the place he is coming from. We know that Lassa fever comes from West Africa and certain other diseases are endemic in other parts of the world, so there will be an awareness of that factor when a traveller arrives in our country. Secondly, there is material, through international medical information, by which we are informed about possible carriers and possible problems. As to medical symptoms, I would like the officials to have an opportunity to tell you the sort of things that quarantine officers look for.

Dr. Lyall Black, Director General, Programs Management, Medical Services Branch, Department of National Health and Welfare: Mr. Chairman, there are two separate points of view here. First of all, there is the traveller coming from a country, who is not ill but who may well have been exposed to a dangerous disease, and we provide our quarantine officers with updated bulletins which we have received form the World Health Organization and the communicable diseases centres, as well as from our own officers overseas, so we can alert the individual passenger to the fact that he may have been exposed to a dangerous disease. We advise him to check with his own doctor if he develops any symptoms.

We also have a procedure whereby we can place persons under surveillance. Again, they are not ill, but there is the risk that they may well have been exposed to a disease. Perhaps they have been to Ethiopia and have been in danger of contacting smallpox and they have not been vaccinated. This places a requirement upon them to report to their own medical officer of health. The quarantine officer will also advise that medical officer of health. It is only when the patient is actually ill that the quarantine officer would have to have a medical opinion, if he himself is not a doctor, and that would include a history of where the man has been, what illnesses he has had and what immunizations he has had, and at that time it would be a medical judgment as to whether or not a dangerous disease could have been contracted. In many cases it is not possible to decide this without making some specialized tests. I think a case in point that we run into once or twice every year is the possibility of smallpox. A person arrives on a ship or on a plane with a type of eruption similar to smallpox, and it is only by going out to the individual patient with some type of specialized equipment and making tests that we can make a diagnosis. So, in effect, the diagnosis is held in limbo until we make a definite diagnosis. In fact with a disease like Lassa fever it is very difficult to make a definite diagnosis in a short period of time. But we see this as being utilized very rarely. We are going to brief all our quarantine officers on these particular diseases and the concerns we have about them.

We also have a concern, of course, that newly diagnosed diseases might come in the next year or two, diseases of which we have no knowledge at the present time.

Senator McGrand: What is the incubation period for Lassa fever?

Mr. Kaplan: I think it is actually six to 13 days, but Doctor Sprenger, who has been in Washington recently, would know more about that.

Dr. R. A. Sprenger, Senior Consultant, Quarantine and Regulatory, Medical services Branch, Department of National Health and Welfare: That is close enough.

Senator McGrand: And during that incubation period he may give no evidence whatever that he may have lassa fever?

Mr. Kaplan: That is correct.

Senator Bonnell: Why can't you set this bill up so that the Governor in Council can add diseases from time to time, rather than bringing it to the House of Commons and to the Senate and to the Governor General each time?

Mr. Kaplan: Will, in fact the present act does contain the power, by Order in Council, to add diseases to the schedule, but an Order in Council normally takes a longer period of time than might be in the national interest in a particular case, so this bill is bringing in a supplementary power.

Senator Bonnell: Are you telling me that Orders in Council have so much red tape in them today that you can get through two houses of Parliament and the Governor General more quickly?

Mr. Kaplan: No. We are not doing this in a moment to apprehend some individual at the border, which might be what an Order in Council might require.

Senator Bonnell: Then perhaps I might suggest that there should be a section in this act giving power to the Governor in Council so that if in, say, July a new disease is discovered and they want to stop somebody with it from coming into Canada freely, then they can add this disesase automatically to the Quarantine Act without bringing Parliament back.

Mr. Kaplan: It could be done by Order in Council, but that is not as efficient a way of proceeding. For an Order in Council the name of the disease would have to be known. In this case, with the minister's approval and subject to judicial review, a person could be detained with some new and not fully understood disease.

The Chairman: What is the restrictive force of this agreement? You say it is limited to four diseases. How can you add more if it is limited in that way? You would be transgressing some agreement.

Mr. Kaplan: Yes, we would. If we acted by Order in Council to add a disease to the schedule, we would be violating our literal agreement at the World Health Organization. So that would be a second reason, senator, for not wanting to proceed in that way.

Senator Bourget: Any time you do something, you have to inform the world Health Organization?

Mr. Kaplan: Yes; we always do.

Senator Bourget: Up to now there are only two countries which have done the same, is that correct—the United States and the United Kingdom?

Mr. Kaplan: I mentioned only the two, but there are others in addition to the United States and the United Kingdom.

The Chairman: What would be the case if a person came from India, or Southeast Asia, and had been exposed to leprosy, which is not too unlikely? Leprosy is a difficult thing to diagnose. What would happen in that case?

Mr. Kaplan: As I understand leprosy, and I stand to be corrected, it is a disease which has a long incubation period. It takes several years to incubate; it is not a disease which could stimulate an epidemic.

Senator Bourget: It is contagious, though.

Mr. Kaplan: It is, but it requires a prolonged period of contact—years and years. Is that not correct?

Dr. Black: That is correct, Mr. Kaplan.

The Chairman: He would still be a menace to public health, would he not? The fact that it might take three or four years before you discover you have the disease is one thing, but you would have contracted the disease at the time of entry or shortly after.

Mr. Kaplan: The quarantine law permits us to detain a person, subject to all the safeguards, until the person is no longer a contagious threat. If one were to resort to this statute in order to control leprosy, that would be an impractical solution because the quarantine period would be too long. You could not hold the person for years until he ceased to be a carrier. Perhaps Dr. Black would care to comment on this.

Dr. Black: Leprosy is not a highly contagious disease and, as such, is not a danger to public health. Nowadays people work with lepers at first-hand. They do not use sophisticated isolation techniques. It is not necessary. It is quite a difficult disease to contract. Indeed, we have a number of people in Canada being treated for leprosy now, but we do not expect it would be necessary to quarantine people with leprosy. We treat them in hospitals. There is a minimum danger to public health.

Senator Smith (Queens-Shelburne): Mr. Chairman, although this does not bear directly on the bill, I wonder if someone would be able to give us a short report on the world situation with respect to smallpox at the present time. The last bill which did this kind of amending was for the purpose of making it no longer necessary to have vaccinations for smallpox in order to re-enter Canada. What is the world position now, and how is our policy working?

Mr. Kaplan: Senator Smith, you have given me the opportunity to make public the latest statement of our department on that subject. I would be delighted to be able to make this information public

The Chairman: By all means. Make your statement, please. Is that agreed, honourable senators?

Hon. Senators: Agreed.

Mr. Kaplan: From the time when smallpox became reportable to the Dominion Bureau of Statistics, around 1928, Canada experienced a few cases of smallpox each year until the end of World War II. There were 120 cases in 1938; 198 cases in 1939; 5 cases in 1945; 2 cases in 1946. The only case since 1946 has been one importation from South America in 1962 at Toronto. There have, of course, been many alerts, but prompt investigation has disclosed some other cause for the illness.

In Great Britain endemic smallpox disappeared about 1934. There have, of course, been several importations since and more recently a samll outbreak arising from the escape of the virus from a laboratory.

The eradication campaign against smallpox was initiated in 1966, but much of the infrastructure on which is based

the remarkable success story was established in the previous ten or twelve years. The most important aspect in the successful eradication of smallpox was the development of freeze-drying techniques to supply large quantities of stable smallpox vaccine.

In 1962 the Government of India, among several other countries, decided to institute a smallpox eradication program. WHO supplied consultants and advice and UNICEF supplied money for the manufacture of freeze-dried vaccine in India. The U.S.S.R. gave the Government of India millions of doses of vaccine.

In 1967, five years later, India suffered a very severe epidemic. WHO intensified its efforts in 1967. The disease at that time was endemic in 30 countries and 12 others imported it that year. There were some 131,000 cases reported that year and it has been estimated that there probably were 2½ million cases.

The disease is now contained in the remote regions of Ethiopia, and this week, which is pretty current information, only 51 cases of smallpox remain in the world.

Senator Smith (Queens-Shelburne): What a tremendous change that is.

Mr. Kaplan: It is a real success story.

Senator Smith (Queens-Shelburne): It certainly is.

Mr. Kaplan: I am glad to say that the smallpox vaccine is manufactured in my own constituency. Ironically, there is a declining demand for the product because of the process of eradication of the disease.

Senator Bonnell: Maybe someone will start producing a Lassa fever vaccine.

Mr. Kaplan: We hope so. There is not one yet.

Senator Smith (Queens-Shelburne): Mr. Chairman, the virtual eradication of smallpox has taken a long time. According to my recollection of what I have read, the earliest smallpox vaccination, which goes quite a distance back in the history of North America, took place in my home town in the late 1700s.

Senator Bonnell: You have a good memory.

Senator Smith (Queens-Shelburne): Yes. I am getting quite old, too. The then leader of the community, who was "chief cook and bottle washer"—a representative in the first legislature and that sort of thing—set the example for those who were the inhabitants of the town by having his own family vaccinated. Unfortunately, one of his children died, which was a sort of sacrifice, but everybody else lived, and he was able to influence everyone in the community to protect themselves against what was then known as the cowpox, as I remember it. All of that information is contained in a diary which came to light only 50 or 60 years ago.

Mr. Kaplan: What is regrettable is that new diseases keep turning up. If there were only the four diseases, then with one down there would be only three left to worry about, but with the tremendous amount of international contact and travel, and the opening of so many remote areas of the world, new diseases keep appearing.

Senator Smith (Queens-Shelburne): The smallpox story is one of the great advances in world medicine.

The Chairman: Many viruses develop new strains and adjust to vaccines, but apparently the smallpox germ has not succeeded in doing so.

Mr. Kaplan: No, it has not, and the hope is that it will be eradicated within a short time.

The Chairman: I believe you mentioned the plague as one of the four diseases.

Mr. Kaplan: Yes.

The Chairman: As I understand it, the plague has developed different strains, has it not?

Dr. Black: It has, Mr. Chairman, but they are amenable to treatment. The various strains of the bacillus which cause the plague are amenable to treatment. There is a vaccine available, but the disease itself can be treated with antibiotics.

Senator Bonnell: Mr. Chairman, under this act, if a quarantine officer suggested that a person should have a medical examination, would that examination be paid for by the Government of Canada or would it have to be paid for by the person attempting to enter Canada?

Mr. Kaplan: We have the authority, under the act, to require the carrier bringing the individual to our country to pay for the cost of any steps taken under this act. Of course, the carrier in turn can require that the individual pay.

Senator Bonnell: What do you do in the case of those who arrive without funds and must undergo this examination? Do you go back to the carrier?

Mr. Kaplan: No, as far as the government is concerned, we have the right under the act, which we would exercise, to claim payment from the carrier, which means the transportation company which brought the individual into the country.

Senator Bonnell: That is in another section, apart from this amendment.

Mr. Kaplan: Yes, it is not being amended. It is section 15 of the act.

The chairman: Are there gaps still not covered by this bill? If this bill became law tomorrow and new diseases were discovered, do you have all the means required to take care of the situation?

Mr. Kaplan: One hopes so, this is a new act. Quarantine legislation has existed in our country for 100 years. This act is new, as of 1972, and in that time we have had to come back for this amendment, which I hope will give us sufficient foresight and authority to live with this act for a considerable period of time. However, I doubt if the minister would be prepared to promise that he will not be back for amendments if that were determined to be in the public interest.

Senator Bonnell: In the case of someone detained for 48 hours, is board and lodging also charged to the carrier?

Mr. Kaplan: To the transportation company, yes.

Senator Bourget: Do you have any difficulty in collecting from the carriers?

Mr. Kaplan: Not so far.

Senator Bonnell: Approximately how many would have been stopped in the last year or five years?

Mr. Kaplan: Forty million travellers, including Canadians, cross our borders every year, so the percentage would be very low. However, in absolute numbers, Dr. Sprenger, could you give us figures?

Dr. Sprenger: There has not been a detention under the Quarantine Act, to my recollection, for at least 15 years.

Dr. Black: We have, however, detained people for the purposes of examining them and determining that they do not have smallpox.

Mr. Kaplan: But we have had no overnight guests in our quarantine stations?

Dr. Sprenger: I will clarify my previous statement by saying that the last case of smallpox endemic in Canada occurred in 1946 and, as Mr. Kaplan pointed out, there has not been occasion to detain cases of smallpox.

Mr. Kaplan: What about other infectious diseases?

Dr. Sprenger: There has been no case in which an order of detention has been made, as I said, to my recollection within the last 15 years.

Senator Bonnell: How many people were stopped, help up and examined without being detained, then?

Dr. Sprenger: That is a very good question. I couldn't give you a figure, but I will give an estimate on the basis of the number of alerts that have occurred in recent years. Perhaps half a dozen a year for brief periods, the "brief" meaning three or four hours, until the diagnosis could be ascertained and a major quarantine disease excluded.

The chairman: Do honourable senators wish to proceed through the bill clause by clause?

Senator Bonnell: I move that the bill be accepted as read.

The chairman: Shall the bill carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Thank you very much, gentleman.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 15

THURSDAY, MAY 6, 1976

Third Proceedings on:

The Study of the feasibility of a Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society.

(Witnesses—See Minutes of Proceedings)

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29787—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C., *Deputy Chairman.*

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier (*de Lanaudière*)	Smith (*Queens-Shelburne*)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter;

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science.

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P. C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,

Clerk of the Senate.

29787—2

Minutes of Proceedings

Thursday, May 6, 1976
(19)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 11:05 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Bonnell, Bourget, Carter, Croll, Denis, Fournier (*de Lanaudière*), Macdonald, McGrand, Norrie and Smith (*Queens-Shelburne*). (10)

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

In attendance: Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken.

The following witness from the Department of National Health and Welfare was heard:

Dr. P. G. Banister,
Director,
Bureau of Surveillance Services.

After discussion and on motion duly put, the Committee AGREED it would call further witnesses before presenting a final report to the Senate.

On Motion of the Honourable Senator Bourget, it was AGREED that the letters, briefs and submissions received by Senator McGrand on the subject matter under study by the Committee be printed as appendices to this day's Minutes of Proceedings and Evidence. The appendices are as follows:

No. 1 Letter received from Dr. B. A. Boyd, M.D., Medical Director, Mental Health Center, Ontario Ministry of Health, Penetanguishene, Ontario.

No. 2 Letter received from Dr. R. E. Stokes, M.D., Brasebridge Community Mental Health Service, Riverside Centre, Brasebridge, Ontario.

No. 3 Letter received from Dr. Eileen S. Whitlock, Assistant Executive Secretary, The National Association for the Advancement of Humane Education, The University of Tulsa, Tulsa, Oklahoma, U.S.A.

No. 4 Letter received from Dr. C. K. McKnight, M.D., Chief of Service, Forensic, Clarke Institute of Psychiatry, Toronto, Ontario.

No. 5 Letter received from Dr. Gordon E. Warme, M.D., Chief, Child and Adolescent Service, Clarke Institute of Psychiatry, Toronto; Assistant Professor of Psychiatry, University of Toronto, together with three Addenda entitled "Preventive Implications of Development in the preschool years" by Lois Barclay Murphy; "Supplemental Care" and "The High Risk Infant", two position papers from the Ontario Psychiatric Association subcommittee on child psychiatry.

No. 6 Letter received from Dr. John T. O'Manique, Associate Professor of Philosophy, Saint Patrick's College, Carleton University, Ottawa; Member, Third Research Team for the Club of Rome.

At 12:17 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, May 6, 1976.

The Standing Senate Committee on Health, Welfare and Science met this day at 11.05 a.m. to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we want to accomplish as much as we can, so I call the meeting to order and introduce our witness.

We have with us this morning Dr. Banister, Director, Bureau of Surveillance Services, Department of National Health and Welfare. I understand that Dr. Banister has a short oral presentation to make, which will open the meeting for questions.

Dr. P. G. Banister, Director, Bureau of Surveillance Services, Department of National Health and Welfare: Honourable senators, I notice in the proceedings of the previous meetings that your witnesses introduced themselves, so perhaps I should follow that pattern and give you a few words on my background, which would allow you to see my interests. Basically I am pediatrician, who started with a period of research into the causes of blindness in premature infants. This was carried out in Oxford and in Montreal. Following this I went into pediatric practice in Montreal for a number of years. I found myself becoming more interested in the determinants of infant and adult behaviour, and I ended up by spending a year studying at the Institute of Human Relations in London. The child department there is headed by John Bowldy, whose name has come up before.

I then came back into practice and found that my range of interests was broadened even further. So one way and another, I ended up in the Department of National Health and Welfare, in the field of maternal and child health, which really remains my principal interest.

Currently, I am doing mostly administration. The programs that I administer are fairly narrow, one of which is related to birth defects; we are studying the causes of birth defects and their numbers across the country. The other two programs relate to drug adverse reaction and poisoning, which are not, I think, relevant to this discussion.

The few points which I should like to bring up seem to be related to the research papers, factor A, in which there is a paragraph concerning the fetus and environmental factors.

The Chairman: That is in the research paper?

Dr. Banister: Yes. It mentions that stressful pregnancies have been linked to mental retardation, ill health, malformations and personality defects.

These things were brought out very nicely in this research paper, and I can see that you must all be well aware of the complexity of the factors which you have been asked to consider. I think you have quite wisely decided to limit your attention to certain areas. You have excluded, as I understand it, drugs and socio-economic factors, and some of these things.

The interest that I have had has concerned violence and the fact that John Bowlby has alleged that there may be some link between severe maternal deprivation and what could be called antisocial behaviour later on. His original paper was entitled "Forty-four Juvenile Thieves." It was on the basis of the psychoanalytic material which he derived from interviewing these young criminals that he developed the hypothesis that there might be a link between the maternal child relationship and future behaviour.

There has been an incredible amount of research devoted to this subject over the past 25 years. It is interpreted in one way by some people and in another way by others. Certainly his original thesis was based on the kind of deprivation which fortunately we do not see too much of nowadays. But we are still left with the suspicion that the quality of the reaction between mother and infant must have something to do with our future personalities. The research paper you have received brought out the fact that perhaps some of this has to do with the child itself. In other words, if the child is damaged at birth, or is different in some way, then perhaps any mother would interact with a damaged baby in a different way from a normal baby. I think this is perhaps what you are trying to get at: Do we have babies who are different at birth and who will develop differently if handled in other than a normal way, and do they need to be handled in a special way in order to develop more normally?

I have not been concentrating on this subject for quite a long time, so I apologize that I am not up to date in the literature. There are recent papers which still raise the question of this relationship.

I should like to draw your attention to ethological studies, in which we try to interpret human behaviour by looking at animal behaviour. One interesting point is that in a lot of mammals there is never aggression against the young. It is not the kind of behaviour which occurs. If there is an attack on the young, usually there is a mechanism or signal which switches off the attack. I believe one of the classical ones is that of the wolf, where the baring of the neck, or putting it into a certain position, stops the attack. So the child abuse we are seeing so much of must be a manifestation of very abnormal behaviour. I realize there are other committees looking at this. Nevertheless it is a matter of great concern to me.

I will not make any further introduction, except to say that there may be some avenues along which research

could be pursued. I was just talking with Mr. Reed in the Justice Division of Statistics Canada, to ask him if it might be feasible to get information on contacts with the judicial system by individuals and relate it back to the events around birth. It was an idea which occurred to me. My idea would be that if we presume that there is a population of infants who are damaged at birth, that we could look for their names, look for them coming into contact with the judicial system later. Prematurity has perhaps been one area which may lead to brain damage. Birth injury used to but, in view of the fact that deaths from birth injury have declined very markedly over the past 10 years, it is probable that birth injury itself would not be a fruitful factor to pursue. Prematurity runs at the rate of between 6 per cent and 8 per cent, and if we took mothers under twenty, it is higher than that; it is 8 per cent or 9 per cent. If we selected the population of premature infants from the birth records, and we then linked them, or looked for their names, in lists of contacts with the judicial system, admissions to penitentiary or coming before the courts, or something, it might be possible to give you hard evidence about whether prematurity was related to an increased contact with the judicial system.

Mr. Reed of the Research & Analysis Section, Statistics Canada, has designed a research program entitled "A Study of Criminal Histories" and a study of explanatory factors in those histories. Mr. Reed was thinking of going forward. In other words, constructing a file on people who had contact with the system to determine what happened to them afterwards, depending on the treatment they received—whether they were paroled or had received long or short sentences, and so forth. I think this is a very interesting study design and I can see its possible usefulness in linking prematurity and birth defects in infants with criminality later in life.

The Canada Health Survey is currently being designed. It is possible that members of the committee might consider it a vehicle to explore some of the factors of relevance to their inquiry.

That concludes my opening remarks, Mr. Chairman.

The Chairman: Thank you, Dr. Banister. I perhaps should pointout to you that the primary question before this committee is the feasibility of a Senate committee's conducting a further inquiry focussed on the area of causes of crime and violence and linking those causes to circumstances surrounding birth and the behaviour of young children. The purpose of the inquiry would be to come up with somes means of diagnosing potential criminal tendencies, or criminal behaviour, which could be remedied before the child developed a set pattern of criminal behaviour.

Senator McGrand will lead off the questioning.

Senator McGrand: Mr. Chairman, I want to thank Dr. Banister for his opening statement. Had he made that statement on May 14, 1975, I am sure we would be much further ahead now.

Members of the committee have been provided with all the material I have received from the medical people in connection with this proposed study, so there is no point in repeating it.

I want to emphasize for members of the committee that I am not after an investigation covering the whole field of crime. It is much too large a subject. I made that clear when I spoke on this inquiry on May 14 of last year. I should like to limit the proposed study to how and why a boy with psychological damage, regardless of its source, at the age of two becomes a psychopathic killer at the age of 22.

I have before me an article which appeared in the *Globe and Mail* of April 3. It is an article on one John Thomas Graham, age 26, who was sentenced to life imprisonment for the mentally criminal insane. It gives his tory. He was brutalized as a boy at both home and in school: his parents beaht him; he was beaten in school because he had a learning problem. Dr. Davidson, a psychologist, who has studied his case intimately, says that it was a learning problem, probably due to something in his early life, such as lack of oxygen. Nevertheless, nothing very much was done to help him. At the age of 26 he ends up a convicted murderer. There are hundreds of such cases. Generally, they start out as a school problem.

To illustrate my point, if a young boy under the Ottawa School Board is exhibiting some difficulty, he is seen by a school psychologist who might advise that he go to the Royal Ottawa Hospital for assessment. He does not get any better and eventually becomes a school dropout. He then gets into trouble and is brought before the juvenile court. He now comes under the jurisdiction of the Province of Ontario. He gets worse. He commits murder or rape, at which time he comes under the federal jurisdiction.

What means do you have within the Department of National Health and Welfare to ferret out individuals with a high risk potential for crime?

Dr. Banister: I think what you are describing, senator, is a case history, which would mean, essentially, that the child in question, or the young boy in question, would have to be seen through the health care system of a province, unless he were an Indian or an Eskimo. Therefore, I would have to say that within the Department of National Health and Welfare there would not at the moment be any system whereby the federal authority would come in contact with that individual.

Senator McGrand: I am aware of that. That is why I posed the question. There is no way that the federal authority can coordinate the care for the problem child who is seen by the provincial authority and correlate that with federal program; there is no means by which that can be achieved, is there?

Dr. Banister: No. Quite frankly, I think that treatment at school age may be too late. I note that one of your previous witnesses, Dr. Langley, made the comment that he had not met a child or a boy who would not respond to kindness and warmth, or words to that effect. That is possibly true, but experience suggests that people with these severe abnormalities of behaviour, the anti-social, psychopathic individuals, are not treatable, and if in fact that trait is developed very early in life, then this approach may be too late. That is why I believe we should concentrate our efforts on prematurity and circumstances surrounding the birth of infants.

Senator McGrand: That is what I have been working at all along. Are you saying they are not treatable after they go beyond a certain stage? Are you going along with the old saying that you cannot teach an old dog new tricks? You cannot change the personality of a person once it has been set. It is like putting it in concrete. However, when it is flexible, I think then you can. It would seem to me that if you could detect this sort of thing at a very early stage, a

very young infant for example, a young child before he walks, I believe it would be possible.

Dr. Banister: I think your comments are interesting because this is what led me from my pediatric practice to child psychiatry, the hope that in my practice I would be able to recognize early behaviour patterns. It is on the basis of inter-reaction between mother or foster mother and infant that I could delineate some behaviour patterns, which I could modify. This I found was very difficult and considered perhaps the best approach was a more global one, where the whole concept of mothering behaviour should be looked at. Maybe our children are not getting the kind of care and attention that they deserve.

We have a declining birth rate and every child who is born merits the chance to develop to his or her full potential. I think it is difficult to determine predictive factors on an individual basis but maybe the senators would like to look at it in terms of a general approach to child rearing practices.

Senator McGrand: In my first letter, Mr. Chairman, which I sent to you, copies of which were distributed to all members of the committee, I mentioned that a study of some 1,600 breach deliveries had been conducted in Denmark and they discovered that 25 per cent of them had learning problems and that 25 per cent of them failed to pass one or two, and sometimes three, grades before they got to grade 9. I practiced medicine for 40 years and I was unaware that breech deliveries were so hard on a baby. Also, 15 of the 16 most dangerous murderers had suffered damage at childbirth.

You were speaking about this mother-child relationship. I am sure you are familiar with the work of the doctor in Los Angeles who has tried to establish the fact that the mother should see, hear and smell the baby at the time of birth. Then, that has been followed up by the doctor in Paris who delivers babies in the dark and does not let anyone speak until the mother has talked to the child. Then there was the Japenese doctor, investigator, who took these children who cried incessantly, they just would not stop, and he made a tape with an electrode attached to the uterus of the pregnant woman and when he played the tape of the sounds of the pregnant woman the child went to sleep. These were disturbed children, or they would not be crying. This, I think, is a field to explore.

You mentioned what took you into this field, and I am now going to tell you what aroused my interest in it. Over 20 years ago a girl, a nurse, was murdered on the banks of the Saint John River and her car stolen. About two months later a girl was murdered in a gravel pit in northern Ontario. The car seen at the gravel pit bore Nova Scotia licence plates and it was later found that the car belonged to the nurse who had been killed. The fellow who was picked up was a Mr. Frayner from Halifax. He was hanged. He was age 30. I tried to find out as much information as I could about this matter but no one knew too much about it. I wrote letters, made telephone calls trying to find out the background of this 30-year-old man who became a psychotic killer all of a sudden. I was told there was no information on him. I would think he would have to grow up like that. The court was not concerned with this. They wanted to know whether he murdered the girl or not. That was all.

I had another interest in this matter back in 1945 or 1946, when we were trying to set up a mental health service in New Brunswick. I had a long talk with Dr. John Griffin, the executive director of the Mental Health Association. At that time he told me that, in the opinion of the investigators, the psychology of the day—and this was 1945—was that a lot of people believed that children, even before birth, could be influenced by their surroundings and that mental health started at the time of birth. Now, that is nearly 40 years ago. We have been playing around with this thing and yet no one has ever been able to put it together.

The Chairman: Do you have any comment?

Dr. Banister: Well, I agree we have not been able to put it together, but this is a measure of the complexities we face. I was scribbling last night and I came up with a very simplified diagram of some of the factors which I thought were relevant and I entitled this "The Genesis of Anti-Social Behaviour." I gave up after a while because there were so many arrows going in so many different directions that it became meaningless.

The problem with the case history approach, the retrospective approach is such that we really do not know if what is shown on shall numbers of breech deliveries is valid for the total population. There are communities in which anti-social behaviour is very low. There are the religious groups. Could it be possible that breach deliveries of Mennonites would also produce criminals, or do they never become criminals?

Senator McGrand: That is one question I asked when I made that speech, why is it that there are certain groups where crime is virtually unknown—the Mennonites being one and the Seventh Day Adventists, for example?

Dr. Banister: Do you not think it might be of interest to find out if there is a statistical association between prematurity and crime?

Senator Croll: What is the definition of a "breech"?

Dr. Banister: It is where the baby, instead of coming head first, comes tail first.

Senator Croll: Why has the department not done significant work in this field?

Dr. Banister: On birth injury?

Senator Croll: The field about which we are speaking.

Dr. Banister: Most of the work in the department has to be done through research grants. I cannot, of course, speak definitively here because I do not know of all the research grants. However, when research projects come up in this area, they are funded if they appear to be valid. Most of the work has been done on a co-operative basis. Because you need large numbers before you can really draw conclusions.

For example, in the United States there was a study on 50,000 births. It is for this reason we are collecting information on birth defects from something like 225,000 births in the country. At the moment the only damaging effect I can see, which may produce large numbers, would be prematurity, where there are about 25,000 premature deliveries a year in this country.

There are many criminals, and if there was going to be an association, you would have to take something which had a large number of events. Breech delivery is not that common.

Senator Croll: How big is "premature"?

Dr. Banister: Well, a premature baby is defined as weighing five and a half pounds or less at birth.

Senator Croll: I meant in numbers.

Dr. Banister: Well, 8 per cent, and probably 25,000 a year. Something like that.

The Chairman: that is not a sufficiently large balance?

Dr. Banister: It is, yes; but this possibility of studying it can only be entertained at the federal level. For example, if the Department of Justice statistics division were able to carry out their study and prepare a master file, this would give information on the contacts an individual had throughout his life, following his first contact with the law. In other words, if he were a juvenile and came in contact with a court, he would then be on record and he could be followed, to see what happened after his first contact with a court.

Our birth records go back a long way. Now, the other way is to go forward, which is a much better way; that is, to take a sample of all premature births in Canada over a certain number of years and look for these people appearing in the system. If they do not appear, they are not criminals; but if they appear, then you can tell what type of crime they have committed, and what their future history might be.

Senator McElman: What would be the possibilities, doctor, at this point in time, of going back, let us say, ten years on premature births in Canada, tying that in with the study which is now being set up, and taking samplings throughout the country; and also taking totals in test areas such as, let us say, the city of Toronto, a large urban centre, and another area with a rural base—a small community, with, let us say, a large farming community around it—and running them through to determine what has happened over the last ten years in those cases? Is there enough data available to permit this to be done effectively?

Dr. Banister: The vital statistics division or department of the province would have data which could give you the place of birth and the weight at birth of any infant born in the province, and of course, this is centralized in Statistics Canada.

Senator McElman: This is computerized, is it?

Dr. Banister: Yes. If we only went back ten years, then the oldest child would only be ten years old. I am not aware of any way of linking school records with birth records. If there was one point I would want to make today, I think it would be that we should be looking at ways of utilizing information that is already available of the type you have discussed, and putting it together to draw useful conclusions, rather than going out and doing further studies and collecting more forms. It is possible that in some provinces such information is available, say, on school records; but if you were to go back 20 or 30 years, then you would not need to rely on school records, you could look at something else; you could look at unemployment.

Senator McElman: And the justice system.

Dr. Banister: And the justice system; but as I say, all of these things are feasible, and I can give you the name of a witness who is really able to tell you, because this is his major specialty. The feasibility that I am speaking of, however, does not include financial costs. The studies I have mentioned, carried out by Statistics Canada, cost a lot of money, and it may be that they do not have the funds set aside to do this sort of thing.

The Chairman: Is the information available, supposing a researcher wanted to make a survey of, for example, a thousand child delinquents, and wanted to go back and find out what circumstances had attended the birth of those children, from the point of view of whether it was a breech birth, or whether the mother was diseased, or whether there was any damage done? Is that information available in provincial statistics? It would have to be in the provincial records, would it not? Is that type of information available?

Dr. Banister: The answer is yes, because 96.6 per cent of Canadian infants are born in hospitals, and any hospital birth should be the subject of a record. If you look hard enough and spend enough time, the information is available.

Senator McGrand: It is always recorded as to whether it is a breech delivery or not, and it is recorded as to whether it was necessary to have oxygen at the time of delivery, and so on. There is a lot of information available.

Senator Bourget: And those statistics would be available for the past 25 or 30 years, would you say?

Dr. Banister: I am not sure about that many years, because records in various hospitals are dealt with in different ways. In many provinces there is a form called the physician's notice of live birth or stillbirth, on which has been recorded at various times these types of data. There is a space in which to indicate whether there is a birth injury, yes or no; whether there is a congenital malformation, yes or no; the age of the mother and her parity. This information has been recorded, but it may be that if you went back too far you would only be dealing with the birth weight and the age of the mother.

Senator Bourget: What about other countries? Has that type of statistic been kept by other countries, on the basis of which research has been made on this particular question?

Dr. Banister: In general, the developed countries are the ones with the best records. The United Kingdom is a good example. There are probably good records there. The Scandinavian countries, particularly Finland, and also a lot of the socialist countries, like Czechoslovakia, have good records also. But I cannot answer that question directly; I do not know about the quality of the statistics back that far.

Senator Bonnell: Mr. Chairman, I just wonder if Dr. Banister could tell us if, in his view, he feels that we, as a committee of the Senate, could do anything to correlate the information that is at present available across the country or across the world, and if we could do anything to get other people interested in research in these fields. Does he feel that it would be worthwhile for Canada, and worthwhile for the reduction of crime, for us to set up a committee to investigate crime and violence in youth? Would you recommend that such a committee be set up, Dr. Banister?

Senator Bourget: That is a tough question, but it is a good one.

The Chairman: It is a pertinent question for us.

Senator Bourget: It is the main question we have to face.

Dr. Banister: It is very rarely in government that one gets the opportunity to put forward personal viewpoints. If I were to start with the question of possible benefit to Canada, drawing attention to the need for research in certain areas and to the need for funding of research in certain areas would be worthwhile. My own feeling is that if you were to draw attention to current trends in child rearing practices, the need for a very careful examination of trends in day care, and a careful examination of health care in the area of maternity and maternal and child health, this would be worthwhile.

Regarding the possibilities of explaining crime, I think it is unlikely that we would come up with answers; but it is possible that, as I say, we might be successful in bringing to the attention of Canadians the need for preventive action, for better care for our children, say, with learning defects and birth defects. We could give visibility in areas where perhaps visibility is needed.

The Chairman: You spoke earlier about Dr. Reed's work. He is working through Statistics Canada on criminals . . .

Dr. Banister: Criminal history.

The Chairman: Of what age group—any particular age group?

Dr. Banister: Any. It starts with juveniles. Apparently—I am talking without full knowledge, because this is completely outside my sphere . . .

The Chairman: He would not be dealing with anyone who was not old enough to come before a court, to have a criminal record?

Dr. Banister: No.

The Chairman: So his work would not be relevant to what we are trying to focus on here?

Dr. Banister: Except prospectively, in the way I have indicated, that if you have information on the first 10 years of life and you wish to launch a prospective study . . .

The Chairman: Is he going right back to the birth of the child?

Dr. Banister: This idea of going back to the birth is one that I suggested to him just this morning, because I had been thinking of ways . . .

Senator Croll: It looks like premature birth!

Senator Bonnell: Can Dr. Banister tell us if it is his opinion that crime and violence in youth is affected by before-birth influences, at-birth influences, or their environment thereafter?

Dr. Banister: Well, we have two points. First, before birth. I am certainly very well aware of the . . .

Senator Bonnell: —chromosome changes, or something or other?

Dr. Banister: You are talking about genetic diseases?

Senator Bonnell: Yes, and so forth.

Dr. Banister: I do not believe at the moment that this is one of the major factors. We are talking about a lot of crime and violence. We know that about one-half per cent of babies have chromosome aberrations. There are other genetic diseases which might conceivably be related to abnormal behaviour, but I think this is probably not worthy of the committee's time. The other influences on the unborn child are scientifically very hard to validate. The birth injury, the prematurity, and the first week of life, I do not know. That is why I am saying that no one has really done a study to test statistically whether there is a significant association between birth events and future crime. No one knows or, at least, I am not aware of any studies. I would be left, then, with the feeling that the period from birth on is probably the most important one.

Senator Bourget: But there are no statistics regarding the last period you mentioned?

Dr. Banister: No, except to say that in families it is possible to study twins. We all know examples of where there are many children in a certain family, and one of them is outstanding and one of them is not, one of them is a criminal and one is not. This is about the only evidence we have. I suppose that twin studies might give us data.

Senator McGrand: A lot of people still believe that crime is inherited from generation to generation. It has always been my impression that all that a person can inherit is the culture of his people. We inherit culture. If you do not care to answer that, I do not blame you. Despite all the information that is readily available, if we look for it, most psychiatric murders concern victims of the society in which they grew up. Nevertheless, despite that, 80 per cent of people will say, "Hang him! Make him suffer! Why is it that, from all this information that is available, our society is not aware that it is better to go looking for the potential criminal when he is able to walk than to try to hang him or not hang him when he is 30 years of age?

The Chairman: The witness shrugs!

Senator Bonnell: I wonder if Dr. Banister could tell us where the jurisdiction lies so far as the health field is concerned. It seems to me that health, welfare and education, and such things, are within the provincial jurisdiction; whereas we in the federal field might have more to do with justice. If some research were taking place into the health of children, at birth, before birth and immediately after birth, would we not have to have very close cooperation with provincial health departments rather than, necessarily, the national health department?

Dr. Banister: Yes. The date, of course, are all provincial. Any studies that we do, for example, with our birth defects are in complete cooperation with the originating province, and explicitly any research is done with their consent, knowledge and approval.

Senator McGrand: That is why countries like Denmark and Finland do not have provincial governments. It is all federal. They are able to assimilate this better.

Senator Croll: I think you are off the track, senator. Dr. Banister started on something. Births that take place in 1976 are reported to the federal government at the end of the year.

Dr. Banister: Yes.

Senator Croll: Every birth, every death. I think they will also indicate whether it is premature, and so on. So that all the information which provincial governments may have

may get here a year late, but it gets here, to our federal department.

Senator Bonnell: I do not agree with you.

Senator Croll: But he is agreeing with me.

Senator Bonnell: I do not agree with him, either! Certain statistics, as you said, are in the federal field, but you do not find that out in a narrow way. We do not find out if there was oxygen used at birth. We do not find out if there were forceps, high forceps or low forceps. We do not find out anything, really, except that a baby was born, that it was a boy or girl, and we did not even give him a name. We keep that within the province . . .

Senator Bourget: And in the hospitals.

Senator Bonnell: Therefore, the federal has certain broad information only, but the detailed information must come through the provinces where the jurisdiction lies under the BNA Act.

Senator McGrand: Countries that do not have provincial governments do not have that worry.

Senator McElman: It is not just in the health field. The question we are studying here involves not only health but also education. If a pilot program study were being put into force, the educational level would have some of the most important material to feed into such a study.

The Chairman: Perhaps the witness could reply to the question.

Senator McElman: It was not a question, Mr. Chairman. I am simply pointing out that it is not just the health field in which the provinces are predominant; it is also the field of education, which represents a very large and important part in any study that might be undertaken. Again, the statistical information lies at the provincial level.

What we are talking about, I suggest, is preventive medicine in the field of criminology. We spend most of our money and human capability in this country, as others do, after the event, on the reaction to crime. We are not getting very far by simply throwing people into jails, or hanging them, or whatever. It is all reactionary. We have learned through medicine that the most important, rewarding and useful ependitures are those aimed at preventive medicine, and such expenditures, relative to the total expenditures in the field of health care, are minimal. The corrective measures in health care are really the expensive ones, as they are in criminology.

I support Senator McGrand fully in his desire finally to get started in Canada in this field, and perhaps we could be leaders. It may be that other have done significant work in this area. We do not seem to know. I support him fully in getting a start in this country on preventive criminology—and I emphasize the word "start"; it has to start somewhere. We should not continue to spend all our money in reaction, most of it uselessly.

It seems to me that Senator McGrand has pointed up one area that needs some research. There are sufficient signs now, based on studies about which he has informed us, both in our sessions and in the material he has fed to us, that events at birth do affect children, as well as events in their very early pre-school and school years. These events have a great deal to do with whether they become, at a later stage, criminals, as defined by society.

Whether we start with the possible effects of premature birth, or one of the other areas, there has to be a start in this whole area that can be initiated within the competence of Canada, with the cooperation of the provinces, which, of course, would be forthcoming, as a result of which this committee could recommend, not just to the Senate, but to the Department of National Health and Welfare or the Justice Department, or whoever, to point up that at least a minimal beginning be made in this whole area. Perhaps the witness would comment at this stage.

Senator Croll: I wonder if I might put a question to Senator McElman before the witness comments?

You are suggesting that, in view of what we have heard to date, some start be made by some competent body, whether it be from within the Department of Justice or the Department of National Health and Welfare, or jointly, and you are suggesting that the committee make a recommendation to that effect.

If that is your suggestion, I think you could get agreement of the committee. I think there would be general agreement in the committee to do that. In other words, we have to start some place and the obvious place would be the Department of National Health and Welfare. The idea is that we recommend to the Department of National Health and Welfare that they undertake this study. With that I agree, and I think the committee will.

Senator McGrand: That is what it is all about.

Senator Croll: That is not what it was all about, to begin with.

Senator Denis: There is a vast difference between this committee undertaking the study and recommending that the Department of National Health and Welfare undertake it.

Senator Croll: Senator McElman is suggesting that we ask the Department of National Health and Welfare to do it. That is the point. With that, I agree.

Senator McGrand: That is what it is all about.

Senator Croll: No, it isn't. There is a difference between this committee doing it and the Department of National Health and Welfare doing it.

Senator McGrand: The committee has to call in the experts.

Senator Croll: In any event, let's not argue. If that is what you want, I think we are in agreement.

Senator Norrie: I would like to step into this heated argument. To whom did you pass over your Poverty Committee, Senator Croll?

Senator Croll: There was no one, in any department, who could have dealt with it other than the Senate committee. There was no one in the department that had any knowledge in that area.

Senator Norrie: Well, they have no knowledge in this field either.

Senator Croll: Oh yes, there is a department full of researchers. We spend millions of dollars a year for this sort of thing.

Senator Norrie: I think we are talking at cross-purposes. I do not agree with you. What you say about going to the

Department of National Health and Welfare, I think, is a good idea, and I do not think anyone objects to it. I think we are capable of deciding on that and steering it into the right area. I do not think the provincial governments are going to object to this. I am quite sure they are all anxious to cooperate.

Senator McElman: They would welcome it.

Senator Norrie: Yes. As I understand it, there have been studies conducted in the United Kingdom, and perhaps in the United States and other countries.

Are you aware of the areas in which research has been carried out in this field, Dr. Banister?

Dr. Banister: I should emphasize that I have not made a formal search for recent work in this field—not because of a lack of interest, but mainly because I have a lot of administrative responsibilities which take me outside this area. I am certain there are additional data available.

If I might comment on the suggestion which came forward, I am wondering if your committee might not carry out a little more refinement and exploration of the problem before referring it to the Department of National Health and Welfare. I feel you might be in a position to bring together different people from different areas, which may be difficult for the health department to do.

Senator Norrie: Maybe you could steer us in a certain direction.

The Chairman: I think what you are saying, if I understand you, Dr. Banister, is that the committee could perform a useful service in bringing together experts in the field, who would define the problem a little more precisely and give us a better idea of the dimensions of the problem involved, and give us the type of information that would be relevant. Is that what you had in mind?

Dr. Banister: Yes, in a way. I feel that you still have lots you could do.

Senator Bonnell: Perhaps I could partially answer Senator Norrie's question. I had the privilege and honour to be in New Delhi, last November, when 35 Commonwealth nations met and discussed crime and violence in youth. It was one of the topics which a panel discussed, and it went on for two days. Most of these countries are very concerned about crime and violence, particularly in youth.

I do believe the United Kingdom and the Americans both have done some research in this field. I believe that a committee is to be set up in the Commonwealth Parliamentary Association to look into crime and violence in youth and report back to the next meeting, which will be in Marrakesh this September. It is known, I believe, as a new international social order, but they are to recommend to the Commonwealth.

Dr. McGrand's proposal here to the Senate is apropos because of what has been going on in every country in the Commonwealth during the last year, particularly, in Great Britain, and also in the United States. I am not too sure whether it is involved in the uteri, or before-birth type of thing, but I believe they are more involved with the causes of crime—whether it be poverty, affluence, unemployment, or whether it be breakup in the family home, or whether it be many many other things that seem to be the cause in different countries.

I do not believe that any one country knows all the answers, nor that any one group of people knows all the answers, but I do believe there is room for research. In light of the fact that representatives from the Senate will be attending the conference in Marrakesh in September, we will be able to report back on what we should be doing here in Canada with reference to violence and crime among youth.

Therefore, I would like to support Dr. McGrand's viewpoint that something be done. I think we should take Dr. Banister's recommendations and bring in more witnesses to our committee before any final decision is made. I do believe it is only experts like himself, in other areas such as crime, justice, health and so on, who can really give us the type of information we need to form a strong basic opinion upon which to go forward.

Senator McElman: Senator Bonnell has raised an interesting dimension here. If the studies are to be undertaken, particularly within the Commonwealth countries, perhaps this would be an area of study for us within that global program. No one country can, in a short period of time, study the whole picture with all its ramifications. Perhaps this is an area of study, within the structure Senator Bonnell speaks of, that Canada could offer to undertake, as its contribution to this broader study. I am sure it would be useful in the international context. It could be funded; it would be funded; it would become a high priority. We know that with respect to the budgeting which takes place, not only in our country but others, things that are important get shuffled off because of lesser priorities placed upon them within a departmental picture rather than the larger picture. Perhaps you have hit the very thing we need so desperately, at this point.

The second point I would make is that Dr. Banister has suggested that much more information should be gathered before we reach a final conclusion, and report. Obviously one of those areas would be Statistics Canada. I think we have got to find out from Statistics Canada what sort of information they are gathering. If there are holes in that information that are not being covered, in looking to the future—not to our present situation, but looking to the future—perhaps we could convince Statistics Canada that there is information which should now be gathered in this field so that we can develop a body of data so that effective follow-up can take place. Perhaps we can fill in holes for Statistics Canada they have not realized exist in their current gathering machinery. I would recommend to the committee that Statistics Canada be one of the groups they gather some information from very quickly.

Excuse me for taking so much time, particularly as I am not a member of your committee.

The Chairman: Are there any more questions of Dr. Banister?

Senator McGrand: I would just like to make one small statement. I return to what they say about, "Hang them!" 80 per cent of people, when they come across blind people, or the half blind, or two-thirds blind, say, "Give them all the treatment they need! Salvage them!" If we see someone who is deaf and dumb we say, "Give them lots of treatment!"; and even for the autistic child. But the little fellow who has a blemish that makes him a potential killer, he receives no sympathy, anywhere. 80 per cent say, "He is no good; hang him! Hang him when he is only five years of age!" Now, that is the thing we have got to break down.

Senator Norrie: I do not know if you have read this magazine. There is a part in it entitled "Young and in Trouble." It is enough to make your hair curl; it is just awful. I believe we should try to do something to overcome this situation. I am fully supporting Senator McGrand in making a start.

The Chairman: Honourable senators, the immediate question before us it: Shall we call more witnesses? I would like to get the opinion of the committee on that; and, if so, what witnesses we should call. I had hoped that we could wind this matter up today. I had developed a draft report which I have circulated only to the steering committee, but there is no point in dealing with the draft report if we are going to have more witnesses.

Senator Smith (Queens-Shelburne): I have been sitting back thinking very deeply about some of these problems. I was quite impressed with some of the statements made by Dr. Banister. It seems that in each succeeding meeting we have we get a fresh point of view; we get fresh information. I believe there is a rich field yet for us to plough up and see what is underneath, where the old crop was. We could use more information upon which to base our decision, when we finally reach that stage, in this committee.

I can see that it is going to be very difficult for us to look in depth into this subject matter, but I feel we are really capable of pulling off an inquiry that will involve research of all kinds of technical knowledge on this subject matter. However, I do think we need some further information. I am strongly in favour, after consultation with some of the others who have appeared before us and certainly with Dr. Banister, of finding out just who those people are. Statistics Canada has been mentioned. Let us see what they have got, and I think we will be playing an important role in whatever research is undertaken. I am convinced that Dr. McGrand has already done a great service by initiating this part of the discussion. I am becoming more interested in it all the time. I thank him for it, as much as I do Dr. Banister and all the others. I am in favour of our going on a little further before reaching any final conclusions.

Senator McGrand: Why not bring in Dr. Warme, Dr. Barry Boyd? I say that we should not bite off too much at one time. Bring in one or two or three of these people, and let us see where we are going from there.

The Chairman: The only problem, Senator McGrand, is that we are working within a diminishing time frame. We are coming up against the problem of whether we can get a report in before this session ends. If we do not establish a time for the work to start, before the session ends, or somehow arrange for it to be carried on into the next session, we will have to start from scratch again; because the whole thing will die on the Order Paper. This is the problem with respect to witnesses. I am in the committee's hands.

Senator Croll: You can deal with it very easily, Mr. Chairman. On the day before we adjourn you move that the matter be proceeded with at the next session. If the motion is passed, you proceed with it *ab initio* in the next session. That is the thing to do; there is no problem. In any event, one of the things that has cropped up here that is rather important is that Statistics Canada know what we are talking about. Aside from what all the experts tell us, we have to take a look at some of the statistics, so let us collect information and then ask that the committee be reconvened. That will be granted automatically, at our request; and that is it.

The Chairman: Is everybody agreed that we call further witnesses?

Hon. Senators: Agreed.

The Chairman: Are there any more questions for Dr. Banister?

If not, before we disperse, I would like to mention that Senator McGrand submitted a summary of briefs, letters and submissions that he received, and these were circulated to members of the committee. Do any members have questions to raise on that material?

Senator Smith (Queens-Shelburne): I wonder, Mr. Chairman, if it would be useful to have this material incorporated in our report.

The Chairman: Yes. I have been wondering about that. I do not think, for people who really want to study our report and our proceedings, that the summary would be very useful; I think we would have to have the whole text printed.

Senator Bourget: I agree with you. I move that we put the whole thing in.

Senator Bonnell: I agree. It should be put in as an appendix to the proceedings.

The Chairman: To today's proceedings?

Senator Bourget: Yes.

Hon. Senators: Agreed.

(For text of material, see page 15:13)

The Chairman: Thank you, Dr. Banister. You have been very helpful.

The committee adjourned.

APPENDIX "1"

Ministry of health
Mental Health Centre—705/549-7431
Penetanguishene, Ontario L0K 1P0

March 8, 1976

Senator Fred A. McGrand,
The Senate,
Parliament Buildings,
OTTAWA.

Dear Senator:

Thank you very much for sending me your material in regard to the proposed bill.

I feel very strongly that we must have a great deal more research into the causes and prevention of violent crime. We have the distinct impression that much of it is caused from social factors very early in life.

Good luck with your bill.

Yours sincerely,

B. A. Boyd, M.D., F.R.C.P.[C]
Medical Director

APPENDIX "2"

BRACEBRIDGE COMMUNITY MENTAL HEALTH SERVICE
Riverside Centre, Bracebridge, Ontario—P0B 1C0

March 17, 1976

The Honourable Fred A. McGrand,
Senator,
The Senate,
Ottawa, Ontario.

Dear Senator McGrand:

I have read your address to the Senate concerning the need for study of the causes of crime. Your observations reflect a keen interest in the problem which is a complex multidisciplinary one spanning such professions as law, sociology, penology, psychiatry, psychology and education. There is no common etiology of crime but rather multifactoral influences. To use the example of the boy with problems at age six who becomes a dangerous psychopath at age 26, it is probable that the etiology is established at 6 and perhaps without vigorous and socially unpalatable infringement on his rights, will show the pattern of behaviour at age 26. His size increase, geographic mobility etc. reflect the same problem at six in a different way rather than an exascerbation or developmental process of the problem at six.

Another questionable belief is that criminals are mentally disordered. Some mentally disordered persons do commit crime but not all criminals are mentally disordered. There are a number of persons who suffer cultural deprivation, who have varying degrees of intellectual incompetence, who are maladjusted and unhappy and who are resistant to most voluntary participatory forms of therapy. Attempts to limit the influence of such persons on society are viewed as infringemements on their rights unless a crime has been committed. Any attempt to limit their influence and modify their behaviour after a crime has been committed is viewed as punitive and currently receives considerable condemnation. Treating a mental illness, even a psychosis, does not necessarily modify antisocial or violent behaviour. The treatment of violent behaviour often requires the segregation of the individual to protect both society and himself. Attempts to modify the behaviour will usually be regarded as unpleasant since they interfere with the person's desire to be violent. Such interference will be loudly protested by the offender and any he can enlist to support him.

The child is often angered and frustrated when a parent stops him from entering a busy thoroughfare. Perhaps such repeated attempts to enter the street are met with unpleasant consequences including removal to a room in the house, a slap on the bottom etc. It is rather difficult to apply these techniques to a twenty year old person who behaves with the irresponsibility of the child, consequently jails are used to segregate indeed sometimes solitary confinement. Often misguided persons strive to prematurely release the person before appropriate behaviour retraining has occurred. We teach trades etc. not behaviour with the result that most rehabilitation programmes are a dismal failure (see American Psychiatric Association News February 1976). Currently an increasing number of persons are concerned with prohibiting treatment plans that are contrary with the wishes of the offender—that I believe is the ultimate in therapeutic futility.

Until we can assure the public and law enforcement bodies that violent individuals will be modified or not released until they are then I suspect the demand for capital punishment will increase in volume and breadth. Regardless of the undesirable aspects of capital punishment, it has one virtue that is unique. The offender, beyond any doubt, will not repeat the offence. This has a certain attraction to an apprehensive or terrorized society who has become disenchanted with the sympathy extended to the offender and indifference shown to the victim.

There is a considerable body of knowledge of how to deal with criminals both locally and internationally. The causes of crime have been studied but the measures of prevention are an extremely complicated sociological issue.

I strongly urge your committee to enter into a dialogue with committees of Canadian Psychiatric Association who have given much study to the problem and are a well informed body. Dr. R. E. Turner, Associate Director Medical, Clarke Institute of Psychiatry has achieved international acclaim within and outside of his profession. He would be an appropriate person to establish liaison between your committee and the C.P.A. I believe this course will be the most economical and propitious course to follow.

I hope this letter assists you in your worthy endeavours and if I can be of any assistance I shall be most honoured to serve.

Yours sincerely,

R. E. Stokes, M.D., D. Psych., F.R.C.P. (C).,

APPENDIX "3"

UNIVERSITY OF TULSA
600 South College, Tulsa, Oklahoma 74104

March 31, 1976

F. A. McGrand
The Senate-Canada
Ottawa, Ontario K1A 0A4
Canada

Dear Senator McGrand,

For a long time humanitarians have felt that humane education could counteract crime. Unfortunately, to date very little research has been done in this area. However, studies do have a bearing on the subject. J. MacDonald ("The Threat To Kill," American Journal of Psychiatry, 120: 125-130, 1963) and Daniel S. Hellman M.D. and Nathan Blackman M.D. ("Eneuresis, Firesetting and Cruelty to Animals: A Triad Predictive of Adult Crime", American Journal of Psychiatry, 122:1431-1435, 1966) have documented cruelty to animals by children as being a positive factor in forecasting adult criminal violence. These two studies could form a solid base for any argument relating attitudes to animals to attitudes toward mankind and all that lives.

May I also refer you to the article in the Fall 1975 NAAHE JOURNAL (enclosed) by Delma Sala Fleming (p. 11) "Cruelty to Animals as Predicitive of Psychopathologic Behavior." In the article, Ms. Fleming refers to three murders wich were unusually cruel and violent. In all three cases, the persons responsible for the murders were also found to have commited acts of cruelty to animals early in childhood.

If one can apply logic at this point, one can assume that if cruelty to animals in childhood is predictive of future criminality, children who are taught the concept of humaneness will be less likely to commit crimes of violence as adults.

It should also be considered that those of us who promote the teaching of humane education in schools feel quite strongly that children taught humaneness toward animals will *transfer* the attitude of humaneness to humans. Dr. Boris Levinson (*Pet Oriented Child Psychotherapy*, 1969, Charles C. Thomas, Springfield) States, however, that in order for the transfer to take place, we must teach for it. Therefore, if humane education is to affect the incidence of crime, we must treat the concept of humaneness in its broad definition which states that it is a balanced sensitivity toward all that lives. If this is indeed what we mean when we refer to humaneness, then humane education should logically be a very important factor in the reduction of crime.

In regard to the need for additional research in the area, we do have a sufficient rationale for numerous hypotheses for research on the relationship between crime and the

attitude of humaneness. The facts that very little has been done, that the few studies we do have suggest the need for research in the area, and that so many people feel so strongly that such a relationship exists certainly should be sufficient to encourage the actual implementation of such research). If through such research it can be proven that humane education can effectively reduce criminal violence, the importance of humane education has been established.

I hope I have responded to your letter in a manner that will be helpful to you. I regret that we do not have more complete data to give you, but there has been a reluctance on the part of psychologists to recognize the role that animals play in all our lives. Recently, however, there has been renewed interest and I think we will begin to see more research along these lines.

If you have any questions, please let me know.

Sincerely,

Eileen S. Whitlock

APPENDIX "4"

Clarke Institute of Psychiatry, 250 College Street, Toronto, M5T 1R8

April 6th, 1976

Senator F. A. McGrand
The Senate
Ottawa, Ontario K1A 0A4

Dear Senator McGrand:

I wish to thank you for the telephone conversation, for your letter of March 17th and the enclosures. I read the enclosed material with great interest.

In brief, I would very highly support the need and value of a Senate-sponsored multi-disciplinary committee to investigate the area of crime in Canada. As you indicate, such will inevitably also touch on mental and emotional disorders.

Although it would be hard to document all the reasons for this, it is my belief and I think it is shared by many that there is a real sense of urgency that we must at least attempt to do concrete things about these problems in a way that we have not tried before. In brief, one senses that time may be running out for us. Perhaps we have only some five to ten years to work with.

I would highly support the multi-disciplinary concept of the committee as you suggest and that it would have a wider range of disciplines than frequently is the case. Such might include beyond the usual members a historian, an ethologist, an anthropologist, etc. as you suggest.

It is very evident from your speeches that you have done extensive reading and research on the matter.

If I may, I would like to briefly elaborate some of the reasons and some of the personal concerns which lead me to support the development of a Canadian committee.

1. It is my understanding that Canada is using incarceration and massive intervention in persons' lives more than any country in the Western World. I am not aware of any proof that this intervention is, in fact, achieving better outcomes in terms of prevention of initial crime or of recidivism. However, the costs in terms of money, of personnel and human destruction are massive. For whatever reason, it would seem that the Scandinavian countries are able to achieve similar or better results using two years of incarceration as the near upper limit of their incarceration and six months as a much more average sentence.

2. It is very evident that we are coming up against the limits of our financial and personnel resources with the consequence that we must establish priorities for the deployment of these resources in a systematized and organized way that has not been the case before. If at all possible, it would be important to not "crash" into the end points of these resources as we have recently done with energy.

3. Although others can speak much more learnedly about this particular matter, many of us are very concerned about the translation of findings and causes and, in fact, management that has been assessed in other countries even though such countries would seemingly have at least a superficial resemblance to ourselves. Such would include the translation of results from the United States, the United Kingdom, and Scandinavian countries. One only learns later that there were very special people involved in the programs and in the causes and then one cannot directly transfer such to Canada with its specific mix of population, size of country, economic base, etc. This speaks all the more for uniquely Canadian committee and assessment.

4. It would seem that both in psychiatry and in corrections genuinely good ideas turn into what might be called "management by slogan". Furthermore, well-monitored and well-evaluated projects, whole systems get changed across the country. In the newness and in the enthusiasm, the application swings well past the optimal point. A relatively recent effect in psychiatry has been "the open door policy". Although this did much to benefit mental hospitals, it would seem to have now been over applied. With corrections, possible examples might include temporary absence, indiscriminate bail and living unit concepts in maximum security prisons.

   There would seem much merit rather committing whole systems that small pilot projects with well established base data, adequate monitoring followed by evaluation would have great place at reduced costs before committing systems to the current theory or fad.

5. We must keep trying by the means of the above small pilot projects to enter into prevention. It is clear in psychiatry that we will simply never have enough personnel to even become the necessary "listeners" in our society as it is currently constituted, let alone deal with the frankly, emotionally and mentally disordered. Perhaps I have become over simple, but I would very much like to see programs started in a small area accumulating all the knowledge we have at present about the very fundamental facts of what it is like to be a man, to be a woman, to be married and to be a parent. We would also seem to need to develop trial projects in the handling of leisure time.

6. I have been repeatedly impressed of the conflict which exists at times in the judge's mind and certainly in the correctional system. I really come to question whether it is even possible in any adequate way to combine the dual roles of punishment and rehabilitation. At least, in recent times in a psychiatric field, we have had a clear mandate which would go something like this: cure if you can, improve if that is all you can do, and incarcerate only if you must. It would be of great interest to see correctional programs develop consistently on the theory and purpose of rehabilitation *only*, as a small pilot project.

7. I am of the opinion for the reasons noted above that there is an urgent need for such a committee in Canada and that the Senate would be a very appropriate sponsoring body. Even if it would be short-lived, it would be of value. However, I would like to suggest that great dividend would be achieved if a committee could be formed which would be of great duration such as two or three generations, to have members replaced as need be but somehow the continuity of purpose, pilot project and the ongoing collection of data would be of immense value. All too frequently committees seem to form tackling problems the solution of which are bound to vastly outlive the duration of possible solutions.

I hope you will forgive my making the above rather personal comments.

I would very much appreciate a brief note at sometime as to how your project develops.

Yours sincerely,

C. K. McKnight, M.D.

Chief of Service, Forensic

APPENDIX "5"

Clarke Institute of Psychiatry, 250 College Street, Toronto, M5T 1R8

April 6th, 1976.

Senator Frederick A. McGrand
The Senate of Canada
Ottawa, Ontario K1A 0A4

Dear Senator McGrand:

We know that you have been concerned about the causes of violence for many years. In this regard, Walter Menninger has sent us the Final Report of the National Commission on the Causes and Prevention of Violence (1969) and has also sent us nine volumes of Task Force Reports that were used in the final report. Almost without exception, the factors which are considered are the social factors that contribute to violent behaviour in human beings. Virtually no attention is paid to the individual and personality factors that play a role in violent behaviour. This, despite the fact that we all know well that violent individuals tend to be disturbed individuals. The recent film "Taxi Driver" studies the behaviour of an unstable individual in an unstable society. Why is it that we all too often ignore the "unstable individual" and concentrate our attention on the unstable society?

We acknowledge that unstable violent persons may well have constitutional vulnerabilities which lead to abnormal development, but we must also acknowledge important individual developmental factors that contribute to adult violent behaviours. It is unfortunate that we have an enormous amount of knowledge about individual factors and yet make little use of them. We would mention some of the research knowledge available.

Chess and her associates (1967) have written eloquently on the basic temperament of children when they are born. She emphasizes the fact that the interaction of the child's temperament and the parenting behaviours it receives are crucial in the personality style that individuals eventually adopt. It is amazing to note how few people are aware of this work and how few people are aware of the well-known at-risk combinations of children and parents that can be identified and ameliorated.

In recent years, Klaus (1972) and others have demonstrated the crucial importance of the earliest hours, days and weeks of life. He has demonstrated that mothers are deprived by not contacting their infants during the first hour of life and that this affects the future maternal behaviour for many months and in fact his studies now have gone on long enough that behavioural changes are still demonstrable five years later. He has demonstrated that certain mothers may not be able to develop normal relationships with their children without this contact during the first hour of life, with dire consequences for the future development of that child.

Margaret Mahler (1975) has been conducting careful observations of children in New York City for many years. In these studies she feels able to predict the development of personality disorders before the age of two years, such personality disorders including the violent individuals here in question.

We might also remind you of some much earlier work by Rene Spitz (1945, 1946) in which he first drew our attention to the grossly disturbing effects of abnormal rearing practices. In these papers he studied children reared in institutions and showed that after three years 37% of the children had died and the remainder were grossly retarded in the social, intellectual and physical spheres. This work demonstrates the impact of abnormal environments on infants and to us drives home the importance of studying child rearing and parenting much more thoroughly than we have until now.

Two of us (Atcheson and Warme) have studied a few cases of violent individuals (unpublished) in which we were able to dramatically demonstrate the grossly deviant family functioning that led to the abnormal behaviour. Because the individuals are easily identifiable, this material cannot be discussed publicly, but the information is available to us and clearly demonstrates the pathogenic effects of abnormal families.

Bowlby (1961) has written for many years about the consequences of separation and parental loss for the psychological development of children. His influential papers have changed many of our practices and have led to more sophisticated interventions with regard to children who have experienced losses. Nevertheless, we still subject hundreds of thousands of children to abnormal environments and to repeated separations because we do not have the courage of our convictions, that is, because we are not yet able or willing to apply what we know. We refer to those children who live in abnormal homes, are placed in foster homes and then live in a succession of temporary placements, none of which truly invests itself in the children and from whom the child must repeatedly separate without the assistance that we know to be so vital.

All these research efforts are preliminary. We know the devastating effect that improper parenting can have on children, but we do not yet know the details of this. More important is the fact that we do not seem able to implement the knowledge that we have. Thus, implementation may be the greatest problem of all and requires study. The research involved is expensive and time consuming and must be done on "normal" populations. In other words, it cannot be done as part of clinical work, but rather must be more pure research which is always difficult to fund and difficult to justify. Nevertheless this is what is required. There seems to be a stobborn reluctance to know about such matters and to deal with such matters, perhaps because these things are too close to home for most of us. Someone once said that there is not a crime that any of us cannot imagine committing ourselves. Perhaps the roots of our own violence are something that we do not care to know about.

"One other thing requires research. This is the issue of the prediction of violence. An individual who has regularly been violent in the past can be predicted to behave violently in the future. But we do not know how to predict violence in persons who have behaved well heretofore, nor do we know how to predict violence in an individual who has only committed one violent act. We know that most of the latter group will never be violent again. There are a number of research strategies that could be undertaken, but not without funds."

And finally a word about treatment. Many children who are developing abnormal personalities come to the atten-

tion of psychiatrists. Very few of our psychiatric settings are organized so that these children can receive the long-term treatment that they require. Most flit from setting to setting receiving brief interventions because of the pressure of work. Any lay person knows that the alteration of the personality requires long arduous work—consider what difficulty we supposedly normal people have in changing ourselves.

We hope that these comments will be of value to you and should you wish to discuss this further, please let us know.

For your information, please find enclosed two position papers from the Ontario Psychiatric Association Subcommittee on Child Psychiatry and an article by Lois B. Murphy.

Yours sincerely,

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ADDENDUM "1"

Reprinted from PREVENTION OF MENTAL DISORDERS IN CHILDREN.

PREVENTIVE IMPLICATIONS OF DEVELOPMENT IN THE PRESCHOOL YEARS*

LOIS BARCLAY MURPHY.

By "an emotionally disturbed child" we mean a child whose emotional response to the stresses and crises of his life disrupts his growth and distorts the development of relationships with his environment necessary for further growth. There is a difference here between emotional disturbance or mental disorder in a child and that in an adult: the adult, in the process of achieving enough adulthood to manage himself outside of an institution, has reached some minimum of physical, mental, emotional maturity. With him, mental disorder consists in disintegrative reactions or loss of the level of mental and emotional integration achieved up to the point of illness; recovery is to a large degree a return to a level already achieved.

*Based on findings from The Coping Project, supported by The Menninger Foundation and U.S.P.H.S. Grant M-680.

In a child, physical illness and emotional disturbance threaten to, or actually do, interfere with the process of growth itself, and are expressed in distortions or blocks in development. The zones of development most seriously blocked or distorted by disintegrative reactions to extreme stress or crisis are apt to be those whose maturation is still incomplete, or the most recently acquired functions (Freud (3), Erikson (1)) and the zones dynamically related to them. But the *entire* area of mental illness in a child has to be looked at in developmental terms; how does this reaction to stress or crisis affect the motor, cognitive, affective integrations that are of special importance to a child of this age, and to a child of this temperamental style? For this reason, workers with children need a thorough knowledge of developmental processes and sequences, and also the wide range of individual differences within an over-all outline of developmental sequences through which children move in the process of growing up—in physical, mental, and emotional (including psychosexual) areas. We cannot in one brief chapter review the details of these sequences which have been outlined elsewhere (13). We shall deal with general underlying problems of vulnerability and factors related to it.

Before going further, we need to pause briefly to explain the way in which we use the terms stress and crisis. "Stress" refers to outer or inner conditions or both that (1) make demands on the child beyond his capacity to handle with his usual resources and (2) arouse anxiety that he will not be able to deal with the threat. Either he develops a new solution in order to manage the stress or he protects himself by some way of minimizing or distancing himself from it; or, if he remains in the situation and is not able to manage it or avoid it, he is likely to regress to a poorer level of integration, showing disintegrative reactions to stress (10). Stress may be temporary or prolonged, mild or severe, simply or complexly determined; above all it is a matter of thresholds of the individual organism and of the meaning of a given situation to the individual child. This subjective and interactional aspect of stress sometimes leads people to avoid the term because of the ambiguity involved in these complexities. We can handle this most simply by referring to "*stressful experiences*," thus making

clear the fact that we are primarily concerned with the stress as felt by the child.

"Crisis" as ordinarily used refers to a more severe ("critical") or sudden or overwhelming stressful experience, with greater disintegrative danger. Many infants, for instance, have stressful experiences as new foods are presented, but we do not usually find there to be crises, weaning from the breast need not always involve a crisis but may do so when the infant is not prepared for it by adequate familiarization with other satisfying feeding methods and adequate continuity with the mother's lap and experiences of being held. Developmental blocks and distortions arise both from crises and from long-continued stress.

We know from many longitudinal studies that virtually all children go through both stressful periods and crises during their growing up; and that by and large children find ways of handling these. Their reactions and efforts include problem behavior that typically reaches peaks at the age of five to six years and in the prepubertal period (9). It is not possible or desirable to think of prevention in terms of avoiding all stressful experiences or all crises, since growing up includes developing the capacity to cope with stress and crises. We can thus think of "normal expectable stresses of childhood in our culture." We can also think of a continuum of specific sensitivities, intrapsychic vulnerability, and over-all vulnerability to different normal or unusual stress experiences and crises in different children.

Differences in intensity of gratification associated with an object lost, differences in capacity to use substitutes, differences in insight into the event are among the many factors within the infant or child that affect the degree of stress felt in experiences of loss, for instance. Individual differences in coping resources and resilience within the child, as well as differences in support from the environment, help to determine which children can weather these stresses sufficiently to permit continued growth, and can develop increasing capacity to reach workable relationships with the environment. As Grace Heider (4) has shown, the over-all vulnerability of the child is a resultant of both external and internal, positive and negative factors. The task of primary prevention includes strengthening positive resources for coping with stress as well as reducing excessive dangers, whether of pain, disease, anxiety, prolonged deprivation, frustration, or sudden loss.

Children differ from adults in that they are typically in situations that they had no part in choosing and cannot choose to change. At the same time they come into these situations with their own unique needs, drives, talents, and capacities to stimulate, irritate, exhaust, or inspire the people of their environment. Our knowledge of individuality is still incomplete but it is sufficient to justify the assuption of a continuum or wide distribution curve along every dimension of capacities, drives, and vulnerabilities characteristic of the human organism. As Roger Williams (15) pointed out, a person average in all ways is almost nonexistent: everyone is deviant in some respects. These differences contribute to the degree of proneness to emotional disturbance and the capacity to handle stress, and need to be understood as basic to the development of concepts of primary prevention and programs for working at prevention of mental illness in children.

It is to be noted that primary prevention has both positive and negative aspects. We talk about how we can *prevent* something bad and how we can keep something bad from getting worse; it is also possible to talk about prevention of mental disorder in terms of learning how to *maintain something good*, how to support and develop ego strength, how to sustain integration. This is part of what we are trying to find out, in our studies of children we call normal.

We often talk about what adults can do *to* the baby or *for* him; it is also possible to learn about what an infant and child *can do for himself*, his own selecting, fending off, delaying, timing efforts. Learning to appreciate and to support these is part of the positive approach to prevention.

We generally assume that bad produces bad or eliminating it just gets rid of it. But when we look further we find creative or *new good* consequences of coping with stress and crisis: "triumph" and "mastery" of stress can produce optimism and greater capacity for struggle and mastery.

Learning to Study Children's Ways of Handling Stress

We tend to assume that we *know* what is healthful; but some important points can receive only a question mark at present. We are just beginning to learn how to distinguish between withdrawal as a healthy strategy of a sensitive child and withdrawal as an unhealthy style of adaptation that produces dangerous alienation from people. Part of primary prevention is learning to respect the child's ways of coping with life, and to judge the longtime results not just the method of the moment.

Thus children who progress in weathering the stresses and crises of development have as much to teach us about primary prevention of emotional disturbances in childhood as do children whose development is interrupted or who become impossible to live with. In our study of thirty-one children who were observed during infancy by Drs. Escalona and Leitch (2), we focus on the delineation of the child's ways of dealing with everyday difficulties, demands, and stresses and the over-all picture of the positive and negative factors contributing to his capacity to maintain his integration. While we are concerned with major crises such as those created by severe illnesses or by the cumulative effects of qualitatively different stressful experiences within a short time, we do not confine ourselves to these. Rather, we turn our microscope on the careful delineation of disintegrative reactions to stress, such as some young children experience when they are examined by a strange doctor or are expected to meet the demands of an intelligence test or respond to the provocations of a psychiatist or move from one home or one city to another. From detailed records of disintegrative reactions to relatively mild stress together with the positive efforts made by the child to handle the stress of the situation and to master his stress, we formulated a repertory of stress reactions and coping resources that can be studied in relation to a wide range of factors contributing to both. We are as much interested in learning how to support a child's capacity to handle the slings and arrows of outrageous fortune as we are in the problem of bringing the freight of external trouble within manageable limits.

In making observations on the child's way of handling life, we discriminate between two kinds of coping: (1) We are interested in the child's capacity to make use of the opportunities, challenges, and resources of the environment and to manage the pain, frustration, difficulties, and failures with which he is confronted. (2) The child's capacity to maintain *internal integration* and his resilience or potential for recovery after a period of disintegrative

response to stress are also of basic importance and involve additional factors as well. Ways of dealing with the small but incessantly repeated everyday stresses involved in the petty interruptions, conflicts, and defeats of daily life related to the first point may be as important as the ways of handling the more dramatic or unhappy acts of fate that are implied by the term "crisis." What a baby does when it is overstimulated or when it is desperately hungry or when it is constantly and rudely interrupted in the process of feeding, and the residues of expectancy emerging from these basic experiences contribute to the development of styles of coping that influence both the thresholds for disturbance at times of crisis such as weaning or separation from the mother, and also the kinds of resources the child brings to coping with crisis. We want to look at both the factors that contribute to different forms of vulnerability, the factors that contribute to the child's resources for coping with everyday stress and with crises, and his capacity to maintain internal integration: that is, to continue to make developmental progress with an adequate degree of mental health. The more we understand these, the better foundation we will have for prevention work.

Internal Integration as Dependent on the Interaction of Many Factors

We can view emotional disturbance of various degrees, including the severe forms of mental disorder in childhood, as an expression of interaction between the child's thresholds for response to, needs for, and vulnerability to external stimuli of every sort, and the range, intensity, tempo of the external stimuli. Disturbances arise either from too little or too much, too soon or too late, in relation to the needs or demands, limits, and tempo of the individual child. The latter are constantly changing with developmental changes, and the residues of gratifications, frustrations, and conflicts left from preceding sequences of experience. Seen in these dynamic biosocial terms and at different levels of depth, prevention of mental disorder in childhood has to concern itself with the total range of inner and outer factors and their interactions, especially in relation to developmental vulnerabilities and areas prone to distintegrative reactions and also to conflicts that sensitize particular zones of functioning under extra stress or at times of crisis.

We also deal with both inner and external factors in the maintenance of internal integration and in the difficulties in maintaining integration; factors that need to be appreciated if prevention is to be effective. In preventing physiologic difficulties we know, for instance that iron requires the presence of copper for adequate utilization. Equivalent *interactions* can be studied on the psychologic level. The best mother in the world cannot guarantee smooth nursing if she happens to have difficult nipples, or a passive baby with little appetite, any more than a large breast and a hungry baby can guarantee a serene nursing experience if the mother hates babies.

A first step in planning preventive measures is to discover controllable factors in vulnerability and for this we need to look at many factors related to vulnerability. In a pilot study I found that a total vulnerability score based on presence or absence of the following elements showed significant negative correlations both with the capacity to maintain internal integration and with the capacity to handle challenges, frustrations, failures, and opportunities in the environment; these variables related to over-all vulnerability grouped themselves under the following categories:

1. Disintegrative tendencies: this included tendencies to show disintegrative reactions to stress in the motor, speech areas, etc. These disintegrative tendencies have to be seen as resultants of congenital or developmental weaknesses inherent in structural limitations or damages, as augmented by over- or under-stimulation or other inadequacies of the infant's experience. Prevention of the former (barring controlled breeding) involves comprehensive measures guaranteeing optimal pregnancy, birth, and neonatal development.

2. Impulsiveness, difficulties in control, etc., are related to the above, with similar factors involved.

3. Tendencies to be irritable, demanding, aggressive, antagonistic.

4. Fatiguability, giving up easily. All the factors of innate energy level as affected by metabolic and endocrine processes, nutrition, psychic orientation, emotional response are involved here.

5. Fears and anxieties are resultants both of innate thresholds, multiple conditioning, conflicts, and residues of previous inadequate coping efforts.

6. Tensions and conflicts still in the process of active struggle, still available to the child's efforts at resolution and to help from outside.

7. Difficulties with peers are resultants of all the above, but continue to act as contributing factors in further stress.

8. Difficulties with mother, family, and environment are both primary factors in stress and resultants of unmastered problems that contribute to further difficulties.

This last group includes background factors observed in infancy when the children were studied by Escalona and Leitch.* Although we did not have any mothers in the group who could be called rejecting mothers—really rejecting mothers would probably never cooperate for ten years with a project of this sort—there were strains between mother and child in certain instances, where the mother had a child who seemed hard to understand, who was odd or different from the rest of the family, whose sex was not the one wanted, or who was simply temperamentally incompatible with the personality makeup of the mother. In two such instances there was an extremely gentle, tender mother with a very bouncing, vigorous, active baby boy who needed more stimulating contact than this gentle mother could give; in another instance we had pretty much the reverse picture: an extremely sensitive boy with a devoted but rather rugged and vigorous mother whose handling was not naturally well adapted to the needs of such a sensitive baby.

*As analyzed by Grace Heider, *op. cit.*

Internal Factors in Vulnerability

Although our group was screened to exclude defects and other kinds of congenital and birth hazards as far as it could be, a factor that has loomed rather large as contributing to difficulties in maintaining integration is *developmental imbalance.* Actually, a relatively small proportion of the children have been growing at an even rate. In infancy, a child may be perceptually very acute and very sensitive and in this way far ahead of let us say, his visual-motor coordination and his ability to handle things, or his *intake is ahead of his ability to integrate;* he is confronted with

intrinsic problems of coping with stimulation from the environment.

If the pattern of deviations produces intraorganismic imbalances, a child may have a constant inner source of tension or stress. In our normal sample in Topeka there are children like the following: a boy of strong drives and poor ability to control and integrate impulses; a boy of strong intellectual interests and limited intellectual abilities; a boy of great motor energy and poor coordination; a boy of strong visual interests and limited vision; a child who is advanced in all areas except speech so that his explorations and ideas outrun his ability to communicate or even to formulate his concepts clearly. These *imbalances constitute primary sources of difficulty* that can be helped, insofar as pediatricians and mothers and other people in contact with the baby can see the things that pile up the tension and stress for him.

We cannot go into all the nuances of sensory, motor, and affective differences, but each baby is highly individual and the problem of the way in which the baby integrates his idiosyncratic range of resources is particularly important in relation to maintaining mental health.

The group "disintegrative tendencies" is based on ratings of specific disintegrative reactions to stress at the preschool level and the ratings of disintegrative reactions to stress also in infancy. Here we are including constitutional tendencies toward breakdown in one or another functional area of the organism, some children showing loss of motor coordination, others perceptual distortions, others speech disturbances, others loss of contact with the environment, etc., via marked withdrawal of attention. Disturbances of motility, autonomic reactions, withdrawal tendencies, etc., could all be observed in infancy as well as later. Impulsiveness and difficulties in control are often closely related to constitutional tendencies, since even in infancy ease of control versus impulsiveness was easily observable; however, these tendencies are greatly modified as the child develops. Defensive, demanding, aggressive reactions can be seen in relation to irritability during infancy, and to other early evidences of tendencies toward hostile and aggressive reactions.

Going beyond our sample of normal children to those we see in the Children's Division of The Menninger Foundation: when there is some degree of organic deficit, damage, or disease, the child's integration is further threatened in various ways. His resources for control of impulses or for insight and understanding or for absorbing and integrating stresses or trauma are limited; if the organic damage is slight, vague, diffuse, difficult to diagnose, it is often not recognized and he is subjected to demands he cannot possibly meet, is misunderstood, and considered wilful; still further, his failures are frustrating and anxiety-provoking to his family, whose anxiety reinforces and augments his own. He lacks the resources ordinarily contributing to resilience and recovery: he cannot surmount trauma and conflict adequately alone as normal children often do through comforting *gratifications*, focusing on their *skills* or *strengths*, through play, fantasy, and the like. If, as in a smaller percentage of instances, the child had a thoroughly *bad start* as an infant, with colic and other gastrointestinal difficulties for the first six months or so of life when the baby is ordinarily establishing his basic sense of goodness within and without, he may lack all foundation for trust in life, in help from others, or his own potentialities. These are the children who are most unreachable, especially when such a fundamentally bad start goes along with evidences of persistent uncompensated organic damage.

Now for the others in our *normal* group who do not have any obvious intrinsic disharmonies of equipment or between equipment and drive: here we often find that individual stressful experiences have come too fast or frequently for the child to integrate or absorb one before he is bowled over by the next; or the child has lacked the support he needed for his own spontaneous ways of coping with stress; or the stresses occurred at a critical phase when an important new function such as speech or locomotion was emerging. The incompletely established new functions are then vulnerable to stress and insecurity.

In other words, we are concerned with background and developmental factors; with constitutional tendencies toward disintegrative reactions, sensitivity, irritability, impulsiveness, and the like; and also with more complicated resultants to which the constitutional factors in the child, the stress that the child has experienced in the family, the accumulated residual strains from unresolved problems, and uncompensated stresses all contribute.

To the extent that vulnerable areas of functioning are secondary to pregnancy or birth disturbances, sequelae of illnesses, and the like, prevention measures involve improved medical care; to the extent that these vulnerable areas are the resultants in large part of genetic factors, prevention (short of guided or selective breeding of human beings) involves the development of balancing, compensating, or control factors that can help the child to manage his own limitations. To understand these we need to look at factors offsetting vulnerability.

We find the chronic stress and strain of disturbed parent-child relationships undermine the child's ability to utilize his resources; here we can include stresses rooted in parental ignorance of what to expect from a child with his shifting orientations and attitudes as they reflect the inner demands of successive phases of development; stresses intrinsic within unbalanced parent-child personalities, as in the case of a child of slow tempo with a quick mother or vice versa an extremely active child with a reserved quiet mother or mother of limited energy; stresses embedded in complex parent-child rivalries and exaggerations of normal conflicts of psychosexual development.

That is, stress arises chiefly within the child or within his relationships to the environment or as an effect of unusual impacts from the environment.

In all cases the central problem becomes (within himself and in his relations to the environment) the question of the extent of the child's resources for coping with stress in such a way as to permit growth, increasing integration, confidence, and mutually gratifying exchanges between and interactions with his environment. When he cannot handle stress, that is, when he is overwhelmed—immobilized, made panicky, frantic, blocked—he needs active assistance and support for his efforts to achieve better integration, and to grow.

The problem of prevention, then, is one of assessing the external and internal factors in the child's experience of stress and crisis and the child's capacities to deal with it; then finding ways to support the child's efforts toward mastery. This can include both medical, social, and psychologic help (giving him usable knowledge and insight where he can use it, as before an operation; comfort in the terms that can help him; support for mastery in his terms; compensatory gratifications that have value for him;

opportunities for discharge of tension; help in communicating his experience of stress; doses of challenge, reality testing, and stimulus to give up unconstructive defenses at a pace he can manage; appreciation of his efforts to cope and progres in coping). This can go parellel to management of the environment to prevent the child from becoming overwhelmed by stress with which he cannot cope.

Up to this point we have emphasize chiefly endogenous factors in vulnerability in the child, their complex resultants, and some suggestions of ways to begin to deal with them.

We now turn to factors in stress more involved in specific external events, culture patterns, ways of handling the child.

Stressful Experiences in Infancy

Data from our study show the importance not only of large developmental crises such as weaning, toilet-training, separation from mother, and hospitalization but also day-by-day stresses from external factors. We need to recognize the impact on the baby of cumulative experiences of being forced, teased, subjected to unpleasant and frightening experiences such as inoculations and injections, and of ways of handling by the mother that do not meet the individual and unique needs of the particular baby with his individual cravings for contact, soothing rhythm, motor freedom, opportunity to look around at the world, and so forth; and also the intrusive impositions that can easily occur when a baby is handled like a doll or an animal whose own sensitivities and rhythms are ignored.

The normal range of expectable crises that a baby goes through include of course the pregnancy and delivery crises, but there may also be a crisis in the manner of changing from breast to bottle feeding, or in some instances with the introduction of a new food or new vitamin. Any new situation may precipitate a crisis for certain babies, who refuse to eat at all when a new food is started, or cannot sleep in a new crib. Botk K. Wolf (16) and the Escalona-Leitch data (17) record disturbed reactions to strange people in some infants as early as the age of two months.

Prevention here is helping the mother to avoid what we can call *strangeness shock* and to help the baby get used to things. Infants have a major task of becoming comfortably familiar with and at home in a complex and strange world. Getting used to each experience of newness, new foods, new places, new people, new ways of being handled, new discomforts or pains, is a difficult process for some babies, and one that leaves scars, weak spots, a residue of anxiety, or low thresholds for disturbance; with other infants the new experiences bring new gratifications, with residues of positive hopeful expectancy toward future new experiences.

Among our preschool children certain constant or recurring stresses are also experienced; these vary in number, severity, and impact on the children. We can summarize these from data in the reports by mothers first, then add a brief comment on evidence of intrapsychic stress from clinical data.

Nearly half the children have various problems including *exacerbated oedipal conflicts* connected with lack of independent sleeping arrangements, sleeping up to four children in one small room, sleeping in the parents' room, and even lack of any consistent sleeping quarters. Over a third lived in cramped or shabby homes, in a few cases in poor neighborhoods, and some of these had very inadequate equipment for play.

In half a dozen instances mothers were at some time markedly depressed, or ill with emotional disturbance requiring psychiatric care for a limited period. Two fathers were alcoholic at periods, and two were hospitalized with diabetes; two had accidents. Two mothers have divorced the fathers, one remarried. Seven children have experienced death of relatives, mostly grandparents; with two, death of a dog was heartbreaking. Not just the death of the grandmother or the uncle may be important, but also the impact of death on the mother, on the father, or on the oldest sibling who has an attachment to a person who is very sick or dying; there is the cumulative impact of all this on the baby or little child. Certain mothers were able to give the child very little during a period of acute mourning so the child had, as it were, a double loss.

Emotional ups and downs of the mother were especially important in the vulnerability of the girls. From the case analyses also I have been impressed with the dilemma of the girl with an emotionally disturbed or physically ill mother. During the first years of the child's life, the little girl needs to identify with the mother and unless she has enormous support from other members of the family and someone else with whom she can identify, she is apt to introject the patterns of disintegrative reactions shown by the mother more than is the boy, who is fortified by his ability to identify with the father. It may be a fluke that in this sample there were more emotional disturbances among mothers than among fathers. In any case we did not have the material to look at the difficulties of boys identifying with disturbed fathers; there were two boys to all intents and purposes without fathers; one had died in the child's early infancy and the other way away in the armed services most of the time. In the second instance, the boy developed a clear-cut masculine pattern through identification with the image of his absent soldier father.

Both external and internal factors were involved for six children who had marked *separation anxiety* and anxiety about new situations at the beginning of the project (an additional five showed mild anxiety). One child showed separation anxiety only when her mother was ill. Individual differences in children's capacity to handle separation are apparent when we consider that at least twenty-six of the children had experienced absence of the mother, for hospitalization, birth of a baby, visit to relatives, vacation with husband (1), religious retreat during the preschool period. In addition one little girl, her grandmother's favorite, felt deeply the loss of the grandmother's support when the family moved from the grandparents' home to an independent house. In many other instances the gap left by absence of the mother was comfortably filled by the presence of the grandmother.

Moving also presents major problems of understanding to certain young children for whom leaving may mean loss of one's universe. When three-year-old Molly's family was going to move, she said "I'm not going to move." Her mother sat down and talked to her about it: "Daddy is going because he has to go to a new job and I'm going and Billy is going and Trudy's going and our dog is going and the cat is going and you can take your furniture and your teddy bear and you can have all your things in your new room and in the new house." Molly said, "Well, O.K., I'll go." A crisis was threatened until she began to understand.

It is important, then, whether a new situation is understood. Stress that cannot be understood was implied in

David Levy's (8) article on operations, which reported 75 per cent fears after an operation at age two compared to 20 per cent at the age of five. I think that we cannot overestimate the importance for management of crisis of the child's capacity for understanding at the time. Greater stress tolerance is a resultant also of other aspects of emotional maturation in this period.

All the children had some infections but the disturbing effects appeared chiefly when too many came too fast, or when an illness came in a setting of other stresses. One child came temporarily to a developmental stop after a broken arm, mild polio, a baby sister with more severe polio, a new baby sibling within ten months. Or *severe illness and hospitalization at a critical phase* may involve greater stress as when a little girl was hospitalized for infantile eczema during her period of development of locomotion. Prolonged colic during the first six months when basic perceptual functions are emerging is a threat to the foundations of ego functioning; later we shall discuss the influence of this earliest phase on development in greater detail. Illnesses unusually prolonged and repeated deplete the child's morale as when one boy lost energy and drive during the period of a long throat infection, and developed difficulties at school.

We also need to recognize external as well as internal factors in the *fears* that all children show during the preschool period, many of them paralleling those described by Jersild (6) in the 'thirties on a New York sample; new situations strange people thunder and other loud sounds and noises, dark, death, animals, snakes and bugs, floods*, tornado threats, getting hurt, doctors, hospitals, fire engines, firecrackers, etc.; but with the contemporary additions of hydrogen bomb, "shots" (hypo), the locally stimulated fears such as kidnaping,† and religiously stimulated fears such as hell and heaven, ghosts (and dwarfs), sin. Some children conquer or outgrow their fears, but the capacity to cope with the environment was seriously disturbed by fearsomeness in several children.

* The families of five children suffered during the 1952 flood, but we had no evidence that this frightened the children as much as did severe thunderstorms, for instance, or that the folds in themselves had lasting effects.

† A Kansas City child was kidnaped and killed in 1953.

About half the children have been disciplined by corporal punishment, in several cases with belts or paddles; deprivation, restriction, sitting in a chair, mouth-washing, hand-slapping, and other methods were used. But the stressful effect of discipline is seen chiefly in children whose parents in two instances impose unusual restrictions, because of religious taboos. Restrictions typical of the culture—e.g., breaking things—are casually accepted, along with the punishment used to maintain them.

Conflicts as a predisposing factor in reactions to external stress are familiar to us; these children have their share of sibling rivalry, oepidal, sex, and agression conflicts. But we must point out that in the developmental imbalances already referred to and also in the combination seen in a baby who has great gratification in response to certain sensory stimuli but is also easily overstimulated and therefore has a possibility of strong negative reaction, we have a certain fundamental *internal basis for ambivalence and conflict* that underlies some of the other predispositions to ambivalent reactions to external stimuli.

Another struggle that we put in the group of stress experiences arises from the daily frustration of efforts of the child who is stimulated to or internalizes aims or aspirations that his equipment does not permit him to reach. One of the children in our group is a little boy with intellectual interests and aspiratons, without the ability and IQ to deal intellectually with such problems. We see this in other children with motor drives (in some instances greatly reinforced by environmental stimulation) that are too strong to permit coordination.

Conflict between the child's needs and preferences and the environment's assumptions about what is good for a child can produce stress; by contrast, one of the things impressive in Topeka is the capacity of the environment to tolerate temporary regression with an understanding that the child has times when he needs to let down. But the difference between the degree of stimulation or demand from the environment and the level of the child's skills and capabilities and the relation of drives to fatiguability is also important. As Dr. Heider says, some of our children most responsive to environmental stimulation live "close to the margin," and practice brinkmanship all the time, thus having small reserve with which to handle emergencies or unexpected extra stress.

Here we can see that adequate preventive work needs to be based on precise evaluations of the total capacities and limitations of the child, and not simply upon an appraisal of his intellectual skills or potential aims.

If we now look at what we might call intrapsychic vulnerability as rated on the basis of the psychiatric view of the preschool child,* it is useful to note at the start that, of the children about whom the psychiatrist was concerned, about ten showed potentialities for hysterical reactions, future character disorders, extreme involvement in conflicts, or other intrapsychic pressures that he thought would produce trouble before long. In addition, the possibility of minimal brain damage was suspected in connection with dysarthria and slight difficulty in motor coordination in a couple of cases.

*Grace Heider's detailed analysis of vulnerability at the preschool stage is based on a comprehensive review of all the data, and is a broader concept, weighing the stresses and supports in the environment along with the strengths and weaknesses of the child himself. This work is in process and subsequent to the analysis I am summarizing here.

Most of the rest of the children have been moving along, with ups and downs to be sure, but on the whole not very different from the picture we get from Macfarlane's research and other studies showing the normal range of problems for a normal sample of children. We ourselves have been concerned about one very bright boy who has the highest IQ in the group but who is developing on a very restricted basis and who is not able to move into new situations with any degree of freedom, does not get satisfaction out of his school work, and in general does not seem to be functioning at a level that we would expect from his high ability. He is very stable and there is no problem of likely disintegration; however, in terms of active coping with the environment and range of enjoyment he is sufficiently limited to have stirred up much discussion by the staff.

Positive Resources for Coping with Stress

Our statistical analysis of positive coping resources has highlighted certain other broad generalizations.

Within our sample of relatively normal children from more or less normal backgrounds (although half a dozen of the mothers showed one or another degree of emotional disturbance requiring psychiatric help during these ten years of our knowing them), *the individual specific areas of*

vulnerability do not turn out to be as determining in the final evaluation of the capacity of the child to maintain his own integration as are the cumulative effects of all factors in relation to the positive resources he brings to handling himself in his environment. This of course is something that we see every day very clearly in relation to physical defects and limitations. A child may be partially crippled by disease or may have some partial or total sensory defect in one or another area, may be limited by certain environmental inadequacies, but the extent to which this is expressed in emotional disturbance is a matter of *how he deals with the limitation*, whether he actively handles his life in his environmental setting so as to minimize or to master the stress that the limitation might cause. The same principle applies to less visible sources of vulnerability, extreme sensitivities, fatigability, a high reactivity, variability, autonomic instability, and other deviations within the range of this sample that are handled by some children skillfully enough to make it possible for them to maintain a high level of integration.

There are four major aspects that can easily be seen when we look at the positive coping resources of the children as they deal with the environment and their own resources and limitations within the environment. First of all is the *range of gratification* available to the child including his interest, the warmth of response toward objects, to people, the depth and sincerity of interest; etc.; all these are relevant to the child's ability to use substitute gratifications, to sublimate, and to find new solutions when he is frustrated in one area.

Second: Important is every aspect of the *positive, outgoing attitude* toward life, including pride about himself; courage in facing challenge, difficulty, and obstacles; resilience and capacity to mobilize resources after frustration, disappointment, and the like.

Third: The *range and flexibility of the child's coping devices and defenses* and his ability to use defenses in a constructive way is the next group; that is, being able to *delay long enough to plan*, being able to *fend off the environment or to turn away from excessive stimulation*; being able to *deny for limited periods* of time until one can mobilize one's positive resources or find solutions; being able to displace and project within limits as well as to sublimate. In other words, a moderate use of defenses that can serve the purpose of cushioning the impacts of stress in a way that is helpful to the child. Defenses only become pathologic when they become rigid, fixated, and used to the extent that they interfere with resourceful, resilient handling of problems.

Fourth: Related to the above but worth looking at separately are the *capacities to regress*, to *give oneself leeway to let down*, to *retreat to a level of functioning* that does not make such acute demands upon oneself, to indulge in less mature forms of fantasy or of satisfaction. In short, regression in the service of recuperation and regaining strength is important in circumscribing the effects of vulnerability.

In our research group we see that some old-fashioned virtues and strengths such as courage, autonomy, determination, and their relatives have a place and hold their own, but alongside of these the contribution of safety valves, protective devices, and aids to recuperation, including defenses and periods for healthy regression, are equally important. By and large we are apt to allow ourselves more of the latter than we permit the children; a balance of positive effort with flexible defenses and regressions is important at any age.

We also see the capacity to maintain mental health and prevent mental illness in terms of *balance of ego strength and instinctual strength* and many other kinds of *balance; perceptual clarity; motor tension release, flexible distribution of energy* being *able to accept limits, resilience in mobilizing resources* under stress.

Similarly with the capacity of the child to fend off excessive stimulation from the environment or to change things, to try to restructure situations to meet his own needs: these may be regarded with respect by the parents and other persons in the environment, or they may be blocked and interfered with, and this would have much to do with the ability of the child to deal with his stresses. I would include here what I call the orchestration of coping patterns and defense mechanisms.

The inference from this, then, is that if we could diagnose children more carefully so as to have an accurate appraisal of the potential problems created for the child in his environment by his sensitivities, his tendencies to be very reactive, his difficulties in functioning in any psychic or physical area, and the like, we could have a clearer idea of the problems within himself with which each child had to cope, and it might be possible for us to help children to deal with their own limitations in more constructive ways.

From this point of view, primary prevention also includes everything that can strengthen the child's capacity for mastery: tolerance, insight, flexibility, realism and perceptual clarity, courage, resourcefulness, tension discharge, and techniques for changing the environment.

Development of Capacities to Cope with Stress

This focuses our attention on primary prevention as control of the factors that increase or decrease coping capacity. Quantitative data show that, in our study, infantile oral gratification is significantly related to clarity of perception among the preschool variables and negatively related to loss of perceptual clarity under stress. This seems to imply that oral gratification in early infancy is a necessary foundation of integration that protects functioning through later development; or it may be an early *expression* of integration. This makes sense in relation to observations of disturbed children in whom perceptual functioning fluctuates and children whose perceptions are easily distorted under stress; in these children we often find a history of extreme gastrointestinal discomfort and disturbance in oral functioning in early infancy and in the most disturbed children the bad start is often most extreme. It seems worthwhile to discuss in some detail the role of such early foundations of mental health. Other areas require equally careful study but space precludes detailed discussion of more than the oral phase.

Another of the strongest positive correlations between oral gratification and other variables is with preschool strength of interests; this would seem to imply that oral gratification in the first half-year reinforces the infant's capacity to cathect the external world in a strong and satisfying way. Many other findings in our study point in the same direction.

The positive correlation with support from siblings is a tantalizing finding and suggests the possibility that the orally gratified baby is better able to relate to siblings in a less threatening and anxious way, being more free from concern about whether he will get enough, and thus more free to arouse positive responses from siblings.

A significant positive correlation between oral gratification in infancy and the ability to limit or fend off excessive stimulation may be understood in terms of the likelihood that an orally satisfied baby is relatively free from insatiable stimulus hunger that would make it hard for him to be selective or active in limiting stimulation. An initially unsatisfied baby would tend to reach out for stimuli beyond his own later physiological need. Close to the ability to limit or fend off excessive stimulation is the significant correlation with ability to control the impact of the environment.

The significant correlation with ability to mobilize energy to meet challenge or stress may not be as completely obvious unless we reflect that the orally gratified baby is more apt to be free from these defensive structures that would interfere with flexibility and mobilizing energy.

A positive correlation between oral gratification and security confirms what we would expect to start with. A positive correlation with sense of self-worth and a comfortable relation to the child's ego ideal along with adequacy of the child's self-image in the child's social milieu can be seen along with the significantly positive correlations with clarity in sex role, assertiveness and forthrightness, and differentiation of self from others, as well as "positive self-feeling level, it feels good to be."

Taking these positive correlations in relation to the significant negative correlation between infantile oral gratification and tension as rated at the preschool level, we can infer that oral gratification in the first six months tends to leave the baby with a good feeling about itself, free from chronic tensions that make it dependent upon constant stimulus feeding from the environment and which blur its perception of the environment; also it is left freer for the development of clear awareness of self vis-à-vis others, and for maintenance of stable positive feelings about self.

(More or less consistent with what I have just said are the negative correlations between oral gratification and such variables as feeling of being rejected, tendency to be demanding in relation to others, tendency to become fatigued, being critical of people and depreciating others.)

The correlation between oral gratification in infancy and what we call Coping Capacity II—that is, ability to maintain internal integration—is considerably higher than the correlation with Coping Capacity I, which refers to the child's ability to make use of the opportunities, respond to the challenges, and deal with the frustrations presented by the environment. This adds still further weight to the importance of the first year of life for the basic foundations of ego strength.

An example of a constellation of correlations different from the group associated with oral gratification is the group associated with courage as rated at the preschool level. Here we find significant positive correlations with various measures of motility: motor coordination, smoothness in movements, purposefulness of movements, fineness of coordination, freedom to translate ideas into action, competence and mastery, speed or tempo, and motor skills and use of motor skills for coping with environmental demands, although these do not follow exactly the same patterns for boys and girls. I will not go into the differences at this point.

An example of how increased understanding of the relation of the mother to the baby can guide preventive work is implied in the following portion of our findings: Autonomy allowed in the feeding situation in the first six months by the mother correlates significantly with perceptual clarity, impulse control, tolerance for frustration, capacity to use substitute gratification and to postpone gratification; positive self-appraisal, differentiation of self from others, available neutral energy, ability to harmonize goals, ability to facilitate resilience by timing rest. It correlates negatively with loss of perceptual clarity under stress, demandingness, impulsiveness, tendency to destructiveness, power drive, fear of hurting oneself.

The capacity to protest, resist, and terminate unwanted stimuli, including distasteful or surplus food, correlates significantly with the preschool tendency to defend one's own position, maintenance of self-regard in the face of difficulty, ability to control the impact of the environment, satisfaction in mastery, flexibility in adapting means to the goal, ability to restructure, and coping by changing the environment, self-reliance, self-awareness, ability to mobilize energy to meet challenge or stress, problem-solving attitude toward life, reality testing.

In other words, when our infancy observations dealing solely with children in the first seven months of life are compared with ratings of the children at the preschool level based on examinations and observations by many different persons, it looks as though our evidence tended to support the hypothesis that profound patterning of the ego is laid in the oral experience of the infant in the first six months of life; we have some evidence that this influences the foundations of clarity of perception, later self-image, integration, and mental health.

In short, I am saying that one foundation of ego functioning rests in the baby's experience of achieving mastery of the feeding experience in the first weeks of life, and that individual differences in the patterns evolved during these early weeks and months contribute significantly to the adequate patterning of later ego functioning. We can add, of course, that intense experiences during later critical phases or affecting highly cathected functions, differing from one baby to another, modify the pattern laid down during the earliest weeks of life. Both positive and negative experiences of subsequent phases of blossoming, and of vulnerable phases, are important here.

The first six to eight months is also the period during which the self is becoming differentiated from others [cf. Jacobson (5), Spitz (12)]; positive or negative sensations (leading to massive autonomic reverberations) from the feeding experience are associated with both the emerging self and the gradually differentiated environment. This is also true of other basic experiences—pleasant or unpleasant contact, auditory and visual experiences—provided only that they are strong enough to involve diffuse affective concomitants as does oral gratification, frustration, or distress. Our significant correlation between gratification in feeding during the first six months and level of self-feeling: that at the preschool stage it feels good to be, along with maintenance of positive self-feeling and other nuances of Van der Waals' (14) "health narcissim," fits in with our psychoanalytic expectations at this point.

"Satisfying mothering" for girls in the first six months correlates significantly with later expressiveness of speech, energy level, security, alertness, responsiveness to a wide range of stimuli, pleasure in cognitive functioning, pleasure in being oneself, differentiation of self from others, involvement in play activities, range of affects, tempo of recovery from emotional states, facing the world with open anticipation, warmth, naturalness, accepting people as they are, pleasure in handling materials or

objects, receptivity to environmental cues, qualities, positive self-appraisal, realism-imagination balance, freedom from inhibitions, judgment, love-aggression balance, balancing self and social demands, resilience, adequacy of discharge of tension, tolerance of regression.

Complex experiences of mastery over distress owing to colic, frustration owing to early difficulties in coordination, or like accomplishment, may provide a foundation of anxiety-triumph sequence patterns with an undertone of repressed frustration, anxiety, and anger; these are important for later motivation to make efforts to triumph over obstacles, pain, frustration, and the like (with the help of enough denial to support mobilizing and directing the energy toward mastery).

Later subsequent major (massively reverberating) stresses owing to illness, pain, loss, especially when occurring during a critical phase (development of motility, speech, psychosexual excitement, or other determinant factor) may change the positive patterns established during the oral phase. Our prime example of this was Manny who had a good start at four weeks, but in the second and third years of life fell into a lake, had repeated high temperature illnesses, ear infections, hearing loss, and possibly mild brain damage contributing to speech and motor problems. Even here, the good initial start evidently helped to sustain the warm positive approach that was expressed in his good relationships and his appealing "Can you help me?" So also, Thea, an initially gratified infant later exposed to prolonged severe infantile eczema, hospitalization, flood, seeing the birth of a sibling in the next room, poverty, and the like, was able to maintain her internal integration well at the age of four to five. Also Will, whose parents were in conflict and divorced when he was six years old, maintained his cognitive and social functioning although at the price of obesity at the time of maximum tension between his parents.

Probably the extent to which subsequent experience will change the trends established during the oral phase will depend in part on some of the factors already mentioned; the fluidity or variability of autonomic functioning or reactivity of different systems, the stability and flexibility of the defense structure developed by the child, as well as the factors in the environment supporting or contributing toward integration, and the impact of single and cumulative stress and crisis experience in later stages of development.

The implications of this for direct preventive work are, it seems to me, that just as when we are working with the physical problems of a cerebral palsy or pilio child we do not consider ourselves entitled to respect what we do unless we have a very precise idea of exactly what the child's experience of stress or crisis is, what he can manage by himself, at what points he needs help; we neek to know for every child through what steps he must go in order to be able to make progress toward greater mastery. All children need this diagnosis of detailed strengths and weaknesses, the points where they need help and the points where they can do well to struggle ahead on their own. This is a much more delicate and problematic task with children within the normal range because very often we have extreme difficulty in evaluating the implications for the child of what we see.

Ecology and Prevention

Kansas has a salubrious climate so that it is possible for the children to run around freely; also, in a relatively small-town type of community, with traffic channeled in certain major streets, the *world is safe* for children. From the time the youngster can walk at fourteen or fifteen or sixteen months, he can push open the back door and get out in the yard. In other words, it is an area that protects and maximizes autonomy and the child has a chance to experience it completely.

Cramped box houses with tiny bedrooms and no privacy often are of relatively poor construction, with thin composition walls; in these the patterns of family life are lived out. Two, three or four children sleep in one room, even in the same room with a parent. The relation of this to sex curiosity, involvement with parents, and the acuteness of oedipal concerns is obvious. This is basically a problem of the role of *architecture* as well as *economics* in prevention.

By and large this is not a group that can afford to have much furniture: high chairs, play pens, baby bouncers, strollers, buggies, and all the other things some middle- and upper-class families are accustomed to as ways of keeping the baby safe and busy, things that create distance between the baby and the mother, are at a minimum. Here, prevention includes helping families to be aware of the hazards of confinement and limitation of activity owing to overuse of protective furniture.

Next, we consider the supportive aspects of the social configuration of the family. Many of our families have *grandmothers and relatives nearby.* Some of them are one step away from the farm. This means *support;* in some cases stress to be sure, but by and large we have been impressed by the support. Particularly when the mother goes to the hospital, it does not mean a real separation experience for the child; his grandmother comes, whom he knows very well, or he goes to grandmother's house, and many of the aspects of the birth of a sibling that are stressful for children in large cities are less stressful here. At the same time, it is true in certain cases that there is tension betwen the generations; we have to balance the plus and minus factors in the relationship, but preventive work can also help the generations to understand each other and increase their mutually supportive potential.

The *ideology* of the culture as it is expressed by the family also plays an obvious role in contributing to and also offsetting stress, especially in relation to religion, for instance. Three of our children have acute conflicts and rebellious feelings toward parents because of *restrictive effects of religious taboo standards* and notions; such a thing as "I can't play with any child who doesn't go to my church" creates severe resentment and intensifies rebellious and hostile residues of infantile conflicts with the mother. On the other hand, certain children at the age of six or seven when asked, "What do you do when you are not in school?" will say "I belong to my church." The church can contribute a sense of belonging and provide support additional to that of the family. Help to churches in understanding the needs of families and children can maximize this.

Along with the ideology of the culture, I would include such things as the way the mothers feel also reflects attitudes of other persons about what goes on with babies in terms of the attitudes she thinks she is expected to have, the way she feels about nursing, and similar matters, or what other persons will think if the baby isn't clean enough, and so forth.

Communication is also basic; one kind of mother just doesn't know what to do with a baby in terms of communication; she is under the influence of a tradition of *no baby*

talk and "no baby talk" inhibits her responding at any level that the baby can accept; the mother follows assumptions derived from an ideology for some of which the experts are responsible. Helping mothers to understand the great importance of communication from earliest infancy on is a major need.

The Contribution of Pediatrics and Nursing as Influencing Ideology and Practice

It would be perfectly possible for doctors, nurses, teachers, and many other persons to be helped to understand the process of development of mental health and to help it go in the right direction. In medicine the pediatrician from the start is thinking about the needs of this *individual* child. The formula is adjusted in terms of how strong or who weak, how much sugar, which kind of prepared milk, what additional nutrients, and so forth should be added in order to meet the needs of this individual child. Similarly allergies are quickly recognized and, when solid foods are added, those solid foods are utilized that the child can assimilate without allergic reactions and any that create gastric disturbances are omitted; substitutes are found for them.

We have not yet reached this kind of pediatric thinking in dealing with children's feelings and yet the need for recognizing the emotional equivalents of allergies, low sugar tolerance, high protein requirements and the like is present both for the direct effect on the child and the long-time influence on the mother-child relation. We are at a point where it is not only possible but desirable to begin thinking of babies in such terms as *the amount of stimulation they can stand, the amount and kinds they need.* One baby sleeps best when tightly wrapped up, where another needs arrangements that will permit more activity. One baby will be soothed by rocking and jiggling where another one will be soothed by being stroked and comforted with tactual stimulation, and still another responds to being held, kittenlike, on a shoulder. One baby expresses a desire very early to be sufficiently vertical to be able to extend the range of vision, where another baby is content to lie down and bang at toys on a cradle gym as long as he can satisfy his desire for manual contact.

Such things may sound trivial but we have cases in our group of normal babies where the subsequent vulnerability of the child could be seen to have its roots in such things as these.

Babies need more than good diets from pediatricians; the mothers need guidance in providing feeding experiences that allow the babies to follow their own rhythms and pace, and to do as much for themselves as they can with satisfaction. They need individually measured stimulation, play, communication, opportunities for many different kinds of mastery, gratifying experiences with the new and the strange, and other contributions to ego development that are of equal importance to the meeting of basic physiologic and libidinal needs of infants.

It is important to avoid associating the new and the strange, or change, with pain, especially to skin-sensitive babies; we should not have inoculations as major experiences of the strange. (Since moving change, and the new are likely to be important features of life for some time to come, preparation for handling and integrating them is important for many children around the world.)

If pediatricians, nurses handling well-baby clinics, and public health nurses were trained in the understanding of the long-time consequences of the kinds of deprivation that can occur when mothers are exhausted or do not understand the baby's need for contact and stimulation, they could guide young parents toward finding solutions for the problems involved here.

In addition, we also have to say that therapy as well as education for mothers is primary prevention for disturbance in children.

Education of pediatricians along all the lines discussed would certainly be very high on the list of important prevention needs, as well as education of nurses, nurses in children's wards, and particularly of nurses in hospitals; the nurses are the persons who are really doing the work in a well-baby clinic. I would also include bringing understanding of babies and little children somehow into the churches. Helpful insights and attitudes can be stimulated in mothers by contagion, imitation, or identification with the supportive, kindly, observant understanding approach of a wise pediatrician, nurse, or teacher. As fast as the whole range of persons most closely in touch with children in their homes, in clinics, hospitals, churches, and schools can recognize the danger signals in individual children, their individual needs for support, and ways of helping themselves, the more able we shall be in helping children turn potentially overwhelming and damaging crises into manageable stress, whose mastery can contribute to greater strength and capacity to handle new stress.

But beyond this, basic prevention of mental disorder in children requires child-oriented and family-oriented thinking and planning throughout the culture: community planning and architecture, theology and the church, education, mass media of communication, all contribute their share to defeat or support of the child's effort to maintain stability in an increasingly complex, and changing world.

Summary

From this point of view, primary prevention cannot ignore *ecology* (space, privacy, stimulus-range of the external environment); *architecture* (location of parents' room, size and equipment of child's room, with opportunities for discharge of tension, healthy use of energy); *adult stability* (especially mother's emotional balance) *and family unity; ideology* (assumptions regarding types of behavior to encourage: e.g., *balance* of autonomy and ability to ask for help, drive to grow up, with tolerance for regression in the service of resilience; balance of love and aggression); *pediatric and hospital handling; maternal preparation* for support of infants' developing interaction with the environment as well as maximal protection and comfort during the period of early integration, emergence of ego functions (perception, manipulation) and ego formation.

A comprehensive program of primary prevention would involve a discriminating assessment of the sensitivities, imbalances, strengths, needs of the infant, strengths and blind spots of the mother in her response to the baby, other hazards and strengths of the environment in relation to the equipment of the individual child. Education of pediatricians in the personality needs of infants and young children could be a major factor here, provided the resources for supplementing family care could be developed. It is likely that some psychogenic childhood schizophrenia and much neurotic instability could be eliminated with adequate care in the first two years.

But before we can be on thoroughly solid ground in preventive work we need to have a more integrated con-

ceptual formulation in dynamic terms of the interaction of such factors as those discussed by Pasamanick (11), Lacey (7), and Williams (15), all bearing on the balances and imbalances of organic aspects of the infant, with the processes of interaction with the environment visible in feeding situations and mother-baby-interaction in the context of the total stimulus pattern with its frustrations, excessive demands, and its gratifications in infancy, and in relation to the learning capacities and style of the individual infant. Similarly, for each successive stage after the first six months when basic perceptual and motor functions are emerging and being patterned by the quality of the organic experience of the infant, we need to see every new experience in relation to the context of organic stabilities and instabilities, the tolerance or frustration thresholds they involve, the impact of the experience on the emerging functions of the child, and the progress or interference with integration that all this brings. Oversimplified generalizations, whether they are concerned with hospitalization, good mothering, or types of schooling, will miss the boat; what is urgent is an understanding of the dynamics of healthy growth for each child or at least for each kind of child, comparable to our understanding of the developmental needs of other living species.

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ADDENDUM "2"

SUPPLEMENTAL CARE

WHO IS CONCERNED?

Public officials, governmental agencies, community organizations and the media have been increasingly interested in day care for children. As greater numbers of women enter the labour force, the demands for well supervised, licensed day care increases.

Psychiatrists are being asked to consult to these organizations, to design enrichment programs to promote normal healthy development as well as specialized programs for children with physical or emotional handicaps. If we are going to respond to these requests, we must be as informed as possible. To this end, our group undertook to survey the relevant literature. We hoped to compile the best research and perhaps dispel some of the misconceptions that are perpetuated from publication to publication.

WHAT IS SUPPLEMENTARY CARE?

Supplementary care refers to care for children provided by a person other than the parents. Care as incidental to education is not included. The majority of children requiring supplementary care are from families with working mothers, single mothers, single fathers, or families in crisis. Therefore, supplementary care includes infant group care, family day care, nursery schools offering full day programs, pre-school day care, before- and after-school programs, night care and in-home care.

IS SUPPLEMENTARY DAY CARE SEPARATION OR DEPRIVATION?

Since the work of Spitz and Bowlby, many have hypothesized that many repetitions of minor separations may have effects similar in form, although not in severity to major separations or deprivation. Recent studies of neonates show what many have long suspected that the biological mother is usually more responsive to her own infant that the most expert and warm substitute caretaker. Winnicott stated "... the function of the nursery school is not to be a substitute for an absent mother, but to supplement and extend the role which in the child's earliest years the mother along plays".

Almost anything one wishes to say about the children of working mothers can be supported by some research project. Unfortunately, many of the studies do not control for ethnic background, socioeconomic status, number of sibs, or family stability. Most studies deal with children over the age of 2.

Walliston (1973) reviews some infancy studies that found no evidence of long term effects of repeated separations (Burchinal, 1963, Caldwell, 1970).

Some studies even suggest that children of working mothers are slightly more advantaged in terms of development quotient, socialization, and self-assertion than home reared. (Yudhim & Holme, 1963, Caldwell & Richmond, 1968, Moore, 1969.)

Those who believe there is a critical period between six months and three years as the height of stranger anxiety, postulate a need for continuity of care. Schwarz (1973) repeated Caldwell's work with no long term detrimental effects from day care placement in his infancy group. Later he compared the infant group, now age 3-4, with matched controls entering day care for the first time. Faced with a new environment, the early day care group had higher social interaction and more positive affect on entering and remained happier than the new group. Blehar (1974) reports a difference in the strength and quality of attachment behaviours of children entering day care at 20 and 30 months. Her finding that these children showed more oral behaviour and avoidance of strangers agrees with the work of Tizard and Tizard (1971) who found children reared in residential nurseries to be more afraid of strangers than those reared at home. Whatever the implications of continuing studies of the effects of parent separation on the children might have, parents must and will continue to work.

WHAT IS THE NEED?

In Ontario, there are an estimated 715,000 children under the age of 16 with working mothers. Of these, 135,000 are under the age of 6. There are only 44,000 licensed group care places available. Of these, only half offer programs for the full day. In addition, the government subsidizes 500 children in supervised family day care. 85-90% of children in the pre-school age are in family day care either with a neighbour, baby-sitter or relative. Present expansion is well above the expected 10% per annum, with 100 projects for an increase of 3,000 more places in 1975-76.

In Metro Toronto, an estimated 80-90,000 children are receiving some form of supplementary care. At most, only 10% of these are in licensed group care or supervised family day care.

In 1971, the Women Bureau, Department of Labour, calculated there were 17,400 children under 14 years with working mothers enrolled in day care centres. This represented only 1¼% of the 1,380,000 children under 14 of working mothers. The Department of Health and Welfare gives 1973 figures of 26,811 places for full time day care. But because of the increases in the women's labour force, this still represents only 1¾% of children under 14 with working mothers. While 7% of children age 3-5 of working mothers are enrolled in licensed day care, less than 2% of children under 3 are enrolled.

STATUS OF DAY CARE IN CANADA

DEPARTMENT OF HEALTH & WELFARE, OTTAWA

	1971	1973
1) Number of children under 14 with working mothers.	1,380,000	1,537,000
2) Number of places in full day care.	17,391	26,811
3) Percentage of children under 14 with working mothers in day care.	1¼%	1¾%

The average cost per child per annum is $2-3,000 in a licensed group care situation. Thirty dollars a week is a conservative estimate of the cost of family group care. It is evident that day care is available only to the very poor through Canada Assistance Plan or to the rich.

The most shocking statistic presented without any indication as to how they arrived at their figures, comes from the Day Care and Child Development Council of America. As of September, 1965, there were 38,000 children in the United States under the age of 5 left alone without any adult care during working hours. Some of the well documented horror stories reported by Keyserling (1972) arise out of such situations.

WHAT ARE THE CONCERNS?

INFANT GROUP CARE VS. FAMILY DAY CARE

One of the hottest debated issues is whether infants should be cared for in groups or in family day care homes with more individual attention. Group care may be a health hazard to children. Some countries have reported a three times higher incidence of respiratory infections in group care infants. However, preventative health, nutritional and psychological assessment can be more easily carried out and corrective measures instituted in group care. The cost of group care is almost twice that of family day care. Adequate staffing of a group care situation accounts for much of the cost, but it is difficult to recruit good and dedicated family day care homes.

Perhaps one of the best suggestions is a satellite program. A central community day care facility, which super-

vises a number of family day care homes in the immediate neighbourhood. The Family Resource Centre would provide a full day or part day program for older children as well as a specialized program for handicapped children permitting integration of the programs. Visiting homemakers, medical and nutritional consultants, nursing and social work services for parents and family care personnel would operate out of the resource centre. There would also be provision for central equipment pool and ongoing training of family caretakers. With support and role definition there might be less turnover of personnel.

Others state that employers should be responsible for providing adequate facilities for children of their employees. There are no studies which report on the effects of such facilities in Canada, but it is reported that mothers prefer services close to their homes. We must be cautious about accepting reports on such centres from other countries as these programs are often instituted to meet needs other than the welfare of the child.

PRE-SCHOOL PROGRAMS

Pre-school programs in fostering socialization often promote identification with the group. The child has little opportunity to be by himself to develop a sense of personal identity. As the normal child struggles for separation and individuation, we see typical ego-centric behaviour. Biting, scratching and assertive behaviours will be discouraged in group care.

Many programs for children age 3-5 are directed at the disadvantaged child. The American Education Research Association supported preventive programs on the basis that 50% of all factors which determine intellectual functioning are formulated by age 4. As critics descend on the Head Start program in the United States, many good studies on the advantages of pre-school enrichment programs are swept aside. Most of these studies have focussed on the academic aptitude of children with a nursery school experience as not appreciably different from their less 'advantaged' peers. However, it has been clearly demonstrated that individual behaviour patterns at the pre-school level seems related to later school functioning. Programs must plan intervention on a behavioural and emotional level as well as focus on cognitive functioning.

BEFORE AND AFTER SCHOOL PROGRAMS

The problems of the 'latch key' child have long been the concern of psychiatrists and social agencies. However, other than descriptions of current programs, there is little reported research.

SPECIAL PROGRAMS

In our concern to provide adequate supplementary care for children of working parents, the special needs of the economically and culturally deprived are often overlooked. Reports of specialized programs such as night care, visiting homemakers for family relief, parent resource centres are beginning to be reported in the literature. Specialized programs for pre-school Canadian Indian children are in operation in Ontario employing Indian personnel. As yet, there is no reported research on the benefits of hazards of such programs.

SHOULD WE BECOME INVOLVED?

The task of planning an environment that both fosters optimal growth and is appropriate to the child's stage of development is a formidable one. As psychiatrists we have the training and experience to critically assess research from a mental health standpoint. If we accept primary prevention as one of the tasks of psychiatrists, we must not abdicate our responsibility to other mental health professionals. We must continue to upgrade our knowledge of current research or normal growth and development. When our opinions are sought, as indeed they will be, we can respond from as informed a base as possible.

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ADDENDUM "3"

THE HIGH RISK INFANT

The following text is a brief exposition of some current findings and controversies surrounding the concept of the "high risk infant". Neonatology has made immense inroads into the previously high mortality of infants born with medical complications. This is partly due to the increasing sophistication of postnatal resuscitation but also related to the regionalization for reproductive care. This allows the development of highly specialized centres in key locations in Ontario, present in Toronto's Sick Children's Hospital and the Departments of Paediatrics in Hamilton, Kingston, Ottawa and London. Infants whose delivery has been complicated, whose birthweight is below 1500 gr. or who have had other congenital abnormalities are treated in these centres. The size of each unit varies from 10 beds in Kingston to 60-70 beds at the Hospital for Sick Children, and 100 to 1000 admissions per year (Swyer and Goodwin, 1972).

The term "risk" as used in the literature implies an increased probability of handicap in childhood. At present, one generally identifies infants at biological risk for later sensory, motor or mental handicaps on the basis of pregnancy, perinatal, and postnatal factors related to infant mortality. Justification for this procedure derives from the concept that a continuum of casualty exists which has both lethal and sublethal manifestations. The lethal components consist of abortions, still births, and neonatal deaths while the sublethal manifestations include sensory, motor and mental disabilities (Parmelee and Haber, 1973).

This concept is helpful in identifying potentially important variables, but it does not aid us in determining the

predictive power of these factors. Such information is not available from present studies. Correlations between single perinatal or postnatal events and later disabling sequelae have been very low in several large prospective studies (Buck et al, 1969; Niswander et al, 1966; Parmelee and Haber, 1973). Similarly, the English risk register, which attempted to classify infants with items selected on the basis of clinical impressions, has failed because too many unimportant isolated events were included (Rogers, 1968).

Studies that have focused on mere comprehensive "risk" events such as prematurity and neonatal asphyxia or anemia have demonstrated greater incidence of disabling sequelae among infants who have suffered such trauma than among control infants. However, even these results have varied between studies because of the heterogeneity of the risk groups studied. In all follow-up studies of risk factors, a broad spectrum of outcomes has been obtained rather than a bimodal distribution of normal and abnormal outcomes between groups. While this is consistent with the concept of a continuum of casualty, such results do not aid in the identification of the strength of relevant variables (Braine et al, 1966; Douglas, 1960; Drage and Berendes, 1966; Drillien, 1964; Graham et al, 1962; Heimer et al, 1964; Keith and Gage, 1960; Lubehenco et al, 1972; Parmelee and Haber, 1973; Schachter and Apgar, 1959; Weiner et al, 1968).

One important recurring observation is that the outcome measures are strongly influenced by the socio-economic circumstances of the children's environments and this influence is often stronger than that of earlier biological events. However, there is also evidence that early biological problems lead children to be more vulnerable to adverse environments. Since health problems during pregnancy and early infancy are related to socio-economic status, the two variables must be considered inextricably interwoven (Braine et al, 1966; Douglas 1960; Drillien 1964; Heimer et al, 1964; Parmelee and Haber, 1973; Werner et al, 1968; Weiner et al, 1968).

Thus, with our present information, we can discuss which groups of infants are at risk of later disabilities on the basis of socio-economic and/or biological indicators, but we cannot specify the degree of risk or identify the individual infant who will suffer a disability in childhood.

A Cumulative Risk Concept

The majority of the infants in a "risk" group so far identified do sufficiently well on all outcome measures later in childhood that they cannot be considered truly handicapped. As a result, the manpower required for intervention programmes with the truly handicapped infants is critically diluted by the inability to precisely identify these children. Several studies have demonstrated that multiple factors may be considered as additive in determining degree of risk. Some have cumulated pregnancy, perinatal, and neonatal events and others have included socio-economic factors (Braine et al, 1966; Drage and Berendes, 1966; Weiner et al, 1968; Drillien, 1964; Heimer et al, 1964; Weiner et al, 1968). A recent study demonstrated high prediction of behavioural achievement at 7 years of age using a cumulative score of biological factors during a pregnancy, birth events, socio-economic factors and performance items during the first year of life (Smith et al, 1972).

With these points in mind, a useful risk scoring system presently employed by Parmelee (1974) might be one that:

1. Scores pregnancy, perinatal, and neonatal biological events and behavioural performances in an additive fashion;
2. Reassesses the infant in the first months of life to sort out those infants with transient brain insult from those with brain injury who remain deviant;
3. Reassesses the infant again primarily on a behavioural basis later in the first year of life, providing time for environments to have an effect on developmental progress.

Cumulative risk scores as advocated by Parmelee et al, (1974) are presently investigated and validated in long-term follow-up studies.

The problem this method shares with older methods is the great changes which take place in neonatology every year, making data published in 1972 almost useless in 1975. Nevertheless, the following neonatal conditions persistently increase later risk of an abnormal development.

1. *Factors of Delivery*

(a) Breech delivery or any delay in the delivery of the child due to excessive moulding of cranium which may cause intra-cranial bleeding.

2. *Prenatal Factors*

(a) Small for gestational age, i.e. less than 3rd. percentile in weight, body length. Risk is increased if infant weighs less than 3 lbs. Main problems are learning and behaviour disorders. (Fitzhardinge and Steven, 1972).

(b) Intrauterine Infection—frequently causes severe brain damage.

(c) Any congenital abnormality superimposed on any other pre-, peri-, or postnatal difficulty.

(d) Any infant with birth weight of less than 1500 grams.

3. *Postnatal Factors*

(a) Apgar score of less than 5 at 5 minutes (Schachter and Apgar, 1959).

(b) Symptomatic hypoglycaemia, i.e. any jitteriness and not only convulsions.

(c) Any child requiring artificial ventilation or admission to an intensive care unit.

(d) Neonatal meningitis. Antibiotics do not work as well in newborns as in older children, hence the illness is a much more serious condition.

(e) Prolonged separation of infant and his parents (Barnett et al, 1970; Elmer and Gregg, 1967; Farranoff et al, 1972; Klein and Stern, 1971).

A number of well executed studies demonstrate that prematurely born infants are four to seven times over-represented in population of battered children and those who fail to thrive. (Klein abd Stern, 1971).

This is thought to be related to two phenomena:

(a) The lack of contact between parents and their infants after birth may lead to a failure in the establishment of secure attachment between the infant and his primary caretakers and to later parenting disorders.

(b) The premature infant's behaviour differs significantly from that of full-term babies. This impedes

parental attachment and may lead to distorted later child care practices.

Percentages of later abnormalities for all conditions mentioned are meaningless as they change from study to study but in general, one can say that girls fare better than boys.

Summary

The preceding text dealt with some recent findings linking cognitive and emotional disturbances in childhood to events taking place during pregnancy or the perinatal and postnatal period of life. The following conclusions were drawn:

1. Single perinatal or postnatal events are poorly correlated with later disabilities.

2. Comprehensive risk events such as prematurity, especially if infants below 1500 gm. are associated with a higher incidence of cognitive and emotional disturbance.

3. Physical assaults experienced during pregnancy or delivery can be ameliorated by good parental care, especially during the first year of life.

4. The repeated assessment of the neurological and cognitive functioning of the child and a repeated analysis of caretaker-child interaction leads to a cumulative risk score which may predict future cognitive and psychological functioning more accurately than present methods can do.

5. Advances in infant care, led by the regional centres for reproductive medicines are dramatic and constantly change the final outlook of the high risk infant. This together with the heterogeneity of many studied samples makes interpretation of outcome hazardous.

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APPENDIX "4"

CARLETON UNIVERSITY
FACULTY OF ARTS

ST. PATRICK'S COLLEGE
COLONEL BY DRIVE
OTTAWA, ONTARIO
K1S 5B6

7th April, 1976

Hon. Fred A. McGrand
The Senate
Parliament Buildings
Ottawa
Ontario

Dear Dr. McGrand:

I have read the text of your speech to Senate on crime and violence (Hansard, 123, 86) and wish to make the following comments.

There is no doubt in my mind that crime and violence is a major problem in Canada today, and threatens to become an even greater problem in the future. This is all the more disturbing in the light of the vast potential that Canada has to provide the basis for a truly human and humane society. Paradoxically, it seems that wherever the potential for humanity is greatest, the actualization of real human values is on the decline; our material wealth is no longer a means to the good human life, but is itself an end which defines the "good life" in crass, materialistic terms, breeding excessive individualism and greed, and the consequent lack of respect for others. This is, in other words, a greater problem than the absolute figures indicate, because we have every right, given the state of our material and cultural development, to expect a trend toward peace and benevolence.

The relative lack of crime and violence in countries with different economic bases and/or systems would seem to indicate that these behaviours are not the natural human condition—that they are aberrations possibly resulting to some extent from *our* affluent way of life in the context of *our* economic system. If this is the case, all the more reason to give very high priority to research into these matters.

As you have pointed out, there are probably many other causes at work—environmental, genetic, early physical and psychological traumay... It seems to me that given the complexity of the problem, one thing required is a bringing together of the results of recent research—a "state of the art" study. To some extent our society's excessive individualism leads to lack of coordination in research efforts, and a resulting lack of effectiveness. This is true, in any case, in the work I have been doing on ecological problems which are also grounded in the material and ideological bases of our society and have multidimensional ramifications. What better place to bring about such a synthesis than the Seante!

In sum, I strongly endorse your proposal and encourage you to do whatever you can to see it carried out. I would be pleased to help you in any way that I can.

Sincerely,

John T. O'Manique, Ph.D.
Associate Professor of Philosophy
Member, Third Research Team for
The Club of Rome

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75-76

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 16

TUESDAY, MAY 11, 1976

Fourth Proceedings on:

The Study of the feasibility of a Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society.

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C., *Deputy Chairman*

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier (*de Lanaudière*)	Smith (*Queens-Shelburne*)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,

Clerk of the Senate.

Minutes of Proceedings

Tuesday, May 11, 1976
(20)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 2:10 p.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Cameron, Carter, Denis, Fournier (*de Lanaudière*), McGrand, Neiman, Norrie and Phillips. (8)

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken".

The following witnesses from *Statistics Canada* were heard:

Mr. Lorne Rowebottom,
Assistant Chief Statistician,
Household and Institutional Statistic Field;

Mr. Marcel Préfontaine,
Director,
Justice Statistics Division;

Mr. Paul Reed,
Assistant Director, Research,
Justice Statistics Division.

The witnesses answered questions put to them by members of the Committee.

At 3:10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Tuesday, May 11, 1976

The Standing Senate Committee on Health, Welfare and Science met this day at 2:10 p.m. to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us Mr. Lorne Rowebottom, Assistant Chief Statistician, Household and Institutional Statistics Field, Statistics Canada. Do you have an opening statement, Mr. Rowebottom?

Mr. Lorne Rowebottom, Assistant Chief Statistician, Household and Institutional Statistics field, Statistics Canada: I do not have a formal opening statement, but perhaps I could make a few introductory remarks.

The statistics for which I am responsible include those of the Justice Statistics Division, of which my colleague Mr. Prefontaine is the Director, and of which Mr. Reed is the Assistant Director, Research. I am not sure the information we have can be of assistance to you in your deliberations, but perhaps I could take a moment to indicate the sort of thing that we are engaged in and the type of statistical product that emanates from the division. If it is of interest to you, Mr. Prefontaine or Mr. Reed can explain that somewhat further. Our basic purpose today is to answer any questions that you may wish to direct to us.

The Chairman: I should explain to the committee that I discussed with Mr. Rowebottom over the weekend and yesterday why we asked him to appear before us. It was a decision of the committee at our last meeting that we needed more statistical information which is available in Statistics Canada, and which is necessary for the type of research suggested by Senator Bonnell. Following Senator Bonnell's questions, the committee decided that we should get somebody from Statistics Canada to inform us as to what types of information there are available, what types are published, and what types are available but not published.

Senator Bonnell pointed out that statistical information on childbirth, pre-birth conditions and conditions surrounding the birth of a child, would probably be available only in provincial departments. I think we want to make sure for our records exactly what information is available, what gaps there are and what further information is necessary in order to decide as to the feasibility of the investigation implied by Senator McGrand's motion. Time is so short that I did not want to waste any by telling you all this in my introduction. However, perhaps it is better that I should say it now, and it is within that framework that we can conduct our questioning.

I am sorry I interrupted you, Mr. Rowebottom.

Mr. Rowebottom: Rather than tell you what we do not have, which perhaps is more than we do have so far as it relates to what appears to be the focus of interest of your committee, maybe it would be best just to sketch out very briefly the types of information on which we concentrate.

First of all, emphasis has historically been on criminal rather than civil statistics, although the latter are not excluded from our concerns, and we have recently begun to consider the problem of civil law and its incidence within the community.

In the criminal field, we start by attempting to measure the amount and characteristics of crime in Canada. This is a broad spectrum of information which we gather from police forces of all kinds across the country—federal, provincial and municipal—under a uniform crime reporting system. Out of this we produce statistics relating to the amount of crime in Canada, classified by the type of crime committed. The amount of information we have about any particular type of crime varies according to the type of crime itself. On some we have a good deal; on some we have very little.

We then have a court program, in which we attempt to quantify the decisions of the courts and the disposition of those who commit crime according to the sentences they receive vis-à-vis the crimes they commit.

That is followed by a set of statistics concerned with the correctional institutions—the penitentiaries, prisons and other correctional institutions—to which those sentenced by the courts for crimes of various kinds are committed. We look at the populations of prisons and the through-puts of prisoners—"clients" to use the jargon of the trade—in the institutions.

We try to follow this with a quantification of what happens to people when they leave prison, and the extent of recidivism.

Our objective in each of these four categories is to integrate the figures so that we can provide the population at large, as well as those who are concerned with the administration of justice, with a total, integrated type of picture of the types of crime that are committed and the consequences to those who commit them, through the courts, through the prisons and subsequently.

The relationship between that type of information and your particular deliberations can perhaps be brought out in questioning. If you believe it would be of help to you, I could ask Mr. Prefontaine to describe in more detail the major characteristics of the statistics we produce, or any of us could respond to particular questions.

The Chairman: Perhaps we could start with some questions. After the questions, perhaps Mr. Prefontaine could elaborate on this aspect of it.

Senator McGrand: We are interested in a group of people at a very early stage in their lives. You cannot call them criminals. You may call them, I suppose, potential criminals but they have not committed any crimes as yet. A youngster of five, eight or ten years of age, who has not committed any crime does not form part of your statistics, I gather. Senator Bonnell mentioned the other day that our vital statistics, records of births, mention the day and whether the child is a boy or a girl, but there is no information as to whether or not there was any difficulty at birth.

Some of the material we have been collecting has made mention of the "high risk infant." Things that may happen to an infant before he is born, at the time of birth, and in the few months thereafter that, taken singularly or collectively, may lead him to be a criminal.

On the back page of one of the articles I received, signed by three psychiatrists in Toronto—Dr. daCosta, Dr. Warme and Dr. Atcheson—there is a list of articles dealing with the work done on this subject in 1970, 1972 and 1974. There was not much done in the sixties.

The information we need has not been developed to the point where it could be processed as a statistic. This is our problem. You would not have such information among your statistics, would you?

Mr. Marcel Prefontaine, Director, Justice Statistics Division, Statistics Canada: Definitely not.

Senator McGrand: That is what I was afraid of.

The Chairman: This person would not become a statistic until he comes in contact with the law in some way or other, would he?

Mr. Rowebottom: He certainly does not become an observation, as a component of criminal statistics. The only way in which the type of specific inter-related incident in which you are interested could be approached is to relate the circumstances of either the birth or the childhood of an individual to subsequent events. A possible way of approaching the type of information you are seeking is to look at the criminal record of an adult, and then relate that back to the childhood circumstances.

Senator McGrand: If I were seeking information on a criminal who is 30 years of age with relation to his childhood, and what happened to him when he was eight, nine or ten years of age, would there be such information about him on record?

Senator Fournier (de Lanaudiere): If he were a member of a family of eight and were the only black sheep in the family, all having the same parents, all being raised in the same atmosphere and same society . . .

Senator McGrand: In the same environment.

Senator Fournier (de Lanaudiere): —then that does not seem to apply. In my opinion, it does not depend upon that.

There is a standard for any form of life, whether it is a tree, an animal or a human being. There is a normal standard. Some are geniuses, some may not be as mentally equipped, but the majority of people are sound and reasonable; they are people who obey the law, et cetera.

We were created free. We were born with certain responsibilities, however, and the responsibilities increase with age. If at a certain point in time someone decides to become an engineer, an architect or a criminal, it is his responsibility and he must face the circumstances. If he has been working and has shown initiative, and has been willing to make sacrifices to become qualified and earn his living, he will also face those responsibilities as a result of his behaviour. This would not necessarily apply if he were sick or not mentally capable of facing the responsibilities of life. This is another matter entirely. If he has chosen freely to become a criminal, he must face the consequences of that decision. That is my opinion.

The Chairman: Senator Neiman, did you wish to put a question?

Senator Neiman: Mr. Prefontaine, I take it that you are dealing with the statistics at the federal level and, therefore, you do not go into the criminal activity of a juvenile delinquent in your statistics.

Mr. Prefontaine: Yes, we do.

Senator Neiman: Into the correctional schools, into the training schools?

Mr. Prefontaine: We have a statistical program for the juvenile courts. It is a national program which collects information, and provides this information on individuals, their characteristics, the cause of action, the decision of the court, the sentence, and so on. We are attempting now to follow the child through to the correctional stage, and we can do this if he is sentenced to a juvenile institution for observation or sentenced to juvenile probation, or if there are other measures of this nature. We have a program at the present time that provides us with statistical information on juveniles.

Senator Neiman: What is the earliest age you deal with? There is an age difference across Canada.

Mr. Prefontaine: The Juvenile Delinquents Act of the present time, if my memory serves me correctly, provides that delinquency can be committed by children as young as seven years of age. We have, effectively, some children seven or eight years of age brought into the system.

Mr. Rowebottom: We rely upon the provinces in a very large measure for our information since, as you know, this is largely under provincial jurisdiction. We work very closely with the provinces in the production of the statistics which relate to the country as a whole, and to each of the provinces thereof.

Senator Neiman: Are you satisfied that you are receiving a reasonable correlation between provinces, or do you feel that some provinces give you far more information, or deal with certain cases in different ways?

Mr. Prefontaine: Not at the present time. Maybe I should state, however, that there is a federal-provincial advisory committee on justice statistics and information. This committee was created in June 1974. We have had a number of meetings already. One of the major objectives of this committee is to achieve national standards for reporting, and all of the provinces and the Northwest Territories and the Yukon have accepted the principle of some standardization.

Statistics Canada plays a co-ordinating role in developing compatibility for systems with all of the provinces. So we deal with each province and territory in order to develop with them information systems which will produce not only information for management purposes in the provincial departments, but also information which will

provide Statistics Canada with figures which in the long run we hope will satisfy all needs, including information for the enlightenment of the public and information for research purposes as well.

In this context we are presently negotiating with all of the provinces. With some of them we have completed the program, and it is providing us with adequate information. We hope by the end of this fiscal year we will have our program for juveniles—that is, the juvenile court program—completed. However, we lack resources to develop the corrections area which gives us information on the juvenile after he has been dealt with by the courts, and this is where there is a serious gap. That is due to the lack of resources. We have not been given adequate resources to tap that source of information.

I do not expect it will be before the next fiscal year that we will be able to tackle that area. We have no information on juvenile probation at all. We have a partial program on juvenile institutions, but it covers only training schools. Of the ten provinces and the two territories, only five areas have training schools. So with respect to all of the other juvenile institutions, we do not have even those in those other areas.

For the present we have had to set priorities, and we have even had to "marquer le pas"; that is, to interrupt the training school program because of lack of resources. So we are only collecting the forms, the reports from the provinces, and we cannot even process those to provide users of the statistics with information on this important area.

Senator Norrie: Do you cooperate with medical departments in psychiatric institutions in terms of your statistics?

Mr. Prefontaine: We have, jointly with the Health Division of Statistics Canada, some informal consultation. I do not remember how they call it. It is medical justice, but there is a special term for it which has skipped my mind. We have developed an informal consultation process. Alberta appears to be setting the pace in relating health or psychatric information to criminal justice information.

Senator Phillips: Do you keep any classification of juveniles? By that I mean the various classifications which psychologists use.

Mr. Prefontaine: No. The only information we have is that a child has been referred to a psychatric institution for observation or treatment when dealt with by the courts. We do not know what happens to him after he has gone to that institution.

Senator McGrand: A moment ago we were speaking of the family of eight, with one child different from the rest. I should like to point out that they all had the same father, the same grandfather and the same general environment. Each of them, however, has different experiences from the moment he is born, and there is no way that you can put those experiences into statistics, is there?

Mr. Rowebottom: Yes, that is correct.

Senator Fournier (de Lanaudière): It is true that no two people are the same, but that does not destroy the fact that people have responsibilities.

Senator McGrand: A child at birth is not a responsible being. He is certainly not responsible for the things that happen to him. If something happens at birth, or when he is three or six months old, to change his personality, a person cannot be held responsible for that.

Senator Fournier (de Lanaudière): If he becomes sick or insane he must be taken care of. He certainly cannot be punished, but he might be cured.

The Chairman: Referring to the statement that there might be one black sheep in a family of eight, all of whom have had the same home environment, it occurs to me that the pre-birth environment might not be the same. The eight children might have been born under quite different circumstances with quite different pre-birth environments.

At our last meeting Senator Bonnell asked what information of that type was available. Is it recorded? It would not be recorded under "justice," but it might be recorded under "vital statistics" or under "general health." Do you have any information on that? Do you collect any information of that type at all?

Mr. Rowebottom: The only information I am aware of is what Dr. Bannister referred to when he was testifying.

Senator McGrand: Is it fair to say that the information you have is what is recorded on the person's birth certificate?

Mr. Rowebottom: The information on the birth certificate does not in any way indicate the characteristics of the birth; not at all. The only information of a related character available to us is from our hospital records where the birth is recorded. But again that is not information in the type of detail which would indicate the particular circumstances of the birth. It is not the type of information you would be interested in.

Senator Norrie: Do you know any countries in which such information is tabulated or recorded?

Mr. Rowebottom: No, I do not, senator.

Senator Fournier (de Lanaudière): It is impossible.

Senator Norrie: There is no such thing as "impossible."

Senator Fournier (de Lanaudière): Mr. Chairman, how could we have statistics on something which people could not divulge because they would not even know about it. Humanly speaking, so far as I am concerned, it would be impossible to go that far.

Senator Phillips: What about school records?

Mr. Rowebottom: The amount of information available on almost any subject is a function of the priorities that society is prepared to allocate to making that information available, and of the resources it is prepared to deploy for such purposes. If it were important enough to require the type of information you are talking about, then it could be obtained from doctors, from hospitals and from families, but it is a function of the determination of society over a long lead time to acquire such information. It is expensive, it is difficult, and it takes skilled resources and significant amounts of time before such bodies of information can become available to support the type of investigation that you are embarking upon.

Senator Phillips: I was going to ask about school records, particularly of those who have failed a year or dropped out of junior high school. Would we find it very difficult to obtain information in that regard?

Mr. Rowebottom: Again, we do have information about the number of children who drop out of the school stream at various points, but the characteristics about which we have such information, such as age and sex, and the grade at which the child left school would be quite insufficient to support the type of investigation that is being talked about here, because you are going back to the characteristics of the parents. The type of information, of a sociological nature, that is more readily available would be that which describes the socio-economic neighbourhood in which the person moved from youth to teenage, and so on through to adulthood, so that the social environments can be compared.

A good deal of this type of information could be derived from sets of records that exist. An obvious example of this is a census. We would have to know something about the neighbourhoods in which people grow up, and it would then be possible to relate those neighbourhoods to the neighbourhoods of those who get caught up in the toils of the law in one way or another. That, again, however, is not related directly to the problem you are focusing on.

The Chairman: We are focusing on the child at an early age, before his behaviour patterns have crystallized, so that any potentiality for crime, or obvious potentiality for crime, can be recognized and so that something can be done about it before it is too late. Some countries have done research along these lines, and obviously they need statistical information to be able to carry on the research involved.

Mr. Rowebottom: I judge that some individuals have become interested in it.

The Chairman: Even if we employed someone to research this, he would have to get the information somewhere, so that the information would have to be collected from provincial, federal and hospital records, would it not? Somebody must be collecting it, or it would not be available to use for research.

Mr. Rowebottom: Indeed it would not, and my hypothesis would be that it does not exist now in Canada in any significant volume. It would also be expensive, difficult, and time-consuming to create it. Let me just check with my two colleagues on that, and see if they agree with my assessment.

Mr. Prefontaine: Yes. There are two ways in which it could possibly be done. One would be to get a project started right now, under which you would take a sample of Canadian babies and follow it up over a 30-year period. We would then have statistical information after 30 years. The other method is to take people who are at present 30 or 40 years of age, who are actually known criminals, and try to work back, tapping all administrative records relative to the differemt aspects of their lives— I am referring to educational and health records and so on. We would have to go right back to their birth. This is where the cost would be beyond reason, I believe. It would be very difficult to tap all those records. You would need an army of people to check the school and hospital records, and to check the environment in which those children, depending on the sort of survey you wished to carry out, grew up.

Mr. Rowebottom: Our concern is pointed much more towards what is happening in society. We want to know what crime is being committed, in what volume, of what character, and by whom. We want to know what happens to such people, what society does with them, what resources society uses in coping with criminals, for how long it commits them to institutions, what happens to them when they leave those institutions, what the distribution of sentences is that the courts hand out to people who commit crimes of different types, and so on. These are the types of issues that we are addressing ourselves to, and the causal relationship between a certain type of birth delivery, or pre-birth incidents, is one which has thus far been well beyond the scope of our concern.

Senator Phillips: Mr. Chairman, Mr. Prefontaine mentioned the possibility of starting a study of a group of children from the time of their birth and carrying it through to the age of 30, in order to establish information of this nature. How big a group would he suggest it should be?

Mr. Prefontaine: I am not a sampling expert. I would have to check with the experts within the bureau to see what size of sample we would need, and what characteristics we would be tapping. I cannot give you that information. Maybe Mr. Reed, who is a researcher, might have some idea of what could be done in that regard.

Mr. P. Reed, Assistant Director, Justice Statistics Division, Statistics Canada: A very quick estimate and I emphasize the word "estimate"—would probably be one starting with 10,000 or a group even larger than that. There has been a major study under way for some time in England on the correlates of educational performance. They have taken a large number of children, looked at family characteristics to start with, and watched how they progressed. That study has been very costly, has involved some 10,000 to 20,000 children, and will last for something in the order of 20 years, I understand, with acquisition of further information almost every year on each child. The cost would be in the many millions of dollars.

Senator McGrand: You were mentioning statistics and how hard they are to get. I know it is practically impossible in Canada with our federal, provincial and municipal systems, to get this information. However, in Denmark, according to a study made there, out of 1,682 breech births, 25 per cent of those children failed in one or two grades before they got to Grade IX. This indicates that breech births do cause a certain amount of damage to children. Now, the authorities concerned must have had this information, or they would not have been able to present it in that form. They must have been doing some work on it. Also, of the 16 most dangerous criminals—murderers—in Denmark, 15 had a tough time when they were born. This must be recorded somewhere.

If we want to know today something about the childhood or babyhood of some of our criminals, the best way to get it is to go to the men who are doing research on criminals, such as Barker, Boyd, or Stokes. They know everything that it is possible to know about the criminals they are dealing with. They have taken a young man of 20, a murderer, and have gone back into his childhood to find out everything they can about him. They are the people to go to at the present time. We could set up in Canada a system for recording more and more about children. I do not expect this information at the present time because it just does not exist.

Mr. Prefontaine: In that field it would be very expensive to get started on a program of this nature.

Senator McGrand: It is not essential to our inquiry at the present time. We can get more information about the

criminal from talking to Boyd or Barker than from any other source.

Senator Fournier (de Lanaudière): You are talking about 10,000 or 20,000 people, but let us make it a million. After 1,000,000 people there will be one other who has his own personality; to a certain extent, he is different from every other person. In my opinion, if we are working on statistics of criminality, that will lead us nowhere. It is not a matter of statistics. I return to my first approach. It is a matter of responsibility. It is not a matter of birth, chromosomes or anything else. It is a matter of responsibility. Is he responsible for the crime he committed, or is he not?

Senator Norrie: That is not the point at all.

Senator Fournier (de Lanaudière): When you say it is not the point you are right, but what we are discussing leads ultimately to making it the point.

Senator Norrie: No, it does not.

Senator Fournier (de Lanaudière): That is what I understand.

Senator Norrie: We are talking about where that man as a child shrugged off his responsibility, and why he did so.

Senator Fournier (de Lanaudière): At seven years of age?

Senator Norrie: No, at one year, seven months, pre-birth.

Senator Fournier (de Lanaudière): There is no possible responsibility there.

Senator Norrie: That is the point we are discussing.

Senator Fournier (de Lanaudière): In my opinion, responsibility is an expression of freedom, freedom is an expression of the use of intelligence and will, and at one year of age it is just instinct.

Senator Norrie: But it just does not happen to be the point.

The Chairman: I should like to ask a question about the cost. If we start from the premise that we are interested in focusing on the causes of crime, then we already know many of the causes—poverty, poor environment, drugs, poor upbringing, deprivation, and so on. However, there are other causes that we do not know about, such as those attendant at birth, like breech birth and pre-birth conditions, to which Senator McGrand referred.

Mr. Rowebottom, you have been dealing with realities, with situations as they arise, and recording them in statistics. Apparently crime is still increasing. All we are doing is reacting to situations as they arise. We are not doing too much to get at the causes of crime. There is certain information that Senator McGrand and the committee are trying to zero in on.

Mr. Prefontaine, you told us earlier that there is a provincial-federal committee, and that you agree among yourselves as to what information you want. If you wanted a little extra information, such as that about the type and conditions of birth, and possible psychological damage, I do not understand why it would cost a great deal more to start collecting it. If you never start, then you will never have any such information in Canada. Even if you started tomorrow, then in 10 or 15 years you would at least have a body of statistical material that might be useful. If you got agreement through the federal-provincial agency to collect this additional information, would that cost all the money you say it would?

Mr. Rowebottom: I am not familiar with the type of information that may now exist in the files of the medical fraternity about difficult births. I am sure that the medical profession has a body of direct data which it uses for purposes of medical experimentation, research and analysis, which describe the circumstances of birth for some percentage of total births, derived from clinics and hospitals. I am reasonably sure that some fairly intensive attempt to gather that information together would probably be successful. But it seems to me that you are asking a quite different question. You are asking for the correlation between that type of information and subsequent events.

The Chairman: I do not think we are asking you to make the correlation. What the committee is asking is that you collect the data so that other researchers can use it and make the correlation.

Mr. Rowebottom: The data that would be an essential element, the data base you would require for such a correlation, would relate to any criminal or non-criminal event which subsequently occurred involving those particular individuals. Therefore, what you are asking for is the development of a longitudinal data base extracted from a cohort of the population; that cohort derives from an evaluation of the circumstances surrounding birth. That is where it would be exceedingly expensive in time, skill and money. It is not just the development of the data base surrounding the original circumstances, but it is that data base related to one which describes subsequent events in the lives of the individuals involved. You are talking about the development of a data base through time in which subsequent events of a criminal nature are related back to the circumstances of birth, or environmental circumstances related to birth. That is where the time and money would be involved.

The Chairman: I would think all that would be needed for research purposes would be a sufficiently large sample. If this were limited to one province instead of the whole population of Canada, would that reduce the expenditure?

Mr. Rowebottom: It would reduce the expenditure, but it would probably add some complications. It would increase the degree of error associated with the measurement. We are a very mobile population. People born in one province spread out across the country at varying ages. A person born in British Columbia may be residing in any one of the other provinces, so the process of tracking that individual through time becomes difficult and expensive.

The Chairman: Mr. Reed, would you like to add anything to this matter?

Mr. Reed: There is another approach which would give you information and in turn tell you whether or not it is worthwhile to spend a great deal more, and that is to identify a list of individuals who have shown a consistent criminal behaviour, starting at any age you want and continuing on to any age you want with that list, assuming policy questions regarding the release of those names are solved. If you take that list of names and go looking for information on, for example, birth defects or birth trauma, and whether or not it existed in the case of each of those individuals, that may be another approach. In other words, rather than starting with the birth information and later through a long period of time trying to identify the occurrence of crime, take criminals, people who have been iden-

tified as criminals, and go backwards; go to family records and school records of those people.

This is probably not something which Statistics Canada could do, simply because of the guidelines and rules as to the kind of work we can carry out. We could participate in some ways in it. This, I believe, would be one of the most inexpensive ways of starting to acquire reliable statistical information on the linkage between the kinds of factors you see as important, and the occurrence of criminal behaviour.

The Chairman: How large a number would you start with in this line of research? Would you think 1,000 would be large enough? Do you think you would get enough information to correlate and show trends out of a group that size?

Mr. Rowebottom: You would be caught up in circumstances of acts and information that would be available for each and every one of them. Historically, you would look back, and how much you would find would be uncertain.

Mr. Reed: You may find, starting out with a list of 1,000 names, that you would only be able to get information on 200, or 39 or perhaps 700; I do not know. Again, sample size is determined by your analytic intent; the purposes of the analysis. So, I cannot really give you a simple answer to that question.

I would say simply and rather vaguely that several thousand would be necessary in a sample. Again, the costs would be much less than what we have been speaking about for these other kinds of projects.

Mr. Rowebottom: I would argue that the probability of reliable information being available about an event which occurred 20 years ago to a known criminal would be very low.

Senator McGrand: If you were to search for information respecting a criminal named John Doe, aged 20, it seems to me that the only place you will find information as to his early life is not in school records, but in the records of the hospital where he was born. If it was a well organized hospital, there will be information available with reference to the radio between the fetal pulse and the mother's pulse. Was the baby's pulse more rapid than it should be? Was meconium present before he was born? Meconium is simply the bowel movement before the baby is born and during delivery, which is always evidence of an infant in distress. That is always recorded in a good hospital.

Another significant point is whether the baby cried incessantly after he was born. These are important matters. The only place from which you will obtain such information will be the hospital at which he was born.

I am just offering my thoughts as to how this information may be gathered.

Mr. Reed: This kind of work would really be detective work; not so much statistical work.

Senator McGrand: I imagine that anyone who takes an interest in a criminal and says, "I am going to find out all I can about this man," will go back and search the records. We must go to these people and talk to them. There is no use talking to people at Statistics Canada, when they do not have the statistics.

Senator Norrie: You cannot tell me that Dr. Atcheson in Toronto does not have a lot of information like that.

Senator McGrand: Yes, from all the people he is interested in.

Senator Norrie: I would imagine he would have information about every month of their lives. He is dealing with criminals and disturbed people, and going right back to their childhood. He is a man of renown.

Senator Fournier (de Lanaudière): Mr. Chairman, if it were possible to go into the files of Dr. Goldbloom in Montreal, who was certainly one of the greatest in his line of work, we would find a wealth of information. I am sure his files have not been destroyed. This is detective work, and it has been done by a specialist. I happened to know Dr. Goldbloom very well, and know what he was doing here in Canada, the United States and even in Europe. He was a man who could assess the stature and characteristics of a person, and no mistake.

I would imagine that your department would need permission to conduct this type of a survey because the records are confidential, but they would very helpful indeed. The records of the doctor you just mentioned in Toronto would be very helpful as well, and I am sure there are others we could speak to.

Mr. Rowebottom: That would more probably be the responsibility of some other department than Statistics Canada if, indeed, it were of any advantage.

The Chairman: It may be the Department of National Health and Welfare.

Mr. Rowebottom: Yes.

Senator Fournier (de Lanaudière): And they could transfer the information to your department.

The Chairman: Any further questions?

Senator Fournier (de Lanaudière): I move we adjourn.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 17

THURSDAY, JUNE 17, 1976

Fifth Proceedings on:

The Study of the feasibility of a Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society.

(Witness—See Minutes of Proceedings)

21585—1

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21255—1

THE STANDING SENATE COMMITTEE ON HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C.,

Deputy Chairman.

AND

The Honourable Senators:

Argue,	Goldenberg
Blois	Inman
Bonnell	Langlois
Bourget	Macdonald
Cameron	McGrand
Croll	Neiman
Denis	Norrie
*Flynn	*Perrault
Fournier (*de Lanaudière*)	Phillips
	Smith (*Queens-Shelburne*)
	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it ways—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,

Clerk of the Senate.

21255—2

Minutes of Proceedings

Thursday, June 17, 1976
(21)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 2:10 p.m., the Chairman, the Honourable C. W. Carter, presiding.

Present: The Honourable Senators Bonnell, Carter, Croll, Denis, Fournier (*de Lanaudière*), McGrand, Neiman, Norrie and Smith (*Queens-Shelburne*). (9)

Present but not of the Committee: The Honourable Senators Burchill and McElman. (2)

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken".

The following witness was heard:

Dr. E. T. Barker, Consultant,
Mental Health Center (*Oak Ridge*),
Penetanguishene, Ontario.

Dr. Barker made an introductory statement after which he was questioned by Members of the Committee.

On motion of Senator Bonnell, the Committee *Agreed* unanimously to report to the Senate that it had investigated the feasibility of a Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society and *Agreed* that it is not only feasible but necessary to carry out such an investigation.

At 12:10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, June 17, 1976

The Standing Senate Committee on Health, Welfare and Science met this day at 10 a.m. to look into and report upon the feasibility of a Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, since you have already met our witness, Dr. Barker, there is not much need for a lengthy introduction, but I will just say again, for the benefit of my colleague who came in with me, that our witness today is Dr. E. T. Barker, a consultant at the Mental Health Center Oak Ridge Division, of the Ontario Ministry of Health, at Penetanguishene, Ontario.

Dr. Barker, do you have a presentation that you would like to start with, before we come to questions?

Dr. E. T. Barker, Consultant, Mental Health Centre (Oak Ridge), Ontario Ministry of Health, Penetanguishene, Ontario: Yes, Mr. Chairman, I telephoned you a week or two ago about some of my misgivings, having read the transcripts of the last four sessions of this committee, and also wrote to you about some observations which I thought might expedite our discussions today. Unfortunately, the letter did not arrive, although it was mailed on June 11. I think I should explain my reservations, perhaps reading what I wrote, and carry on from there.

I simply wrote to you saying that I had had an opportunity to review the transcripts of this committee's deliberations, that I looked forward to meeting with you today, and that I discussed with you on the telephone the regrettable fact that neither I nor any psychiatrist that I know, who deals with criminals and disturbed people, has been able to go right back to their childhood and obtain information about every month of their lives. As Dr. Atcheson told me when I spoke with him about this matter,"We all have our hunches but is is exceedingly difficult to get reliable data."

I felt concerned that I was coming here under false pretences, having read in the proceedings of your fourth committee meeting that you hoped to obtain from one of us at Penetenguishene data about the early life and background of many of our dangerous patients. We no doubt should have, though we do not have, extensive data about their early birth and development, which I felt you were looking for.

> I wrote: In anticipation of our meeting together, I thought I should set out the following tentative observations and opinions regarding the matter before you, in the hope that it might expedite discussion when we meet. Moreover, I am writing on Canadian Society for the Prevention of Cruelty to Children rather than hospital stationery so that my bias in these matters will be perfectly clear. I have just recently organized this society, the first objective of which is to
>
> > "gather existing information relating to the nature and extent of child abuse, including both physical and psychological aspects, potential consequences, and possible means of reducing its frequency."
>
> Let me say first of all that I cannot help but be very greatly impressed by the incisiveness and breadth of knowledge reflected in the discussions of you and your Committee members on this matter. Perhaps I have become too used to more fuzzy-minded psychiatric discussions! What comes through from the proceedings, in addition, is the great tenacity with which Senator McGrand has pursued this most important matter. In my experience, such singleness of purpose is both rare and admirable.
>
> As I see it, there are two important reasons why the broader motion passed by the Senate needs to be restricted in scope, as your Committee has quickly done. The first as Finsten and Tait note in their paper "The Causes of Crime and Violence: Influences in Early Childhood," is that "research into probable causes stemming from the first few years of a person's life has received less analysis than other areas." Secondly, and of greater importance, in my opinion, it is only through more extensive knowledge regarding *causal* factors occurring very early in a child's life (pregnancy, birth, the first two or three years) that *preventive* programs can be developed. As has been known for many years now, it is in these early years that "the die is cast" or "the concrete hardens".

This is the paragraph that I was hoping there might have been some review of earlier. It is a rather closely worded argument.

> I argue for a concerted effort to obtain knowledge upon which to base preventive programs rather than early remedial programs for the following reason. At best, we are likely only to be able to identify a reasonably large number of children who are "at risk". That is, they will have been subjected to a series of factors demonstrable in the early years which make them more likely to become disturbed or violent or criminal as adults. We know that it is from this "at risk" group that the majority of our violent criminals will arise. What will most certainly be the case, however, is that not only will some children in this "at-risk" group not become disturbed or violent adults, but a few dangerous criminals will almost certainly arise from the population not previously identified as "at risk." What we are faced with, then, is providing some type of "therapeutic" intervention [if we are following the attack of early remedial intervention] to a very much larger number of children before they have done "much wrong" (a process offensive to civil libertarians) while at the same time pursuing a policy which

would stretch even thinner the already scarce resources which are presently inadequately coping with the treatment of those who have clearly established themselves as dangerous or disturbed.

Why should a Senate Committee inquire into and report upon factors occurring early in a child's life which may later lead to disturbed or violent behaviour?

Because it is of such vital importance? Yes.

Because the Senate can select a small group of competent, concerned lay people to maturely review from a common-sense point of view the findings of highly specialized professionals from a wide range of disciplines? Yes?

Because the stature of the Senate of Canada will be a powerful force to evoke from the best minds in each discipline an up-to-date summary of the known data in that field? Yes.

Because a Senate Committee already has the resources (the Queen's printer) to publish its proceedings as a matter of course? Yes.

Because the Senate is perhaps the only institution in Canada secure enough to call before it witnesses who may present evidence which we as a society are very reluctant to hear? Yes.

To illustrate this last point, I append an example given by Dr. Lawrence Kubie in which he points out that

"we find ourselves up against taboos which have been entrenched for generations in laws, traditions, religious rituals and taboos, in family life, and in our political and economic system".

Additionally, I refer you to the April 6, 1976 letter from Drs. Warme, Da Caosta, and Atcheson to Senator McGrand in which they state

"perhaps the roots of our own violence are something that we do not care to know about".

If a special committee of the Senate of Canada is not established to obtain submissions from, or hear in person, the best minds in each of the wide range of relevant disciplines—anthropology, sociology, psychiatry, pediatrics, to mention a few—to elicit concise statements regarding factors occurring during pregnancy, birth, and the first three years of life which can lead to criminal, violent, or other disturbed behaviour in adult life, a unique opportunity will have been tragically lost.

I sent those remarks to your chairman, and they will arrive in due course, and in my remarks here I will be most interested to speak with those amongst you, and I think there are some, who rather violently disagree with what I am proposing here and who perhaps disagree with the whole notion of a Senate committee being established to look into these matters.

Perhaps I have said enough for now.

The Chairman: Thank you, Dr. Barker.

It is unfortunate that Dr. Barker's letter, although mailed on June 11, still has not arrived. However it probably will arrive some day, and when I get it I shall have copies made and sent to all members of the committee.

Senator Bonnell: Woudl it be possible to have a copy attached to our proceedings of this morning?

The Chairman: Well, the essence of the letter is already in the body of the transcript as part of Dr. Barker's presentation. I shall now ask Senator McGrand to lead off the questions.

Senator McGrand: Well, Mr. Chairman, I have many questions I would like to ask our witness, and I am sure everybody else is in the same situation, so perhaps we will not have time to get all our questions in. However, just to go back to something that happened quite recently in Edmonton, there was the case of a seven-year-old boy who killed another child, aged 2½, and there is evidence that he was involved in another murder attempt of a three-year-old. So here you have a boy of seven years of age who is in school and who is under the observation of teachers, and yet this came as a sort of bolt from the blue; he was not recognized as a potential psychopath. You did not get a chance to study this case, but I am sure you have studied the case of many others. How would you go about assessing the potential of children to commit crime?

Dr. Barker: Senator McGrand, I think one of the inaccuracies in the general opinion about the dangerous criminal, particularly the insane criminal, with which I have had so much to do over the past 10 years, is that in some way he is very, very different from you or me. I have not found that to be the case. When I get to know these patients, when I am involved in their treatment programs for five, six or seven year or just study them for 60 days prior to court appearance, I am struck far more with what is similar in their make-up to the make-up of other children or other persons, than what is dissimilar. That fact always seems to be forgotten. As I see the situation, that boy out West was not "picked off" early, less because the facilities were inadequate to pick him off than because he is not exceedingly different from half a dozen or more kids on his block. We are dealing with something endemic in society, and the question should really be: Why is it that only one boy did this? From my experience with these kids the frightening aspect is why it does not happen much more often. The seeds are there and it seems that it is those seeds that are being generated early in children's lives. I personally have become disenchanted with what is now at Penetang, probably the most intensive treatment program for these people after the fact. I want to go back to a much earlier stage in order to prevent such situations arising in the first place.

Senator McGrand: Do you mean we should have a better screening? With respect to tuberculosis, for instance, years ago we put the patients in sanitoria in an attempt to cure them. Now people travel with x-rays and everything else in an endeavour to locate the tuberculosis before it becomes evident. I take it that you would like a better screening of all children.

Dr. Barker: I am afraid I disagree. In my opinion, if we were to initiate a program of very intensive psychological testing and psychiatric interviewing of all Grade I children throughtout the country, with our present knowledge and the knowledge we will have over the next 20 years, we would not be able to seriously affect the volume of violent crime or disordered behaviour that generates out of that group. In my opinion, we simply must go back earlier than that.

Senator McGrand: Yes, I know. The cause can be before the child is born, during the birth period and 24 hours after the child is born.

Dr. Barker: And during the next two, three or so years. Since the turn of the century Freud and others, with whom we may disagree, have been saying that the "die is cast" then, and if you wish to make changes after that you must use a hacksaw on a piece of metal which is already solidified.

Senator McGrand: Yes, but the thing is, what would be the four or five cardinal symptoms for which you would look in a disturbed child before he gets into trouble?

Dr. Barker: I have testified perhaps a hundred times at murder trials, either for or against insanity, as it is defined in section 16 of the Criminal Code. On half a dozen of those occasions the offenders have been patients who have killed within a week of having had a psychiatric examination. I am not trying to whitewash the psychiatric profession, but I have put myself in the shoes of the psychiatrist who examined the patient a week before he killed someone, and in one instance a day before. I have asked myself: Could I have done better? Would I have locked him up? I have had to say no, not to protect my confrères. Our capacity to predict in the individual case is simply not good. True, there are some cases which differ from that. If a man has a delusion that he is being persecuted, has a gun and is very disturbed, we lock him up. We certify people under the Mental Health Act under those conditions. However, by and large, this type of behaviour is not easily predictable the day before. That is my experience. Perhaps there are experts who can do it. However, I have not met them and do not know them. All I can say is that there is a seething mass of violent and near-violent people, some of whom act out. The surprising thing to me is why it is that more people do not cut loose the forces that are contained within them for violence. In my opinion, the factors in our society which generate those forces early on should be investigated.

Senator McGrand: One thing that comes up time and time again is that people think that this criminal tendency is inherent. I have never put too much stock in this genetic thing. What is your opinion?

Dr. Barker: Well, there was a big thing about XYY chromosomes a few years ago. We had everyone in Penetanguishene surveyed for that, and we found that three out of 300 patients had XYY chromosomes.

Generally, I would say, with some modifications, we are not dealing with problems of genetic inheritance. I might add here that there is a basic flaw with retrospective studies, like going to our patient population and trying to find XYY chromosomes, or trying to find which of our dangerous patients had forceps delivery or were premature. What you find, and what has been found countlessly in delinquency studies, is that if you take a normal population you will find very close perhaps the same proportion of people who had forceps deliveries or who were premature.

One must knock on doors and take a random survey of people, not just the diseased population, in trying to find correlates early on.

Senator Neiman: You are stressing the efficacy of preventive rather than remedial programs, and you are talking about starting it at birth or in the first three years. How do we go about setting up those programs? What is your idea of where we can zero in and really identify it at an age and stage you think is important?

Dr. Barker: My idea on that is exactly what you, as a Senate committee, have focused yourselves on, and I hope will be proposing to the Senate at large, which is simply to start with an inquiry focusing on the pregnancy, birth and the early years of life, and what factors might have to do with disturbance and crime later. All I am saying is that it is too late for later programs. I do not think we have the information or knowledge at the present time. What is lacking is the impetus which can be provided by a group such as yourselves, or a special Senate committee, to say, "We must start looking back there." At that point, in those hearings some ugly questions will arise about factors in our society which may be contributing—*may be contributing*—to violence in our society.

I do not think we have the answers now, other than saying that more and better prisons, more and better hospitals like Penetanguishene, and more psychiatrists to treat more Grade I pupils is not, in my opinion, the answer. The answer is the direction which you, for some reason, started to get focused on. That is my excitement about what you are almost into.

Senator Bonnell: What do you think of the possibility of hypnosis, in bringing people back to their early days of childhood and seeking what they remember, to find out what the problem or trauma might have been? They tell us that in hypnosis you can bring them back even to the womb. If you go far enough, you might even bring them back far enough to believe that reincarnation is really the thing, that people have other lives and perhaps were influenced by the life before. Have you any comment to make on that?

Dr. Barker: I have had personal experience of having hypnotized some dangerous people myself. I have spearheaded over the last 10 years at Penetanguishene programs using very special drugs to try to discover early, unconscious, events which might have been contributory to later violent behaviour—such as the use of scopolamine, tofranil—Jexamyl and LSD. That material has now been published in the *Canadian Psychiatric Association Journal.* The standard use of truth serum, (so-called) sodium amytal, and Methedrine; and the use of group hypnosis within Oak Ridge we practised in 1966 for the purposes you are suggesting.

Violent acts on the part of adults do not occur as a result of a single or two or three tragic and startling events early in life. A personality is developed as a result of the repetitive experiences early in the family life and perhaps some experiences during pregnancy and birth, about which very little is known (and about which this committee has started talking, well in advance, I think, of the majority of the scientific community,) rather than single, isolated events. If these violent acts were attributable to a single isolated event, the approach of hypnosis and drugs might have some impact in unlocking the event, and that has been tried with battle neurosis, and so forth.

Generally, we are dealing with people where the mold was wrong to start with. The concrete was poured in and set wrongly. That mold was created over two or three years of repetitive daily experiences in the child's early life—perhaps with no father present; perhaps with very abusive parents—on a repetitive basis, not just one great big battle in the family, not one instance of this or that, or anything else, which might leave some hope for the approach of getting in and getting at that one event. We are dealing with the milieu of the formative years.

Senator Bonnell: Do you feel the breakdown of the family unit in this day and age is a factor? In my time, if a couple in the community were divorced they became outcasts. Extramarital sex was taboo. Today, about one or two in ten are divorced and perhaps three in ten are separated. Extramarital sex is still not the best thing to do, but it is not as taboo as it used to be. Are these changes in attitudes having any impact on family life, love life, the home life? Are we going to have more criminals in the future because of these changes in attitudes?

Dr. Barker: It is my view that it is in that direction that we ought to begin asking serious questions, such as the effect on children of more relaxed divorce laws and who is presently arguing for children in that particular debate. Those are questions which need to be asked. They are issues that very quickly move into public policy.

We must start the focus back in the early years and start it as vigorously as possible. I do not know what particular things will turn up. I repeat, I think some of them will be offensive to the citizenry of this country and will not be raised lightly by elected representatives. That is a major reason, in my mind, why the Senate is the place to call witnesses who may well give testimony that some people will find offensive. We need an autopsy table, just as medicine progressed by operating on its failures, by the postmortem. Our society—and some people have been writing about this for 20 or 30 years—has no autopsy table for its social institutions, for its public policies. What are the effects on its own people of particular policies? I have often thought that when a jury in a murder trial brings in a verdict of not guilty by reason of insanity, in general it is thought that the culprit has been caught and he will be put away and cured. That is not true, on many grounds. You do not have the culprit; you have the symptom. The act of a husband shooting his wife is the end of a long series of events. You may have to indict poverty and a wide spectrum of things, many of which are not being talked about yet. There is no arena for public debate in this area. That is what I argue for. There is not enough attention focused on these things so that society can re-examine its policies, its institutions, and the cost it is willing to pay for certain policies. I think there is a correlation. As one sociologist put it, it is as though we oppose breakdown products but we favour catabolism. That is an overstatement, but it is in that direction that I think we need to begin to ask questions.

Senator Bonnell: Again dealing with my own experiences, I started out some 27 years ago delivering most of the babies in the homes. There were never any problems; everything was fine. The whole family was involved; even the grandfather was there boiling a pot of water on the stove. Then people started moving to the rural hospitals to give birth, and again there did not seem to be many major problems; everything seemed to go reasonably well. However, when you go into the maternity wards of some of the hospitals of our larger cities, you hear mothers screaming, see nurses running, and what seems to be great confusion. It no longer seems to be a very natural event. They always seem to be administering anesthetics, delivering babies by caesarian section, and everything else. Is this whole thing going to be a cause of more crime in the future, with birth not happening in the natural way as it did years ago? Are we going to have to go back to more natural birth?

Dr. Barker: I believe it is hard to say with precision, "Yes, that will cause more crime," or, "It will not." It is clear to say we must be looking at those things. We must do as someone did in the last two weeks, raise some totally ugly questions publicly.

We get into euthanasia which is an abhorrent political issue. The time has come when we must face those abhorrent questions and debate them. The question of whether it is reasonable to preserve the life of an infant badly damaged physically at birth, who perhaps requires multiple operations and hospitalization for the first year of its life, was raised publicly by some medical specialist within the last couple of weeks at a conference. I think that takes a good deal of courage. It seems to me that we need an arena (and what better or safer one to start in than the Senate?) to have those questions raised, and possibly in an ongoing way. I believe that behind those questions, which are too horrendous to ask, lies much of the trouble.

I appended to the letter to Senator Carter a quotation from Dr. Lawrence Kubie who argues about religous taboos and things entrenched in law. He is a psychoanalyst. Of course, he believes that everything starts with sex and agression. Quite apart from that, he gives as an example the taboo in *talking* about sexual matters in our society—just *talking* about it—and that it is probably causing enormous damage because the child is unable to think or talk about those matters freely. I happen to believe that is true. It is better to talk about them.

We would protect the child from hearing about rape, about violent sexual crimes. We have a lot of special ways of hiding matters sexual from children. He is arguing that therein lies the seed of danger. You simply indicate to the child by not talking about sexual things that they are so dangerous or so bad that they should not enter their mind. Society, I think, is being like that in a wider sense about many matters.

I notice that Dr. McKnight, who is a very traditional psychiatrist, in his letter to Senator McGrand, which is part of your minutes, talks about having some five or ten years left in this area. I phoned him and asked him, "What sort of apocalyptic talk is this? Why are you thinking in such a short time span?" He talked to me for about five or ten minutes on it.

I am inclined to agree. I think we cannot afford to idly talk about better treatment programs and prison reform for very much longer. That may be a personal and very wrong opinion, but I believe our society has to begin asking very basic questions which have to do with the early formation of children. I have said it about ten times, and I am sure you are tired of hearing me say it.

Senator Croll: I am very interested in the questions asked by the doctor. However, I must remind you, doctor, that you were not there and once upon a time that institution was under my care. You have no idea how glad I was to be rid of it. I heard the same argument at that particular time, the very same one you present right now quite convincingly.

Nothing has changed very much. It has become one of the best institutions in the country, as expected, and why not, but nothing has changed. The public have never warmed up to the problems that you get in that institution. Why not?

Dr. Barker: I have a brief statement which I think answers directly that question, if I may be permitted to find it and read it.

Senator Croll: Yes, go ahead.

Dr. Barker: I am quoting from a book review by a sociologist whose name is Seeley. He was reviewing in the publication "Canada's Mental Health" a volume entitled "Action for Mental Health" which was an assessment of where we were in mental health programming.

What he says is:

> What is disappointing, what creates the total effect of a "dull thud" in the final report—even though brightly written—is the fact that it says very largely what everyone (e.g. the reports of the Council of State Governments) was saying fifteen or twenty years ago or more. There is, for me and others, the strongest impression of déjà vu, the most vivid feeling of "This is where I came in." Why?
>
> When a persistent pattern of behaviour yields no results—or results quite different from those intended—psychiatrists direct the patient's attention to something persistenly wrong—inept or maladaptive—in the behaviour. And yet, when for thirty years we have attacked without appreciable alteration the public's apathy about or rejection of the mentally ill patient, all we can do is deplore public behaviour instead of examining our own ineptitude. And it is ours that is inept. It is inept because its principal proposition—that mental illness is just like other illness—is simply not true. It is inept because of the way we have of talking about it—as though the speaker were outside and above the thing spoken about. This makes impossible the participation which is itself the medicine against alienation. Furthermore, it is inept because the capacity to deal with mental ill health is a function primarily of mental health, not of knowledge about mental health: so that the way to help people deal better with those even sicker is to heal the former, not tell them—a very different operation!
>
> What is entailed then, for a meaningful attack on mental health is the creation of a healing and helpful society; not a tinkering one with special corrective institutions, inside an essentially competitive and self and other-destructive one. But this is supposed to be political and sociological territory. And those who are bold with the patient, who see daily how the sickness of the society finds its inevitable counterpart in the sickness of the person, cannot be brought to deal with society boldly—or even to indict it clearly. It is as though they opposed breakdown products, but favoured catabolism. Whether history will label their patients as crazier than they, must remain an interesting open question.

They are talking about mental health there. We are talking about crime. I notice from some of the earlier proceedings, some of you would make a sharp distinction between the two. I do not, personally.

Senator Norrie: You do not make a distinction?

Dr. Barker: Not a sharp distinction, not as sharp as before. *Mens rea* is a very important thing to the legal profession. It dissolves under psychiatric assessment. If the mind does not seem to be behaving logically, if a person does not choose to do right and you cannot understand why, you define it then as an illness, but the same factors are at work, it seems to me, in the mind whether a person chooses to do right or wrong. I would enjoy a discussion of that. It does come up in section 16. Clearly, whether a person is found insane under the Criminal Code for the commission of an offence has far more to do with the politics of the trial—not in any unfair sense, but with the nature of the charge. What lawyer would put forward the defence of insanity on behalf of a person if he is just charged with B and E? It has less to do with the state of the mind of the person than other factors. It is a very fuzzy distinction between mental health problems and criminal behaviour. It seems to me that we are far better off to deal with the more basic notion of disturbed behaviour, some of which is criminal.

I suppose it is possible to find—I have not met one but I would not necessarily at Penetanguishene—a well-adjusted criminal, a person who simply feels that the odds favour it, perhaps that he likes night work or working in that kind of exciting job and he is not likely to get caught and he weighs those chances. He is an informed and sensible criminal. I think there are some. I would not call them sick.

Senator Norrie: Would you think that a criminal who had created a crime at some time could be more insane at one minute than at another? Do they have spotty insanity which clears up and the person is quite normal, but then might create another crime later on and nobody could detect that trait of insanity in him?

Dr. Barker: Well, the situations I am most familiar with, in that context, are murder situations, and the cases I am familiar with are ones in which the murder occurs at a particular time, with a number of factors developing into the situation, which produce the murder at that instant. Most often, where insanity is available as a defence, the person has been psychotic for a period of time and therefore he is unable to appreciate the nature and quality of the act; but there are cases where a person was psychotic at one time, and later on was not, perhaps while being questioned by the police. It is a shifting thing.

Senator Croll: I have two questions, and I will ask the second one first. Are you an abolitionist?

Dr. Barker: No. I am in favour of capital punishment. Dr. Boyd, the director of the mental hospital, and I, spoke in favour of capital punishment in the media some month and a half ago, not because we feel it is right morally, or right in any other sense, to kill people but that it is a much greater evil for the government to pass legislation which requires, without provision for parole, mandatory 20 or 25 year sentences for murder. That is an incredibly backward move, because very many people who commit murder are clearly not a danger to society, and are capable of being rehabilitated. The management of prisons will be hopelessly complicated by the provision of such mandatory sentences, the opportunity for rehabilitation programs anywhere in the prison system for capital cases without the provision for parole will be eliminated, and in my opinion it makes more sense to sacrifice a few dangerous and unrehabilitated felons in order for the public to regain some sense—perhaps through a motivation of revenge—that justice is being done, and we argued for that so that we will be able to continue to try to rehabilitate. I think, if we do not that at this time, that in 10 years from now, because the crime rate is going to rise—it is going to rise whether we have capital punishment or not, of course—we are going to be having the argument in favour of capital punihsment 10 years from now on economic grounds which is the more sinister, as I see it, that it is simply too expensive to keep all these people locked up for 20 or 25 years. The options are bad on both sides, but in our opinion it is far worse to do a trade-off of mandatory prison terms without the option for parole, of 20, 25, 30 years.

Senator Croll: When you say that these sentences will be without the option of parole, that is not correct, doctor.

Dr. Barker: I understood that the provision that is contemplated allows for a mandatory 20-year sentence.

Senator Croll: No. I think parole is available after 10 or 15 years.

Dr. Barker: It is available after 10 years at the present time, for non-capital murder. What is contemplated is that there be mandatory sentences of 20, 25 or 30 years. I have heard those figures bandied about, and that is an exceedingly retrogressive step.

Senator McElman: There is a provision that after 15 years there can be a special consideration.

Senator Smith (Queens-Shelburne): Before a judge.

Dr. Barker: I think it is insane.

Senator Croll: Doctor, in tracing back from what we are trying to do now, I suppose it was about 15 years ago that we started pulling these people out of the closet and admitting that they existed. Up to that time we were hiding the fact that we had somebody in the family who wasn't well. That was 15 years ago, not too far away from the time when we started to take on that new attitude.

Dr. Barker: Are you referring to the back wards of mental hospitals, or the acceptability of mental illness by the general public?

Senator Croll: Yes, and acceptability.

Dr. Barker: It is not my feeling that mental illness is as yet acceptable to the general public.

Senator Croll: Well, the recognition that it is there—and here I am getting to the acceptability of it—the doctor you spoke to said it is still some years away, ten years or 15 years away before it is accepted?

Dr. Barker: No, he was not referring to acceptance. He was saying that we have five to 10 years to get at solutions to the problems of violence and crime in our society.

Senator Croll: But if we have not accepted it, and you say that the acceptance is not there yet with respect to mental illness, how can they talk about doing something about it if we have not yet accepted it fully?

Dr. Barker: Well, I think we still want to think of the mentally-ill person as being different from ourselves—that he is suffering from some kind of medical disease. The analogy, I think, can be drawn between the person in the family who becomes mentally ill and who is hospitalized and the person in society who becomes a criminal. We have to define *our* role in the process. It is often said that the person in the family who becomes hospitalized in a mental hospital is not necessarily the sickest, but the most vulnerable and the others may be sicker but they extrude him into the hospital. We must look at society to see what the rest of us are doing to extrude a certain number of breakdown products into our penitentiary system or our hospital system. Who is going to accept that? The family is not accepting that model. At the present time there is still a clinging to the notion that the disease rests in the individual. We lock that individual up and that has solved it for society. But it hasn't. That person is a symptom and has grown out of a social system or a society which has had a lot to do with the creation of the problem, and we blind ourselves to all those factors by saying that we have to put him away, preferably a hundred miles from a major centre. That has changed somewhat, perhaps due to your policies. We have brought in family therapy and some progress has been made in this field. But the basic notion that I may be the cause of my wife's psychotic depression is not widely accepted or that the parents may be more culpable in his offence involving the child out West has not been accepted. Perhaps the child was brain-damaged. We do not know. When I am testifying in court and I see the mother weeping and the boy is on trial for having shot his father and they ask me, "What do you think caused this?" I waffle on about biochemical causes of schizophrenia because the mother will feel better if she feels that it was something beyond her. It is very hard at that moment to say that perhaps the way the mother handled that child in the first three years was a factor. I do not want to scare all the mothers and fathers who are trying hard against a lot of odds to raise their children. That is the danger in talking prematurely or even beginning to talk about this area. But perhaps parents do not have enough supports in our culture; perhaps there are not enough rewards for being a good mother. Those might be the type of factor that the committee would uncover—that mothering is a very difficult job to do well in contemporary society.

Senator Croll: Does mothers' allowances help?

Dr. Barker: I am sure it would help.

Senator Croll: We understand what you are saying, doctor, but the thing is that it is hard for us to realize you are throwing so many truths at us and we don't have the answers.

Senator Bonnell: In Prince Edward Island, where I come from, we have a lot of peace and tranquility, and about 90 per cent of our crime is connected with alcohol. I am one of those who believe that alcoholism is a major problem, and I find that all the alcoholics in my part of the country now tell me that it is a disease. It seems to do something good for their ego to be able to say that it is a disease. As a psychiatrist, and one who is related with crime, do you think alcoholism is a disease and that that is partly a reason for crime? Personally I believe that these are people wo have never grown up and become mature.

Dr. Barker: My opinion is that the excessive use of alcohol is a symptom and it is very attractive for a person to believe that it is a disease just as it is attractive to the mother of the boy who shot his father to believe that something is wrong genetically or biochemically to cause the tragedy rather than that somehow she is implicated. However, we are all implicated in some manner. That is hard; that is why I come back to saying that the Senate, perhaps, can be an arena in which to implicate ourselves. Who is going to throw you out for saying it? The Senate is secure. I think that if some questions were even raised by a candidate, he might be re-elected. With respect to alcoholism, we are talking about an enormous situation, widespread and international. Why do people want to drug themselves out of their minds and sometimes out of existence? Alcohol is a wonderful tranquillizer, but why is half of North America on Valium? There is a real urgency to begin to look at those factors. It is beyond the point of worrying about treatment programs, in my opinion.

Senator Bonnell: What percentage of the crimes, be they sex crimes or murder, with which you are presently deal-

ing at Oak Ridge, would be due to alcohol or drug abuse at the time of commission of the actual offences?

Dr. Barker: Over half of them would have been under some influence of alcohol.

Senator Bonnell: Or some other drug?

Dr. Barker: Yes; over half of the population is under the influence of alcohol or some other tranquillizer half the time.

Senator Croll: It is not the influence; when you use the word "influence" of alcohol, you do not suggest that half the people in the country are under the influence of alcohol.

Senator Bonnell: When they commit a crime.

Dr. Barker: In my opinion, a great many people use alcohol as a tranquillizer. Do we need to be half drugged to face life? There is something basically wrong, and I argue that crime and violence in our society at this time is endemic and it has to do with those factors.

Senator Smith (Queens-Shelburne): How many witnesses would you estimate we would have to call before this committee to arrive at a deeper understanding of this problem in order to submit a report which would come to the attention of the public and make them realize how strongly we feel with respect to this problem? How strong would the reaction be in response to this? And do you believe it would be a big task you contemplate?

Dr. Barker: No, in my opinion, you could call half a dozen witnesses, if you were to get the right ones. Also, because of the prestige of the Senate, the committee could evoke from distant experts written statements from the best minds in the areas to which I refer. I do not believe it is a matter of a great deal of money or time on your part to go ahead with such an investigation. I repeat, I think that as the Senate of Canada you are in a unique position to endeavour to direct a spotlight on an area which, admittedly, is under-researched, under-investigated and, in my argument, frightening for Canadians to consider.

The Chairman: Senator Smith, for clarification, did you question as to how many witnesses it would be necessary to call refer to this committee before we report, or a committee that we might recommend to follow up this investigation?

Senator Smith (Queens-Shelburne): A committee which might be formed upon presentation of our report.

The Chairman: The committee that would follow our report.

Senator Smith (Queens-Shelburne): To give us an idea of the dimension of our task. I think we should do something along this line.

The Chairman: You were addressing your remarks, Dr. Barker, to the committee that would follow our report. Our terms of reference are only to report upon the feasibility of a further investigation, and you were addressing your remakrs to the further investigation after we had reported, as I understood it.

Dr. Barker: I would think so—whoever has the job to do it—a group of senators. It seems to me that it is not an onerous task.

Senator McElman: Could we ask the witness to provide the committee, through you, Mr. Chairman, with a list of names and addresses of the most competent people in these respective fields about which he has spoken, so that we could consider the possibility of calling such people before the committee either at this or a later stage?

Dr. Barker: I would be pleased to do that. It is not easy, in the sense that we are talking about a variety of disciplines, and within each discipline there are high-profile people, and people who for other reasons within the discipline are thought of as experts. It will take some ferreting out to find those who enjoy going to conferences and making press-catching statements, from people who have done solid work, who can back up what they are saying, who know the field and who, in my judgment, will give competent opinions to a group such as yours. I do not know that now, but I will be pleased to try to submit those names and leave the selection to the committee.

Senator McElman: I should point out to Dr. Barker that the committee has the capability of sitting *in camera*. As he prepares his list, he may come across people whom he feels would not appear if they had to make a public statement. I would like him to know that we can handle that situation very nicely. It might have a bearing on his list of possible witnesses.

I would say also that we have been seeking, without too much advice, the proper people to appear before us. It is very obvious that Dr. Barker can give us good advice, and we must not miss the opportunity.

Dr. Barker: Thank you. I can try.

Senator Neiman: Before the meeting started, we were speaking of the series of articles that appeared in the *Globe and Mail* last week. I recall the comments of one of the inmates to the effect that he wished he had been sent to a place such as Oak Ridge many years earlier instead of being sent to a training school. Eventually he went on to Kingston and to some other penitentiary.

I am concerned, as is Dr. Barker, about what is happening in connection with Bill C-84, which deals with the abolition of the death penalty, because I am a strong believer in abolition. I am also concerned about the other provisions which almost inevitably involve longer prison terms for murderers.

I am extremely concerned about the way our prisons are set up today. We have an example in the Toronto area, where a man has just been declared a dangerous sexual offender under the existing legislation, and he will be sent to Kingston presumably because they have the proper psychiatric facilities.

This is a lengthy way of asking you the question, but I am wondering whether in our whole penal system we cannot in some way identify, even at the training school age, at the age when these people are sent to Kingston perhaps for the first time, the people who are potentially dangerous, and segregate them at that point—why we cannot have more facilities like Oak Ridge. Perhaps it should not be to the same intensity of care, of treatment, but should we not have far more facilities for people who have first come into contact with the law?

Dr. Barker: Yes. Generally, facilities that have a treatment orientation are clearly better than patients being subjected to an inmate subculture. Again, if we are talking about the use of scarce resources and there is money to go

into treatment programs, compared to at least some money going into exploring basic causative factors, I am arguing for more dollars for the basic causative factors.

Additionally, there is a problem that one is not always able to identify at an early age, which individuals require more intensive treatment, and to predict who is going to go on to kill.

Further, and finally, there is the problem that if you can identify the person as being potentially a recidivist, with the civil rights pendulum being where it is, you are very much restricted in the kinds of treatment programs that you cannot just offer but make available to such a person, because usually they are not people who are looking for treatment in the first place.

I recall, in particular, a patient whose treatment I was responsible for for some two years, who had been charged with break, enter and theft. No review board would keep him in hospital for the length of time it might take to successfully treat him. He was released and subsequently killed two people. It reflects both our lack of knowledge in being able to predict the person, and the climate to force treatment on people before they do something horrendous enough to warrant their incarceration for a long period of treatment. All those factors complicate the problem.

Senator Neiman: This is what is perhaps bothering me about this projected research. In a sense, I agree with you. If we can get to the preventive stage, of course that is the ideal. However, society seems to be constituted in such a way that we wait for something to happen and then try and do something about it. We are having difficulty today dealing with the hardened criminal. Our only cure seems to be to add on a few more years and put him away for a bit longer. We are obviously going the wrong way. You are saying we have about five or ten years to smarten up in our attitudes and the way we are going. We are starting at this point with a hardened criminal, and if we cannot move back and say, "All right, let's look at this boy when he was 16. Let's look at him when somebody put him away in a training school. What was wrong with him?", what are we doing with him then?

If we cannot start then, if we cannot cope with the civil libertarians and say, "What we have got to do is change our attitudes," if we do not, how in the name of heaven are we going to go back to the new mother and start investigating and say, "Look, we are not sure what we are doing; we cannot really tell you if this baby is going to be good or if this baby is going to be bad, but we want you to do this"? I believe we are getting into such a field that . . .

Dr. Barker: I do not think we are into such an horrendous field. When I attended the Ontario Psychiatric Convention a few years ago, at the child psychiatry section, one of the child psychiatrists there said that there are thousands of ways of raising children. We cannot dictate to parents how they are to raise their children—being permissive or with a lot of discipline, or this or that. The analogy he used there, which I think was a good one, was that there are a thousand ways of baking a good cake. I cannot tell you or anyone else how to bake a good cake. However, there are probably a half dozen things I or anyone else could tell you, that if you do any one of those things to your cake, you will not get a good cake. Perhaps we should have an intensive look at the things which are already known and agreed upon by specialists that will ruin a "cake". A media campaign such as for seat belts, that zeros in on such things and says, "If you do these things to your kid the odds are that he is going to be in a mental hospital or a training school down the line."

Are we aware? I do not know that it is established by the experts that if the mother is out of the home in the first three years it is going to be detrimental to the mental health of the child. I am not saying that that has been established. It may not be true. If it were true, and if it were clear that a public media campaign, and that alterations in institutions and political funding, or whatever it may be, could ensure that the mother is with the child for the first three years, that would do more for the kids who are going to end up in training schools and mental hospitals than building better hospitals and training more psychiatrists. That is the kind of thing I am looking for. I do not think we are miles away from those kinds of things. I do not have that kind of information, however.

I have given up enthusiasm for trying to get the seriously damaged offender back into society. I just think it is like catching water that has dripped through a leaky roof. If we are going to make this work, and if we are going to be trying, and if there is ever going to be a pay-off, it is going to be back there that we must act, and in making changes of a more sweeping nature, and in pointing out the consequences, potentially, to people.

Senator McElman: And it is a long road, indeed, Dr. Barker. For example, there are some who believe, including myself, that a large part of the illness in our society—and I speak not of individuals, but the whole of society—could be corrected by improved educational standards. One very quickly says, "Well, if the curriculum specified that we should be teaching love of our fellow man, and that instead of bashing up the kids in the neighbourhood we should talk with them," and so on, things would be a great deal better; but then one realizes that one has to have teachers who are capable of doing this; one has to realize that there are 600,000 teachers now who are already through their training, and in the mill. How would we get rid of them and replace them? You then come back to the question of the curriculum for teachers' colleges.

These are the reasons why I say it is a long road that we are talking about, but we should not be disturbed or discouraged by the fact that the road is indeed long.

Senator McGrand: And some of the teachers do not hesitate to go on strike, which is a bad example for the children.

Senator McElman: Well, that is another situation.

I was impressed with what you said earlier on, Dr. Barker, when you said that people look at the person who has been convicted of a violent crime, be it rape or murder or whatever it may be, and say, "He is different." You say he is not all that different. On that score I have two questions I would like to put to you.

Are you saying to us that instead of looking at the individual and saying that a particular man is mentally disturbed, we should be looking at society as a whole and saying, as it has developed up to this point, that society is mentally disturbed?

Dr. Barker: Clearly that is one part, and the most contentious part, of what the Senate committee should look at, and ask experts to comment on. It is not the whole part of it, of course. There should be pediatricians and obstreticians and others looking at potential organic factors early in life. But one group which has not received adequate

public hearing, I think, is the sociologists, who will balance off what the rest have to say. If you have a communist system you have certain breakdown products as a result of that system. The perfect system, of course, has not been devised, and you have certain costs as a result of our way of doing things, also. I do not think people equate the breakdown costs with the system, let alone getting to the point of having a debate in Parliament influenced by that. If we make policy moves of this nature, what is the human cost going to be at the other end? I am arguing that we should get into that kind of debate.

The answer, therefore, is yes, that that is clearly part of it, and the most contentious part of it.

Senator McElman: And that is why it is so difficult to obtain, through the political system, or otherwise, truly preventive measures, rather than all of the reactive and remedial measures that we see being adopted.

Dr. Barker: Exactly.

Senator McElman: The other question I would like to put to you is this. You have dealt over many years now, intimately, with the perpetrators of violent crime. On how many occasions, as you talked with such people, have you said to yourself, "In a similar circumstance, what would I have done?"

Dr. Barker: Well, that is always in the background, perhaps most clearly at our conferencing procedures, where we are assessing an individual. That comes up quite often. For example, a patient is admitted to Oak Ridge, the maximum security hospital, and as you are admitting him he may be angry, and yelling at you, and saying, "I've been framed, and sent here, and there's no point to it," and you mark that down as symptoms, and so on. Very frequently we will say, "Well, if I had been picked up and brought to this maximum security hospital, I would object, and if I am normal, how does a normal man act when he gets admitted?" Because if such a man were to sit back quietly, the psychiatrist may note him as being indifferent to being admitted to a maximum security mental hospital. We are asking ourselves, in that sense, "How would we react in a similar situation"?

Senator McElman: But the crime itself is what I am talking about.

Dr. Barker: Well, there are crimes which are clearly sick, but they are extensions of our own illness, not matters that are different in quality. We have all been jealous, for example. We do not get a gun and go out and kill the person in question, perhaps, but we know what the feeling of jealousy is, or the feeling of rage or anger. I am saying that in that sense we are similar to the people we are dealing with, with the exception that in the case of the person who is organically brain damaged it is hard to have any empathy with him or to sense what is going on in his mind. That has been noted for a long period of time. When a person starts talking about something that you cannot personally relate to, you begin to wonder about organic brain damage.

Senator McElman: Perhaps I am being unfair, but I am going to press you as far as I can.

Dr. Barker: I wish you would.

Senator McElman: Have you ever said to yourself, "At the age of 17, as this boy is, I might have done the same thing, in similar circumstances"?

Dr. Barker: Yes. Yes. Perhaps not—yes, I have, but more so our attendant staff, who have, generally, the same socio-economic background as our patients, and who approach life's problems in a similar way. My middle-class upbringing makes me less prone to overt physical violence, but others, who are used to that as a daily way of life, are generally closer to the kinds of offences we are discussing. Often our attendants say, "I'd do the same thing if somebody attacked my daughter," for example; so in that sense, yes. With that exception, yes.

Senator McElman: So I bring you back to my question: you are a product of the same kind of society as we are, and there could be circumstances in which you could have committed a violent crime.

Dr. Barker: Exactly. Senator McGrand quoted from Arthur Maloney, I believe, and asked the question himself about what puts the judge up there and the prisoner in the dock. It comes back again to this question of a group at risk.

The Chairman: It boils down to what John Bunyon said. "There, but for the grace of God, go I."

Senator McElman: It may not be too relevant, but I would like to say that in New Brunswick, at this point in time, we have two convicted murderers of police officers who, under the existing law, are liable to be hanged. The case has now gone to final appeal, and I believe there is a stay in operation, until it is decided what Parliament is going to do on the subject currently before us. I will not go into the full details of this case except to say to you that of the two people involved, one, the older of the two, is a most violent person. The younger of the two is a person who was brought up in a rather dreadful home environment, and as part of his upbringing his father, who was a pretty awful creature, would send the children out at dark, in the evening, to steal whatever they could in the community. If they came home without stealing, he kicked the hell out of them, and I mean literally, physically kicked the hell out of them. This boy got into the hands of the older person, and one can appreciate that if he was told, "You shoot your police officer and I'll shoot mine. If you don't, I'll kick the hell out of you", he would do it. So here we have a situation in which they are both liable to be hanged, both products of the society in which we live, but the element of guilt is far greater in the one instance than in the other. Yet our society will deal with the two cases in exactly the same fashion—either hang them or put them away for 25 years. For the one who goes in there is no hope of rehabilitation. Within 25 years there is no damn hope that we would ever have a human being left.

I wanted to make that comment as a follow-up to Dr. Barker's earlier statement.

Senator Burchill: I would like the doctor to say something with respect to rehabilitation. What percentage, in your experience, of those with whom you deal have been rehabilitated, and what are your views with respect to rehabilitation?

Dr. Barker: There have been several studies at Penetanguishene in connection with that factor. The failure rate in relation to patients who have been found not guilty by reason of insanity is something in the order of nine per cent. Only one such person has subsequently killed again. The rest of the failures have been for offences against property. The failure rate for patients who are detained in the hospital after being certified as mentally ill is approxi-

mately one third. I believe that is a sufficient answer. I had intended to comment in relation to the bill before the House of Commons that, because the public is so alarmed in connection with criminals not getting desserts, their just desserts, the rehabilitation of the very good risks, or those patients who would very likely to do well, will suffer, in my opinion, which seems to be a tragic saw-off.

Senator Bonnell: Of those who are hardened criminals, what percentage are in the institution because they have committed a crime against their immediate contacts—in other words, father, mother, daughter, brother, child or friend—as compared with those who are hardened criminals because they were disturbed by the police and shot in order to get away or something of that nature? It seems to me that many are in the institutions, not because they are hardened criminals out to do harm to society but because they are criminals who rebel against their own immediate friends. Most murders are connected with close acquaintances. What percentage are there because of a criminal act toward an immediate relative or close friend?

Dr. Barker: Most of the murderers who have been found not guilty by reason of insanity have been involved more or less in family crimes. The term "hardened criminal" gives some difficulty. In my opinion, a criminal is hardened by society's warehousing of him in a prison. There are people who from a very young age are dangerous and repeatedly so, and who do need to be incarcerated, in my opinion. However, most of the strategies for incarceration in the prison system tend to make the problem worse.

In response to a comment made by one of the senators at an earlier meeting, that the function of these committees is to recommend changes in the law, because the possibility of penal reform seems so remote and hopeless, I simply propose that the Criminal Code be amended to say that anyone sentenced to prison must serve his time at the mercy of the most powerful thug in the institution. We should amend the Criminal Code to bring it into line with current practice!

Senator Norrie: To come to the point as to whether this is a feasible undertaking for the Senate, if the Senate should turn this down, in view of our crime rate as it is and the advancement predicted, it would be a real black mark on our reputation. In addition to that, I do not see how we could tackle any other age group than that which Senator McGrand advocates, after listening to you and Senator McGrand's presentation to us. I am quite sure, from the remarks you have made this morning, that you also feel that way, that this is the logical place for this committee to start.

Dr. Barker: I very definitely do.

Senator Norrie: This is a point which I feel we must make very clear, because this is where the opposition to this committee lies.

Dr. Barker: The opposition is to it focusing on the young age group?

Senator Norrie: Yes, I think so.

Dr. Barker: Well, that is sad, for all the reasons I have mentioned. It seems to me that that is the age group which must have attention focused more on it.

Senator Norrie: The mere fact that we do not have much literature, or because it is a new field really, not to you, but to the public, also influences the thinking.

Dr. Barker: It is new and it has this dangerous aspect to it in the sense of being unpopular to the public at large. That is the factor which it seems to me makes it particularly important ground for the Senate to cover.

Senator Norrie: Those are the points I wished to make definitely clear, because that is what we have been supporting all along on the other side of the fence, that we cannot go on to another age group until this is clarified.

Senator McGrand: I believe that the contention that we have five or perhaps 10 years to consider this situation carefully before it becomes worse is probably correct. However, what would we do if we attempted to reform society? That is what it means; we must have a better understanding of life and our relationships with other people. A number of people are working on a program of human education in which children are taught to live with their environment. People refer to earth as dirt. A handful of soil is not a handful of dirt, but a handful of living organisms without which we cannot live on earth, so it is not dirt. These people advocate that our schools should bring all these aspects together to create a better society in which to live. I read their magazine.

Senator McElman made mention of New Brunswick. Do you know that in New Brunswick we have a judge who a week or two ago wrote a letter to the editor and advocated the return of the lash? He said, "That is the way to rehabilitate these beasts."

Senator McElman: He said this would bring the beasts out as gentle lambs.

Senator McGrand: There is no doubt that we have a long way to go.

Dr. Barker: In that connection, though, I think there are two encouraging things: one is that when I was a teenager, or a little before, growing up in the west end of Toronto, the Humber River became so polluted that we could not swim in it. It started to smell, and so on. I never heard any discussion in our family, or in others, that it was a state of affairs other than inevitable. It was just that way: the rivers were getting more and more polluted. In my adult lifetime there has been an enormous public revolution, if you like, in public opinion about the pollution of the environment.

The amazing thing is that I accepted it at that time with such equanimity, and perhaps most of us did, that it was a just fact of our way of life. It heartens me that it is possible that there could be a similar revolution—that is perhaps too strong a word—in public feeling about the pollution of children's minds. It is not entirely out of the question that public opinion could be shifted in your lifetime and mine.

The other factor, perhaps in a more pessimistic way, is that if by five or 10 years Dr. McKnight means that society will evolve in a very much more rapid manner, perhaps uncontrolled manner, it still is true, I believe, that at some point societies will be faced with the same problem of raising children who as adults can live with each other in a more sensible way than we seem to have evolved at the present time. I would like to see that work carried on, if not for our civilization or our society as we presently know it, then for some future one—this correlation of what we do to children and what we get out at the other end.

Senator McGrand: You cannot teach a child to grow up and live with other children, and respect the dignity of

other children, unless he is taught to respect the dignity of life. I might mention soil, trees, animals—everything. It has to be a question of a reverence for life, does it not?

Dr. Barker: That kind of talk in this day and age sounds a bit far out. I suspect that if you talked about pollution 15 years ago you would have been thought far out.

The Chairman: As a supplementary to Senator McGrand's question, do you know of any studies which have been made on children who have had pets to care and be responsible for; whether such children have more regard and sensitivity for life than those who do not have that opportunity? Is that a fact in the life of a child which could have a beneficial effect on them? Are there any statistics to show that children who have had that advantage are less prone to crime and violence?

Dr. Barker: I do not know the answer to that question. I do not know of any existing research. It is a subject that is of personal interest to me. I suspect that pets are an ameliorating factor. It is clear that pets can adopt newroses, or can be made violent, by the way they are handled when they are young. I suspect there are people who have looked into that. I do not know of the research, but I think it is relevant to what we are talking about.

Senator McGrand: Mr. Chairman, I listened to Professor James Mehorter, of New York, speak on this thing. He was a professor of psychology at the University of Vermont medical school. He said that when he was talking to students on violence, and that sort of thing, he would tell them to tune into a boxing match, but not to watch the boxers but the audience, because that is where they would see the psychopaths, the evidence of the psychopathic mind.

Dr. Barker: That is a frightening thing, that the film industry and TV media can market 50 murders a night on television and have a ready and willing audience for it. It is a scary thing.

Senator Norrie: Do you think that films on television have a bearing on children's lives?

Dr. Barker: I think it must. I am reluctant to give a definitive opinion on something I have not looked at—the current arguments pro and con and the current research which has been done on it. My own feeling is that it is very hard to nurture a child on killings. The average child watches something like 10,000 murders by the age of 15. The statistics are incredible.

Senator Bonnell: There is one good thing about it: the good fellow gets away and the bad fellow gets caught.

Dr. Barker: That is a problem which came up with my own six-year old daughter. She has got to know quite well some of the patients who had previously been in the hospital. From the television she gets a clear notion of who is the good guy and who is the bad guy. I am forced to tell her, when she asks, that I do not really see that there are good people and bad people. I am capable of doing things which in retrospect, I think are bad, wrong, things, and I am capable of doing some good things; and I see that in other people. It is just not a black-and-white issue, and painting it that way is a distortion of life.

Senator Norrie: There was recently a film on Stephen Truscotte and I realized it was being shown on my TV. I found five or six boys around the TV, and I said "That's it." That is the only time I have turned off the TV. They really could not understand it. They were quite crushed that I would not let them look at it.

Senator McElman: Producers of films and television programs are not stupid people. They are out to make money from the society in which they live. They are pandering to the will and wish of that society, and we call it entertainment. We always come back to where we started, that it is society we have to work on, and where do we start? What Senator McGrand is proposing would appear ridiculous to some, but it is a start.

Dr. Barker: To ask the questions is the start. All I ask is for a Senate inquiry just to ask the questions.

The Chairman: While we are on the subject, Dr. Barker, you have shown us a pretty clear idea, of what a Senate committee would do. You have mentioned that possibly six or eight witnesses should be called. Can you go a little further and say, if the Senate undertook to set up a special committee to investigate this narrow field proposed by Senator McGrand, what topics or avenues the committee might explore? We would have to call different types of witnesses to give evidence on different aspects of the problem. Can you outline some aspects of the problem that would have to be explored?

Dr. Barker: My feeling has been that in focusing on factors in pregnancy, birth and the first three years, one covers the formative years. As I have thought about it, perhaps not definitively, the way I would approach it would be to inquire of specialists in the wide range of known disciplines who might have information bearing on the issues, and what, if anything, has been written by anthropologists, which correlates factors in those early years with disturbances in personality, crime, or violent behaviour in latter life? What have sociologists to say about that? What have social psychologists to say about that? What do child pyschologists have to say about that—and child psychiatrists, pediatricians, pharmacologists, obstetricians? Try to cover that range.

It is a range of material with which I hope to become familiar, in connection with the Canadian Society for the Prevention of Cruelty to Children. My own feeling would be that, after a review of the information from specialists in that range of disciplines, you would be able to pull out a half dozen key people who could cover that ground. There many be other ways of approaching this which would be more fruitful.

The Chairman: Would you suggest a number of people be written to, specialists in their particular field, and getting their opinions on certain specific questions? You could write to, say, 50 or 100 people, who are specialists anywhere in the world and solicit their opinion; and, after having received their opinion, assess what you have on paper and then select maybe six or eight or a maximum of ten out of this group who might appear before the committee for further questioning?

Dr. Barker: I do not think it would be difficult for the Canadian Society for the Prevention of Cruelty to Children to obtain funds to do that work, to scan the related disciplines, and have a person in each of those disciplines scan the literature with which they are familiar, and pull that material together. I believe that should be done in preparation for that committee meeting, as groundwork for them to see the kinds of material that might fall out of that. I see that as an important thing to do, and if such a

committee was going to be set up, and that was going to be useful material for such a committee, I am certainly involved and concerned enough to be interested in trying, to prepare a working paper, if you like, that the committee might make its selection of witnesses from.

The Chairman: Our terms of reference are limited to making a report as to whether the whole matter is feasible or not. If we say it is feasible, then we have got to go a step further and say how the committee should proceed. It would be useful to have your opinions on that.

Senator McElman: It is a marvellous offer the doctor has made to us and perhaps the organization he speaks of could correlate this material for us. If that could be done, it would be of tremendous assistance to the committee.

Dr. Barker: That is a large task, but a task I see as important and not requiring any Senate funds to do, and facilitated on my part and the organization's part by having the Senate expressing an interest in the gathering of this information, to the end of allowing a Senate committee to carefully select the witnesses it would like to have testify on the matter.

The Chairman: Let us assume that the committee reports that it is feasible, in the circumstances, and we recommend a special Senate committee, and the Senate accepts our report and the committee is set up in due time and selects its witnesses, what do you see as the overall result of this committee? Do you see an impact on public opinion? Do you see a framework in which we would give impetus for various types of research in various fields, or a stimulus for that research and probably a stimulus for new research in fields which have not yet been touched upon?

Dr. Barker: All of those things. And I see you as focussing on something such as Finsten and Tait said in their early paper, that is a relatively unresearched area. Most people would say other areas related to crime and violence have been researched to death. There has been relatively less attention focussed on this, and I belive a Senate committee would bring attention to it and have greater significance. Following on from that, it would be a stimulus for further interest, and that in itself is adequate.

The Chairman: Perhaps I should go a little further and speak of what our airms should be. Perhaps we should not just leave it to chance and say waht might happen or what might not happen. Should the committee say this should be done and actively stimulate the research in different areas?

Dr. Barker: I do not know what means there are at the disposal of the Senate in this regard. As I have said repeatedly, I believe it is an area which has been neglected for too long, and it is an area which has inherent unpopularity, and for that reason requires a socially secure institution to speak out publicly about it. You do not have to take a stand on it, but there will be an arena in which that debate may take place, an arena of high status.

The Chairman: Such a committee, of course, has no funds of its own and would have no power of its own to direct any particular type of research in any particular direction. However, it could make recommendations to the government and it could make recommendations to various departments as to what needs to be done and how they might do it and possibly encourage private interests or organizations to explore certain avenues, such as your own organization with relation to cruelty to children.

Dr. Barker: I do not think that should be underestimated. Perhaps you do not get feedback about the kind of fallout there is from your proceedings, but that is what I would count on happening.

The Chairman: I would now come back to this unfortunate case of the little seven-year-old child who was recently alleged to have murdered another child. This would seem to be a case whkre records would be available of the circumstances under which he was born, prenatal circumstances, and possibly the kind of family life he was exposed to. Do you think that information could be secured in that particular case?

Dr. Barker: I think the boy is remanded now for psychiatric examination. Because it is closer in time to the event, they would be able to obtain records more easily.

The Chairman: What I am asking is: Will the psychiatric examination which he will undergo include all of these things? How far back would they go? Would they go back to his pre-birth records and the family life?

Dr. Barker: No, the standard psychiatric examination would consists of writing to the hospital for details of the birth. If there was something especially unusual about it, they would seek further information. I would predict that what they will do is interview the parents. The mother may describe that the birth was difficult, or the baby was jaundiced for the first week or whatever the circumstances were. They may find that the child was hospitalized for the first six months of its life due to some problem. Depending upon the information they receive, they may go back further.

Some questions have not been asked. No one is asking what the lighting conditions were in the delivery room or how much noise there was, and people are beginning to ask questions about the shift from the womb to our atmosphere. Those questions were never asked, because no one ever thought to ask them.

Senator McGrand: They have only begun to ask those in the last five or ten years.

Dr. Barker: It may be a red herring; we do not know. However, it does not hurt to have the questions raised. That is the value of going back over these individual cases. The process gives you hunches, as Dr. Atcheson says. We all have our hunches about what is going on, but it is around those questions that are never asked that the real danger lurks, and that is the value of your forum here; that is, having people come to answer questions that have not been debated publicly, or even asked publicly, or given any particular credence.

The Chairman: I have one more question of my own. I think you implied, in your answers to various questions about mental illness, that there were some theories to the effect that schizophrenia is a result of chemical imbalances in the composition of the body. Could you elaborate on that? How far back do they go? Do you just look at these things at the time the person runs afoul of the law, or should such possibilities be investigated earlier? Is this study far enough advanced, or well enough established to make the assessment of chemical factors part of routine investigation?

Dr. Barker: No. To my knowledge the studies have not gone that far. There is a division of opinion in psychiatry between those psychiatrists who believe that most cases of

schizophrenia are caused by environmental circumstances, and psychiatrists who believe that most cases of schizophrenia are caused biochemically. Most psychiatrists would think some cases are caused biochemically, and some environmentally. You do get that mixture. To my knowledge, the biochemical proponents are not yet at the stage of being able to establish with, say, the precision that exists in the case of pernicious anaemia, or other physical illnesses, some kind of laboratory screening test, like the Wassermann test, for example, for syphilis, that would routinely be done on admission. I think that is what you are suggesting, or hoping, that they may come up with something like that, and then that kind of public health screening procedure, moving on perhaps to a situation in which some kind of vaccination would be introduced. For some of the causes of mental retardation they do screening of urine, and so on, of course. However, I do not think it has been settled yet that all schizophrenia is biochemical in origin. I think most psychiatrists accept that some cases are due to a biochemical disturbance, but I do not think the work has progressed that far yet.

The Chairman: Would there be any merit, do you think, in requesting the authorities that are going to examine this little child that we have been talking about to have a look at that? To go back as far as they can into the child's history?

Dr. Barker: I tend to think not, because such investigations tend to focus on the individual perpetrator of a particularly violent act, and that, to me, shifts the focus away from where it ought to be. These startling acts catch our attention, and make us feel particularly sad, or outraged, or aggrieved, but I think that is misdirected energy. If all the energy or concern about a particular tragedy—in this case the boy, his family, the victim, and the victim's family—could go into looking at the wider picture out of which that family developed, I think we would be more profitably employed. I think we must shift to that. Clearly this boy is a sympton, as I see it, that should call our attention to the fact that something is wrong, and not to the fact that he individually needs treatment.

The Chairman: You are saying that he is more a product of society than of the particular physical factors or mental factors involved.

Dr. Barker: I cannot say so categorically without seeing the boy. Perhaps he has an inborn error in metabolism that led to his act, but all the people I have seen, or the majority of them, are a product of their environment, and it is precisely the environment—the family constellation, the level of poverty, and all of these other factors that add stress which distill out into the ultimate victim, and the notion that he be individual, somehow, is the object that needs to be treated is, I think, an incorrect one.

Senator Norrie: I have read several articles about the causes of crime, and they are very contradictory. One says that you can get more crime from affluent families than from poverty stricken areas, but I have read other that say the very reverse. What is your opinion?

Dr. Barker: I do not know. First of all, the patient population at Penetanguishene tends to be from the lower socio-economic group. It may well be that the crimes of violence in question are of a different order. Lower socio-economic groups tend to act out frustrations physically to a greater extent than you or I would. We play more psychologically violent games with one another.

When I was talking with the a Children's Aid official just lately, we discussed neglect and the emotional abuse of children, and the kinds of kids they see who are emotionally abused and neglected are from the lower socio-economic groups, but the wealthy can abuse and neglect their children emotionally in a socially acceptable fashion if they have the means to do it; so it is hard to pin down precisely. When you begin to try to define a violent act, whether it is just a punch in the mouth or strangling, it tends to get out into fuzzy areas, though I do not think this should deter us from getting back to the seedbeds of anger at fellow human beings.

Senator Norrie: It is unfair, really, to say that it is the affluent sector of society that contributes to crime more than the poverty area.

Dr. Barker: I would not say that now any more than I would say that permissiveness causes more problems than disciplinarianism. I am not sure that we know enough yet to pinpoint the factors involved. My hunch would be that it is the quality of the relationship with the parents that counts rather than whether they are strict or harsh, or spank or never spank.

Senator Norrie: It is wrong to blame one segment of society more than another.

Dr. Barker: There is a study that is really frightening, in the course of which a population was surveyed, and which pointed out that most mental illness, if I recall correctly, occurred in the lower socio-ecnomic group, where those who did break down received poorer treatment and received it less frequently. There seemed to be a distillation downwards. On the other hand, of course, there are studies, and studies and studies.

Senator Bonnell: Mr. Chairman, one of the first crimes ever committed was because of starvation, when Adam and Eve ate a particular fruit. Since it is 12 o'clock, in case there should be any more violent crimes committed because of this, I would like to take this opportunity to thank Dr. Barker for his very excellent presentation and to say that I think that you, as Chairman, should write to Dr. Barker, thanking him for coming, including in the letter a request that he ask the CSPCC to present their views, and say what they might be able to do to help us orient ourselves with regard to future studies. We should then, I suggest, adjourn and go and enjoy dinner in the parliamentary restaurant and take Dr. Barker with us.

The Chairman: I think that is a very good suggestion.

Is it agreed that there are no further questions?

Hon. Senators: Agreed.

The Chairman: Before we adjourn, is the committee agreed that we do not need to call any further witnesses before making the report? I had hoped that we could make a report before the adjournment.

Senator Norrie: I am agreed.

Senator McGrand: You would have to have a general meeting of the committee, would you?

The Chairman: The first question to settle is, is Dr. Barker the last witness before we report?

Senator Bonnell: I do not believe so. In my opinion, we should decide on our report, then whether we need to hear

from more witnesses. We should not decide today to hear no more witnesses.

Senator McGrand: It seems to me that Dr. Barker is going to suggest names, and I also have some to submit to appear as witnesses. Perhaps we should go along as we are for a while.

The Chairman: This is your committee and I am in the hands of the committee. However, our terms of reference are very specific, to consider the feasibility of such an investigation. My own opinion is that we have heard sufficient witnesses now to come to a decision within our terms of reference. Then we must prepare a report to present to the Senate as to the feasibility or otherwise. If feasible, we must recommend how we should proceed. We are required by our terms of reference to do that. If we call further witnesses, very likely we will not conclude our deliberations before the adjournment. It is so difficult in the first place to get witnesses and then a time allocation in which to hear them. Following that, we must agree upon and prepare our report.

Senator Bonnell: I move that we report to the Senate that we have investigated the feasibility and agree that it is not only feasible but necessary to carry out this investigation. Also we should carry out a study into the future with respect to crime and violence up to three years.

Senator McGrand: I second the motion.

The Chairman: You have all heard the motion. Is it agreed?

Hon. Senators: Agreed.

Senator Smith (Queens-Shelburne): Unanimously.

The Chairman: Carried unanimously. That having been done, it so happens that next Wednesday we have a time allocation for a meeting after the Senate rises, which is usually occupied by the Special Committee on Science Policy, which is not meeting at that time. I will therefore endeavour to have a report prepared to be presented to the committee at that time.

Senator Bonnell: It is a very poor time, Mr. Chairman, because the next day, Thursday, is St. Jean Baptiste Day, and I can think of many senators sitting close to me who will wish to catch an early flight. I would suggest the following Wednesday, of Thursday morning.

The Chairman: Very well; that is two weeks from now.

Senator McGrand: The meeting should be held on a day when Senator Bonnell and Senator Norrie can be present. I can attend on any day, as far as I can see.

Senator Smith (Queens-Shelburne): We have not too many weeks left before the summer adjournment.

The Chairman: Time is running out.

Senator Norrie: Do we have to submit a detailed report?

The Chairman: No.

Senator Norrie: Would it be simply our motion?

The Chairman: We should report that we consider it to be feasible, and the type of committee we recommend should be established.

Senator Norrie: I am just wondering, because the number of witnesses who have been unfavourable has been more than those who have been favourable.

The Chairman: We must weigh the evidence among ourselves.

Senator McGrand: The only witness who has really discussed this problem has been Dr. Barker. Two sociologists have appeared.

The Chairman: Yes, and representatives of Statistics Canada.

Senator Norrie: Maybe this will have a detrimental effect on the presentation of our motion. It would be better if we had more than one witness such as Dr. Barker.

Senator Bonnell: We will dress the report up in a tuxedo; the chairman will present it to the committee and we will all support it.

Senator Norrie: You believe that, do you?

Senator Bonnell: Yes.

Senator Norrie: Do not let it fail.

Senator McElman: One turn of events may alter the whole situation. We are told that there is a possibility that a certain bill before the other place will fall— a very strong possibility. The scuttlebutt has it that if that should happen the other place will either adjourn this session or will wind it up the following day. In that event we will not have the opportunity to submit any report. Would you consider late Tuesday afternoon for our meeting? I do not believe the committee would take very long in dealing with the recommendation, favourably I suggest. The meeting should be held at four o'clock in the afternoon, or at whatever time will assure a large turnout of your committee, as should be in attendance on such an occasion. I simply express the fear that since we have no authority to proceed beyond the life of this session I would be sorry to see the whole matter die because we did not present our report as directed by the Senate as a whole.

The Chairman: That point is well taken.

Senator Bonnell: I agree.

The Chairman: Is five o'clock next Tuesday satisfactory as the time for the next meeting?

Hon. Senators: Agreed.

The committee adjourned.

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The Honourable M. Lamontagne, P.C., *Deputy Chairman*

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier (*de Lanaudière*)	Smith (*Queens-Shelburne*)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,

Clerk of the Senate.

Minutes of Proceedings

Tuesday, June 22, 1976
(22)

Pursuant to adjournment and notice the Standing Senate Committte on Health, Welfare and Science met this day, *in camera*, at 5:10 p.m., the Chairman, the Honourable C. W. Carter presiding.

Present: The Honourable Senators Bonnell, Bourget, Carter, Croll, Denis, Fournier (*de Lanaudière*), Langlois, McElman, McGrand, Neiman and Norrie. (11)

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken.

The Committee proceeded to the consideration of its draft Report.

After discussion and on motion of the Honourable Senator McGrand, the Committee *agreed* to adopt the report as amended.

At 5:50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick Savoie,
Clerk of the Committee.

Report of the Committee

TUESDAY, June 22, 1976.

The Standing Senate Committee on Health, Welfare and Science, in obedience to its Order of Reference of December 18, 1975, has the honour to present the following report:

On May 14, 1975, the Honourable Senator McGrand moved "that the Senate considers it advisable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society."

On December 18, 1975, the Senate referred the subject matter of Senator McGrand's motion to the Standing Senate Committee on Health, Welfare and Science and instructed the Committee "to look into and report upon the feasibility of a Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

The Committee's task was threefold:

(1) to determine the feasibility of the study contemplated;

(2) if feasible, to determine whether such a study is warranted; and

(3) if feasible and warranted, to outline how the study should be conducted.

It will be seen, therefore, that the key word is "feasibility". If the Committee decides the study is not feasible, then tasks (2) and (3) are eliminated.

The word "feasibility", however, embodies a number of variable factors. Thus a study that would not be feasible under one set of conditions and circumstances might prove feasible under a different set of conditions and circumstances.

In considering feasibility, your Committee took into consideration the nature of the subject to be considered as well as the time available, the facilities required (*space accommodation, staff, etc.*) and the present workload of Senate committees.

Your committee held six meetings and was fortunate to secure the services of Mr. Hugh Finsten and Mr. Gary Tait—two research officers on the staff of the Library of Parliament.

It soon became evident from the work of the research officers that the common factors influencing crime—poverty, broken homes, unemployment, drugs, the penal system, lack of education and vocational training, etc.—are already well known and well documented. Consequently, a wide open inquiry into the causes of crime in Canada is neither feasible nor warranted.

However, in the course of the inquiry the Committee became aware that there was one area related to the causes of crime about which very little is known and which is now engaging the attention of research specialists in several countries, including the United States and France, where extensive work has been going on for several years. This area includes influences experienced in early childhood which may lead to violent and criminal behaviour later on.

This involves a more detailed account of the mother's health and condition during pregnancy, including the blood supply to the brain of the fetus, together with a more detailed account of the birth itself, as well as physical or psychological injuries sustained after birth.

Your committee heard the following witnesses: Dr. Michael Langley and Professor Bryan MacKay from the Department of Criminology, University of Ottawa; Dr. P. G. Banister, Bureau of Surveillance Services, Department of National Health and Welfare; Mr. Lorne Rowebottom, Household and Institutional Statistics Field, Mr. Marcel Préfontaine, Justice Statistics Division and Mr. Paul Reed, Justice Statistics Division, Statistics Canada; and Dr. E. T. Barker, Consultant, Mental Health Center (*Oak Ridge*), Penetanguishene, Ontario.

For the most part, their evidence indicated strong support for a restricted inquiry as outlined above and their opinions were greatly reinforced by a number of letters and submissions addressed to Senator McGrand From Gordon E. Warme, M.D., F.R.C.P.(*C*); Granville A. daCosta, M.D., F.R.C.P.(*C*); J. D. Atcheson, M.D., F.R.C.P.(*C*); (*three psychiatrists from the University of Toronto*); from Dr. B. A. Boyd, F.R.C.P.(*C*), Medical Director, Mental Health Center, Penetanguishene, Ontario; R. E. Stokes, M.D., D. Psych. F.R.C.P.(*C*), Director of Bracebridge Community Mental Health Service; C. K. McKnight, M.D., Chief of Service, Forensic, Clarke Institute of Psychiatry; Dr. John T. O'Manique, Professor of Philosophy at Carleton University and member of the Third Research Team for The Club of Rome; Dr. Eileen S. Whitlock, Executive Secretary, The National Association for the Advancement of Humane Education, University of Tulsa, Oklahoma, and Mr. Arthur Maloney, Q.C., Ombudsman for Ontario.

Your committee was convinced that such a restricted inquiry should not be undertaken by the Standing Senate

Committee on Health, Welfare and Science, nor by any other Senate Standing Committee, but rather by a very small special committee composed of not less than 6 nor more than 10 members who have a special interest in this problem.

The Committee suggests the foloowing terms of reference:

> THAT a Special Committee of the Senate, consisting of 8 senators be appointed to inquire into and report upon what is being done and what further avenues of research are required to detect factors occurring before or during the first three years of life which may lead to personality difficulties or violent behaviour in later life;
>
> THAT the Committee have power to send for persons, papers and records and to print such paper and evidence from day to day as may be ordered by the Committee; and
>
> THAT the Committee have power to engage the services of such counsel, technical and clerical personnel as may be required for the purpose of the inquiry.

It is envisaged that the Committee would utilise the services of the research staff of the Library of Parliament to write to top specialists of world reputation in this field and related areas and to analyze their replies. From this analysis the committee would select 6 to 8 witnesses so that the expenses involved would be kept to a minimum.

Your committee feels that such a special committee is feasible and that it is warranted by the necessity to focus attention on this gap in our knowledge of the causes of crime and violence and by the interest and stimulation of research that would result.

Respectfully submitted.

CHESTER W. CARTER,
Chairman.

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FIRST SESSION—THIRTIETH PARLIAMENT

1974-76

THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

INDEX

OF PROCEEDINGS

(Issues Nos. 1 to 18 inclusive)

21896—1

Prepared

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LIBRARY OF PARLIAMENT

Standing Senate Committee on Health, Welfare and Science
1st Session, 30th Parliament, 1974-1976

INDEX

Aerosol Cans

Fluorocarbons, environmental problems 10:13

Alcohol

See
Crime and Violence

Alexander, C. S., Legal Advisor, Environment Dept.

Bill C-25 10:6-18

Apse, Dr. J., Chief, Drugs Regulatory Affairs Division Drugs Directorate, Health Protection Branch, National Health and Welfare Dept.

Bill S-9 1:6-7, 10, 13

Archaeology

Protection, legislation 5:11-2, 27

Argue, Hon. Hazen, Senator (Regina)

Bill C-22 4:6-9

Art

See
Cultural Property

Atcheson, Dr. J. D., M.D., Senior Psychiatrist, Forensic Outpatient Dept., Clarke Institute of Psychiatry, Toronto

Submission to committee 15:19-34

Banister, Dr. P. G., Director, Bureau of Surveillance Services, National Health and Welfare Dept.

Background 15:5
Crime and violence, birth, childhood, influence 15:5-11

Barker, Dr. E. T., Consultant, Mental Health Centre (Oak Ridge), Ontario Ministry of Health, Penetanguishene

Crime and violence 17:5-17

Barrow, Hon. A. Irvine, Senator (Halifax-Dartmouth)

Bill C-75 11:6-7

Bélisle, Hon. Rhéal, Senator (Sudbury)

Bill C-4 3:8-9, 12
Bill C-33 5:10-1, 14
Bill C-37 6:18-9

Benidickson, Hon. W. M., Senator (Kenora-Rainy River)

Bill C-4 3:11-2

Bill C-4, Statute Law (Veterans and Civilian War Allowances) Amendment Act 1974

Advertising, campaign 3:10
Cost 3:10-1
Discussion 3:6-12
Provisions 3:6, 8-10
Report to Senate 3:5, 12
Royal Canadian Legion, opinion 3:6-7
See also
Veterans

Bill C-22, An Act to amend the Canada Pension Plan

Discussion 4:6-9
Provinces, consultation, opinion 4:8
Report to Senate 4:5
See also
Canada Pension Plan

Bill C-23, Lieutenant Governors Superannuation Act

Bill C-52, M.P.'s pensions, relationship 9:6-10
Purpose, provisions 9:6-10
Report to Senate, with recommendations 9:5, 9-10
See also
Lieutenant Governors

Bill C-25, Environmental Contaminants Act

Background, consultations 10:6, 11-2
Discussion 10:6-19
Other legislation, relationship 10:13
Purpose, operation 10:6, 13, 18-9
Report to Senate 10:5, 19
See also
Environmental Contaminants

Bill C-33, Cultural Property Export and Import Act

Amendments
Clause 8—Determination by expert examiner 5:5, 36
Clause 12—Alteration of permits by Minister 5:4, 25-6
Clause 15—Review Board established 5:4-5, 27-8
Clause 23—Requests for review by Review Board 5:5, 28-32, 36-7
Clause 26—Request for determination of Review Board 5:5, 37
Discussion
Clause 1—Short title 5:7-10
Clause 2—Definitions, "institution" 5:10
Clause 3—Establishment of control list 5:10-2
Clause 4—Designation of permit officers 5:12
Clause 5—Designation of expert examiners 5:12
Clause 6—Immediate issue of export permit 5:12-3
Clause 8—Determination by expert examiner 5:13-25
Clause 14—General permits to export 5:26
Clause 15—Review Board established 5:26-7
Clause 20—Administrative services 5:28
Clause 24—Request for determination of fair offer to purchase 5:32-3

Clause 29—Grants and loans from moneys appropriated 5:33-4
Clause 30—Canadian Heritage Preservation Endowment Account 5:34
Clause 32—Designation of cultural property 5:34-5
Clause 52—Commencement 5:35-6
Background, consultation 5:16, 18-22, 24
Effect, collectors 5:23-4
Purpose, provisions 5:7-9
Report to Senate, with amendments 5:6, 37
See also
Cultural Property

Bill C-37, Ocean Dumping Control Act

Application 6:5-13, 7:8, 12-3
Consultation, provinces 6:9, 7:9-12
Discussion 6:5-19; 7:6-14
French text, disposal of ships 6:11-8; 7:7-8
Purpose 6:5, 7, 14-5, 17-8; 7:7
Report to Senate 7:5, 14
See also
Ocean Dumping Control

Bill C-52, Statute Law (Superannuation) Amendment Act, 1975

Bill C-23, relationship, M.P.'s pensions 9:6-10

Bill C-75, Government Annuities Improvement Act

Discussion 11:6-7
Report to Senate 11:5, 7

Bill S-9, An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act

Amendments
Clause 3—Commencement 2:8
Discussion 1:5-14; 2:6-8
Consultation
Pharmaceutical Association of Canada 2:7
Provinces 1:11, 14
Drug industry, effect 1:13-4; 2:7-8
Effective date 1:6, 13-4; 2:6-8
Proprietary Association of Canada, opinion 1:13; 2:7-8
Purpose 1:5-7; 2:6
Report to Senate, with amendment 2:5, 8
See also
Drugs

Bill S-28, An Act respecting the Royal Canadian Legion

Background 8:6
Discussion 8:6-11
Purpose 8:6
Report to Senate 8:5, 11
See also
Royal Canadian Legion

Bill S-31, An Act to amend the Quarantine Act

Discussion 14:6-11
Purpose, need 14:6-7
Report to Senate 14:5, 11
See also
Quarantine

Black, Dr. Lyall, Director General, Programs Management, Medical Services Branch, National Health and Welfare Dept.

Bill S-31 14:8-11

Blair, D. Gordon, Q.C., Parliamentary Agent, Royal Canadian Legion

Bill S-28 8:6-11

Bonnell, Hon. Lorne, Senator (Murray River)

Bill C-33 5:14-5, 24-6, 28-31, 33-6
Bill C-37 7:10-4
Bill S-31 14:7-11
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 15:8-12; 17:6-8, 10-1, 14-5, 17-8

Bourget, Hon. Maurice, Senator (The Laurentides)

Bill C-22 4:7-9
Bill C-23 9:7-10
Bill C-25 10:8, 11, 17, 19
Bill C-33 5:10-2, 16, 18, 29, 31-4
Bill C-37 6:7, 9-19; 7:6-8, 10-3
Bill S-28 8:6-9, 11
Bill S-31 14:7-10
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 15:8-9, 12

Boyd, Dr. B. A., M.D., Medical Director, Mental Health Centre, Ontario Ministry of Health, Penetanguishene Ont.

Letter to Committee 15:13

Brydon, Dr. J. E., Director, Environmental Contaminants Control Branch, Environment Dept.

Bill C-25 10:6-19

Burchill, Hon. G. Percival, Senator (Northumberland-Miramichi)

Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 17:13

Cadmium

Use 6:9

Cameron, Hon. Donald, Senator (Banff)

Bill C-33 5:11-2

Campbell, Coline, M.P., Parliamentary Secretary to Minister of National Health and Welfare

Bill C-22 4:6-9
Bill S-9
Discussion 1:6, 8, 10-1, 13; 2:7-8
Statement 1:5-6; 2:6

Canada Pension Plan

Administration 4:7
Amount, increase 4:6-8
Appeal Board, increase 4:7

Application, age limit 4:9
Basic exemption, determination 4:7
Contributions, age limit, requirements 4:7-8
Equality, male, female 4:6
Means test, repealed 4:6
Overpayments, recovery 4:9
Pensionable earnings, maximum, determination 4:6
Qualifying period, maximum benefit 4:6
Retroactive payments 4:8-9
Spouse, children, death benefits 4:8
Welfare benefits, deducted 4:9

Canada Pension Plan, An Act to amend

See
Bill C-22

Canada Shipping Act

Ocean Dumping 6:6, 8-11

Canada's Mental Health

Vol., "Action for Mental Health" reviewed 17:9

Canadian Society for the Prevention of Cruelty to Children

Organization, role 17:5, 15-6

Capital Gains Tax

Cultural property 5:23, 32

Carter, Hon. Chesley W., Senator (The Grand Banks), Committee Chairman

Bill C-4 3:6-12
Bill C-22 4:6-9
Bill C-23 9:6, 8-10
Bill C-25 10:6, 8, 10, 14-9
Bill C-33 5:7, 9-10, 12, 14, 16, 20-1, 24-37
Bill C-37 6:5, 9-17, 19; 7:6-14
Bill C-75 11:6-7
Bill S-9 1:9-10, 12, 14; 2:6-8
Bill S-28 8:6, 8, 10-1
Bill S-31 14:6-11
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:5-11; 13:5-6, 10-1, 15, 17-21; 15:5-12; 16:5-10; 17:5, 11, 15-8

Carton, J. C., Director of Legal Services, Environment Dept.

Bill C-37 7:10-4

"The Causes of Crime and Violence: influence in early childhood"

Research Paper, H. Finsten, G. Tait 12:4-6, 10-1; 17:5-6, 16

Children

Day care, facilities, psychological effects 15:30-2
Euthanasia, birth damage 17:8
High handicap risk infants 15:32-4
Mental, emotional illness, prevention, study 15:20-30
See also
Crime and Violence

Cities

See
Municipalities

Civilian War Pensions and Allowances Act

Deep Sea Rescue Tug service, excluded 3:7

Civilian War Pensions and Allowances Act, An Act to amend

See
Bill C-4

Clark, H. D., Director, Pensions and Insurance Division, Treasury Board Secretariat

Bill C-23 9:6-10

Clark, Ian C., Special Advisor, Arts and Culture, Secretary of State Dept.

Bill C-33 5:10-3, 19-37

Commonwealth Parliamentary Association

Committee, crime and violence in youth 15:11

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

Purpose, provisions, ratification 6:5-10, 17-8; 7:8, 11
See also
Ocean Dumping Control

Correctional Institutions

See
Crime and Violence

Covacs, A., Chief, Translation Bureau, Justice Dept.

Bill C-37 6:16-7

Crime and Violence

Alcohol, drug abuse, relationship 17:10-1
Birth methods, conditions, influence 12:6-8; 13:7, 16; 15:5-10; 16:7-9; 17:7-8, 16; 18:5
Defects, genetic influences 15:5-7; 17:7-8
Children
Abnormal personality development, treatment 15:19-20
Abuse 12:6-7; 13:12; 15:5-6; 17:17
Experiences, influence 12:6-7, 9; 13:12, 15-7; 15:5-7, 9, 14-6, 19-20; 16:6-10; 17:5-8, 10 ,12-5 ,17; 18:5
Prediction of behaviour 13:5, 18-20; 15:19; 17:6-7
Commonwealth Parliamentary Assoc. committee 15:11
Control, priorities necessary 13:7; 15:17
Correctional institutions
Incarceration, rate, length 15:17
Prisons, trends, effect 13:9-10; 17:14
Psychiatric treatment 17:11-2
Rehabilitation, behaviour modification 15:14, 17
Training Schools (juveniles) 13:10-5, 17
Cruelty, sadism 12:6; 13:18-9
Cruelty to animals, relationship 15:15-6
Economic, social system, relationship 15:35; 17:12-3, 17
Education 13:6, 8-9, 20-1; 15:15
Ethnic, religious, communities 13:16-7; 15:7

Feasibility of Senate Committee inquiry
Cost, facilities, staff 12:8-9; 18:5
Discussion 12:5-11; 13:5-21; 15:8-9, 17, 35; 17:5-6, 8, 11
Focus, pregnancy, birth, childhood 17:7, 14-5; 18:5-6
National Health and Welfare Dept. study proposed 15:10-1
Purpose, role 12:7-9; 13:7-8, 11, 20-1; 15:6, 11; 17:16
Report to Senate 17:4, 18; 18:4-6
Research papers prepared 12:4-6, 10-1; 17:5-6, 16
Senate reference 12:3, 5; 17:18; 18:5
Special committee proposed 18:5-6
Subcommittee proposed 12:9-10
Submissions to Committee 15:13-35
Suitability of subject matter 12:6-10
Witnesses 12:7, 9-10; 15:12; 17:11, 15-8; 18:5-6
Firearms
Legislation, effect 13:8
Use, effect on behaviour 13:7, 9
Juvenile delinquency
Child abuse, relationship 13:12
Control, prevention 13:11-3, 19-21
Ethnic, religious, communities 13:17
Group behaviour 13:18
Prediction 13:19-20
Sadism, murder 13:18-9
Social class, relationship 13:14-5
Statistics 16:6-7
Training schools 13:10-5, 17; 16:7
Working mothers, effect 13:17-8
Mental illness, relationship 17:9-10, 13-4, 16-7
Murder
"Family crimes" 17:14
Penalty, effect rehabilitation 17:9-10
Poulin inquest 13:7-8
Prediction of behaviour 13:5, 18-20; 15:19; 17:6-7
Pre-natal influences 12:6-7; 13:16; 15:5, 9; 16:7; 18:5
Preventive criminology 13:20; 15:9-12, 17; 17:5-7, 12-3
Provincial jurisdiction, health, welfare, education, relationship 15:9-10
Research, available, proposed 12:4-11; 13:6-8, 21; 15:6-13, 15-7, 19; 16:7-10; 17:16
Statistics Canada 15:9; 16:5-10
Rural-urban, comparison 13:16-7
Social mores, change, influence 17:8
Television violence, effect 13:16; 17:15
See also
Children
Mental Illness

Criminology

See
Crime and Violence
Preventive Criminology
Research

Croll, Hon. David A., Senator (Toronto-Spadina)

Bill C-4 3:7-8, 10
Bill C-23 9:7-10
Bill C-25 10:6-7, 9, 13-4, 17, 19
Bill C-28 8:6-7, 9-11
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:5, 8-11; 13:6; 15:7-10, 12; 17:8-11

Cultural Property

Export
Control list 5:10-5, 26, 29-30
Foreign origin 5:8-9, 17-23
Illegal, recovery 5:34-5
Minister, powers, alteration permits 5:14-5, 25-6, 28-9
Permits 5:9, 12-4, 25-7
Review Board 5:7, 9, 12-6, 26-33, 36-7
National Heritage, protection 5:10-1, 25-6, 30, 34
Sale in Canada
Fair offer, determination 5:32-3
Financial assistance 5:11, 33-4
Tax benefits 5:19-20, 23-4, 32-3

Cultural Property Export and Import Act

See
Bill C-33

Curran, R. E., Q.C., Counsel, Proprietary Association of Canada

Bill S-9 1:13-4; 2:7-8

da Costa, Dr. Granville A., Staff Psychiatrist, Child and Adolescent Service, Clarke Institute of Psychiatry, Toronto

Submission to committee 15:19-34

Day Care

See
Children

Denis, Hon. Azellus, Senator (La Salle)

Bill C-22 4:6-8
Bill C-25 10:9-10, 16
Bill C-37 6:14-5, 17-8; 7:7
Bill S-9 1:12, 14; 2:6, 8
Bill S-28 8:7-8
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 15:10

Drugs

Dangerous, control 1:7-11
Ineffective, control 1:10-1
OTC (Over the counter), regulations 1:5, 9
Patent medicines, definition 1:11
Prepared by physicians, regulations 1:9
Prescription, criteria 1:9
Proprietary medicines
Advertising
Defined 1:12
Regulations 1:7-8, 10, 12-3
Studies 1:8
Alcohol content, control 1:12-3
Expiry date, regulations 1:7, 11-2
Formula preclearance 1:13
Labelling regulations 1:5, 7-9, 11-3
Promotion, defined 1:12
Sale, regulations 1:5-14; 2:6-7
Scientific review 1:6, 8-9, 11

Self-medication, value 1:13
See also
Proprietary . . .

du Plessis, R. L., Acting Assistant Law Clerk and Parliamentary Counsel
Bill C-25 10:16-7

du Plessis, R. L., Justice Dept., Legal Adviser to Committee
Bill C-33 5:30-2, 37
Bill C-37 6:13-5; 7:13

Emotional Illness
See
Mental Illness

Environment Dept.
Vessel purchases 6:11
See also
Environmental Protection Service
Fisheries and Marine Service

Environmental Contaminants
Control
Board of review 10:7, 14-5
Emergency provision 10:10-1, 15
Environment, Health and Welfare Depts., role 10:13-4, 18
Industry, effect 10:7
Information provisions, testing 10:6, 17-9
International cooperation 10:13
Legislation, other countries 10:12-3
Mercury pollution, effect 10:8
Offences, penalties 10:9-11, 15-7
Procedures 10:6, 13, 18-9
Provinces, relationship 10:6-11, 18
Release 10:6-9
See also
Specific substances

Environmental Contaminants Act
See
Bill C-25

Environmental Protection Service
Ocean Dumping Permits 6:10
Waste disposal 7:9

Euthanasia
See
Children

Faulkner, Hon. Hugh, Secretary of State of Canada
Bill C-33
Discussion 5:9-16
Statement 5:7-9

Finsten, Hugh, Research Officer, Research Branch, Library of Parliament
Research paper 12:4-6, 10-1; 17:5-6, 16
Witnesses introduced 13:5

Firearms
See
Crime and Violence

Fisheries and Marine Service
Research, ocean monitoring 6:6; 7:8-9

Fluorocarbons
Environmental problems 10:13

Flynn, Hon. Jacques, Senator (Rougemont)
Bill C-23 9:6-10

Food and Drugs Act and Regulations
Advertising, control 1:10
Proprietary medicines, inclusion 1:5-8, 11-4; 2:7
Purpose, scope 1:5-6, 11
Regulations, review 1:11

Fournier, Hon. Sarto, Senator (de Lanaudière)
Bill C-4 3:9
Bill C-23 9:7
Bill C-25 10:9-11, 13, 18
Bill C-33 5:7,27
Bill C-37 6:5-19; 7:6-9, 12
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 16:6-7, 9-10

Geoffrion, R. L., Legislation Section, Justice Dept.
Bill C-37 6:16-8; 7:7-8

Government Annuities Improvement Act
See
Bill C-75

Haig, Hon. J. Campbell, Senator (River Heights)
Bill C-22 4:6-8

Hanmer, H., Director, Service Bureau, Royal Canadian Legion
Bill C-4 3:7-8, 10-1

Health Welfare and Science Standing Senate Committee
In camera proceedings 5:26; 18:4
Motion
Publication proceedings, feasibility of Senate Committee inquiry into crime and violence 12:4-5
Procedure 5:7, 9-10; 6:18-9; 7:6-7; 17:18

"The High Risk Infant"
Ontario Psychiatric Assoc. subcommittee on child psychiatry position paper 15:32-4

Hopkins, Russel E., Law Clerk and Parliamentary Counsel
Bill C-22 4:6-8

Income Tax Act
Cultural property 5:20

Influenza
Control 14:7

Inman, Hon. F. Elsie (Murray Harbour)
Bill C-4 3:8, 10-1
Bill C-22 4:6, 8-9
Bill C-23 9:8-9
Bill C-33 5:12
Bill C-37 6:8-9
Bill S-9 1:7, 9, 12; 2:8

Intergovernmental Maritime Consultative Organization
Operational discharges, ships 6:8, 11

International Health Regulations
See
World Health Organization

Juvenile Delinquency
See
Crime and Violence

Kaplan, Bob, M.P., Parliamentary Secretary to Minister of National Health and Welfare
Bill S-31 14:6-11

Kelm, W. A., Director, Planning and Development Division, Canada Pension Plan Branch, National Health and Welfare Dept.
Bill C-22 4:6-9

Lamontagne, Hon. Maurice, Senator (Inkerman)
Bill C-33 5:7, 9-20, 37

Lamy, J. E. A., Dominion Secretary, Royal Canadian Legion
Bill S-28 8:9-11

Langley, Dr. Michael, Dept. of Criminology, University of Ottawa
Background 13:5
Crime and violence 13:5-21

Langlois, Hon. Léopold, Senator (Grandville)
Bill C-37 6:14-6

Lassa Fever
Control, Canadian action 14:6-10

Lead
Emissions, Toronto company, control 10:9

Leprosy
Control 14:9

Lieutenant Governors
Pensions 9:6-10
Cost of living increase 9:8-9

Lieutenant Governors Superannuation Act
See
Bill C-23

Liston, Dr. B., Acting Assistant Deputy Minister, Health Protection Branch, National Health and Welfare Dept.
Bill S-9 1:6-13; 2:7-8

London Convention
See
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

Macaulay, Ian D., Division of Ocean Science Affairs, Oceanography Branch, Environment Dept.
Bill C-37 6:5-15; 7:8-14

McDonald, Douglas, First Vice-President, Dominion Command, Royal Canadian Legion
Bill S-28 8:6-11

Macdonald, Hon. John M., Senator (Cape Breton)
Bill C-4 3:9
Bill C-25 10:9-10
Bill C-37 6:6-7, 9-10, 13-6
Bill C-75 11:7
Bill S-9 1:7-11, 13
Bill S-28 8:7, 9-10

McElman, Hon. Charles, Senator (Nashwaak Valley)
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:9-10; 13:7, 9-10, 12, 15-20; 15:8-10-1; 17:11-6, 18

McGrand, Hon. Fred A., Senator (Sunbury)
Bill C-25 10:19
Bill C-33 5:11-2, 23
Bill C-37 6:7-8
Bill S-31 14:8-9
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:6-9; 13:6-9, 12, 15-9, 21; 15:6-12; 16:6-8, 10; 17:6-7, 12, 14, 16-8

McKay, Prof. Bryan, Dept. of Criminology, University of Ottawa
Background 13:5
Crime and violence 13:5-21

McKnight, Dr. C. K., M.D., Chief of Service, Forensic, Clarke Institute of Psychiatry, Toronto
Letter to Committee 15:17-8

Malcolmson, H. A., Toronto
Background 5:15
Bill C-33 5:16-25

Martineau, Louis, Translation Bureau, Justice Dept.
Bill C-37 7:7-8

Mental Illness
Acceptance 17:10
Children
Abnormal personality development, treatment 15:19-20
Prevention, study 15:20-30

Crime and violence, relationship 17:9-10, 13-4
Schizophrenia, causes 17:16-7
Treatment 17:9-12, 17

Mercury

Environmental problems, Bill C-25 effect 10:8, 10-1

Monteith, John R., Chief, Hazardous Material Management, Environmental Protection Service, Environment Dept.

Bill C-37 6:7-11; 7:9-14

Municipalities

Disposal of waste, snow 7:9, 11-3

Murder

See
Crime and Violence

Murphy, Lois Barclay

Study, "Preventive Implications of Development in the Preschool Years" 15:20-30

National Health and Welfare Dept.

Drugs
Advertising studies 1:8
Review, Health Protection Branch 1:6, 9-10

National Heritage

Protection, cultural property 5:10-1, 25-6, 30, 34
See also
Cultural Property

Neiman, Hon. Joan, Senator (Peel)

Bill C-25 10:8, 13
Bill C-37 6:6-13, 15-6
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:5, 7-11; 13:7-8; 16:6; 17:7, 11-2

Netherlands

Prison system 13:9-10

Norrie, Hon. Margaret, Senator (Colchester-Cumberland)

Bill C-4 3:9-11
Bill C-23 9:8
Study of feasibility of Senate Committee inquiring into a reporting upon crime and violence in contemporary Canadian society 12:8-9; 13:9-14, 17; 15:10-2; 16:7, 9-10; 17:14-5, 17

Ocean Dumping Control

Accidental, emergency 6:9-10, 15; 7:11
Alternatives 7:9
Current practices 6:9; 7:8
Disposal on ice 6:5, 15, 17; 7:11-2
Dredged material 6:9, 11; 7:8
Enforcement, penalties, court procedure 6:6-7, 9-11; 7:10-1, 13-4
Foreign vessels 6:6-9
Incineration at sea 6:5
International waters 6:6-7, 10, 12-3; 7:11
London Convention 6:5-10, 17-8; 7:8, 11
Monitoring dumping, effects 7:8-9
Operational discharges 6:8-9, 11
Permits 6:5, 7-13; 7:8-10, 13
Provinces, co-operation 7:9-10, 13
Ships, disposal of 6:11-8; 7:7-8
Snow, disposal of 7:11-3

Ocean Dumping Control Act

See
Bill C-37

Old Age Security

Retroactive payments 4:9

O'Manique, Dr. John T., Ph.D., Associate Professor of Philosophy, Carleton University; Member, Third Research Team for the Club of Rome

Letter to committee 15:35

Ontario Psychiatric Association

Subcommittee on child psychiatry position papers 15:30-4

PCB's

See
Polychorinated Biphenyls

Pension Act

Provisions 3:8-9, 11-2

Pharmaceutical Association of Canada

Bill S-9, consultation 2:7

Phillips, Hon. Orville H., Senator (Prince)

Bill S-28 8:7, 10
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 16:7-8

Plague

Control 14:10

Polychorinated Biphenyls

Environmental problems 10:7-8

Popp., A. H. E., Legislation Section, Justice Dept.

Bill C-37 6:18

Prefontaine, Marcel, Director, Justice Statistics Division, Statistics Canada

Criminal Statistics 16:6-8

"Preventive Implications of Development in the Preschool Years"

Study, Lois Barclay Murphy 15:20-30

Prisons

See
Crime and Violence. Correctional Institutions

Proprietary Association of Canada
Bill S-9, opinion 1:13; 2:7-8
Membership 1:13

Proprietary Medicines
See
Drugs

Proprietary or Patent Medicine Act
Purpose, scope 1:5-6, 13

Proprietary or Patent Medicine Act, An Act to repeal
See
Bill S-9

Prowse, Hon. J. Harper, Senator (Edmonton)
Bill C-4 3:8-9, 11

Quarantine
Administration, enforcement, quarantine officers 14:7-8, 10
Dangerous diseases, control 14:6-9
Detention 14:6, 8-11
International Health Regulations, WHO 14:6-10

Quarantine Act, An Act to amend
See
Bill S-31

Reed, P., Assistant Director, Justice Statistics Division, Statistics Canada
Criminal statistics 16:8-10

Reports to Senate
Bill C-4 3:5
Bill C-22 4:5
Bill C-23, with recommendation 9:5
Bill C-25 10:5
Bill C-33, with amendments 5:6
Bill C-37 7:5
Bill C-75 11:5
Bill S-9, with amendment 2:5
Bill S-28 8:5
Bill S-31 14:5
Feasibility of Senate Committee inquiry into crime and violence 18:5-6

Rowebottom, Lorne, Assistant Chief Statistician, Household and Institutional Statistics Field, Statistics Canada
Criminal statistics 16:5-10

Royal Canadian Legion
Bill C-4, opinion 3:6
Branches
Autonomy 8:9
Property rights 8:6-7, 9-10
Bursaries 3:10
Government grants, tax exemptions 8:10
Ladies' auxiliaries 8:8-9
Membership, fees 8:10
Organization, Commands defined 8:7-8, 11
Presidents of Commands, authority 8:9-10
Property value, total 8:10
Service Bureau 8:10
Veterans' benefits
Improvements proposed 3:6-7
Review committee proposed 3:7

Royal Canadian Legion, An Act respecting
See
Bill S-28

Schizophrenia
See
Mental Illness

Senate Committee inquiry into crime and violence (proposed)
See
Crime and Violence. Feasibility...

Smallpox
Control, world situation 14:9-11

Smith, Hon. Donald, Senator (Queens-Shelburne), Committee Acting Chairman
Bill C-23 9:9
Bill C-25 10:11-2, 16
Bill C-33 5:27, 37
Bill C-75 11:7
Bill S-9 1:5-6, 8, 11-4
Bill S-31 14:9-10
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:10-1; 13:7, 12-5; 15:12; 17:11, 18

Social Assistance
See
Welfare Programs

Sprenger, Dr. R. A., Senior Consultant, Quarantine and Regulatory, Medical Services Branch, National Health and Welfare Dept.
Bill S-31 14:8, 11

Statistics Canada
Criminal statistics 15:9; 16:5-10

Statute Law (Superannuation) Amendment Act, 1975
See
Bill C-52

Statute Law (Veterans and Civilian War Allowances) Amendment Act, 1974
See
Bill C-4

Steele, D. J., Executive Director, Services Branch, Unemployment Insurance Commission
Bill C-75 11:6-7

Stokes, Dr. R. E., M.D., Bracebridge Community Mental Health Service

Letter to committee 15:14

Sullivan, Hon. Joseph A., Senator (North York)

Bill S-9 1:6-13

"Supplemental Care"

Ontario Psychiatric Assoc. subcommittee on child psychiatry position paper 15:30-2

Tait, Gary, Research Officer, Research Branch, Library of Parliament

Research paper 12:4-6, 10-1; 17:5-6, 16

Thompson, D. M., Chairman, War Veterans Allowance Board

Bill C-4 3:7-12

Toft, Dr. Peter, Chief, Environmental Standards Division, Bureau of Chemical Hazards, National Health and Welfare Dept.

Bill C-25 10:6, 13-4, 18

Trade Marks Act, An Act to amend

See
Bill S-9

Veterans

Allowances
- Age requirement, male-female, difference 3:8
- Children, payments, qualifying age 3:9-10
- Common law relationships, children, married rate 3:8-9
- Eligibility 3:8, 11
- Income levels, variety 3:6
- Other income, effect 3:9, 11
- Payments, number recipients 3:9
- Provincial supplements 3:10
- Widows, age, rate 3:7, 11-2

Assistance fund 3:6, 11

Benefits
- Canadian residence requirement 3:6
- Children, education 3:9-10
- Deep Sea Rescue Tug service, excluded 3:7
- Equality, male-female 3:6, 8
- Improvements proposed, Royal Canadian Legion 3:6-7
- Indexed, cost of living 3:12
- Qualifying Service, United Kingdom, World War I 3:6-7
- Review committee proposed, Royal Canadian Legion 3:7

Disability pension
- Eligibility 3:8
- Rate, basis, committee report 3:7-8

Pensions
- Orphans 3:11
- Widows, children 3:11-2

Widows benefits, allowance act, pension act, comparison 3:11-2

See also
War Veterans Allowance Act

Violence

See
Crime and Violence

WHO

See
World Health Organization

War Veterans

See
Veterans

War Veterans Allowance Act

Payments, number recipients 3:9
Provisions 3:8-12

War Veterans Allowance Act, An Act to amend

See
Bill C-4

Warme, Gordon E., M.D., Chief, Child and Adolescent Service, Clarke Institute of Psychiatry, Toronto

Submission to committee 15:19-34

Welfare Programs

Federal-provincial agreements, recovery of overpayments 4:9

Whitlock, Dr. Eileen S., Assistant Executive Secretary, The National Association for the Advancement of Humane Education, University of Tulsa, U.S.A.

Letter to committee 15:15-6

Willis, Alan Legal Services, Environment Dept.

Bill C-37 6:6-11, 14-6

World Health Organization

International Health Regulations, quarantinable diseases 14:6-10

York University

Drugs, advertising, studies 1:8

Appendices

Issue 15
- No. 1—Letter, Dr. B.A. Boyd, Medical Director, Mental Health Centre, Ontario Ministry of Health, Penetanguishene, Ont. 15:13
- No. 2—Letter, Dr. R.E. Stokes, M.D., Bracebridge Community Mental Health Service 15:14
- No. 3—Letter, Dr. Eileen S. Whitlock, Assistant Executive Secretary, The National Association for the Advancement of Humane Education, University of Tulsa, U.S.A. 15:15-6
- No. 4—Letter, Dr. C.K. McKnight, M.D., Chief of Service, Forensic, Clarke Institute of Psychiatry, Toronto 15:17-8

No. 5—Submission, Dr. Gordon E., Warme, M.D., Dr. Granville A. da Costa, M.D., and Dr. J.D. Atcheson, M.D., Clarke Institute of Psychiatry, Toronto 15:19-34

No. 6—Letter, Dr. John T. O'Manique, Ph.D., Associate Professor of Philosophy, Saint Patrick's College, Carleton University; Member, Third Research Team, Club of Rome 15:35

Witnesses

—Alexander, C.S., Legal Advisor, Environment Dept.
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For pagination, *see* Index by alphabetical order.

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