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First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 25

WEDNESDAY, MARCH 12th, 1969

***Second and Final Proceedings on Bill S-29,***

intituled:

"An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

WITNESSES:

*Department of Indian Affairs and Northern Development:* A. D. Hunt, Director, Resource and Economic Development Group; Dr. W. W. Woodward, Chief, Oil and Mineral Division, Resource and Economic Development Group.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

29825—1

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Lang |
| Aseltine | Desruisseaux | Leonard |
| Beaubien (*Bedford*) | Gelinas | Macnaughton |
| Benidickson | Giguère | Molson |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Inman | Welch |
| Connolly (*Ottawa West*) | Isnor | White |
| Cook | Kinley | Willis—(30) |

*ex officio members:* Flynn and Martin
(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 27th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Everett, seconded by the Honourable Senator Sparrow, for the second reading of the Bill S-29, intituled: An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

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 McDonald, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*



29825—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, March 12th, 1969.
(27)

At 10.20 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to *resume* consideration of Bill S-29, "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Inman, Isnor, Kinley, Lang, Macnaughton and Thorvaldson. (14)

*Present, but not of the Committee:* The Honourable Senators Grosart, Hays, McLean, Phillips (*Rigaud*) and Prowse. (5)

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

The following witnesses were heard:

*Department of Indian Affairs and Northern Development:*

A. D. Hunt, Director, Resources and Economic Development Group.
Dr. H. W. Woodward, Chief, Oil and Mineral Division, Development Group.

*Amendments:*

Clauses 12, 13, 21, 25, 26, 27, 40 and 41, inclusive, were amended.

NOTE: The full text of the amendments appears by reference to the Report of the Committee immediately following these Minutes.

Upon motion, it was *Resolved* to report the said Bill as amended.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

# MINUTES OF PROCEEDINGS

WEDNESDAY, March 12th, 1969.
(27)

At 10.20 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to resume consideration of Bill S-29, "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

Present: The Honourable Senators Hayden (Chairman), Beaubien, Burchill, Carter, Connolly (Ottawa West), Cook, Croll, Desruisseaux, Inman, Isnor, Kinley, Lang, Macnaughton and Thorvaldson. (14)

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

The following witnesses were heard:

Department of Indian Affairs and Northern Development:

A. D. Hunt, Director, Resources and Economic Development Group.
Dr. H. W. Woodward, Chief, Oil and Mineral Division, Development Group.

Amendments:

Clauses 12, 13, 21, 25, 26, 27, 40 and 41, inclusive, were amended.

NOTE: The full text of the amendments appears by reference to the Report of the Committee immediately following these Minutes.

Upon motion, it was Resolved to report the said Bill as amended.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

## REPORT OF THE COMMITTEE

WEDNESDAY, March 12th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-29, intituled: "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories", has in obedience to the order of reference of February 27th, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 6:* Strike out lines 36 to 41, both inclusive, and substitute therefor the following:

"12. The Governor in Council may make regulations respecting the exploration and drilling for and the production and conservation, processing and transportation of oil and gas and, in particular, but without restricting the generality of the foregoing, may make regulations".

2. *Page 9:* Strike out lines 14 to 21, both inclusive, and substitute therefor the following:

"(b) the locating, spacing or drilling of a well within a field or pool or within part of a field or pool or the operating of any well that, having regard to sound engineering and economic principles, results or tends to result in a reduction in the quantity of oil or gas ultimately recoverable from a pool;".

3. *Page 15, line 1:* Strike out "two" and substitute therefor "one".

4. *Page 19:* Strike out clause 25 and substitute therefor the following:

"25. (1) No person shall produce any oil or gas within a spacing unit in which there are two or more leases or two or more separately owned working interests unless a pooling agreement has been entered into in accordance with section 21 or in accordance with a pooling order made under section 22.

(2) Subsection (1) does not prohibit the production of oil for testing in any quantities approved by the Chief Conservation Officer.".

5. *Page 19, line 14:* Strike out "two" and substitute therefor "one".

6. *Page 20:* Strike out clause 27 and substitute therefor the following:

"27. (1) Notwithstanding anything in this Act, where, in the opinion of the Chief Conservation Officer, the unit operation of a pool or part thereof would prevent waste, he may apply to the Committee for an order requiring the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof, as the case may be.

(2) Where an application is made by the Chief Conservation Officer pursuant to subsection (1), the Committee shall hold a hearing at which all interested persons shall be afforded an opportunity to be heard.

(3) If, after the hearing mentioned in subsection (2), the Committee is of opinion that unit operation of a pool or part thereof would prevent waste, the Committee may by order require the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof.

(4) If in the time specified in the order referred to in subsection (3), being not less than six months from the date of the making of the order, the working interest owners and royalty owners fail to enter into a unit agreement and a unit operating agreement approved by the Committee, all drilling and producing operations within the pool or part thereof in respect of which the order was given shall cease until such time as a unit agreement and a unit operating agreement have been approved by the Committee and filed with the Chief Conservation Officer.

(5) Notwithstanding subsection (4), the Committee may permit the continued operation of the pool or part thereof after the time specified in the order referred to in subsection (3) if it is of opinion that a unit agreement and unit operating agreement are in the course of being entered into, but any such continuation of operations shall be subject to any conditions prescribed by the Committee.".

7. *Page 28:* Strike out lines 21 and 22 and substitute therefor the following:

"and, subject to section 41, is binding upon the Committee and upon all parties.".

8. *Page 29:* Immediately after line 2, add as new subclause (5) of clause 41, the following:

"(5) Any order made by the Committee pursuant to subsection (4), unless such order has already been dealt with by the Governor in Council pursuant to section 40, shall be subject to that section.".

All which is respecfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE

## COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, March 12, 1969**

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-29, respecting Yukon and N.W.T. Gas and Oil Conservation and Production Act, met this day at 10.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have with us from the Department of Indian Affairs and Northern Development Mr. A. D. Hunt, Director of Resource and Economic Development Group, and Dr. H. W. Woodward, Oil and Gas Administrator.

You may remember that last week when we were considering this bill we heard from the representatives of the Canadian Petroleum Association. Mr. Lewis was the spokesman at that time. Generally, they expressed agreement and said that this particular kind of legislation was needed immediately for the Yukon and the Northwest Territories. They raised some point where they suggested there should be amendments to clarify the intent of the bill.

Following on that, we met with the departmental officers who were charged with the administration of this act when it comes into force and we also had the benefit of the opinion of the director of legislation in the Department of Justice.

Arising out of that, we have agreed on a number of amendments which are in line with what Mr. Lewis suggested and which are approved of by the department. There may be one or two additional points which I raised the other day, but we will come to those after we consider the present ones.

Mr. Hunt, we did not have the benefit of any expression of views, on the last occasion, from your department. We had several silent observers. Would you care to give some explanation of the purposes of this bill?

**Mr. A. D. Hunt, Director, Resource and Economic Development Group, Department of Indian Affairs and Northern Development:** Thank you, Mr. Chairman. Honourable senators, this bill if I might classify it, is a reasonably standard approach to the orderly control and administration of oil and gas production. The concepts and the ideas behind it really rest on many years of experience gained on this continent and particularly in the western provinces.

I think it is fair to categorize it—as I believe the representatives of the Canadian Petroleum Association did when they made their presentation—as in accord with the general principles which have been in practice in western Canada for a long time.

The bill seeks, first of all, to ensure that oil and gas in the Yukon and the Northwest Territories is produced under controlled conditions so that, in the first place, there will be no unreasonable or very little waste and so that the normal concepts and principles of conservation can be followed.

In the Yukon and the Northwest Territories at the moment we have the ever-increasing exploratory effort in the oil and gas industry. Starting perhaps in the late 1950s and early 1960s, we have increased exploration holdings—which I think is a fair indicator of the industry activity—from around in those days 50 million acres, which was even then quite a large amount, to the figure at which we are standing now in the Yukon and Northwest Territories of 250 million acres under permit for oil and gas exploration.

Expenditures, likewise, have increased tremendously. In the middle 1950s something like $4 to $5 million annually was being expended by the industry in searching for oil and gas. This year we fairly confidently predict that that will be $35 to $40 million and probably in a few years from now that will exceed $50 million.

To give you some yardstick, the expenditures in Alberta on exploration, not on development or production facilities or processing facilities, but on exploration alone, is around $100 million a year. So the potential in the north is being recognized.

Furthermore, we have one or two discoveries, some of which we hope will be going into production very shortly. Those I refer to particularly are two gas fields—one in the Northwest Territories and one in the Yukon Territory, in that area just north of the British Columbia boundary. Those gas fields, Pointed Mountain and Beaver River, we expect to be tied into pipeline next year or the year after.

**Senator Isnor:** Are they Canadian companies?

**Mr. Hunt:** The Pointed Mountain gas field rights are held by Pan-American Petroleum Corporation. That is not a Canadian company, it is a United States company operating in Canada through a branch operation, at this point in time.

**Senator Isnor:** What about the other?

**Mr. Hunt:** It is the same company for both fields. The pipeline company for this will be Canadian and the Pan-American Petroleum Corporation have signed an agreement with West Coast Transmission Company Limited to take the gas and deliver it either to Vancouver or to the Pacific northwest, in accordance with export approvals.

That is a background of the activities in the north. I think I should refer—although it has already been done through discussion in the Senate—to the large Prudhoe Bay discovery on the North Slope of Alaska. This apparently is a very large field. I hesitate to put any numbers on it, because I have not heard any official size, but I think we are only just beginning to appreciate the significance of this field.

To Canada it also has a tremendous significance, because the geology of the Mackenzie Delta area and the western Arctic islands is very similar. Therefore, we hope very much that there is a chance that similar sized fields may be in that region.

**Senator Thorvaldson:** In comparison with that field, is it fair to note this whole field as being owned by one company?

**The Chairman:** You mean Pan-American?

**Mr. Hunt:** This is going back to the gas field?

**Senator Thorvaldson:** No. I am referring to the one you spoke of, north of the British Columbia boundary. I am wondering if there are other interests there as well as the American company, or whether the American company has the whole field, in so far as it is delineated now.

**Dr. H. W. Woodward, Oil and Gas Administrator, Department of Indian Affairs and Northern Development:** In that case, the Pan-American Company has the dominant acreage position. Texaco (Canada), the Chevron-Standard Petroleum Company, and other companies, have also some contiguous acreage, which may also be approved for production. At the moment there is one well being drilled north from the British Columbia extension, which is the Pan-American company acreage, but there is contiguous acreage held by competitor companies, which may also be approved for production.

**Senator Thorvaldson:** But they are not defined there yet?

**Mr. Hunt:** That is right. Neither the Beaver River nor the Pointed Mountain fields have yet been fully delineated. It might be helpful to give a brief background of the tremendous upsurge in exploration activity and therefore what we would anticipate in production in the relatively near future.

The bill is divided into several parts. I think I might go through the bill briefly, not by section but just referring to the various parts and to the concepts in the bill. In the first place the bill would seek to authorize the Governor in Council to make regulations providing for the orderly administration and control of the myriad of production activities that go on in an oil or gas field; such things as measurement of oil or gas, control of rates of production, and the control and inspection of the equipment to be used—in other words, I would suggest, primarily housekeeping aspects of the administration.

The bill then goes on to the conservation aspect, which in this case is achieved by defining waste and, of course, prohibiting waste. Waste is not thought of simply in the physical sense of spilling oil and gas on the ground. What is thought of as much more important is the failure to take the necessary steps to recover from the underground reservoir the optimum amount of oil and gas consistent with reasonable economics. Of course, one literally could drill one well for every

few acres and perhaps recover almost all of the oil that is underground. It is, however, physically impossible to recover all the oil. On the other hand, it is very easy to dissipate the reservoir energy so that much of the oil is left behind. In the old days, not in Canada so much as elsewhere, some fields were produced as fast as they could be. This produced an awful lot of oil in a hurry, but often it left 85 per cent of the oil behind.

**Senator Thorvaldson:** Mr. Chairman, I wonder if we could know whether the present witness is a geological engineer or an engineer or an administrative officer of the department.

**Mr. Hunt:** I try to combine several talents, sir. My background is economic geology. For a number of years I was in the oil industry and I was there as a geologist. I was also with my own firm of petroleum consultants, and I have been with the department now for approximately ten years in administration primarily.

**Senator Thorvaldson:** Thank you. I take it your experience in the field has been in western Canada, has it?

**Mr. Hunt:** Yes, and in South America as well; both.

So great care was taken to define what we meant by waste and to make sure that we would conserve the oil and gas from the point of view of not leaving it behind in the ground.

The next part of the bill concerns pooling and unitization. Pooling is simply a requirement with respect to where a spacing unit is established, and this would be done under the administrative regulations. A spacing unit indicates that one well may be drilled within so many acres. It is usually a square. The size of the square is determined by engineers who look at the reservoir characteristics and try—of course, it is not absolute—try to work out how many wells are required to adequately drain the oil or gas pool.

Am I going into too much detail, Mr. Chairman?

**The Chairman:** No, you are not. If you were, you would be hearing something.

**Mr. Hunt:** All right. What may happen, say, in a gas field where you have a fairly large spacing unit, is that more than one company or individual may own or have a lease within that unit. You can only drill one well in the unit so the bill provides for the pooling of the lands within that unit, either voluntarily or, failing that, compulsorily in order that drilling may proceed.

Pooling, therefore, refers simply and only to one spacing unit, and the compulsory aspect, I would emphasize, is well established throughout western Canada.

Secondly, we have unitization. Unitization is a fairly modern concept in oil and gas production. What it says is that, ideally, it is best to produce an oil and gas field as if it were owned by only one organization, one company, one individual or what have you. So that in developing the field you locate wells in the optimum position, consistent with whatever the characteristics of the reservoir are, and you will produce all the oil or gas through, shall we say, a few wells in the optimum position and you will not, of course, overdrill and invest unnecessarily in productive capacity.

**The Chairman:** I suppose you might say, Mr. Hunt, that unitization is quite common in various countries in the world. It is simply a question of the objective being to get the optimum production at the lowest cost.

**Mr. Hunt:** That is right. It is an economic aspect. It is of tremendous importance in the north, of course, because we feel that the markets for northern oil are going to be some distance away. I will not hazard a guess at where they may be, but we do feel that they may not be simply continental markets. The moment we start looking for markets outside the North American continent, we have to be competitive with the much lower cost Middle East oil or North African oil. So we are trying to ensure that there will be no overproductive capacity and that companies will be encouraged to employ the latest approach to the development of a field on a unit basis.

**Senator Desruisseaux:** Mr. Chairman, are we talking only about the fields on the land or are we talking also about fields under water?

**The Chairman:** We are talking only about the Yukon and Northwest Territories. We are not talking about off-shore fields.

**Senator Desruisseaux:** We are not talking about the off-shore fields at all?

**Mr. Hunt:** No. This bill will apply to the Yukon and Northwest Territories, and I

understand their boundaries are the shore line.

**Senator Prowse:** Just to clarify this point, my understanding is that we consider the rather narrow waters and off-shore waters, which would include the Continental Shelf which attaches to the Northwest Territories, as part of the Northwest Territories. Is that not so?

**Mr. Hunt:** If I might put it this way, sir, the waters immediately surrounding the shores of the Northwest and Yukon Territories, for at least three miles out anyhow, would be considered as part of the territorial waters and therefore part of Canada.

**Senator Prowse:** What I had in mind was some of the maps I had seen which have come from your department, as, for example, in the Pan-Arctic pamphlet. That particular map would indicate that very largely the interesting-looking areas, interesting on the basis of now available information, are under permit at the present time. My recollection is that some of those permits went out into fairly deep water and got a fair distance from the shore. Now, this would cover any of those things that you have under permit or that you would put under permit. Would that not be so?

**Mr. Hunt:** No, sir. Not at this time.

**Senator Prowse:** Then who looks after them?

**Mr. Hunt:** There are in force regulations that provide for controlling simply just the drilling of all areas. These regulations were promulgated under the Territorial Lands Act and are generally considered adequate to meet the situation as it exists off-shore at the moment, because in the Arctic, in the Beaufort Sea or interisland channels—I believe that is what you had in mind.

**Senator Prowse:** I have a picture in mind, but I do not remember the names.

**Mr. Hunt:** It is off the Mackenzie Delta.

**Senator Prowse:** And west of the islands, too.

**Mr. Hunt:** Correct. Just for your information there are approximately 250 million acres of permits on the land within the Yukon and Northwest Territories, and approximately 130 million acres in the Arctic Sea and Arctic island channels.

**Senator Prowse:** Those 130 million acres, are they not to be subject to this legislation?

**Mr. Hunt:** Not at this time, no.

**Senator Prowse:** It is anticipated that they will become so?

**The Chairman:** That is a question of policy, senator.

**Senator Thorvaldson:** I understood the witness to say there were regulations covering exploration on the continental shelf. Under what act do they come?

**Mr. Hunt:** They have been promulgated under the Territorial Lands Act and the Public Lands Grants Act. They do not provide for unitization and do not provide for waste. They are simple regulatory acts providing for the control of drilling. They specify the type of blow out prevention and the amount of surface casing that must be provided. They do not contain these more elaborate matters of inspection and unitization and conservation.

**The Chairman:** In other words, the area covered by this bill is an area that has reached the stage, or appears to have reached the stage where these problems of unitization, pooling and waste should be immediately dealt with.

**Mr. Hunt:** Yes, because we have proven that there are gas reserves and some oil in the northern Yukon. It is a little too far from the market at the moment, and there has been extensive drilling. Now we have heard of more wells coming in the Mackenzie Delta and as I indicated this area has a geological similarity to the area of Prudhoe Bay.

**Senator Prowse:** How about the Norman Wells area. Are you in secondary recovery there?

**Mr. Hunt:** Yes, in the Norman Wells area the Government of Canada has a direct carrier interest in that field and so we have been able to achieve what we wanted from the point of view of unitization and secondly to assist in the recovery without this bill. Imperial Oil have been most co-operative in this way.

**Senator Prowse:** There you exercise rights as an owner rather than as a government.

**Mr. Hunt:** Imperial Oil have led the way and have done everything they could to make the field produce to the optimum. This was an example of where one owner owned it completely rather than having several owners.

**Senator Prowse:** And of course the large companies have a tendency to take a longer term view.

**Mr. Hunt:** You mean in the sense of acting now with a view to the future, that is right.

**Senator Prowse:** So they owned it all?

**Mr. Hunt:** Now there are three other aspects to the act, two of which I can deal with very quickly. The first is the provision for the administration and the appointment of inspectors, engineers and so on. The other provision deals with the appeal provisions which have been looked at, I would suggest, very carefully. They are very similar in many respects to appeal provisions found in the National Energy Board Act and in the Railways Act. It finally provides for a review of administrative decisions and provides for means whereby the facts of these very complicated production situations may be determined. The bill provides for the appointment of a committee of five members all of whom are expected to have some knowledge and experience of the oil and gas industry. This committee would have quasi-judicial powers. It would not be an independent board so that it would be responsive to policy requirements, but it would have a certain degree of independence to issue orders and reach conclusions.

I think those are the main parts of the act, Mr. Chairman, and if there are any questions I would be happy to try to answer them.

**The Chairman:** Are there any questions? Otherwise I was going to deal with the amendments proposed.

**Senator Carter:** I have a question with regard to this 130 million acres. Is that a potential oil-bearing area or is that the area mapped?

**Mr. Hunt:** That is the area under oil and gas exploration permit. The potential area is probably somewhat larger than that. But as has already been observed some permits have been acquired by companies a very long way off shore in very deep water which is covered, I think, all the year round by ice and the technological problems of drilling in these areas have yet to be faced. We do not know yet how the companies are going to achieve it, but we are delighted they are going to attempt it. But there is a long way to go before we can see any drilling done.

**Senator Prowse:** I have one or two questions. First of all with regard to the constitution of the committee itself it says "which shall consist of five members, not more than three of whom shall be employees in the public service of Canada." Then it says that they are limited to three-year terms. Is it the intention that the members of this committee will be full-time employees or is it anticipated that for some time to come their duties will be of such a limited nature that it will not be practicable to put full-time people in there?

**Mr. Hunt:** It is anticipated, I believe, that initially it would not be a full-time job, and the committee would be called upon to meet probably just a very few times a year. There probably would be a full-time secretary appointed to ensure continuity but other than that the committee would meet from time to time as required. We would anticipate in view of the good prospects in oil and gas that it would pay off eventually and that it would become a full time committee, but it is difficult to say how long it will be before this takes place.

**Senator Lang:** Are there any reasons other than those of policy why the jurisdiction of that committee was not entrusted to the National Energy Board?

**Mr. Hunt:** Well, it is almost entirely a matter of policy considerations. If I might mention one thing, the National Energy Board will in future, we hope, be called upon to deal with matters of pipelines and so on. But on the question of all policy matters, there might be a little difficulty involved if they were at the same time administrators of oil from the north. The provinces might wonder whether they were too much involved in northern matters.

**Senator Thorvaldson:** I have a supplementary to that question. I take it the National Energy Board at the present time has no jurisdiction whatever in regard to the subject matter of this bill.

**Mr. Hunt:** That is correct, sir. The National Energy Board at a certain time might have jurisdiction over pipelines connecting into the Yukon and Northwest Territories, but it has no administrative jurisdiction over the oil and gas within the territory.

**Senator Prowse:** Then this would be the equivalent of a provincial conservation board which has authority within the area, but in

this case once the oil leaves the area, unlike the provincial board, the matter comes under the Energy Board. Would that be a suitable analogy?

**Mr. Hunt:** Yes, that is a good analogy, sir, and I might draw your attention to the fact that the committee, as proposed here, is, shall we say, a little bit of a compromise between what we find in Alberta, where it is a separate body from the Department of Mines that grants or administers the granting of the oil and gas rights, and, shall we say, the situation in Saskatchewan where their committee is indistinguishable from the Department of Mines.

**Senator Prowse:** That is what you would consider as a practical balance?

**Mr. Hunt:** Yes.

**Senator Prowse:** When we get to section 6, it provides a limitation on the interest any members of the committee should have, and it says:

> No member of the Committee shall have a pecuniary interest of any description, directly or indirectly, in any property in oil or gas to which this Act applies or own shares in any company engaged in any phase of the oil or gas industry in Canada in an amount in excess of five per cent of the issued shares thereof.

This would not preclude a person from being a major shareholder in a gas or oil company in, say, the Middle East, in which he might be in conflict. I am wondering whether it is contemplated that there should not be an interest and that the person should divest himself of any interest in the business in which he is being a judge and in which a conflict might unintentionally arise. I say that not because I think you are going to get crooks in there, but I think of the application of the principle that they should be above suspicion, and that even the most warped mind should not be able to assume they are influenced by anything except their job.

**The Chairman:** Senator, you are suggesting quite a qualification . .

**Senator Prowse:** Yes, I am.

**The Chairman:** . . . for a job of this kind.

**Senator Prowse:** Well, it is not an unusual requirement for people to have to divest themselves of certain interests or to change the interests they have.

**The Chairman:** I am talking about the scope of this position as a member of the committee.

**Senator Prowse:** I think it is something that eventually we are going to have to deal with, perhaps by way of amendment. I do not know that it is that important as of this minute, but I am not sure we should not deal with the principle now.

**The Chairman:** You mentioned that somebody might be appointed a member who had some interest in a Middle East oil company. Under this bill you have pooling, unitization, and all these other things, all in the interests of getting the oil and gas to market at the lowest possible price, in order to be competitive elsewhere.

**Senator Prowse:** It has some purpose beyond that.

**The Chairman:** But I think that this is an essential purpose of the bill, because there is no use developing this processing and shipping in pipelines, and everything else, to get it out of Canada, if you are not going to get it out on a competitive basis.

**Senator Prowse:** What has that to do with the qualifications of the people on the committee?

**The Chairman:** I am trying to think of where the question of conflict of interest could possibly arise.

**Senator Prowse:** Let us say that somebody is on the board and he decides he has an interest where we are considering going into the market, where they could be in conflict with the company in which he can have up to 5 per cent interest, which could give him, with a couple of other people, complete control in a very large company. . .

**The Chairman:** Oh, no.

**Senator Prowse:** Oh, yes.

**The Chairman:** He could declare his interest.

**Senator Macnaughton:** It is certainly very interesting what our learned friend has put forward, but surely the members of this committee are called upon to consider this bill, and that is our outside limit as of this moment. There are other places and other ways of raising the other questions, but it comes very close to policy.

**The Chairman:** That is right. I think it was pertinent to raise the question of qualification, but I do not think it is a matter of any moment right now. This is laying a foundation dealing with the growth and development of this industry in Canada. If it gets to a stage where this aspect becomes important, I am sure you will either have regulation or amendments to the bill.

Are you ready to have a look at the amendments proposed, because then you may want to raise some more questions.

May I indicate to you the first amendment which was proposed by the Petroleum Association, to be found at the bottom of page 6 of the bill?

The association suggested that the regulatory power should include processing and transportation. That has been agreed to and, therefore, the amendment proposed is that we insert after the word "conservation", in line 39 on page 6 of the bill, section 12, the words "processing and transportation". Is that agreed?

**Senator Thorvaldson:** May I just express an opinion? If you include those words, will that not make it necessary to make amendments to the bill elsewhere, or is the bill otherwise unaffected?

**The Chairman:** Adding those words does not in any way affect anything else that occurs elsewhere in the bill.

**Hon. Senators:** Agreed.

**The Chairman:** Then on page 9, that is the next one, in section 13(2)(b), you will notice the language there is, "the locating, spacing or drilling". There is an amendment suggested to that, and I will just read the amendment:

> the locating, spacing or drilling of a well within a field or pool or within part of a field or pool or the operating of any well that having regard to sound engineering and economic principles results or tends to result in a reduction in the quantity of oil or gas ultimately recoverable from a pool;

What is the significance of this change, Mr. Hunt?

**Mr. Hunt:** As I understand it, it was simply suggested by the Canadian Petroleum Association in order to make the reading of that particular paragraph a little more easy. All it does is take out the words "that results or tends to result" in the original draft and move them towards the end of the paragraph, rather than having them in the middle.

**The Chairman:** It simplifies it.

**Senator Prowse:** Instead of the word "under", which might be a little hard to define.

**The Chairman:** Is the amendment agreed, that section 13(2)(b) be struck out and the new paragraph (b), as I have read it, be inserted?

**Hon. Senators:** Agreed.

**The Chairman:** The next one occurs in section 21 of the bill. This is on page 15, under "Pooling", and the Petroleum Association had suggested that the word "two" be struck out and that it should be "one".

**Senator Burchill:** What line is that?

**The Chairman:** That is the first line of subsection 1 of section 21, on page 15. What is the intent of that, Mr. Hunt?

**Mr. Hunt:** It makes more sense. The association pointed out that for pooling actually there might be a strange case where one company held interests in a spacing unit that it had acquired from different parties, and its royalty obligations might be different in different parts of the spacing unit and, therefore, the company might, as it were, want to pool with itself. So, this is simply to take care of that rather strange situation that might develop.

**The Chairman:** The next amendment is at page 19 of the bill, section 26. The first change is again a change of the word "two" in subsection (1) of section 26 to "one", so that the first words of section 26(1) will be: "Any one or more working interests..."

Shall this amendment carry?

**Hon. Senators:** Carried.

**The Chairman:** That is section 26, but I should have pointed out first that it is proposed that we call the existing section 25, subsection (1) and that we insert a subsection (2) which reads as follows:

> Subsection (1) does not prohibit the production of oil for testing in any quantities provided by the Chief Conservation Officer.

This is a matter that was suggested by the Canadian Petroleum Association, which the department viewed favourably. Have you any comment, Mr. Hunt?

**Mr. Hunt:** Only to say that we accepted that it might be possible that a well had been drilled that discovered oil, and following that a spacing unit might be promulgated, and that the company, having drilled the well, would like to test it. Section 25 would have prohibited that unless the spacing unit had been pooled. There seemed to be no objection to a controlled amount of oil being produced for test purposes.

**The Chairman:** Section 27, which is to be found at the top of page 20 of the bill, is a section that the Canadian Petroleum Association raised some questions about when they were here at our last meeting. The substance of what they said was this:

> The minister, under section 27 may require unitization for the purpose of preventing waste. The Association believes that this section is not necessary inasmuch as the Committee, under sections 17 and 18, has the right to call hearings and issue orders which will prohibit waste. These sections also provide for the right of appeal.
>
> Section 27, in its present form, does not provide for either a hearing on the matter of ordering unitization nor does it provide for an appeal. Should section 27 remain in the bill, we submit it should be redrafted to provide for both a hearing and an appeal.

The department, in our discussions with them accepted that point of view, namely, that section 27 should remain in the bill but that it should be redrafted in order to provide for the hearing and the appeal. We have been presented this morning with a draft of the new section 27 which incorporates those features. This has been prepared, presumably, by the Department and the law officers of the Crown. It is quite lengthy but, as can be seen from the bill, section 27 as it is is also quite lengthy. The chief purpose of this amended section 27 is to provide for those two additional features. Is not that right, Mr. Hunt?

**Mr. Hunt:** Yes.

**The Chairman:** That is, it provides for a hearing in connection with unitization, and also a right of appeal. Otherwise, the substance is in line with the substance of the existing section 27. Shall I read the proposed amendment?

**Senator Connolly (Ottawa West):** It can be taken as read. Everybody has a copy of it?

**The Chairman:** Yes.

*[The chairman then placed on the record a proposed amendment to section 27 of the bill, as follows:]*

> 27. (1) Notwithstanding anything in this Act, where, in the opinion of the Chief Conservation Officer, the unit operation of a pool or part thereof would prevent waste, he may apply to the Committee for an order requiring the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof, as the case may be.
>
> (2) Where an application is made by the Chief Conservation Officer pursuant to subsection (1), the Committee shall hold a hearing at which all interested persons shall be afforded an opportunity to be heard.
>
> (3) If, after the hearing mentioned in subsection (2), the Committee is of opinion that unit operation of a pool or part thereof would prevent waste, the Committee may by order require the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof.
>
> (4) If in the time specified in the order referred to in subsection (3), being not less than six months from the date of the making of the order, the working interest owners and royalty owners fail to enter into a unit agreement and a unit operating agreement approved by the Committee, all drilling and producing operations within the pool or part thereof in respect of which the order was given shall cease until such time as a unit agreement and a unit operating agreement have been approved by the Committee and filed with the Chief Conservation Officer.
>
> (5) Notwithstanding subsection (4), the Committee may permit the continued operation of the pool or part thereof after the time specified in the order referred to in subsection (3) if it is of opinion that a unit agreement and unit operating agreement are in the course of being entered into, but any such continuation of operations shall be subject to any conditions prescribed by the Committee.

**Senator Thorvaldson:** I should like to ask a question of Mr. Hunt. Similar enactments to this of the provinces contain sections that correspond generally to section 27, and the draft of the new section 27. Can you tell me which is closer to the provincial enactments—the original section in the bill, or the one that is proposed by the Canadian Petroleum Association? If I recall correctly I think the Manitoba Act contains provisions very similar to those in the draft, and I am wondering why you did not follow the method suggested originally by the association.

**Mr. Hunt:** When we were discussing the approach that might be taken with respect to any form of compulsory unitization we did, of course, try to obtain the views of the industry. It was felt at that time that in addition to providing for voluntary unitization, and in addition to providing for compulsory unitization where 65 per cent of the working interest owners were in agreement, that compulsory part should be promulgated at a later time when and if desired. It was also felt that there should be some absolute mandatory compulsion where it could be proved that failure to unitize was tantamount to waste. It was submitted that this would be a fairly arbitrary approach to the subject. However, it is recognized, of course, that although the committee or the administrative officers would do their best to determine the engineering facts, it is very, very hard to determine precisely whether waste is being committed. It finally comes down to a matter of judgment based on the best facts ascertainable at the time.

So, after a passage of time, and after having had a chance to review it, it did seem appropriate that rather than place this responsibility on the department and on the minister, it would be better to refer the matter to the committee where there could be open hearings, and where all parties who might be affected could at least make their views known publicly.

**Senator Thorvaldson:** And that is provided for in the amendment?

**Mr. Hunt:** That is right, yes.

**The Chairman:** Shall this amendment carry?

**Hon. Senators:** Carried.

**The Chairman:** I should mention to the committee that there are several instances of what we call typographical errors in the bill. These will be corrected in the reprinting, and we do not need formal amendments to take care of them.

With respect to the appeal sections, particularly sections 40 and 41, there was no submission made by the Canadian Petroleum Association. Those who were at the meeting last week will recall that we had considerable discussion of the fact that in section 40 there is a provision whereby an interested person by petition may get to the Governor in Council. I would take it that this is in respect to policy, or the factual situation—a general review of the order of the committee.

When the Governor in Council makes that order, the committee then has to adjust its decision to whatever that order is. But then, there is language at the end of section 40 which provides that when the decision of the Governor in Council becomes a decision or order of the committee, it is binding upon the committee and upon all parties.

Our feeling was that if it is binding on the committee and upon all parties, then that is the end of the road so far as an interested person is concerned, but there is a question as to whether any other right of appeal—for instance, an appeal to the Supreme Court of Canada—would exist even though section 41 provides for an appeal. So, I suggest that after the word "is" in the second to last line of section 40 we insert the word "subject to section 41".

While the Director of Legislation is not here today I might say that I did discuss this with him, and as he expressed it to me over the telephone he saw no objection to doing this. It did not interfere in any way with the intended purpose of the bill.

So, my suggestion is that we insert after the word "is" in the second to last line of section 40, the words "subject to section 41". Is that the wish of the committee?

**Senator Prowse:** May I raise one point, Mr. Chairman. I think your objection to section 40 and to the interpretation given might be perfectly in order. It seems that section 40 was intended to give a residual, absolute power to the Governor in Council as a matter of policy.

**The Chairman:** It does.

**Senator Prowse:** They might find they missed something in the act, for example, so they get a decision from the Supreme Court

of Canada. There are two things. Section 40 gives the residual power to the Crown and section 41 gives an appeal in routine matters.

**The Chairman:** No, an appeal only on two things, on a question of law and on a question of jurisdiction. That is scarcely routine.

**Senator Prowse:** I follow that. You have two factors. Perhaps you can tell me, Mr. Chairman, or perhaps the officers of the department could offer an opinion. Would this create a situation in which we would take away from the Crown that residual power, which I believe it is generally considered ought to be kept?

**The Chairman:** No, because I have another amendment to propose to section 41, so that even after the decision of the Supreme Court of Canada, if you have not already gone to the Governor in Council you would still have a right to go to the Governor in Council.

**Senator Prowse:** After the appeal.

**The Chairman:** Yes.

**Senator Prowse:** That would apply to the department as well as to anybody else?

**The Chairman:** That is right. Is it agreed that we should add these words to section 40?

**Hon. Senators:** Agreed.

**The Chairman:** In section 41, there is a limited kind of appeal. It is an appeal from the decision of the committee on a question of law or on a question of jurisdiction only. This is a right any interested person has. The decision of the Supreme Court of Canada may be confirming the jurisdiction and dismissing any question of law being involved, in which event the original decision of the committee would stand. If the decision of the Supreme Court of Canada differs, the committee must amend its decision to conform. But then the ultimate thing you have is the decision of the committee. At that stage, if you assume the interested party had not gone to the Governor in Council, because that is an entirely different kind of appeal, it may be that as a result of the decision in the Supreme Court of Canada an avenue would open up for consulting or seeing the Governor in Council that did not exist before.

I therefore suggested that in section 41, in cases where the Governor in Council has not already been consulted, we should preserve the right, in relation to the committee's decision that follows the disposition of the appeal, of the interested party to go to the Governor in Council. I did not get any assistance from the director of legislation; he was not difficult to deal with but he just did not feel he should take a hand in the language of it; so the Law Clerk and myself have taken a hand in what we think should be there. You can see what you think of it. We are proposing that there should be added to section 41 a subsection (5) which would say:

> Any order made by the committee pursuant to subsection (4)—

which is the one making the committee adopt as its decision what the Supreme Court of Canada tells it should be the decision—

> shall, unless such order has already been dealt with by the Governor in Council pursuant to section 40, be subject to that section.

In other words, if the matter has not already been dealt with by the Governor in Council, if the Supreme Court of Canada decision affirms the decision of the committee, even if a person had gone to the Governor in Council first he should not be able to go back because it has been dealt with. We have to cover the case where the Supreme Court of Canada may make a decision which is at variance with what the committee has said, which the committee must adopt that as its decision. That may open up vistas or avenues, whatever you want to call them. You may feel the interested party would say, "If I go back to the Governor in Council on this basis I have a different sort of presentation to make", and therefore he should have the right. I am told by some of the authorities that the situation is intended to be inherent in these procedures in sections 40 and 41. When they are intended to be inherent and they are not obviously so, this is the opportunity to make them obviously inherent I would say. Are there any views from the committee on this?

**Senator Burchill:** The interested party has the right to go to the Governor in Council before going to the Supreme Court?

**The Chairman:** There are two entirely different appeals. The appeal to the Supreme Court of Canada is only on a question of law or of jurisdiction.

**Senator Connolly (Ottawa West):** After the committee?

**The Chairman:** Yes.

**Senator Phillips (Rigaud):** You are suggesting it should be exherent rather than inherent?

**The Chairman:** Yes.

**Senator Carter:** Would that not be necessary to allow the Government to control policy? Otherwise somebody else would be controlling policy.

**The Chairman:** It gives the Government, through the Governor in Council, the ability to control policy.

**Senator Prowse:** Are you assuming the Governor in Council is always an interested party?

**The Chairman:** I would think so. That was my reading of "interested party". If the Governor in Council is not an interested party in these proceedings I do not know who else would qualify. What are the views of the committee on such an amendment? Is there any expression of views? ...Are you prepared to adopt it?

Mr. Hunt, I should give you an opportunity to make any comments if you wish to make any. You may not wish to do so.

**Senator Thorvaldson:** Could Mr. Hunt express a view on the practicality of the proposed amendment? Is it practical from the point of view of the administration?

**Mr. Hunt:** The intricacies of the appeals section are a little outside my purview really. If I might express a personal opinion, I had understood that the new order by the committee in accordance with the Supreme Court could be reviewed again by the Governor in Council, but I would hesitate to apply something making it explicit. Sometimes when a matter is explicit the balance somewhere else is upset.

**The Chairman:** Quite apart from the field in which we are operating here, very often when you are explicit you do not gain your point as well as when you are subtle.

Do the committee agree that this amendment should be added as subsection (5) to section 41?

**Hon. Senators:** Agreed.

**The Chairman:** That concludes our consideration of the amendments. Are there any other questions on this bill you would like to ask or matters you want to discuss?

**Senator Desruisseaux:** It might not be pertinent to what has been said before, but I would like to know whether the department has maps of the offshore sections of the great north showing that it is Canadian.

**Mr. Hunt:** The base maps that we use of the north are obtained from the Department of Energy, Mines and Resources and, of course, any maps that I have seen published there clearly indicate that all land areas north of mainland Canada are Canadian.

**Senator Desruisseaux:** Have they not all the islands?

**Mr. Hunt:** Oh, yes. I realize there have been references to maps published elsewhere. I have never seen any.

**The Chairman:** Are there any other questions?

**Senator Thorvaldson:** Supplementary to that, do you know, or is the department aware of any other claim except Canada to the Arctic Islands that we recognize as being directly north of Canada and to which we lay claim?

**The Chairman:** You are talking factually?

**Senator Thorvaldson:** Factually, yes. Surely the department must have knowledge. If, for instance, the United States lays claim to some of those islands—

**Mr. Hunt:** In looking at the situation from the administrative point of view, we have administered the mineral, oil and gas rights or the research rights generally on the basis that they are Canadian and we have had no indication in our department that there is any thought in any quarter to the contrary. A full answer I suppose would perhaps be obtained from the Department of External Affairs.

**Senator Desruisseaux:** There have been no discussions with some other foreign nations?

**The Chairman:** That would not be a function of the department, to which this man belongs. That would be hearsay, the same as what you have heard.

**Senator Prowse:** There is one question that still worries me, and that is clause 38 which begins your appeals. Perhaps the department can tell me, in regard to clause 38, subclause (3), what did you go to the Exchequer Court for?

**The Chairman:** Stated case. That is what it says at the top of page 28, clause 39, which is a stated case to get an opinion.

**Senator Prowe:** That is clause 39. You are given that right under clause 39 surely. I cannot see what clause 38 does. It just says that first the committee is final and conclusive and then it says the Exchequer Court has exclusive jurisdiction to hear and determine. It does not say stated cases for a writ of *certiorari,* prohibition or *mandamus* or for an injunction in relation to any decision or order of the committee or any proceedings before the committee. This deals with *certiorari,* prohibition or *mandamus* or for an injunction. Subclause (3) says:

> (3) A decision or order of the Committee is not subject to review or to be restrained, removed or set aside by *certiorari,* prohibition, *mandamus* or injunction or any other process or proceeding in the Exchequer Court . . .

And the question or fact or on the matter of jurisdiction. I do not know how else you get that.

**The Chairman:** The Law Clerk and I have discussed the relationship of this section and its various parts. Mr. Hopkins, would you assist us please?

**Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** Yes, I had the benefit of discussing this with the Director of the Legislation Branch. Everyone's reaction is the same: It looks like the legislation giveth and taketh away at the same time. What it does in the first place is to confer exclusive jurisdiction on the Exchequer Court, and that has the effect of excluding the Superior Courts of the provinces. The second thing it does sounds a little bizarre, but there remains the question of natural justice which is not taken away from the courts' jurisdiction.

Those familiar with the prerogative writs remember *certiorari* proceedings where there has been a contravention of natural justice. This provision is contained in several acts and the same question comes up every time. It is a very sensible question and it may be that it could be got at some other way, and those are the two effects it does have. You mention a stated case. That is provided for in clause 39.

**The Chairman:** We say under clause 38 that you cannot go to the Exchequer Court to get any decision on a question of law or jurisdiction, under clause 39 you can go to the Exchequer Court on a stated case on a question of law or jurisdiction. All it means is that the committee is getting some advice. They may or may not take it.

**Mr. Hopkins:** The final authority is the Supreme Court of Canada.

**Senator Prowse:** If everybody in the legal department is happy, then I suppose I should be also.

**The Chairman:** Are you ready for the questions? Shall I report the bill with the amendments that were agreed to today?

**Hon. Senators:** Agreed.
Carried.

**Senator Connolly (Ottawa West):** May I ask a question? I wonder how the chairman gets time to go through these bills as carefully as he does with a fine tooth comb. This last demonstration must have taken a tremendous lot of time; you and the Law Clerk.

**The Chairman:** Yes, the Law Clerk and myself huddled for about 15 minutes yesterday afternoon.

Thereupon the committee proceeded to the next order of business.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS
## OF THE
## STANDING SENATE COMMITTEE
## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 26

WEDNESDAY, MARCH 12th, 1969

*Complete Proceedings on Bill S-30,*
intituled:
"An Act respecting The Perth Mutual Fire Insurance Company".

WITNESSES:

*Department of Insurance:* R. Humphrys, Superintendent. *The Perth Mutual Fire Insurance Company:* H. G. Livingstone, President and General Manager.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

29827—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Lang |
| Aseltine | Desruisseaux | Leonard |
| Beaubien | Gelinas | Macnaughton |
| Benidickson | Giguère | Molson |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Inman | Welch |
| Connolly (*Ottawa West*) | Isnor | White |
| Cook | Kinley | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 6th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Lang moved, seconded by the Honourable Senator Burchill, that the Bill S-30, intituled: "An Act respecting The Perth Mutual Fire Insurance Company", be read the second time.

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

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

WEDNESDAY, March 12th, 1969.
(28)

At 9.30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill S-30, "An Act respecting The Perth Mutual Fire Insurance Company".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Inman, Isnor, Kinley, Lang, Macnaughton and Thorvaldson. (14)

*Present, but not of the Committee:* The Honourable Senators Grosart, Hays, McLean, Phillips (*Rigaud*) and Prowse. (5)

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

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

*Department of Insurance:*

R. Humphrys, Superintendent.

*The Perth Mutual Fire Insurance Company:*

H. G. Livingstone, President and General Manager.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 9.45 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, March 12th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-30, intituled: "An Act respecting The Perth Mutual Fire Insurance Company", has in obedience to the order of reference of March 6th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE SENATE

## COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Wednesday, March 12, 1969**

The Standing Committee on Banking, Trade and Commerce, to which was referred Bill S-30, respecting The Perth Mutual Fire Insurance Company, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, this morning we are dealing first with Bill S-30, respecting The Perth Mutual Fire Insurance Company. We have before us Mr. H. G. Livingstone, President and General Manager, and Mr. S. Heighington, counsel. Our usual practice is to hear Mr. Humphrys first. I see no reason to depart from that practice now. May we have the usual order to print?

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

**The Chairman:** Right, Mr. Humphrys.

**Mr. R. Humphrys, Superintendent of Insurace:** Mr. Chairman and honourable senators, the purpose of this bill is to convert The Perth Mutual Fire Insurance Company from a mutual company to a stock company and, in consequence, to provide the amount of the authorized capital and to make consequential provisions as are necessary to cover the transitional stage from a mutual company to a stock company.

As a consequence, the bill has a clause that converts the company; it provides for the minimum capital stock; it provides for continuation of the board of directors, and it provides the corporate powers of the company as respects the classes of insurance it may do. It provides also that the provisions of the Canadian and British Insurance Companies Act shall apply to the company.

This bill really changes the character of the company and replaces the former act of incorporation. That is the reason the bill contains provisions dealing with the classes of insurance that the company may transact.

The Perth Mutual Fire Insurance Company is a mutual company of really very long history. It was formed as a provisional company in the last century and has been a federal company since 1952. It is principally engaged in the fire insurance business and in the automobile insurance business. Its original character as a mutual company was in accordance with the custom of the time, where much fire insurance was done on a mutual basis whereby the policyholder would sign a premium note. He would pay part of the note in cash and remain liable for the balance of the note on call. As the years went by, this method of doing fire insurance and other types of insurance became less popular until now it is quite rare. Even in the case of The Perth Mutual Fire Insurance Company, the extent of the true mutual business that it now does is very small and most of its business is on a cash premium basis.

The remaining mutual policyholders number between 200 and 300. The company is a relatively small company, having assets of about $4 million and a premium income last year of about $3 million. It suffers the difficulty of small companies in the modern competitive atmosphere of the insurance business, and it becomes increasingly difficult for small companies to compete for the business.

As a mutual company it has no source of additional capital funds and, consequently, it finds increasing difficulty in expanding its product, its area of operation, and maintaining its volume of business in the face of the competition it has to meet.

It has suffered in the last few years in concert with most companies in the fire casualty field from underwriting losses. As a consequence, it has been seeking for some time associations with other well established and stronger companies that might enable it to take a better place in the insurance field.

The Economical Mutual is also a mutual company with a history not too different from that of the Perth Mutual. The Economical has its head office in Kitchener; it has been a federal company since 1936, and it is a much larger and stronger company than the Perth, having assets of some $33 million. It has expressed interest in an association with the Perth Mutual.

Neither the Economical nor the Perth wanted to contemplate a straight merger of the two companies; they saw certain advantages in having a separate corporate entity. The Perth Mutual itself wanted to retain its separate identity, and it is well known in Stratford. The Economical saw certain advantages in operating through a subsidiary as compared to merging the two operations. So, this proposal is to convert the Perth Mutual to a stock company, and the Economical Mutual will take up the major part of the stock. They will be prepared to subscribe for $1 million of the capital stock immediately the conversion is approved, and they are also prepared to subscribe up to another half a million dollars, if necessary.

This proposal has been placed before the mutual policyholders of the Perth at a special general meeting, and has been approved by them unanimously. Their interests are protected, since they may, if they so wish, take a mutual policy in the Economical, if they want to continue that type of insurance, and they will also have an opportunity to subscribe to the stock of the Perth Mutual, if they want to do so.

Mr. Chairman, I think that summarizes the purpose and intent of the bill. The insurance remains in the mutual field, since the Economical Mutual itself is a mutual company, having no stockholders.

There is a provision in this bill that will prevent the Economical Mutual selling its interests without the approval of the department, and this was put in at our suggestion in order to avoid the possibility of the company being converted to a stock company and then promptly sold to some other interests. So, this will be under control.

**Senator Desruisseaux:** Mr. Chairman, I would like to ask Mr. Humphrys whether there was unanimous approval by the policyholders of this change.

**Mr. Humphrys:** Yes, senator; there were no dissenting votes.

**Senator Desruisseaux:** Because it is a mutual insurance company, did it in the past receive some tax advantages and, if so, what were they?

**Mr. Humphrys:** No, I think there were no special tax advantages to a mutual insurance company in the fire and casualty field.

**Senator Macnaughton:** Mr. Chairman, where is that provision with reference to the Superintendent of Insurance, should any future change be contemplated?

**Senator Croll:** Clause 8.

**Mr. Humphrys:** It is clause 8, on page 4, senator.

**The Chairman:** Senator Croll?

**Senator Croll:** I move that we report the bill.

**The Chairman:** Just a moment. We have two officers of the company here, Mr. H. G. Livingstone, the president and general manager, and Mr. S. Heighington, counsel. If you wish to add anything to our consideration of this bill—and it would appear to be well on its way to passing in this committee—we are ready to hear you.

**Mr. H. G. Livingstone, President and General Manager, Perth Mutual Fire Insurance Co.:** Mr. Chairman, I think that Mr. Humphrys has summed it up adequately, and I have nothing to add.

**The Chairman:** Are you ready for the question?

**Hon. Senators:** Yes.

**The Chairman:** Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 27

WEDNESDAY, MARCH 19th, 1969
THURSDAY, MARCH 20th, 1969

***Complete Proceedings on Bill C-155, intituled:***

"An Act to provide compensation to farmers whose agricultural products are contaminated by pesticides residue, and to provide for appeals from compensation awards".

WITNESSES:

*Department of Agriculture:* C. R. Phillips, Director-General, Production and Marketing Branch. C. H. Jefferson, Director, Plant Products Division.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

29829—1

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gelinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 11th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hays, P.C., seconded by the Honourable Senator Fournier (*de Lanaudière*), for the second reading of the Bill C-155, intituled: "An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards".

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 Argue, seconded by the Honourable Senator Desruisseaux, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
*Clerk of the Senate.*



29829—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, March 19th, 1969.
(29)

At 9:30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill C-155, "Pesticide Residue Compensation Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Gélinas, Giguère, Haig, Hollett, Isnor, Savoie, Walker, Welch, and Willis. (18).

*Present, but not of the Committee:* The Honourable Senators Bourget, Phillips (*Rigaud*) and Prowse. (3).

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

The following witness was heard:
*Department of Agriculture:*

C. H. Jefferson, Director, Plant Products Division.

At 10:40 a.m. the Committee adjourned consideration of the said Bill until 2:00 p.m. this day and proceeded to the next order of business.

* * *

At 2:00 p.m. the Committee *resumed* consideration of Bill C-155.

*Present:* The Honourable Senators Hayden (*Chairman*), Benidickson, Burchill, Carter, Desruisseaux, Gélinas, Giguère, Haig, Isnor, Kinley, Lang, and Welch. (12)

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

The following witness was heard:
*Department of Agriculture:*

C. R. Phillips, Director-General, Production and Marketing Branch.

After discussion, it was *agreed* that clause 5 be redrafted.

At 2:35 p.m. the Committee adjourned until March 20th at 10:45 a.m.

THURSDAY, March 20th, 1969.
(30)

At 10:45 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to *resume* consideration of Bill C-155, "Pesticide Residue Compensation Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Gelinas, Giguere, Isnor, Kinley, Lang, Phillips (*Rigaud*), Savoie and Walker. (17)

*Present, but not of the Committee:* The Honourable Senators Denis, Eudes and Pearson. (3)

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

The following witness was heard:

C. R. Phillips, Director-General, Production and Marketing Branch was again heard.

Amendment:

Sub-clauses (1), (2) and (3) of clause 5, were amended.

NOTE: The full text of the amendment appears by reference to the Report of the Committee immediately following these Minutes.

Upon motion, it was *Resolved* to report the said Bill as amended.

At 11:30 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

THURSDAY, March 20th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-155, intituled: "An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards", has in obedience to the order of reference of March 11th, 1969, examined the said Bill and now reports the same with the following amendment:

*Clause 5:* Strike out subclauses (1), (2) and (3) thereof and substitute therefor:

"(1) Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of the farmer for the Minister to pursue any action that the farmer may have in law against any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon an agricultural product.

(2) Where the Minister receives, as the result of any action taken by him pursuant to subsection (1), an amount of any judgment for damages in excess of the amount paid or to be paid to the farmer in compensation, he shall reimburse the farmer to the extent of such excess.

(3) The Minister shall in paying compensation take into account any amounts realized by the farmer in any action in law the farmer may have pursued against any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon the agricultural product".

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Wednesday, March 19, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-155, to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have before us this morning Bill C-155. Last week, in our consideration of other bills that had come to us from the other place, we decided against having *Hansard* make a report of the committee's proceedings. What are the committee's feelings with respect to this bill?

**Senator Croll:** Why would you decide not to have a *Hansard* report of the committee's proceedings?

**The Chairman:** The committee decided.

**Senator Croll:** What was the thinking behind that decision?

**The Chairman:** It was because the bill had been considered and passed by the House of Commons, and the committee felt there was no purpose to be served in having a *Hansard* record. We did not anticipate submissions of a nature that would substantially alter the bill.

**Senator Croll:** Are there submissions to be made here today?

**The Chairman:** No, we have had no representation from any person, but we have with us the director of the Plant Products Division who will explain the purposes of the bill to us.

I have looked at this bill, and it would seem to me that some of the objections that were taken to one of the other bills last week would not be sustainable in respect to this bill, because it contains provisions as to compensation which the other bill did not contain.

**Senator Croll:** Mr. Chairman, I know that a most thorough explanation of this bill was given on second reading, but, you see, the other committee heard this gentleman and we did not, and if we want to look at what he said later on...

**The Chairman:** I take it that there is a motion to print?

**Senator Croll:** Yes, I so move.

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

**The Chairman:** We have with us this morning Mr. Jefferson, who is the director of the Plant Products Division, of the Department of Agriculture. Mr. Jefferson, without going through this bill section by section at the moment would you just tell us its chief purposes and functions?

**Mr. C. H. Jefferson, Director, Plant Products Division, Department of Agriculture:** Mr. Chairman, honourable senators, putting it as briefly as I can, this bill has been presented because of the development of a new situation. Pesticides are now used to a great extent and are an integral part of food production technology. Their use is directed by recommendations from the Department of Agriculture and other departments. These directions are based on the best available information at the time, to indicate the utility and safety of the pesticides and the way in which they should be used, both to achieve effectiveness to avoid harmful consequences, one of these being residues in food products produced on Canadian farms.

In that assessment the department works with the Department of National Health and Welfare. An assessment is made of the significance of any residues that might result. The significance for operational purposes may be

referred to in terms of a tolerance in parts per million in the food. When a pesticide in put into the market place, if you like, for use by farmers it may appear that it can be used safely without creating a residue problem, but subsequently new information obtained through research may show that possibly those residues are higher than anticipated or more dangerous than anticipated. Government action under the Food and Drugs Act could follow to prevent the sale of that food produced with the use of a pesticide according to recommendations. Where this happens the farmer is blameless, one might say; he cannot sell his produce because of government action that initially no one could anticipate. This was regarded as an injustice to the farmer and it was considered that some method should be found to protect him from that kind of loss.

The *ex gratia* payment approach had been tried in a case that occurred in Grand Forks, of which some of you may have heard. However, that was not very satisfactory and it was thought that provision should be made to regularize the payment of compensation under specified conditions, which I will mention. Part I of the bill covers this situation.

Part II is also new. It provides for appeals against compensation awards under two bills that I believe have been before you, namely Bill C-154 and Bill C-156. These cover compensation for plants destroyed under the Plant Quarantine Act or livestock destroyed in a program to prevent disease. Heretofor there has been no procedure whereby a producer who felt he had not been awarded adequate compensation for his loss could appeal; he had nowhere to go. Part II provides for assessment by another party—in effect a judge—of the correctness of the award made by the minister under these other statutes.

**The Chairman:** When you are talking about the appeal section, I notice that in section 11 the Governor in Council is given authority to appoint an assessor and deputy assessors, and

> to hear and determine appeals from compensation awards made under this Act or under any other Act to which this Part is made applicable.

Is there anywhere in this bill where this part is made applicable to any other act? I was just glancing at it and I did not see any thing in Part II. How do you propose to do that?

**Mr. Jefferson:** As I understand it, the applicability is provided under the particular statute that provides for compensation. Under the Plant Quarantine Act, Bill C-154, the authority would be there.

**The Chairman:** So you find the authority in the statute concerned, which may be Bill C-154, or Bill C-156?

**Mr. Jefferson:** That is correct.

**Senator Croll:** You have referred to various compensations. What is involved in total in money and numbers over a period of, say, a couple of years?

**Mr. Jefferson:** With respect to pesticides there has been this one incident in Grand Forks, involving four producers. The total payment made during that period, 1966-67, was of the order of $63,000.

**Senator Croll:** To the four?

**Mr. Jefferson:** To the four as a total amount. This is the only case in which direct compensation in dollars has been provided. There was another case in which assistance was provided, but it is questionable whether that one would have qualified under this bill, because it was impossible to establish that the residues arose through the proper use of the pesticide found in the product.

**Senator Croll:** Was that at ministerial discretion?

**Mr. Jefferson:** At that time it was, because there was no provision under which to consider compensation except on an *ex gratia* basis.

**Senator Croll:** Are we passing an act here that is likely to affect only half-a-dozen or a dozen people in Canada?

**Mr. Jefferson:** It is difficult to predict how many might be affected. We hope it will be possible to avoid any financial burden on farmers because of pesticide residues. In other words, if preventive action can be taken these cases will not arise However, based on past experience and the concern people have about pesticide residues, it is anticipated that in the next three or four years there could be a number of cases in which compensation within the terms set out in this legislation would be justified. It is thought on the basis of that anticipation to be advisable to have some procedure in being that could be used to deal with such a situation, and that avoids the delays occurring when an *ex gratia* approach is taken. I hope

there will be no cases, but it is rather like issuing an insurance policy whereby on an actuarial basis we can assume there will be a number of cases, which may be of the order, as you say, of four or five.

**Senator Walker:** Are you going to all this trouble of putting through this complicated bill and setting up this expensive machinery for three, four or five cases? Would it not be better to use your energies and talents in getting rid of the bad pesticides?

**The Chairman:** It goes a little further than that. This machinery is being made available to determine the amount of compensation. These procedures are available under a number of bills, not only this bill, in relation to artificial agricultural chemicals.

This is only one of the bills. We had two bills last week that we dealt with concerning the infestation of plants and there is a provision for compensation. Under that act the procedures to be followed may be the ones that are provided in this bill. In one sense what you said is correct, that is, there have only been three or four cases where the minister has made an *ex gratia* payment because it was in his discretion. There was no statutory authority. Now, they are creating a statute to provide this authority. I think you can look for it and admittedly we should. There will be an increase in use of this sort of thing that may create these residues that are harmful to the crops and would be harmful to people that might use these crops as food. That is the tendency.

**Senator Haig:** Mr. Chairman, do I understand from Mr. Jefferson that the producer has to use the pesticide that is registered under the act? He must use it properly according to the regulations, and as a result of some unknown factor the food has a residue left on it which is harmful, does he apply for compensation? Is the food destroyed? How does it get into the process or the stream of getting compensation?

**The Chairman:** If they do not destroy their food there cannot be any claim.

**Mr. Jefferson:** Mr. Chairman, I have tried to give some background and to get to your point. In section 3 of Part I it is explained that in order to qualify for compensation the farmer's produce must have been sampled by a food and drug inspector through official channels. As a result of that inspection and analysis, a residue is found that is of sufficient concern under the Food and drugs Act to prompt the Minister of National Health and Welfare to advise the Minister of Agriculture that this produce cannot be sold—

**Senator Haig:** Who asks for the inspection?

**Mr. Jefferson:** This is done through the regular inspection enforcement program under the Food and Drugs Act. It is done on the basis of statistical sampling and assessment of where the problems might arise. In other words, for determining whether or not there was a problem would be by the Department of National Health and Welfare and through their official analysis and the establishment that the food product was adulterated and its sale would violate the Food and Drugs Act.

**Senator Haig:** He would have to prove he used a certain pesticide and used it in an improper manner.

**Mr. Jefferson:** Following this assessment of how that residue got there. There is a good deal of information on the cause-effect relationship of the use of pesticides and residue levels in food and it is anticipated that it could be determined fairly readily, the farmer would not in those cases be involved in doing the research, that the residue did arise through the following of recommendations. If I might use an illustration. Suppose it was DDT residue in vegetables of some sort that exceeded the tolerance of seven parts per million and exceeded it to an extent that it was of immediate concern to the Department of National Health and Welfare and that this food should not be marketed because it would be damaging to health.

The evidence may well show that that kind of a residue, and excessive residue, could arise from the following of official recommendations that had been put on the use of DDT and if that was the case then this producer would be eligible for compensation. He would have met those criteria. He could have used the product according to recommendations and wound up with an excessive residue.

**Senator Haig:** He gets paid for that?

**Mr. Jefferson:** And then he is eligible for compensation. The thing that follows is the determination of his loss.

**Senator Haig:** By the Department of Agriculture?

**Mr. Jefferson:** By the Department of Agriculture in whatever manner.

**Senator Haig:** Then it comes to the Health and Welfare first and then you find the residue is excessive and you advise the Department of Agriculture and they get in the act?

**Mr. Jefferson:** Yes, we have a procedure now of co-ordination of activities between the Department of National Health and Welafare and initial inspection agencies which are also providing information on these pesticides. We think we know generally what the implications are in terms of excessive residues. We do not anticipate a basis whereby we will have very many cases, but let me turn this around as to what can happen. There is a move afoot now in the international sectors, to establish tolerance levels for international trading purposes. Let us say that where we have been operating with a tolerance level of seven parts per million of DDT, which on the health standpoint of our people's assessment in the National Health and Welfare, is admissible. It accommodates our agricultural production requirements for that pesticide. Through the international consideration of this matter the tolerance is reduced, say, to one part per million and this is as a result of a consensus and we have to accept that, then perhaps the residues that are occurring while we are well within the seven parts per million tolerance are over the one part per million tolerance. This would create a situation again where the producer is blameless but caught. We have not been able to change the recommendations for use fast enough so that he can develop a new use pattern or use alternative products and avoid exceeding that one part per million tolerance.

**The Chairman:** You are talking about two different things. You are talking about international trade now. If you have international trade regulations—let us say the degree of tolerance of food products passing from one country to another, such as one or two parts per million and you have here where the Department of National Health and Welfare says that as far as Canadians are concerned, such as 30 people, you can have seven parts. You then have the farmer in a bind. He cannot operate in the international field.

**Mr. Jefferson:** The point I was making, Mr. chairman, was as a result of this international activity where the domestic tolerance is reduced to one part per million.

**The Chairman:** What is the justification for doing that? If the Department of National Health and Welfare is satisfied that the Canadian can accommodate himself to seven parts of DDT to a million gallons is it, or to a million what?

**Mr. Jefferson:** A million parts.

**The Chairman:** A million parts.

**Mr. Jefferson:** One pound in a million pounds.

**The Chairman:** If he can accommodate himself to that and it does not damage his system in any way then by what authority, just because there is an international agreement are you going to put him in the position where he suffers loss and cannot trade internationally? He has followed Canadian acceptable standards. Are these standards something you run up and down like playing with a yo-yo? It has got me puzzled at the moment.

**Mr. Jefferson:** Mr. Chairman, I might tray and explain that this is not easy. It is not a black and white situation. The tolerance of, shall we say, DDT at seven parts per million does not really matter, but it will serve to illustrate the assessment of the acceptability of that in terms of the current criteria for measuring the hazard. It may show that there is a one hundredfold or one thousandfold safety factor relative to a person eating that food with that level in it for his whole lifetime, whatever the lifetime is and there is evidence that it would be of no consequence.

But new information could come along, through research, that shows that perhaps at that concentration a person's behaviour changes, or it effects the third or the fourth or the fifth generation, some way. But they are so "way out", the facts, or the possibilities, that at any given time one cannot crystal ball the future with that degree of accuracy. So it is the assessment of this kind of thing that can change. It is happening with smoking, as you are all aware, and it is happening with many other things. It is not possible to say that a level of seven is safe and that eight is harmful, but for administrative purposes you have to draw a line somewhere. The question is, how do you draw it?

It would be better, of course, if someone from the Department of National Health and Welfare spoke to this, than I; but my understanding of the thing is that we will say that the line is drawn at seven parts per million in this example I am using.

**The Chairman:** What you are saying is that the starting point of all this lies with the Department of National Health and Welfare, under the food and drugs provisions, and that they decide whether food is adulterated, and then they notify the Department of Agriculture and then you have to take it up from there.

**Senator Hollett:** If this is something that I am using and if it turns out in the way that is suggested, where do I get my compensation?

**The Chairman:** Under this bill you would get it from the minister, if you came within these regulations.

**Senator Croll:** But he is a consumer.

**Senator Hollett:** I am a consumer.

**Senator Croll:** You just...

**Senator Hollett:** I just asked that question in view of what Senator Walker said about half a dozen people—but there may be a thousand people who have suffered damage as a result of pesticide. Have they no redress about that?

**Senator Walker:** You could sue the fellow you bought the food from, the merchant you brought it from, to recover damages.

**Senator Hollett:** What if I am the person who was issued a permit to use that material?

**Senator Walker:** The merchant would then be the person.

**Senator Croll:** Who invites the Department of Food and Drugs man to the farm to see what is what?

**The Chairman:** He goes without invitation.

**Senator Croll:** There are thousands of farms. It is not a hit and miss proposition, is it?

**Mr. Jefferson:** Ordinarily, the food and drug inspection is back at the retail and wholesale food distribution level. They ordinarily are not operating right at the farm.

**Senator Croll:** They would catch it?

**Mr. Jefferson:** They would catch it in the market place. Then, if they found a residue that is of concern to them, they track it back to the source.

**Senator Croll:** When you say that they catch it in the market place, you mean that they would get it at one of the large stores?

Of course, if they catch the last ten per cent of it, it means that 90 per cent of it has already gone out.

**The Chairman:** That is right.

**Mr. Jefferson:** That is a possibility, but we are not talking about the percentage of produce here, which is probably about one-tenth of one per cent of the total, in terms of meaningful residue levels, meaningful in the sense of being damaging to health.

This whole exercise of reviewing pesticides for healthfulness, monitoring food for healthful levels, is really miles and miles back, if you like, of the levels that would likely create any health problem.

There is a tremendous safety barrier that is being maintained, and the chance is small of getting a food which is adulterated, through normal use. Now, this does not avoid a situation where there is a spill or some accident; we cannot do much about those things. The chance of getting a significantly dangerous residue through normal practice is extremely remote. It just has never happened in this country.

**Senator Welch:** It seems to me that there should be no necessity for such an act as this, because each one of these packages goes out normally to the market with instructions how to use it. The farmer is pretty well instructed as to how long he can use it before the article he sells goes on the market. If he is careless enough to put on this DDT or other substance, or if he is careless enough to put these sprays on, say, a week or three or four days before he goes to the market, he must expect trouble, because the residue is still on the foliage.

In the same way, when you are shipping apples to England, if you spray when it is the last of the harvest at the first of October, if you spray late, on the 15th September, then you are not allowed to ship that food to the world market, because there is a residue on the end of the apple that is injurious to people.

It seems to me that the whole thing rests back with the farmers—because if you want to spray your crops three days before you go to the market, the whole thing would be turned down, or could injure a lot of people—unless you are paying the farmer for his crop.

**The Chairman:** I do not think it is that easy to get money out of the minister under this

bill, but Mr. Jefferson wants to give an answer to that.

**Mr. Jefferson:** This bill would not provide for compensation in the circumstances you describe, if the residue arises from carelessness on the part of the farmer who puts it on or as a result of malformulation by the chemical company that prepared the pest control product or the pesticide. This bill would not provide for compensation in those circumstances.

In the first case the producer is responsible; he has misused the product and he is accountable.

In the second place, if it is the manufacturer who has made the mistake in formulating the product and does not have the right percentage, or if he has given improper directions, it would be he who would be responsible. This covers cases where the federal Government may be responsible and may have changed the rules.

**Senator Welch:** Is it the idea of this bill to compensate the farmer, or is it to protect the people, the consumer?

**Mr. Jefferson:** Basically, it is to protect the producer. This bill will not protect the consumer. The Food and Drugs Act will protect the consumer with respect to adulterated food.

**Senator Welch:** Why protect the consumer from his own carelessness?

**Mr. Jefferson:** It is not for his own carelessness, as I tried to indicate. It is where he is caught out, because he did in fact follow the recommendations for use and either the official recommendations for use were in error or, because of new information, the Department of National Health and Welfare felt that the old parameters of tolerance levels were too broad and that they needed to be restricted—and that the farmers could not adjust, if you like, because there was not an opportunity to adjust to the new rules of the game.

I might say, too, that one of the reasons—and I should have said this earlier—for this bill, is to remove to the extent possible the apprehension that agricultural producers in Canada might have about using pesticides, for fear of losses arising from a change in the rules—either as far as using them are concerned or the directions for use.

**Senator Walker:** Is it not a good thing that the farmer would fear and would do their bet to get rid of these pests?

**The Chairman:** You are right here, Senator Walker, but the concept here starts with the Food and Drugs section. They make the determination on food and drugs as to what is an adulterated product. They might have made a regulation some time ago that seven parts of DDT to a million would be something that the human system could stand. So then the farmers go ahead and use this material prepared in that fashion on their produce and everything goes along fine. Then the Department of National Health and Welfare have a second look and they have more studies and more information is turned up around the world in research, and they say, "Oh, the seven parts was too high; it should be four or it should be five parts."

Now, the farmer has gone out and used this product; the manufacturer has made it on that basis and sold it. Suddenly the Department of National Health and Welfare change the rules. The farmer immediately has a product that is not in accordance with the rules and therefore he cannot sell it. Under those circumstances, since that change has been brought about by action of some Government department, in the best interests of the people, if the farmer's crop is not saleable, then he should be compensated. That is the thinking behind the bill.

**Mr. Jefferson:** If I might speak to that point, Mr. Chairman, the use of pesticides is widespread. Modern food production not just in Canada but around the world is dependent upon the use of pesticides. It would be impossible for most segments of Canadian agriculture to be even as competitive as they are in the world market without the use of pesticides. We can say we will not use them in Canada and we can close out our agricultural industry, but we are still going to need food and, if we were to apply the rules to imported foods, we would have to rule out citrus fruits, our winter fruits and our winter vegetables, no matter where they come from.

The use of pesticides is an integral part of production. There is a risk associated with the use of pesticides, just as there is a risk associated with our transportation system. One way of getting away from car accidents or highway accidents would be to have no cars.

The Pest Control Products Act, which I understand you will be dealing with later,

and the Food and Drugs Act are designed to protect the consumer of food—directly, in the case of the Food and Drugs Act, by keeping from the market foods that are damaging to health, and indirectly, in the case of the Pest Control Products Act, by keeping from the market pesticides that are going to result in damage to food.

**Senator Croll:** Can you give me the names of the two or three largest manufacturers of pesticides in Canada?

**Mr. Jefferson:** I may not have these ranked properly, but I would say Dupont, Niagara, the Interprovincial Co-Operatives and Green Cross products.

**Senator Croll:** Are most of our pesticides imported or do these companies supply enough for our people?

**Mr. Jefferson:** Most of the basic ingredients are manufactured outside our country, in the United States, Germany or the United Kingdom. The products tend to be formulated in Canada; the active ingredients come in and are put together here ready for distribution and farm use.

**Senator Hollett:** Mr. Chairman, under section 2 of the bill "inspector" is said to mean a person designated as an inspector pursuant to section 6 Section 6 says that the minister may designate any qualified person. Is there any definition of qualified person? There does not seem to be in this act. At least I cannot find it.

**Mr. Jefferson:** Not in the particulars, but he would be a public servant employed under the Public Service Act.

**Senator Hollett:** But he must have some qualifications with regard to pesticides and that sort of thing.

**The Chairman:** I would expect they would follow the procedure of writing specifications for the job.

**Senator Hollett:** I would like to know what his qualifications would have to be. It seems most important from the point of view of this act. A whole lot depends upon the qualifications of the inspector.

**Senator Connolly (Ottawa West):** He would probably be a member of 4-H.

**Mr. Jefferson:** It would depend on what area was involved. If the Department of Agriculture was involved, they would be classified as agricultural officers and would be graduates of agricultural colleges or would have taken courses in the biological sciences. If it was somebody just involved with sampling, say, he might be called a primary products inspector, and would be a high school graduate, so far as the academic part is concerned, but would have had on-job training in how to sample products. If he was involved in sampling products for residue determination, he would be very likely somebody under the Food and Drugs Act who would have qualifications similar to those of an agricultural officer.

**The Chairman:** I think the general answer is found in section 4, under the Regulations; the Governor in Council may make regulations, and the last item is: "generally for carrying out the purposes and provisions of this Act." Under that the regulations could provide the specifications or qualifications. So there is authority in the act to do it. How it is going to be spelled out we do not know, and, of course, you do not see the actual regulations until after the bill has been passed into law.

**Senator Hollett:** It does not state in section 4 what the qualifications of an inspector should be.

**The Chairman:** No, it merely provides that the Governor in Council by regulation may do that just as he may do any other things that are necessary to carry out the purposes and provisions of the act.

**Senator Walker:** Mr. Chairman, could the witness tell us what it is contemplated that the administration of the provisions of this new act will cost? There is no doubt the Government has given consideration to this matter, since the question of money is rather important these days.

**The Chairman:** While the witness is cogitating on your question, it occurs to me that most of the expenses that would be related to the administration of this act are expenses that would exist in any event, because the Food and Drugs division are the ones who would trigger into operation any of the provisions of this bill, and they would continue under their authority in the Food and Drugs Act to test for adulterated products. That is where the whole thing starts. That goes on in any event. They have the authority to do that, and this bill does not change that at all.

**Senator Walker:** There would just be more of it, I suppose.

**The Chairman:** They may need more inspectors. I am wondering, for instance, how they have managed up until now without the benefit of this bill and the several others we have passed. When the Food and Drugs department have told the Department of Agriculture that a particular product was an adulterated product and was within the jurisdiction of the Department of Agriculture, what happened then? And what will happen up until the time this bill becomes law and you get the benefit of its provisions? How do you investigate this thing?

**Mr. Jefferson:** That is a good question.

**Senator Croll:** I move that we report the bill.

**Senator Phillips (Rigaud):** Mr. Chairman, I find section 5 is a complete non-sequitur to section 3. Section 3 provides for compensation under two conditions, and the conditions are set out there. But then section 5 states that no compensation is to be made unless the minister calls upon the farmer to institute proceedings for indemnity against a manufacturer of a pesticide. It would appear that a bill like this would call on farmers to institute multifarious actions across the country and thereby negates the value of the bill. The most we should have in section 5 is that the minister should be subrogated in the rights of the farmer.

**The Chairman:** What you are suggesting is something the same as you have under an insurance policy in automobile claims?

**Senator Phillips (Rigaud):** We are told in section 4 that regulations may be put into effect to put teeth into section 3. But when we are told in section 5 to go ahead and start proceedings. The farmer may have to institute proceedings against the manufacturer.

**The Chairman:** If the department wants this protection then they should be able to ask the farmer for subrogation.

**Senator Phillips (Rigaud):** And the Crown has all the facilities for instituting the proceedings. I suggest an appropriate amendment to section 5 to provide for subrogation.

**The Chairman:** How does the committee feel about this? Senator Phillips has pointed out that under this bill a situation may arise where a product is not permitted to be sold because of some order or regulation by the Department of Health. No fault lies with the farmer and therefore he qualifies for some amount of compensation. Notwithstanding that, the minister is not obliged to make the payment unless the producer or the farmer carries out certain conditions which the minister imposes. One of these is that he must mitigate the damage. Now, how the farmer could do this, I do not know. But then he could establish the condition that the farmer must pursue the manufacturer. If he has a right of action against the manufacturer, he must pursue the manufacturer. In the circumstances I have related I do not know what right the farmer would have against the manufacturer. If you have regulations by the Department of Health and the manufacturer manufactures some material according to those regulations and the farmer uses that material of product, and then the Department of Health comes along and says "we have had second thoughts; now the regulations are different and you cannot use that pesticide" then the farmer in those circumstances would not have any right of action against the manufacturer.

**Senator Welch:** Why would the government have any right to pay a farmer for putting poisonous foods on the market?

**The Chairman:** The witness has told us that this bill is not for the purpose of providing compensation where the product is spoiled for human consumption by carelessness on the part of the farmer or the manufacturer in preparing the formula. Why then do they make this a basis? I do not know what purpose section 5 (1) serves.

**Mr. Jefferson:** Paragraph (a) is concerned with reducing the loss.

**The Chairman:** In subsection (2) you partially meet the question raised by Senator Phillips. However, you do not meet it completely because that subsection says:

> Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of that farmer for the Minister topursue on his behalf any legal action against any manufacturer . . .

That is a form of subrogation, but they are dealing with an aspect of this that the bill does not seem to cover and is not intended to cover. The bill is not intended to cover an

award for compensation for the carelessness of the farmer or the carelessness of the manufacturer in his formula.

**Mr. Jefferson:** But the circumstances can arise where you can have several causes for the residue, something associated with the change in tolerance levels, for example, coupled with causes that arise from the manufacturer's action or a spray operator's action, and the purpose of this provision here, and it is discretionary to the minister if he deems it advisable, is that where it appears that a part of the compensation being applied for is associated with some other cause, that rather than expend public moneys to compensate in those cases, to make sure that the compensation is obtained from the sources that were responsible. I would agree and I think I am reflecting the minister's view of this that under this provision in section 5 (1)(b) and even in section 5 (2) there would be no occasion to deem it necessary that those provisions be invoked in a straight case of change in the food and drug regulations or an error in official recommendations for use of a pesticide. It would only come into play as a way of protecting the public where there was a complex of clauses.

**Senator Giguere:** Who would determine if the pesticide was used properly or not? The inspectors?

**Mr. Jefferson:** This would be done as a result of an investigation by the inspectors to determine what was used, and how and when it was used, and this would be related to the research data available on the consequences of using the pesticide in an appropriate manner.

**Senator Giguere:** Their decision would be final?

**Mr. Jefferson:** No, I do not think their decision would be final. Any matter that is governed under Part I can be appealed under Part II to an assessor, and it is his decision that is final.

**The Chairman:** I should point out—and Senator Phillips (Rigaud), I think, will be interested in this—that if we look at the conditions entitling the farmer to compensation, there are only apparently two conditions. On page 2, section 3(2), one of the conditions is that the minister has received

> from the Minister of National Health and Welfare written confirmation that an inspection of an agricultural product of that farmer, made under the Food and Drugs Act, has disclosed the presence of pesticide residue and that the sale of that product would be contrary to that Act or the regulations made thereunder;

That is one condition that has to be met.

The only other condition, apparently, in order for the farmer to qualify, would be that the minister

> is satisfied that the pesticide residue in or upon the product is not present because of any fault of the farmer,

So, if the manufactuer has been careless, that does not rob the farmer of his right to claim compensation. He only needs two things: "I did not do it, I did not cause this pesticide residue, by any fault or carelessness of mine"; and that it is an adulterated product under the Food and Drugs Act. In those circumstances I can understand why the department might want to preserve a claim against a manufacturer for supplying something that was not properly formulated; but, surely, the burden should not be put on the farmer to do it? Rather, the only thing the farmer should have to do is, at the request of the minister, give his consent and subrogate the rights that he might have.

**Senator Phillips (Rigaud):** I entirely agree. I think that clause 5 could be deleted completely, because it indicates specifically the duty imposed on the farmer relates to the pesticide residue; and this fits in exactly.

**The Chairman:** I think the rest of the bill is in order and, if that is the view of the committee, I was going to suggest that possibly we and our Law Clerk should have a good look at section 5 in the light of our discussion, and that maybe we could resume our meeting, say, at 2 o'clock to deal with this part, because we have another matter to deal with now. Is there anyone who has anything more to say on any other aspects of the bill? Are there any other questions?

**Senator Desruisseaux:** I was curious to know when they would pay compensation. Would they pay a farmer compensation only once, or would they repeat payments so that it could become a yearly affair with a farmer having this kind of situation?

**The Chairman:** In the way you have put the question there is the suggestion that the farmer might deliberately each year attempt to provide himself with some revenue.

**Senator Desruisseaux:** Not necessarily through his fault or carelessness.

**Senator Cook:** Does not section 5(1)(a) take care of that? If he kept doing it year after year he would not be taking steps to reduce the loss.

**The Chairman:** The only case in which compensation is to be provided—and, again, the amount is of course determined by the minister, and within a maximum and a minimum area by regulation—is that the product must be an adulterated product and he must have contracted or himself have used a pesticide, with no fault or carelessness on his part, which had the effect of producing that adulteration. He might do that once, but I find it difficult to see how he could fit into the conditions year after year, producing something that he knew was an adulterated product.

**Senator Blois:** Is it not a fact that some of these pesticides have different actions if dissolved in very hard versus soft water, or highly chlorinated water? I had some experience with this a few years ago. Can you answer that?

**Mr. Jefferson:** In general terms, the reaction of pesticide residues can be different under different conditions.

**Senator Blois:** That is what I was interested in, because I am quite certain that highly chlorinated water, with one chemical, will have a different effect and cause some of the pesticides to stick to food much longer than others.

**Mr. Jefferson:** This is an illustration of one of the difficulties in trying to anticipate absolutely what the results are going to be from the use of pesticides or the use of any other thing.

**The Chairman:** In that connection, senator, we are putting so many things in so many things—you have the chlorination of water, fluoride in water, that is supposed to be good for your teeth—that it is supposed to be certain, even by a long distance—and it must be osmosis—that if I take a shower and do not have any teeth, my teeth are still benefitting from the fluoride in the water. These are extraordinary times we live in. There is no question but that the degree of chlorination in the water varies in different parts of Canada, and I am sure in some parts of Canada at different times during the year. It may vary for a variety of reasons. How are you going to adjust the reactions of pesticides in all these circumstances? The more you look at it, the more you realize there is a great element of good fortune in surviving so long.

**Senator Walker:** May I ask one question? You were very helpful in your suggestion. Perhaps the witness could now tell us what the department contemplates this would cost, if this bill is passed.

**Mr. Jefferson:** Yes, I did not get back to that question, sir. On an annual basis, probably the equivalent of about one man-year for administrative purposes in keeping the operation viable; and on that basis I suppose something like $20,000, if you pay the individual a salary in the neighbourhood of $10,000, and you have about $10,000 of operational expenses associated with it. In terms of the amounts that might be paid out as compensation, it is anybody's guess, but I think it would be of the order of less than $100,000.

**The Chairman:** In the year?

**Mr. Jefferson:** Yes, per year, and I hope that it would be nil, because we have in operation now, as I mentioned earlier, a co-ordinated working program to nip these residue situations before they become of significance in the market place. This is co-ordination between the provincial and federal agencies involved, surveillance of foods for residues and surveillance of the use of pesticides.

**Senator Walker:** If that is so, and you have it under control now and you hope it will be "nil"—there have only been five cases to date—Do you really need this bill?

**Mr. Jefferson:** There has been a great deal of demand for something of this nature and, as I mentioned earlier, it was felt that to have this kind of legislation in position would provide an assurance to farmers and producers that their interests were going to be protected when they followed official recommendations as to the use of pesticides. We are concerned that they do use pesticides properly, and to the extent required to produce inexpensive and wholesome food.

**The Chairman:** Is the committee prepared to accept the suggestion I made that we approve the bill with the exception of section 5, which we shall stand for the purpose of further consideration, in the light of the discussion that has gone on here this morning, as to whether any greater burden should be imposed on the farmer in respect of his

qualification to receive payment other than that he shall subrogate to the minister any rights he might have against the manufacturer or any other person. Is that agreed?

**Hon. Senators:** Agreed.

**The Chairman:** Then, if we are ready with the answers to this question by 2 o'clock is it agreed that the committee will meet again at that time in order to deal fully with the bill?

**Hon. Senators:** Agreed.

Upon resuming at 2 p.m.

**The Chairman:** Honourable senators, we adjourned until 2 o'clock to permit our Law Clerk to get together with the representatives from the department concerned in relation to section 5 of the bill, and while there have been discussions I cannot report that the parties have agreed on a wording which is satisfactory to them all. If the department feels that the section in its present form in the bill is essential for their purposes, we will give them an opportunity now to justify that before us. If we are satisfied, that is the end of it; if we are not satisfied, then we will discuss how we are going to change it.

**Mr. C. R. Phillips (Director-General, Production and Marketing Branch, Department of Agriculture):** Mr. Chairman and honourable senators, I gather that there was a bit of concern over section 5 and the authority provided to the minister to restrict payment, if you will. My explanation will be in relation to the intent of the bill. The intent of the bill is not to pay compensation where it is the fault of a manufacturer or some other person. Now in coming up with the drafting, section 3 provides in effect that you can pay, even if it is the fault of some other person, but section 5 places constraints on this. The intent, as I said, is not to pay if it is the fault of some other person, but recognizing that there may be cases where a farmer would not have the resources to take the manufacturer to court and there could be cases where there is a grey area as to whether it is the manufacturer's fault or not. That is why the words "Minister deems necessary" are in there. So this provision is there taking into account the Financial Administration Act which we have to follow that payments could be made where in the judgement of the law officers of the Crown the manufacturer was guilty or perhaps guilty and subsequently the manufacturer can be taken to court. So it was in this context that rather than putting constraints in the hands of the minister, there was put in the hands of minister the opportunity to pay without this action yet having been taken.

**The Chairman:** I think I understand and I'm sure the committee does what you are saying, but if we may do a little simplification on this; under section 3(2) there are two conditions that a farmer must meet in order to be entitled to compensation or to qualify for compensation, but the Minister still has to make his decision as to whether in his discretion he may pay and he has to make a condition as to the amount. The two conditions to be met are, one, that there is some certification by the Department of Health under the Food and Drugs Act that this particular product is an adulterated product by reason of some pesticide in the product, a vegetable or whatever it may be. That is one condition the farmer or producer must meet. The second is that the Minister must be satisfied that the pesticide residue is in the product not by reason of any fault of the farmer. Those are the two conditions. Now you will notice that clearly it does not say he is not entitled if it is the fault of the manufacturer. Those two qualifications which I have enumerated are found in section 3. But then they take away from all that qualification in section 5 where they say:

> No payment of compensation shall be made to a farmer pursuant to this Act in respect of a loss occasioned to him by reason of pesticide residue in or upon an agricultural product until the farmer has taken any steps that the Minister deems necessary
>
> (a) to reduce the loss occasioned to him by reason of such pesticide residue, and
>
> (b) to pursue any action that the farmer may have in law against
>
> (i) the manufacturer of the pesticide causing the residue in or upon the product, or
>
> (ii) any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon the product.

These are conditions that are being added. Even though he qualifies and is in the door and the welcome mat is there, they say, "The manufacturer is responsible, and if you do not sue the manufacturer you do not get any compensation."

**Senator Benidickson:** This was Senator Cook's point this morning.

**The Chairman:** Yes. Under subsection 2, they really provide for a form of subrogation such as you find in your insurance policy where, if the insurance company pays a damage claim and you think you have rights that are subrogated by you, they can sue in your name and, if they are successful, you get judgment. But in subsection 2 it says:

> Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of that farmer for the Minister to pursue on his behalf any legal action against any manufacturer or person referred to in paragraph (b) of subsection (1).

First of all, this is complicated; and, secondly, to compel a farmer—and I do not know where he may be in Canada or how well informed he may be—to go out and take action as the basis for being able to collect any money, this is just playing ducks and drakes with the statute and any rights they pretend to be giving under the act.

I thought we reached the conclusion this morning: Yes, it was right to insist on getting a subrogation from the farmer. In other words, if the farmer-producer qualifies for entitlement to compensation, and the fault for the pesticide residue is the fault of the manufacturer, then I think the minister should have the right, as a condition of payment, to demand that the farmer sign a form of consent, which is stipulated in subparagraph 2, so that action can be taken against the person who has caused that. Why should the farmer do that? You have the Department of Health and Welfare making the order which creates the situation this is adulterated food; you have the manufacturer who may be the contributing cause for the adulteration; and the farmer, the innocent victim, the whole way down the line, and they tell him he has to do all the work. I cannot add that up and find any ground certainly why I should support section 5 in the form in which it is.

It seems to me there could be a very simple section 5. That is, if we took subparagraph 2 and used that as the main paragraph in section 5, saying, "Where the Minister deems it necessary he may require as a condition for the payment of any compensation that the farmer give his consent"—and then the minister goes ahead and prosecutes the action.

Then I added another one this morning. I thought that if the minister settles on the amount of compensation the farmer is to get and then demands a consent from him and sues the manufacturer, he might conceivably get a judgment for a larger amount of money than the amount that he has agreed to pay the farmer, or say, "This is the amount I will pay you." I do not think that extra amount should be for the benefit of the minister, but for the benefit of the farmer.

**Mr. Phillips:** Is that not in here, Mr. Chairman?

**The Chairman:** Where?

**Mr. Phillips:** It is on his behalf. I thought the implication of that was that since it was on his behalf, it is only offset.

**The Chairman:** This is on the minister.

**Mr. Phillips:** I assumed it was on behalf of the farmer.

**The Chairman:** The doctrine of subrogation is that the person who has the right is the farmer.

**Mr. Phillips:** Yes.

**The Chairman:** So the farmer has to give a consent so that the minister can maintain an action in his name.

**Mr. Phillips:** In the name of the farmer?

**The Chairman:** That is the only way in which he can maintain the action.

**Mr. Phillips:** Yes.

**The Chairman:** When he gets the judgment, who gets the money?

**Mr. Phillips:** I take it, Mr. Chairman, that any excess over the compensation goes to the farmer. I am not a lawyer, but the wording . . .

**The Chairman:** The minister has the authority to say that there will be a maximum provided in the regulations, and there will be a minimum below which he will not pay anything. That is the way I read it.

**Mr. Phillips:** Yes.

**The Chairman:** If the minister says to the farmer: "I agree to pay you X dollars", and then takes action in the farmer's name and gets a judgment for X plus Y dollars, who is entitled to the Y dollars? Obviously the farmer is entitled to that amount—at least, he is in my view.

**Senator Haig:** But he has already been paid the compensation.

**The Chairman:** Yes. Therefore, you have got to make it clear as to what happens to any excess. If there was some third person who contributed to this situation, as a result of which the minister paid money to the farmer, I can conceive of the minister's getting judgment against that person who caused it.

**Senator Haig:** Why would the judgment be for more than the compensation?

**The Chairman:** It could be. The compensation that the minister pays is not necessarily the total loss of the farmer. It is a maximum amount that is provided for in the regulations as a general rule, or as a standard. It is not an assessment in a particular case. So, the judgment could well be for more money than the compensation, and if it is then I think the farmer is the one who should get the exess, because he is not making any profit on the deal even if he does get that excess.

Those are the two things I thought we were going to cover, but we have not reached any agreement.

**Mr. Phillips:** If I might say one thing more and then ask a question, I would appreciate it.

**The Chairman:** Go ahead.

**Mr. Phillips:** That was certainly the intent, and if subsection 2 does not say it then it should say that any excess goes to the farmer. That was the intent.

**The Chairman:** Yes.

**Mr. Phillips:** Now, the question is: If parapgraph (b) of subsection 1 were not there, that makes it mandatory to pay, does it not, even if it is some other person's fault?

**The Chairman:** That is right.

**Mr. Phillips:** Does that then take it back again and say that if the minister requires as a condition of payment an authorization to pursue the matter on the farmer's behalf, and the farmer refuses, the minister does not have to pay?

**The Chairman:** That is right. If the conditions are (1) adulterated foods certified by the Department of National Health and Welfare; (2) a pesticide residue occurring in the product, not being the fault of the farmer; and (3) the condition that if the minister chooses to take action against the person who caused this pesticide residue he may require the farmer to give his consent to the maintenance of an action in his name, then the farmer has to meet all three or he does not get any money from the minister. But, with all due respect to what you have explained so far, Mr. Phillips, I cannot figure out the purpose of subsection (1) of section 5, which means that the farmer cannot get any money until he has taken any steps that the minister deems necessary to reduce the loss and to pursue any action that he may have in law. I do not know what purpose that serves.

**Mr. Phillips:** I suppose, Mr. Chairman, it is the old story of the chicken and the egg. There is no intention that the farmer should not receive compensation from a court action. If the words in subsection 2 make it clear that there is not that intent, then that is all right, but it seems to me that subsection 2 by itself does not make it clear that it is not the intention. It imples that sometimes it is the intention and sometimes it is not, because it says "Where he deems it necessary". It implies that in some cases he will not deem it necessary.

**The Chairman:** In some cases he may decide that proof is difficult to establish and therefore there is no purpose to be served in incurring costs in a law suit.

**Mr. Phillips:** I did not pursue my point of the chicken and the egg, if I may do so now. The drafting was designed to set out that if there was a fault of any other person there would not be justification for a payment, and then to provide means so that notwithstanding that there could be an interim payment in difficult cases.

**The Chairman:** My own feeling is that the whole of section 5 should be struck out. There could be very simple language indicating that it is a condition of payment of any compensation by virtue of subsection (2) of section 3 that the farmer, at the minister's request, shall give consent so that the minister may maintain the action in his name, and any excess shall be paid to the farmer. I do not know what else they need say. Senator Phillips, you were discussing this matter earlier today.

**Senator Phillips (Rigaud):** The interim explanation of Bill C-155 was surely an affirmative indication that the purpose of the bill was to provide compensation to farmers, not the reverse, as was suggested in the informa-

tion given us a short while ago. You seemed to take section 5 as the primary purpose of the bill. If that is the case it should be section 1 in order rather than the reverse. You proceed by way of introducing the illusory concept of compensation to farmers by describing the bill as "An Act to provide compensation to farmers" and then, as Senator Hayden said, under sections 3 and 4 make clear the conditions under which he is entitled to compensation, which could, in my opinion, on that score lead to no difficulty of interpretation. Then you introduce section 5, which is completely nonconsequential, a *non sequitur* as we say in law, to the preceding section, calling upon the farmers to take proceedings. Aside from the questions of law and questions of policy, calling upon farmers to find lawyers to institute proceedings and all that sort of thing, is in my opinion leading the farming community astray about what you have in mind in respect of the purpose of this bill.

The heading to the bill is an affirmative indication of intention to compensate, not to find reasons not to compensate.

**Mr. Phillips:** I certainly get the point, but if I could comment I would say that I do not think the title of bills always indicates the exclusions . . .

**Senator Phillips (Rigaud):** If I might interrupt you, the titles of bills do not do so and have no legal significance, but surely you will admit that the order of the sections . . .

**The Chairman:** It is the purpose of the bill. What is the purpose of this bill?

**Senator Phillips (Rigaud):** That is why I referred to it.

**The Chairman:** The purpose is to provide pesticide residue compensation, so we provide it and take it away, or make it tough for the farmer to get it.

**Mr. Phillips:** As I interpret your point, Senator Phillips, you have been alerted in section 3 to the conditions under which a payment is to be made. It says, "subject to this Act". Section 5 then gives the conditions under which the payment may not be made, so, if you will, it is part of section 3.

**Senator Phillips (Rigaud):** If you use the words "subject to this Act" you are technically correct. You say the whole act has to be read and one should not be fooled by the indications of the heading of the bill into thinking it means one gets relief. The basic sections 3 and 4 are intended to give relief, but they may say, subject to this act, please take a look at the last section 5 that follows 3 to 4. Surely this is a negative way of approaching a relief act.

**The Chairman:** Maybe I am misinterpreting the views on the committee. The way I interpret them is that they are not in favour of this section as it stands and that the committee is not in favour and there should be some revision.

**Senator Haig:** Mr. Chairman, under section (c) to subsection 2 by saying that after he sees the confirmation of the Health and Welfare Department that the residue is not present because the farmer must give a right to the minister to sue if he deems necessary.

**Senator Phillips (Rigaud):** That is what the chairman suggested as the first confirmation.

**Senator Haig:** The farmer knows the condition to which he can apply for compensation. In fact, he has got to meet this before he is entitled to it. If he does all those things then he is entitled to the compensation.

**The Chairman:** That is what I said.

**Mr. Phillips:** If I may ask one question related to this. If a farmer decides that he is not going to—I will put it another way—with the drafting that is suggested there is only one way he can get the payment and that is if he subrogates.

**The Chairman:** Three conditions.

**Mr. Phillips:** He may not want to. He may say, "Look here, I am going to take this man to court myself. They tell me I have got a case against him."

**Senator Haig:** Yet he does not get compensation from the Government.

**Mr. Phillips:** That is what I want to make sure.

**The Chairman:** He is the one that has the right to sue the manufacturer. If he does not give up that right in effect by subrogating he does not get the compensation.

**Senator Phillips (Rigaud):** I do not think you are going to get the confidence of farmers across the country if you are going to subject them to this type of public order.

**Mr. Phillips:** I am sorry if I left the impression. . .

**Senator Haig:** From the phraseology of the bill...

**Mr. Phillips:** I am sorry if I left the impression that the intention was to require them—the intention is to make it clear that they have an obligation in relation to faults of other persons and that this only has relation to a fault brought about through the Department of Agriculture registering a product which subsequently was found to leave residue or a provincial department recommending a product which when used according to directions subsequently left a residue either through new knowledge about the matter of harmfulness or new technology in testing.

**Senator Benidickson:** Or an error of judgment.

**Mr. Phillips:** These errors arose from lack of knowledge at the time. I am calling it technology. You can test more accurately later on. The condition is that the Government had a hand in it. It might have been a provincial government, but it had a hand in this. Therefore, there should be compensation.

**Senator Phillips (Rigaud):** This is precisely the point. And because it is the registration which in the final analysis leads to the use of a product, it is the Crown that has the right against the manufacturer without subjecting the farmer to instituting the proceedings.

You said a moment ago that it was the federal Department of Agriculture that registered the product which in sequence brought about the damage; therefore, the public authority that caused the registration should be the authority that has the right to complain against the manufacturer, if at all, for compensation.

**The Chairman:** I am glad you added "if at all" because first of all, you register the product. That is an action of the Government under this bill, registration. Now, the registration means that this product may be used. There are two ways in which a situation might arise afterwards. One would be that the manufacturer himself, in the formulation of the pesticide made some error and if he did the rights would be as between the manufacturer and the user of the product. That would be the formula. The other situation as to registration is if a product is registered on the basis of certain knowledge, which the department must confirm. Otherwise, I would assume that they would not permit it to be registered. If there was any right at all, it would be between the minister and the manufacturer, but I must say that I doubt if there would be any right at all there, because in the state of the knowledge at that time this was certainly known as a satisfactory product.

**Senator Phillips (Rigaud):** I used that expression for that very reason—"if at all". Its purpose would be covered completely by the subrogation.

**The Chairman:** Mr. Pfeifer is here from the Department of Justice. Mr. Pfeifer, do you want to get into this discussion?

**Mr. J. C. Pfeifer, Legislation Section, Department of Justice:** Not particularly, unless there was some specific question about the actual drafting of the legislation.

**The Chairman:** I am not prepared to say that the problem which has arisen is a problem of drafting. I think it is a problem of what the drafting does.

**Mr. Pfeifer:** Yes.

**The Chairman:** I am sure the drafting does reasonably clearly what Mr. Phillips said was the intention. The attitude of the committee so far seems to be that that is not the right kind of intention to put into a statute in the circumstances of this case. It may be that that is getting to the stage of policy and I could understand that you would not want to answer that.

**Mr. Pfeifer:** Yes, it does. What has happened in this bill reflects the Government policy in those circumstances.

**The Chairman:** In those circumstances, I do not see any question we could ask you in this committee, unless the committee feels that there is some questions one would wish to ask. I think it boils down then to this, that we have our own view and we have tried to reach common ground with the departmental officers on a redrafting of this section. That has not been possible. What I suggest is that we instruct our Law Clerk, in the light of the discussion we have had here, to draft a section which would incorporate those views.

**Senator Benidickson:** With notice to the minister.

**The Chairman:** Yes, when we do it we will inform the department officers—you could then come in and agree with it or object to it and make whatever objection you want to make. This would not be hidden in any way.

This is the only way we can leave it. It is possible that this committee might be sitting later today. There are some bills piling up and if a couple are referred to the committee this afternoon and if we still have some time left when the Senate adjourns, if it adjourns at or before five o'clock, we might come back here and do some work for an hour or two.

**Senator Haig:** Whatever you want, Mr. Chairman.

**The Chairman:** I think we are pressing against time and we should make use of every opportunity. I suggest that we adjourn now but may resume later today.

The committee adjourned.

**Ottawa, Thursday, March 20, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-155, to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards, met this day at 10.45 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we approved of all parts of Bill C-155 except section 5, which, if you recall, we left for conferences yesterday. The conferences did not change the amiable relationship between the departmental representatives and ourselves, but it did not achieve any agreement. We have therefore worked out what we think should be reflected in section 5 and furnished a copy of it to the department. Perhaps I should tell you what this is. The Law Clerk and myself have been over it, and I believe Senator Phillips has seen it this morning. We propose that the first three subsections of section 5 should be struck out and in their place the following inserted:

> (1) Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of the farmer for the Minister to pursue any action that the farmer may have in law against any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon an agricultural product.

Under this subsection as revised the minister has no obligation to pay an amount of compensation if he wants to sue the manufacturer of the product, for instance, in the name of the farmer and the farmer will not sign the consent to enable him to do that.

In the new subsections (2) and (3) we propose to say:

> (2) Where the Minister receives, as the result of any action taken by him pursuant to subsection (1), any amount in excess of the amount paid or to be paid to the farmer in compensation, he shall reimburse the farmer to the extent of such excess.
>
> (3) The Minister shall in paying compensation take into account any amounts realized by the farmer in any action in law the farmer may have pursued against any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon the agricultural product.

Those are the three new subsections we propose introducing into section 5. We also recommend that the present subsections (4), (5), (6) and (7) remain.

**Senator Connolly (Ottawa West):** What I am about to say comes off the top of my head, because I was not present during all the discussion yesterday. I am thinking of the question of subrogation. Is this specifically provided for? In other words, if the minister pays the farmer, then he subrogates the farmer's right...

**The Chairman:** That is what subsection (1) provides. It says:

> Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of the farmer for the Minister to pursue any action that the farmer may have in law.

**Senator Connolly (Ottawa West):** That is the layman's way of saying he will be subrogated.

**The Chairman:** Yes, and if he does not subrogate he does not get any money.

**Senator Connolly (Ottawa West):** That is right.

**Senator Croll:** Did you not speak of excess? How do you have excess?

**The Chairman:** The point is that both sides agree on this that it is the compensation

which the minister might award or agree to pay to the farmer. The producer would be within the fixed limits here of minimum and maximum by regulation, whereas if the farmer were pursuing rights against the manufacturer, his claim for damages might be greater than the amount of compensation that the minister would award. The object of subrogation I take it is to enable the minister to recover moneys he has paid to that extent, but if the damage figure becomes larger that should go to the farmer, because the farmer is only being reimbursed by the minister to the extent of what the cost is.

**Mr. C. R. Phillips, Director-General, Production and Marketing Branch, Department of Agriculture:** To the extent of the maximum percentage and the contemplated maximum would be a percentage of the market value rather than a fixed sum.

**The Chairman:** So if the farmer sued the manufacturer it is quite conceivable that he might get a judgment for a larger amount than what that farmer would have received.

**Senator Carter:** How would that affect the farmer whose damages have been below the limit? Would they have any recourse to this?

**The Chairman:** If the amount of the damages determined by any formula of the kind that Mr. Phillips has indicated produces less than a minimum figure the minister does not pay anything.

**Mr. Phillips:** That is right.

**The Chairman:** But, the farmer then would have the right to sue the manufacturer if he would work out a positive action. His rights are not being taken away. The only time the minister can proceed and make use of the farmer's right to sue the manufacturer is if the minister is going to pay compensation to him.

**Senator Connolly (Ottawa West):** Mr. Chairman, if the minister takes an action against the manufacturer for a specific amount and the farmer feels that he has been damaged more than the amount claimed by the minister, is there any right of the farmer—they cannot both sue I suppose in different actions?

**The Chairman:** There are appeal provisions in this bill.

**Mr. E. Russell Hopkins (Law Clerk and Parliamentary Counsel):** Elaborate ones.

**The Chairman:** Very elaborate. If the farmer wants to question the amount...

**Senator Connolly (Ottawa West):** I am concerned about the position of the farmer. If the minister is subrogated in the rights of the farmer then the farmer has no position in that action, has he?

**The Chairman:** No, except it is being carried on in his name and he is given a consent to that. The only right he acquires is the right we provided here and that is if the minister collects more than the amount of compensation he has agreed to pay or has paid to the farmer.

**Mr. Phillips:** Subclause 7 may be covering the point.

**The Chairman:** In subclause 7 which remains it says:

> Except as provided by this Act, no compensation paid under this Act shall in any way interfere with or lessen the right of an aggrieved person to any legal remedy to which he may be entitled.

**Senator Connolly (Ottawa West):** I think perhaps you have given me the answer. The effective subrogation simply enables the minister to make the action in the name of the farmer and subsection 7 allows the farmer to...

**The Chairman:** Would you like an example under subsection 7? Supposing the farmer's family or some members of the family suffered damage to their health or were injured by reason of this pesticide residue, on behalf of those members of the family there could be an action against the manufacturer if the fault...

**Senator Connolly (Ottawa West):** They could take that directly, could they not?

**The Chairman:** Oh, yes.

**Mr. Phillips:** There would be no need for subrogation.

**The Chairman:** They do not come into the problem.

**Mr. Hopkins:** As to the problem of compensation it is only where the minister requires as to the condition that there is subrogation. It is conceivable that there might not be and then they can sue.

**The Chairman:** Then the farmer is free to pursue his remedies as well as taking compensation.

**Senator Connolly (Ottawa West):** There is a subrogation and the minister takes the action in the name of the farmer. The minister issues his instructions to his own solicitor and the farmer's feeling is that the claim is not large enough. Where does the farmer then stand?

**The Chairman:** The farmer would be a witness I would say.

**Senator Connolly (Ottawa West):** He would certainly be a witness.

**The Chairman:** Without the farmer as a witness there would be some question of proving damages.

**Senator Connolly (Ottawa West):** Of course you would have to have the farmer as a witness, but if the claim were restricted to, say, $1,000 and the farmer felt that there was a claim really of $3,000 or $4,000...

**The Chairman:** He has a right under the appeal procedures here to question the amount.

**Senator Connolly (Ottawa West):** It would have to be an appeal, it could not be in the court of first instance.

**The Chairman:** There are two separate procedures. One, if the farmer is not satisfied with the amount of the compensation there are provisions for appeal under the act, but if the minister—he can take those—imposes a term of payment of any compensation the farmer must give a consent so the minister can pursue these recommendations. The farmer must agree and give that consent or he does not get any compensation.

**Senator Connolly (Ottawa West):** I would like to clarify my own mind for the record. The fact that the minister is subrogated in the rights of the farmer and the action is decided and the award is less than the farmer thinks is proper then the farmer, himself, has the right of appeal despite the subrogation?

**Mr. Phillips:** He has a right of appeal under the bill.

**Senator Lang:** No, no.

**Senator Connolly (Ottawa West):** Wait a minute, somebody said no. Who has the right of appeal?

**Senator Lang:** The farmer made a mistake. He should not have taken compensation.

**The Chairman:** Wait a minute. Senator Lang, the minister settles the amounts of compensation under the bill. Now, the farmer may take it or not as he pleases.

**Senator Lang:** That is where the appeal is important.

**The Chairman:** If he says the amount is not great enough he has a right of appeal. There is no conflict between that.

**Senator Connolly (Ottawa West):** The right of appeal against the minister on that amount.

**The Chairman:** Right. This is the point. There is no conflict in the two positions as I see it.

**Senator Kinley:** Who pays the compensation, the Government?

**Senator Connolly (Ottawa West):** Yes.

**Senator Kinley:** Why?

**Senator Connolly (Ottawa West):** They are going to recover from the manufacturer.

**Senator Kinley:** Why do they?

**Senator Connolly (Ottawa West):** That is a matter of policy for the officials. Senator Kinley has a question here, Mr. Chairman. Why should the Government, he says, pay the compensation to the farmer?

**Senator Kinley:** Are they at fault?

**The Chairman:** Yes. The Government requires the registration of any pesticide and when they registered, that indicates it is a material or a product that can be used safely.

**Senator Benidickson:** They change the rules in midstream?

**The Chairman:** That is right. They may do that.

**Senator Benidickson:** Therefore they receive compensation?

**The Chairman:** Senator Kinley, your question. Registration is required of a pesticide.

**Senator Kinley:** Is it now?

**The Chairman:** Under this bill; not under the other bill.

**Mr. Phillips:** Under the Pest Control Products Bill.

**Senator Kinley:** Is the farmer limited to using anything he likes, that he thinks is good? Is he limited?

**Mr. Phillips:** Yes.

**Senator Kinley:** If he makes a mistake the Government is at fault?

**The Chairman:** If the farmer makes a mistake and trouble results, he has only himself to blame and he has no rights. It is only in the situation where you have registration of a pesticide.

**Senator Kinley:** Where he is directed by the department that the pesticide is good and that he should use it.

**The Chairman:** The department, it may be, later, on the basis of more information or research, decide that the formulation should be changed.

**Senator Kinley:** Is there a condition in the country which indicates that they should have this bill? Is there a condition like that? Is there a necessity at the present time? Is there such a condition that the farming community is making mistakes?

**The Chairman:** I have assumed that because the bill is here there is some necessity for it.

**Senator Kinley:** I lost a crop last summer, but I think it was because of the dry weather.

**The Chairman:** It was not a pesticide?

**Senator Kinley:** No, but I used a pesticide.

**The Chairman:** Mr. Phillips, I have exposed to you this morning what it is proposed. You have some remarks to make. Would you take the floor?

**Mr. Phillips:** Mr. Chairman and honourable senators, if I may speak to what the honourable senator mentioned right now, because it is an important question, it is this. Why should the Government pay, if it is the manufacturer's fault? That is an important question. That is why the bill was drafted in this fashion, that it is not contemplated that the Government should pay if it is the manufacturer's fault; but if it is in a grey area, that it would be a little difficult to prove, and so on—the way this is drafted, the minister may pay, and then take the manufacturer to court. If it is a clear case of a manufacturer's error, or another farmer's error, it is not the intent that this bill in totality should be paying anything to a farmer.

**The Chairman:** Now, Mr. Phillips, we were over this yesterday, on the question of intent. The only thing we can gather with regard to intent is to read what the bill says. I pointed out to you yesterday that there are two conditions in the bill under which, if they are satisfied, the farmer is entitled to be compensated. These conditions set out in the bill are simply that the food and welfare department has said that this is an adulterated product and, secondly, the farmer is able to establish that it was not his fault, that this pesticide residue remained on the product.

Those are the two conditions.

We have added, in the form in which we have this amendment this morning, a third condition, that is, if the minister wants to sue somebody who is to blame, like a manufactuere, for the pesticide residue, then the farmer must give him a consent and must subrogate his rights so that the minister can enforce them—or he does not get compensation.

But Mr. Phillips says the intent of this bill was not to pay the farmer, not to take any obligation to pay the farmer, where the condition arises by reason of some action or neglect by the manufacturer. Those are not the conditions that are set out in the bill.

**Senator Benidickson:** The third point is the one brought up by Senator Phillips yesterday, that the farmer does not have to do the suing.

**The Chairman:** That is right.

**Senator Benidickson:** And go to some distance to find a lawyer, and so on, to do it.

**The Chairman:** If there is going to be any suing, the farmer subrogates the minister.

**Senator Benidickson:** And leaves it to the Crown officer to do the suing.

**The Chairman:** That is right.

**Senator Croll:** When he does get into a lawsuit, he thinks the amount is insufficient, and the Government goes ahead and collects a thousand dollars. The farmer says his cabbage was worth $4,000. Then he still has to go back to court, for the purpose of getting that.

**The Chairman:** No, no.

**Senator Croll:** Then he goes to the minister?

**The Chairman:** The minister is the one who fixes the amount of compensation. If the farmer is not satisfied with the amount the minister fixes, he has a right of appeal, under this bill, to an assessor.

**Senator Croll:** Yes.

**The Chairman:** Then the situation is reviewed there and whatever the award is, either the minister's amount is confirmed or it is not confirmed.

**Senator Croll:** That is done before the objection.

**The Chairman:** It can be done at any time, independently or otherwise.

**Senator Croll:** If it is done before, the farmer has to know how much it is, or how is he to know what he is to say he wants to collect. It would not do for him to say he wants to collect $1,000 and collect $3,000; he might say he wants to collect $3,000 and then collect $1,000. But in this case he does not do it without a purpose.

**The Chairman:** In the subrogation, the farmer would give, for the subrogation application, the amount of damages that would be sued for.

**Senator Croll:** In the natural course of events, the farmer will always feel he is being done in and his damages claim is always higher than the Minister is willing to pay. That is a normal thing. In the end, we have the farmer saying that, anyway, he is not satisfied with this amount and that he is going to sue, anyhow. I understood that the purpose in this section—I was not here for the later discussion yesterday, so I could not follow it —was to deal with the little farmer who cannot afford to sue. Why should he —let the Government do this. He is not at fault. The Government then does it, but you do not get the farmer out of court, and you have an unsatisfied farmer.

**The Chairman:** You get him out of court. Under the bill, the farmer could be required to maintain an action himself, as a condition of being able to get compensation from the minister. We said that that is not right. We say that, if the minister wants to recover any amount of compensation he is paying to the farmer, he should sue whoever is responsible for creating that situation; and the only contribution the farmer can make to it is to subrogate his rights.

**Senator Croll:** I follow that. What does Mr. Phillips say on that?

**Mr. Phillips:** With respect, I would like to speak to the point you made, Mr. Chairman. I was talking about the intent of the Government, and you were talking about the intent of the words.

**The Chairman:** The intent of the bill.

**Mr. Phillips:** In order for us to establish what the bill should say, I believe we can go back to the intent of the Government with respect to the presentation of the bill, and I was speaking to that.

The bill was drafted in a manner to provide intent, in the view of the law officers of the Crown. In the view of this committee there is some question about that.

**The Chairman:** There is not any question in my mind.

**Mr. Phillips:** There is certain discussion, and that is why I am speaking to it now. The suggestion is made that, with the amendment of clause 5, you have made three things. But the answer that was given to me yesterday was that anything within clause 5 is not providing a substantive condition. I had argued that it was, because it was part of the bill, and clause 3 said "subject to this bill"; and I say that clauses 3 and 5 are substantive parts of the bill.

**The Chairman:** You will not get any argument on that, certainly not from me. These sections are substantive law.

**Mr. Phillips:** I admitted that they are removed from one another and that you have clause 4, with regulations, in between; but they are both substantive parts.

Speaking to the amendment proposed, there are at least two things in there that are improper, in my view. One is, it removed (a) of (1); and that is designed so that, let us say that carrots had a residue on them and the food and drugs section said they may not be sold, and the farmer says he wants compensation and then the minister tells the farmer that if he washes the carrots the residue will disappear, and so the farmer washes them. That is what (a) says.

**The Chairman:** Which (a) are you talking about?

**Mr. Phillips:** About (1)(a).

**The Chairman:** Of clause 5?

**Mr. Phillips:** Yes.

**The Chairman:** Very well.

**Mr. Phillips:** It says:

> (a) to reduce the loss occasioned to him by reason of such pesticide residue,

That has been removed. The second part is that in (2) or (3), the amended clause you are proposing, the minister not only must get the subrogation but must pay the costs of the action, and give the farmer the money that is collected over the amount of the compensation; and it was not the intent that this should occur. It was not the intent—I am back to Government intent now, Mr. Chairman—it was not the Government intent that the Government should pay at all, except as an interim measure, if it were the fault of the manufacturer or some other person.

**The Chairman:** Can we just deal with those two points, Mr. Phillips? First of all there is the question of washing the carrots and taking the pesticides off them. I read subsection (4) of section 5, which remains in, and this is what it says:

> 5. (4) Where a farmer realizes any amount from the disposition or use of any product or property in respect of which compensation may be or has been paid pursuant to this Act, he shall forthwith notify the Minister of the amounts so received and, if he has been paid any compensation by the Minister, shall repay to the Minister such compensation payment or part thereof as the Minister may direct.

That means, if there is pesticide residue on the carrots, the farmer makes a claim for compensation and the minister awards an amount. Then, if the farmer discovers he can wash these carrots and make use of them, the moment he does so, under section 5 (4), he is under the obligation to notify the minister. If the minister has paid compensation or has settled an amount, the minister is then in a position to determine what amount shall be deducted because the farmer has made some use of the product. To me that covers that point.

Now, with respect to the other point about the minister paying the costs, my friend must know that, as I will point out to him, when you sue and collect a judgment in damages, for example $2,000, that is only one part of it. That is the judgment. But you also get an award of costs, that is, the taxed costs of the action. In that kind of situation the tax costs are another aspect of the judgment. The excess that is being talked about in the amendment that we propose is the excess in the judgment. In other words, if the compensation that the minister agreed to pay to the farmer were $2,000, and then the minister went to court suing in the name of the farmer and got a judgment for $4,000, the excess would be the difference between the $2,000 and the $4,000. The costs are a plus. The plaintiff, the minister as the plaintiff subrogated to the rights of the farmer, would tax the costs and collect the money.

**Senator Croll:** What do you say to that, Mr. Phillips?

**Mr. Phillips:** Well, the Chairman raised two points. I am sorry, but I must disagree with the first point, because, although I agree with the way he put it, nevertheless, under section 1 (a) it says that the minister can tell the farmer to wash them. Under your proposal, Mr. Chairman, the farmer can say, "Maybe I will wash them." But under section 1 (a) it says he must wash them if he can get value out of them. In those circumstances he must wash them. That is the distinction. It puts it in the hands of the minister to say, before he pays compensation, that "you shall take steps that are possible to reduce the losses before I will consider compensation".

**Senator Phillips (Rigaud):** Mr. Chairman, speaking to Mr. Phillips, under the law, section 3, the minister may pay the amount. He is under no obligation to pay, when you go back to the basic issue as to whether the minister will compensate the farmer. Surely, if it is permissive rather than mandatory, you do not have to be concerned about whether a farmer washes the carrots or not. The minister will say, "Wash the carrots; otherwise I may not exercise my permissive right." It is as simple as that.

**The Chairman:** Yes, senator, this is permissive; the minister may award. If the carrots have a pesticide residue on them and the minister, on the advice he receives, knows that if you wash them properly the residue will disappear, but the farmer in making a claim refuses to wash the carrots, then the minister has a discretion whether he will pay or not pay the amount up to the maximum which he can pay, and he can reflect all those considerations in that amount.

**Mr. Phillips:** Mr. Chairman, it has been indicated to me that we should make in the bill things clear as to what the minister can do. Now the situation is that you do not make it clear because it is a matter of "maybe".

**Senator Phillips (Rigaud):** Mr. Phillips, if you are saying that that suggestion was made by me, I draw your attention to the fact that I did not make such a suggestion.

**Mr. Phillips:** I am sorry. I am just talking in the general sense...

**Senator Phillips (Rigaud):** With all respect, sir, you are placing in the mouths of some of the senators here alleged suggestions.

**Mr. Phillips:** I am sorry. If I could rephrase it and indicate, with respect, that it was pointed out to me yesterday, or in this committee, that it was not made clear in section 3 that there were three conditions and therefore we should change the bill. And now I am pointing out that in section 5 there was a point made clear and it suggested that you can do these things by an indirect means, "so don't make it clear". This is my interpretation, correctly or incorrectly.

**The Chairman:** May I tell you, Mr. Phillips, that in anything I have said or anything I have heard members of this committee say there has been no suggestion of the kind that in some indirect way the minister may do this, that or the other thing. The statute says that the minister "may" pay. That means there is a discretion. Then the bill also provides that there "shall be minimum and maximum amounts", and you have indicated that the likely basis would be about 80 per cent of the market value. The minister has a discretion, in the first place as to whether he will pay or not and in the second as to the amount which he will pay. He can weigh and reflect in just the same way as a court in determining the amount, if he decides he is going to pay. If the farmer will not wash the carrots, the minister will decide that the farmer is entitled to less. That is not suggesting any indirect way.

**Mr. Phillips:** I am sorry, Mr. Chairman. I apologize, if I left any wrong impression.

**Senator Connolly (Ottawa West):** I do not think anybody expects you to feel that way, Mr. Phillips.

Mr. Chairman, Mr. Phillips has not said this, but it is implicit in what has gone on; it seems to me that his concern is for the fact that there is a policy question here as to a decision the Government has taken that they would go so far. Perhaps his difficulty arises from the fact that we want to go farther than that policy suggests, and we think it improves the bill by so doing.

**The Chairman:** What is the policy point to which you are addressing your remarks?

**Senator Connolly (Ottawa West):** The question of subrogation. We think we are improving it.

**The Chairman:** Subrogation is in the bill as an added provision that the minister might take. But this is an observation that stands without our amendment. If the minister told the farmer to go ahead and sue the manufacturer on the basis that, if he did not sue, he would not get any money, that situation would not be good. So we took that out but we left the subrogation part of it in. We said that was enough.

**Senator Connolly (Ottawa West):** Yes, that is right.

**Mr. Phillips:** That to me was an important point. That is, that you have taken it out. The way it is written under the redraft, I admit that if the minister deems it necessary he must get the subrogation before he will pay any compensation, but, if it were a clear-cut case and, to use an example that someone else suggested, if it were a very large farmer who had money and background, it would not be the intent that the Government should do it on his behalf. He would do it himself.

This implies that you would have to pay, unless the positive action is taken of deeming it necessary to get subrogation. This is a fine point.

**Senator Connolly (Ottawa West):** I think Senator Phillips' point about the use of "maybe" may get you off the hook. Now I may be in a somewhat querulous frame of mind this morning, but taxed costs are one thing and counsel fees are another. We may be adding to the impost by saying that if there is subrogation and the minister takes the action that ultimately it may cost the exchequer a little money in the way of counsel fees.

**The Chairman:** Senator Connolly, as you know there are two scales of costs; one is on the party and party basis and the other is on the solicitor and client basis. When you go to court as a plaintiff and get a judgment, you get an award and some of these have costs taxed on a party and party basis which is a lower basis than the solicitor and client basis and the counsel fees are part of the taxed costs and it is done by an independent taxing officer who does the taxing on the party and party basis.

**Senator Connolly (Ottawa West):** But there is the solicitor and client aspect of it.

**The Chairman:** That is a problem for the minister having in mind the counsel he retains. Most likely he would use a lawyer from the Department of Justice.

**Senator Connolly (Ottawa West):** Yes. This might not mean any addition.

**The Chairman:** I do not think the ways and means are being disturbed at all.

**Senator Isnor:** Mr. Chairman, we have before us an amendment. Has that been approved or not by the department?

**The Chairman:** No, it has not been approved by the department.

**Senator Isnor:** Do they object to it?

**The Chairman:** Well, you have heard Mr. Phillips this morning. That is the extent of the objection. If I may paraphrase it, and I know I am running the risk of misstating it, the point he made was that the department did not intend in any way to pay money if the fault were the fault of the manufacturer. Therefore they have a provision in the bill which I presume would become operative where they would say to the farmer "go ahead and sue the manufacturer yourself." Our view was that that was wrong; they have a provision in the bill for subrogation, and in establishing the conditions for the provisions in clause 3 they have not included this one about the farmer having to sue the manufacturer.

**Senator Isnor:** Are you recommending your amendment to this committee?

**The Chairman:** To the extent a chairman may recommend anything to the committee. I can tell you that Mr. Hopkins and myself have worked on this and made a number of redrafts and we only took on the job because we felt that in doing this we were reflecting the view that had been indicated by most members of the committee. Now we say that this amendment does reflect the view of the committee as expressed here in connection with this section.

**Senator Isnor:** And do you recommend this?

**The Chairman:** We recommend it to the extent, as I have said, that a chairman may recommend.

**Senator Lang:** I will recommend it for you, Mr. Chairman.

**The Chairman:** We say that these proposed amendments do what appears to be the intention of this committee that this legislation should do.

**Senator Lang:** May we have the question then?

**The Chairman:** Well, it is not my intention to cut off any presentations Mr. Phillips may wish to make.

**Mr. Phillips:** Mr. Chairman, I believe I have made my position clear. I understand from Mr. Pfeifer that he has a slightly different view on this matter of cost from what was expressed here.

**Senator Carter:** Mr. Chairman, there was only one objection Mr. Phillips had. You answered the one about costs, so that has been taken care of. The legislation here only applies to excess judgments. The only other objection he raised was that the minister under the present bill could say to the farmer "you go ahead and do something before I will consider this." Now he maintains under the new amendment he cannot do that. I only see one valid objection that Mr. Phillips has raised.

**The Chairman:** Is that about the washing of the carrots?

**Senator Carter:** Yes.

**The Chairman:** The minister can refuse to pay if the farmer will not wash. You know the old saying: "No tickey no laundry".

Mr. Pfeifer, you wished to say something?

**Mr. J. C. Pfeifer, Legislation Section, Department of Justice:** Mr. Chairman, just on the issue in the proposed new subclause 2 and Senator Connolly's remarks about costs, I certainly do not disagree with the suggestion made about costs in the committee today, but the way the proposed amendment is worded does not distinguish between awards and costs. It simply says any amount in excess of the amount paid to the farmer by way of compensation would be reimbursed to the farmer. Now in my submission "any amount" would include costs or an award. The proposed amendment does not distinguish between costs and awards at all.

**The Chairman:** You are concerned that the word "amount" might be interpreted to mean the costs as well?

**Mr. Pfeifer:** To my mind, sir, it would include any amount. It is subject to this interpretation, in any event.

**Senator Lang:** Well then if you change the word "any" to the word "such" it would get rid of that difficulty.

**The Chairman:** If we are concerned about that we could use three words in place of one. We could say "any judgment for damages in excess of". What do you think of that, Mr. Hopkins?

**Mr. Hopkins:** Or "the amount of any judgment for damages."

**The Chairman:** Yes, we could say "the amount of any judgment for damages".

**Mr. Phillips:** Am I correct in saying that from the explanation of costs as given here, where there is a lawyer-client relationship, and the costs in that for the lawyer were in excess of the other type, that then this would be a cost against the Crown for such excess?

**The Chairman:** No, I did not say anything of the kind. I said there were two bases on which you tax costs, one is a party and party basis and the other is a solicitor and client basis.

**Mr. Phillips:** I took it that on the second basis the solicitor could get more than on the party and party basis.

**Mr. Chairman:** If the Crown started an action in the name of the farmer, the Crown would have a lawyer and the solicitor and client relationship would be the relationship between that lawyer and the Crown. Then if the Crown did not pay the fees the lawyer thought he should get, he could have them taxed. They might be taxed higher or lower. But that is a fact that the Crown could control. I know the situation arises where they tell you "this is so much a day and you can take it or not."

**Mr. Phillips:** Whichever way it is, it is taxed as a charge against the Crown.

**The Chairman:** Is it agreed, in order to remove it beyond the possibility of doubt, that instead of saying "any amount" we say, "the amount of any judgment for damages"?

**Hon. Senators:** Agreed.

**The Chairman:** That removes your objection, Mr. Pfeifer?

**Mr. Pfeifer:** I could not say that, no.

**The Chairman:** Let us say on that point—because I understand you are not agreeing or expressing any approval of the section—that you told me yesterday the reason for it was that it was not in accordance with the policy decisions that were made and on the basis of which the bill was drafted.

Are you ready for the question?

**Hon. Senators:** Yes.

**The Chairman:** Shall this amendment carry?

**Hon. Senators:** Agreed.

**The Chairman:** Shall I report the bill with the amendment?

**Hon. Senators:** Agreed.

The committee proceeded to the next order of business.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 28

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WEDNESDAY, MARCH 19th, 1969

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To which was referred *back* the Report on Bill S-29,

intituled:

"An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

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WITNESSES:

*Department of Indian Affairs and Northern Development:* A. D. Hunt, Director, Resource and Economic Development Group; Dr. W. W. Woodward, Chief, Oil and Mineral Division, Resource and Economic Development Group.

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REPORT OF THE COMMITTEE

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THE QUEEN'S PRINTER, OTTAWA, 1969

20027—1

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gelinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 18th, 1969:

"Pursuant to the Order of the Day, the Senate proceeded to the consideration of the Report of the Standing Senate Committee on Banking, Trade and Commerce on the Bill S-29, intituled: "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

The Honourable Senator Hayden moved, seconded by the Honourable Senator Langlois, that the Report be adopted now.

After debate,

In amendment, the Honourable Senator Prowse moved, seconded by the Honourable Senator McElman, that the Report be not now adopted, but that it be referred back to the Standing Committee on Banking, Trade and Commerce for further consideration.

After debate, and the question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
*Clerk of the Senate.*



20027—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, March 19th, 1969.
(31)

At 10:40 a.m. the Committee proceeded to further consider the Report of the Committee on Bill S-29, "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories" which was referred *back* to the Committee on March 19th, 1969.

*Present:* The Honourable Senators Hayden (*Chairman*), Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Gelinas, Giguère, Haig, Hollett, Isnor, Savoie, Walker, Welch and Willis. (18)

*Present, but not of the Committee:* The Honourable Senators Bourget, Phillips (*Rigaud*), and Prowse. (3)

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

The following witnesses were heard:

*Department of Indian Affairs and Northern Development:*
(Resource and Economic Development Group)

A. D. Hunt, Director.

Dr. H. W. Woodward, Chief, Oil and Mineral Division.

Upon motion, it was *Resolved* to report that the Committee had re-examined the said Report and recommends its adoption by the Senate.

A sub-committee composed of the Honourable Senators Hayden (*Chairman*), Connolly (*Ottawa West*), Desruisseaux and Flynn, was constituted to examine in detail the Bill S-17, "An Act respecting Investment Companies".

At 11:45 a.m. the Committee adjourned until 2:00 p.m.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, March 19th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred back for further consideration the Report on Bill S-29, "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories", presented to the Senate, 13th March, 1969, has in obedience to the order of reference back of March 18th, 1969, re-examined the said Report and recommends its adoption by the Senate.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Wednesday, March 19, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred back for further the consideration, the Report on Bill S-29, respecting the production and conservation of oil and gas in the Yukon territory and the Northwest Territories, met this day at 10:40 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, the Committee's Report on Bill S-29 has been referred back to this committee for further consideration. Last night the Senate, on a motion of Senator Prowse, referred the Report back to this committee for the purpose of consideration of provisions for the protection of the environment—that is, the protection of the land surface and the forestry in the areas where drilling operations, production, transportation, and processing are being carried on.

Senator Prowse, for the purpose of having the record clear, and so that we can get down to the business of dealing with it, would you make a statement as to the exact point which formed the basis of your motion?

**Senator Haig:** Which section are we dealing with, Mr. Chairman?

**The Chairman:** If we are to amend the bill then there will be an amendment to section 12 which sets out the regulatory power of the Governor in Council. I think that any amendment we make in this connection would occur there.

Senator Prowse, would you tell us what the neat point is, and then we can get down to the business of dealing with it.

**Senator Prowse:** Mr. Chairman, I intervened last night because I received yesterday a letter from Professor A. R. Thompson of the Faculty of Law, University of Alberta, and who is co-author with Mr. Lewis of a definitive text on petroleum and natural gas law.

**The Chairman:** Yes, and to identify the other author, Mr. Lewis, he was the witness who appeared before us representing the Canadian Petroleum Association at our sitting last week?

**Senator Prowse:** That is right. He says that he has discussed this matter with Mr. Lewis, and that there is a difference of opinion between them. This is what he says:

> There is one respect in which I consider the Bill to be lacking where Ed . . .

That is, Mr. D. E. Lewis.

> . . . does not agree with me.
>
> Section 12(q) of the Bill authorizes regulations dealing with pollution, but the Bill does not contain any provisions dealing with surface use of land or authorizing regulations requiring restoration of the surface or other protective measures for the surface. Ed's view is that Bill S-29 deals only with exploration, drilling and producing matters and therefore does not need to deal with the surface use of land. However, there does not appear to be any other territorial legislation covering the subject and therefore Bill S-29 appears to be the appropriate place for such measures. I would mention that at the present the Canada Oil and Gas Drilling and Production Regulations include a provision respecting restoration of the surface in section 16. It is doubtful whether there is any legislative authority for this regulation and Bill S-29 does not seem to cover it.

I might say that I had the impression that the report of the committee had been adopted and that the bill had been passed by the Senate, and when I entered the chamber last evening and discovered that the motion for

the adoption of the committee's report was still before the house I thought it would be appropriate to raise this matter then, rather than have it raised elsewhere. I have spoken to two officers of the department, and they are aware of the situation, and I think that the committee would probably gets its work done most expeditiously if it were to call on them.

**The Chairman:** And I have talked with the departmental officers, Mr. Hunt and Mr. Woodward also, and I would ask them to come forward at this time.

I think it is clear from what Senator Prowse has said that the question is whether there should be provision for the protection of the surface area or the environment. Where there are drilling operations there is a disruption of the top layer of soil, and the question is how to regulate that and make sure that somebody is responsible for the restoration or the protection of the environment.

I am going to ask these gentlemen in a moment to give their views, but it seems to me, if I might just analyze the problem, that there are two questions facing us. The first one, and the one that we are concerned with in this bill, is the protection of the environment in the area where the drilling, gas operations, processing, and matters of that kind are being carried on. There is also a much larger area, which might be the whole territorial area, where there are many operations of various kinds going on—mining operations—quite apart from those with which we are concerned here. For the moment I think we shall have to confine ourselves to the scope of the bill, and since the bill deals with drilling, production, transporting, and processing then our consideration of the environment and its protection should be in relation to the area in which these functions are being carried on, and where that kind of disturbance might take place. If this regulatory power is going to be concerned with the larger area, then it has no place in this bill. I rather think that its place would be in the Territorial Lands Act, which is a statute of general application, and one that applies to the whole territory.

As Senator Prowse mentioned there are, for instance, drilling and production regulations passed by order in council under the Territorial Lands Act, of which section 16, to which he referred, is pretty clear. The only question that can be raised is one as to whether there is any authority under the Territorial Lands Act for regulations of that kind. I am sure that we are not going to enlarge the scope of the work that faces us here by conducting an inquiry into the Territorial Lands Act, but there is a regulation, and I shall read it in order to show you how far it goes.

These regulations were passed in June of 1961, and they are entitled "Canada Oil and Gas Drilling and Production Regulations". They are passed under the authority of the Territorial Lands Act. The caption of section 16 is: "Restauration of Surface" and the regulation reads:

> The licencee, permittee or lessee shall, as soon as whether or ground conditions permit, upon the final abandonment and completion of the plugging of any well or structure test hole, clear the area around the location of all refuse material, burn waste oil, drain and fill all excavations, remove concrete bases, machinery and materials other than the marker provided for in subsection (5) of section 15 and level the surface to leave the site as nearly as possible in the condition encountered when operations were commenced.

In the language of section 16 there is ample scope to enforce protection of the environment in the area in which these operations are being carried on. The only suggestion made is that there does not seem to be any authority for that regulation. I am wondering whether we are concerned with more than the fact that there is a regulation dealing with this and that it should be part of the terms of any licence or permit that may be granted or lease made to anybody who goes in to work there.

**Senator Haig:** You are suggesting that under these regulations the licencee or owner has to go in and clean up the site?

**The Chairman:** That is right.

**Senator Haig:** When the order permits?

**The Chairman:** That is right.

**Senator Haig:** Why do you need permission?

**The Chairman:** That is a question I will ask the witnesses in a moment.

The other question is whether there is enough in the bill as we now have it to enable regulations to pass providing for restoration of the surface and protection of the envi-

ronment. Looking at the regulations in section 12, we have first of all the general regulation:

> The Governor in Council may make regulations respecting the exploration and drilling for and the production and conservation, processing and transportation of oil and gas.

There is the general authority under the title "Production and Conservation". We go on with this language for a couple of pages. After saying:

> without restricting the generality of the foregoing.

there follows a whole enumeration of regulations that may be made. The major one is in the most general terms, looking to conservation.

I therefore suggest that in passing regulations the Governor in Council is not limited to the particular enumerations appearing on, for instance, pages 7 and 8 respecting the different things that might be done by regulation. The regulations are not limited to these specific things. There is also the general power to make regulations respecting exploration, drilling, production and so on. I suggest that under that heading restoration of the surface in protecting the environment would be one of the things that could be regulated within the general scope.

There is one other thing I will mention now and then leave it, after which it will be open for discussion. In section 13, under the heading "Waste", in section (2) it says:

> In this Act "waste", in addition to its ordinary meaning, means waste as understood in the oil and gas industry and in particular, but without limiting the generality of the foregoing, includes

and then we have the enumerations. One of the specific authorities for regulations concerning powers for conservation and powers for the prevention of waste within the meaning of this act is to be found in paragraph (1) on page 8. The word "waste" when used there is not only waste in the sense that it has or is understood in the oil and gas industry, but is waste as a generic term in its ordinary meaning. I therefore had a look at the Shorter Oxford English Dictionary, in which there are columns of definitions of waste.

For instance, one paragraph dealing with waste describes it as:

> Waste matter, refuse. Refuse matter; the useless by-products of any industrial process; material or manufactured articles so damaged as to be useless or unsaleable.

In another paragraph it means:

> To destroy, injure, damage (property); to cause to deteriorate in value. To consume, use up, wear away, exhaust by gradual loss; to consume or destroy.

The broadest sense of "waste" is covered by the authority to make these regulations as well as waste as understood in the oil and gas industry.

**Senator Prowse:** May I just point out that the basis of the concern expressed by Dr. Thompson would I assume from my own reading of the act, be that while you may be correct in your general discussion of "waste", where "waste" appears in this act it seems to support a legal argument to the effect the word "waste" as far as the oil and gas are concerned is in the underground reservoir, and I think...

**The Chairman:** I do not know how you can draw that conclusion.

**Senator Prowse:** Without burdening the committee with a long discussion, I would only say that I am not alone in drawing this conclusion. All I can do is to say that Dr. Thompson apparently came to the same conclusion, and I respect his special knowledge in this field.

**The Chairman:** But the voting on that matter is 50-50 is it not? It is one for and one against. Mr. Lewis, whom we know and who has appeared before us, does not hold the same view as Dr. Thompson.

**Senator Prowse:** We are getting his opinion second hand. There is a split opinion. When there is a split opinion between two men who are the co-authors of what is considered to be the definitive book on the subject, it would seem to me that if it is felt this is the bill in which this should be dealt with, then we would provide much more useful legislation if we specifically spell it out in another simple phrase, giving the Governor in Council clear authority without having to deduce the authority from a lot of other things, including the dictionary.

**The Chairman:** But he has the most general authority in the opening words of section 12.

**Senator Connolly (Ottawa West):** I wonder whether it might be helpful to Senator

Prowse, in view of the discussion now taking place, to refer to paragraph (p)—"p" as in "Patrick" . . .

**The Chairman:** A happy choice this week.

**Senator Connolly (Ottawa West):** Certainly this week. That might come fairly close to what is in the Canada Land Act.

**The Chairman:** Paragraph (p) reads:

> Prescribing minimum acceptable standards for the construction, alteration or use of any works, fittings, machinery, plant and appliances used for the development, production, transmission, distribution, measurement, storage or handling of any oil or gas;

**Senator Prowse:** I think that could probably be argued. I do not want to waste the time of the committee, because I think we can take any one of these things and, by giving it an extended meaning, come to the conclusion that perhaps it would be covered. All I am suggesting is that if it is felt desirable to have this power there we should spell it out while we have the bill in front of us.

**The Chairman:** I wonder if you would let us have your view on the opening authority in section 12 to pass regulations. That opening authority is:

> The Governor in Council may make regulations respecting the exploration and drilling for and the production.

In connection with the drilling, there is likely to be some damage to surfaces in the area of the drilling and in the movement of supplies in the area. Under the general authority to make regulations respecting exploration and drilling, would you agree that it would be within the limits of that language to prescribe the conditions in which the area may be used and what protections must be established, and what restoration must be carried out by those getting the authority to drill?

**Senator Prowse:** Having read it over, I would say that it would be quite possible to give a sound opinion backed by authorities, if you had time to go over the authorities, to the effect that this was to be limited to the technical things and what they were to use in exploration. In other words, do they have to put wells down so deep in exploration, how often do they have to do it, and what type of equipment do they use? In other words, things that are limited just to that. This is all I say. There is room for two opinions but the act is a better one if you do not have a split opinion.

**The Chairman:** Senator Giguère is next. I want to point this out. We have a provision in our Interpretation Act which we passed in 1967. Section 11 says:

> Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

**Senator Prowse:** Yes, but I do not think the courts will construe that so as to interfere with private rights. In other words, if I had a right to drill I do not think that that section in the Interpretation Act would mean that you could extend a provision in an act of limited application so as to take away my property or my rights or impose upon me additional burdens that were not . . .

**The Chairman:** How do you account for subparagraph (a) of section 12, which says that "The Governor in Council may make regulations . . . but without restricting the generality of the foregoing, may make regulations." Subparagraph (a) at the top of page 7 is as follows:

> Respecting the licensing, drilling, spacing, locating, completing, producing, equipping, suspending and abandoning of wells.

Are there any more words that could be put in there that would bring you closer to the restoration of surface or protection of the environment?

**Senator Prowse:** For the protection and restoration of the surface and the environment—it is as simple as that.

**Senator Cook:** Paragraph (m) covers that, prevention of waste within the act.

**The Chairman:** I am sorry, Senator Prowse, I do not think "waste" just refers to the reservoir or to the meaning of waste in the oil and gas industry, because the definition of "waste" says that in addition to the ordinary meaning it shall have the meaning that it has or is understood to have in the oil and gas industry. It has the broadest meaning, yet the regulations which may be passed under the heading of "waste" are for the prevention of waste within the meaning of the act. That means you go to the definition of waste in the act.

**Senator Prowse:** They are dealing with production and drilling. There is conservation too, but they are talking about oil and gas, not surface. We could discuss this all day and not get anywhere. The point is that rather than have to get a legal opinion as to whether something is included, if we think it should be included, all we need is a simple paragraph making that fact clear. Then you do not need legal opinions or legal arguments. It takes it out of the realm of speculation.

**The Chairman:** I want to make a reference to another section of the bill, section 14(1) which says:

> Where the Chief Conservation Officer on reasonable and probable grounds is of the opinion that waste, other than waste as defined in paragraph (f) or (g) or subsection (2) of section 13, is being committed, the Chief Conservation Officer may, subject to subsection (2) of this section, order that all operations giving rise to such waste cease until he is satisfied that the waste has stopped.

Section 13 deals with (f) respecting the designation of fields and pools and (g) as prescribing the methods to be used for the measure of oil and gas. It says other than waste as defined in those two paragraphs, why is authority under section 14 which deals with waste in the broadest sense?

**Senator Prowse:** Your interpretation may be correct. You could have from somebody else a completely opposite interpretation based on the statute itself and the interpretation statutes and all the other things involved when you go to argue a legal point. I am saying why leave things in the air so that you may have matters tied up in expensive litigation? Where it is desirable we should have this kind of control. All it takes is one simple paragraph and nobody has to wonder. Surely this is a simple proposition.

**Senator Connolly (Ottawa West):** Could I ask a question?

**The Chairman:** Who is wondering at the moment? I respect your opinion, but I think the point is well covered in the regulations. That is my own personal view.

**Senator Connolly (Ottawa West):** Earlier you quoted a regulation made under the authority of the Territorial Lands Act. Is that regulation still in existence? Will it continue to be in existence after this act is passed?

**Mr. Hunt:** That regulation is in existence now. It would be the intention to bring it under this act once it is endorsed.

**Senator Connolly (Ottawa West):** The Territorial Land Act would still continue to be in force.

**Mr. Hunt:** Yes.

**Senator Connolly (Ottawa West):** I wonder if this act has the restrictive application that Senator Prowse purports. Would he not think that in the general act it might be the Territorial Lands Act?

**Senator Prowse:** I would think it would be and maybe it should be covered in that act rather than in this one.

**Senator Connolly (Ottawa West):** I say that because of your opening statement. You say it applies not only to oil and gas, but to all other operations. . .

**Senator Prowse:** Somebody said that.

**Senator Connolly (Ottawa West):** On operations like mining and that might go on in a territory.

**Senator Prowse:** This is a Territorial Lands Act regulation. Professor Thompson is of the opinion that while those regulations are in effect they are being enforced and presumably being obeyed and that he does not find in the Territorial Lands Act adequate authority for those regulations. In other words, I interpret his opinion to be that if somebody wanted to challenge the regulations they could be set aside on the grounds that there is no authority in the act to pass that particular kind of regulation.

This is the basis of his concern and that he felt these regulations should properly be in this act. I think the department feels they have broader responsibilities beyond just this and whether they want to repeat the regulations in two acts or whether they . . .

**The Chairman:** What they may propose to accept is a matter of interest, that they would propose enacting these existing drilling and prevention regulations under the Territorial Lands Act under the authority that given in Bill S-29. It is a matter of interest that they have told us that this is what they propose to do in the first instance; but as to what the authority is under the Territorial Lands Act, I do not think that is any part of our consid-

eration, it is the authority for the Government to rescind the legislation of the kind we have before us.

**Senator Prowse:** If they want to have that kind of regulation under this act, I think we do everybody a favour, including the department, if we give them clear authority to do so, without having to have a legal opinion as to whether they may possibly have such a right.

**The Chairman:** If you are going to try to express the legislation, Senator Prowse, in a fashion that will leave no opportunity for legal opinion...

**Senator Prowse:** I do not believe one could get it as good as that, but I think that should be our aim.

**The Chairman:** That is a matter of very considerable importance and we would have to spend a lot of time on that. I suggest that perhaps we have threshed this back and forth with the departmental officers. By this time you know what the question is and from the point of view of the department they know also, as to the authority they believe they have under Part I of the regulations, to make regulations.

Have you considered this question of so-called restoration of surfaces and the protection of the environment?

**Mr. Hunt:** Yes, Mr. Chairman. Perhaps I should first underline that the department has become in the last few years more and more aware of the problem posed by the possibility of interfering, if you like, with the environment, particularly in the northern areas where we have a far more delicate balance, than we do have perhaps in the southern parts of Canada—and where the rate of regeneration of the surface, the growth, is much slower.

So, if I might express an opinion for the department, I think there will be no disagreement that there will have to be controls over the oil industry, in the way in which they pass over the surface and the way in which they, if you like, disturb the surface of the land and the environment generally.

I think our concern is also, as you have indicated, broader than the oil industry. We feel that whatever guidelines, whatever controls are introduced should of course apply to all activity in the north. I suppose one might say outside of the municipality, where we pretty well do disturb the surface environment. This would include of course most particularly the mining industry, and also the forestry industry and perhaps any other activities that come along. I think quite a lot of concern has been expressed recently over the possibility of damage in one of the provinces as a result of expensive open pit mining, and we are very much aware of this problem.

Our concern is really a matter of policy on which frankly I find it a little difficult to suggest anything to the committee at the moment. It is whether or not it would be preferable to have, shall I say, regulations providing for the protection of the environment made under the Territorial Lands Act that could be made, of course, to apply to anyone going on the surface of the territorial land for any purpose. I would think that perhaps the generality of the regulations under clause 12 of the present bill should enable us to extend, in part, the control of this act, if we felt it necessary. But I would be a little concerned lest we have too many authorizations in too many different places for the same thing and I wonder if the Territorial Lands Act and regulations made pursuant to it might not be the best place.

**The Chairman:** That would appear to be the more logical place, because that embraces the whole area and it embraces any and every matter of control to preserve and protect the environment.

This bill is just dealing with one particular phase, the oil and gas industry.

Is there any question you would like to ask the witness? We have certainly given the question a full airing. What is the feeling of the committee? Should we affirm our report as it was, or is there some other suggestion?

**Senator Prowse:** May I say that, having heard Mr. Hunt's statement, I am satisfied that he will bring this matter to the attention of the department. I find his statement completely satisfactory and I would therefore withdraw any objection I have raised. In other words, if there are any problems I am sure they will be taken care of.

**Senator Walker:** We could reaffirm the report.

**The Chairman:** That is, we could reaffirm the report which we originally presented.

**Senator Connolly (Ottawa West):** And the department will have what the witness has said.

**Hon. Senators:** Agreed.

**The Chairman:** Before we adjourn, we did have on our agenda for today further consideration of Bill S-17, the Investment Companies Act.

Mr Humphrys was to have his opportunity to deal with, as necessary, all these submissions which were made. He has sent a message indicating that he is not in a position to do so yet. I take it that, as there were a lot of submissions they would have to be digested, and then I expect he would have to discuss them with the department and, it may be, even with the minister.

Therefore, I am not surprised that he is not ready yet. There is no pressure on us to get this bill out today, tomorrow or next week. I think all we can do is let the matter stand.

I suggest to the committee that if I could have a small working committee that might be made up of Senator Connolly (Ottawa West) and Senator Flynn and any others you might feel you might want on the committee.

**Senator Desruisseaux:** I would like to be on that committee.

**The Chairman:** Very well. Also Senator Desruisseaux. Then we could study this bill and say, on the basis of the submissions which have been made, where the errors are that we think should be removed and the parts which may be should be rewritten or altered in some fashion.

I know that, from my point of view, there are certain areas that I say are the key areas and I would expect, in the light of the submissions, that there would be changes in those areas—and I think that probably even Mr. Humphrys expects that by now.

If that is the wish of the committee, we will not be losing time, because we will do some plotting and some planning and be ready, after we hear Mr. Humphrys, to deal in a realistic way with what we think the bill should be.

**Senator Haig:** Could this committee after consultation among yourselves, ask Mr. Humphrys to direct his attention to those matters in particular?

**The Chairman:** Yes. In other words, this small committee would develop a certain point of view in relation to some of the sections that need to be studied and the committee would be informed. In the first instance, Mr. Humphrys' attention would be directed to those, rather than to going through all the submissions—because we might have eliminated a lot that is in the submissions. I think that is a good course of action.

**Senator Connolly (Ottawa West):** Has this committee any authority, if it sets up this working committee and if it should decide to recommend to the plenary committee that they might need some advice, some outside help? If they wanted to go into that field, would they have any authority to do that?

**The Chairman:** You mean, have we authority to spend money to get advice?

**Senator Connolly (Ottawa West):** Yes. I understood the special committee on the Rules of the Senate did so.

**The Chairman:** We would have to go back to the Senate and get directions.

**Senator Connolly (Ottawa West):** You would have to go back?

**The Chairman:** Yes, and maybe we should. At least that does not mean that we will use it.

**Senator Connolly (Ottawa West):** No.

**The Law Clerk:** Two of the standing committees have already gone back to the Senate and got that—the Standing Senate Committee on Legal and Constitutional Affairs and I think the Standing Senate Committee on National Finance.

**The Chairman:** Well, is it the wish of the committee that we go back to the Senate and get that authority? It does not mean that we spend the money, but that we have the authority to do it. We need the advice, in any event, I think.

**Senator Haig:** You can bring it in your report this afternoon.

**The Chairman:** We will make a separate report of that. All right, that is all the business we have.

The committee adjourned until 2 p.m.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 20

WEDNESDAY, MARCH 19th, 1969

*Complete Proceedings on Bill C-138,*

Intituled:

"An Act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund Act".

WITNESSES:

*Department of Finance:* A. E. Hoskin, Assistant Deputy Minister; S. J. Handfield-Jones, Director, International Finance Division.

APPENDIX:

*International Monetary Fund:*

1. Directory.
2. Ratification re Special Drawing Rights.
3. Financial Statement.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

20220—1

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS
## OF THE
## STANDING SENATE COMMITTEE
## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 29

WEDNESDAY, MARCH 19th, 1969

***Complete Proceedings on Bill C-138,***

intituled:

"An Act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund Act".

WITNESSES:

*Department of Finance:* A. B. Hockin, Assistant Deputy Minister; S. J. Handfield-Jones, Director, International Finance Division.

APPENDIX:

*International Monetary Fund:*

1. Directory.
2. Ratification of Special Drawing Rights.
3. Financial Statement.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

20029—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gelinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 19th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator Langlois, for the second reading of the Bill C-138, intituled: "An Act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund 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 Hayden moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*



20029—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, March 19th, 1969.

(32)

At 4.45 p.m. the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill C-138, "An Act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Flynn, Gelinas, Giguere, Haig, Isnor, Kinley, Martin, Phillips (*Rigaud*), Welch and Willis. (17)

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

The following witnesses were heard:

*Department of Finance:*

A. B. Hockin, Assistant Deputy Minister.

S. J. Handfield-Jones, Director, International Finance Division.

It was *Agreed,* that the membership of the International Monetary Fund, a list of members who have ratified the Special Drawing Rights and the Financial Statement of the I.M.F., be printed as an Appendix to these proceedings.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 5.50 p.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, March 19th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-138, intituled: "An Act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund Act", has in obedience to the order of reference of March 19th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE
# EVIDENCE

**Ottawa, Wednesday, March 19, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-138, an act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund Act, met this day at 4.45 p.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I would call the meeting to order. We have before us for consideration Bill C-138 and Bill C-157, and for further consideration, section 5 of Bill C-155. I would suggest that we commence with Bill C-138, the Bretton Woods Agreements Act. Is it the view of the committee that the proceedings should be recorded?

**Senator Flynn:** Yes.

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

**The Chairman:** From the Department of Finance we have Mr. A. B. Hockin, Assistant Deputy Minister. With him are Mrs. S. J. Handfield-Jones and Mr. B. D. Lister.

I would suggest, subject to what the committee has to say, that Mr. Hockin might give us in outline form the substance of this bill which proposes certain changes in the Bretton Woods Agreements Act. Would you take over Mr. Hockin?

**Mr. A. B. Hockin (Assistant Deputy Minister, Deparment of Finance):** Thank you, Mr. Chairman. The bill itself is very complicated, as honourable senators will have seen from the document which has been distributed. The main idea is quite a simple one, however. It provides for the Parliamentary authority which Canada needs to accept the amendment to the articles of the agreement of the International Monetary Fund which empower it to create and allocate to its members Special Drawing Rights. These special drawing rights are essentially a new kind of international reserves. They will serve the same purpose as gold and reserve currencies, but they can be created deliberately by international action as and when they are needed. Thus for the first time it will be possible to exercise deliberate international control over the amount of international liquidity in the payment system. That is the essential purpose of this bill.

The method by which this is to be done was the subject of long and detailed negotiations beginning first of all with the group of ten, which is the ten most industrialized countries in the world, who had met together to provide supplementary resources to the International Monetary Fund and then was taken up by the study by the Executive Board of the International Monetary Fund itself, and then the two bodies came together for joint meetings, and finally the scheme was submitted to the governing body of the International Monetary Fund which consists of governors from each of the 108 member countries. In our case the governor is the Minister of Finance That body agreed in general on the changes which were proposed. They were subsequently worked out by the Executive Board of the International Monetary Fund and submitted to governments for their approval. The form of the approval is what we are now going through here, that is approval by parliaments of the details which have been negotiated.

**Senator Connolly (Ottawa West):** Would it throw you off too much if I just asked a question in the meantime? If you do not have the information now we can get it later. Can you tell us what are the countries composing the Group of Ten?

**Mr. Hockin:** Yes, the countries in that group are the United States, Canada, Japan, the United Kingdom, Germany, France, Italy, the Netherlands, Belgium and Sweden. Switzerland, although not a member of the International Monetary Fund, sits in on all the meetings and is very closely associated with the work of the group of Ten.

The bill before us does two things; it proposes amendments to the Bretton Woods Agreements Act which follow the changes negotiated in the way I have just outlined to you and also provides for an amendment to the Currency, Mint and Exchange Fund Act.

To deal with the first of these, the amendments to the Bretton Woods Agreements Act, we find, one, that it provides for additional sections to the Bretton Woods Agreements Act in which are spelled out the methods by which these new special drawing rights are to be created and dealt with within the framework of the International Monetary Fund, and secondly it provides amendments to the existing articles as they presently stand. I should say they are ancillary agreements flowing from the additions which have been made to separate the various accounts in the International Monetary Fund, and secondly to make some changes in the International Monetary Fund as it originally was to give effect to additional agreements that had been reached between the countries when they were negotiating the SDR scheme and to make special changes in other sections of the IMF necessitated by the changes in the SDR by a kind of parallel change in other sections of the IMF or to spell out such things that had not been sufficiently clear before or on which various countries had wished to make changes which had been agreed to as part of the package deal which included the SDR.

That is the basic nature of these amendments to the Bretton Woods Agreements Act.

**The Chairman:** I do not wish to interupt you, but could you take one the countries, Canada, and show how these changes would apply?

**Mr. Hockin:** Yes. In essence the new special drawing rights are the creation of what we tend to call unconditional liquidity. That is to say they form an account established at the IMF on agreement among the participating countries according to which each member country will be allocated on the books of the IMF so many units of the new special drawing rights.

These units of account will be available to that member country on demand, on the basis of balance of payments need, to enable it to buy from other countries their currencies which they can then use to meet their payments requirements. Just as we presently would use gold to buy, we will say, United States dollars, if we did not have enough to intervene in the exchange markets to support the value of the Canadian dollar, so we will be able to use the special drawing rights to purchase currencies which we need to intervene in the exchange markets to make our payments.

**The Chairman:** Do I understand you correctly that you have a unit bank or a bank of units and then you parcel them out on request, according to balance of payments need?

**Mr. Hockin:** They are parcelled out in accordance with quotas already negotiated in the International Monetary Fund. They are based not just on need but on the result of the application of a rather complicated formula which includes population, Gross National Product, trade—all that sort of thing.

**Senator Connolly (Ottawa West):** Contributions?

**Mr. Hockin:** The contributions flow from the amounts which are made...

**The Chairman:** No, that is not what Senator Connolly means. Do you arrive at the percentage of sharing in these units on the basis of the contributions a country has made?

**Mr. Hockin:** No, you cannot by mere quota in the IMF. You have to have it justified on the basis of this formula which is related to size of country, its economy and position in world trade, and what-have-you. When it achieves its quota it has to make a payment in, partly in the form of gold and partly in the form of its own currency in the form of non-negotiable demand notes, as it were, which can be used when the Fund needs to. That is the way your normal quota on the IMF works.

**Senator Aird:** I would like to ask Mr. Hockin how this is related to the weighted voting factor. What is Canada's percentage in the weighted voting factor?

**Mr. Hockin:** The voting is related directly to the size of the quota allocated in the IMF, and in our case it is 3.19 per cent of the total.

**Senator Aird:** What is the weighted voting factor for France?

**Mr. Hockin:** It is 4.21.

**Senator Aird:** What combination of European Common Market countries could come

to more than 15 per cent in order to defeat this 85 per cent control figure?

**Mr. Hockin:** It would really require all the Common Market countries to do so.

**Senator Phillips (Rigaud):** All the countries, including Germany?

**Mr. Hockin:** All the Common Market countries. You might be able to get by with one of the small countries.

**Senator Aird:** Mr. Chairman, I think it would be useful if we had a list of the countries as it relates to this veto power.

**Mr. Hockin:** Mr. Handfield-Jones tells me, with regard to the Common Market countries, that you would have to have France, Germany, Italy and two of the smaller countries operating together to exercise the veto. They would require that number to exceed the 15 per cent which would give them the veto.

**Senator Aird:** What is the position of this legislation before the parliament of France?

**Mr. Hockin:** They have not moved in France.

**Senator Aird:** What is the position as it relates to Germany?

**Mr. Hockin:** Germany is seen coming close to it, but I do not believe they have yet started their implementation, have they?

**Mr. S. J. Handfield-Jones, Department of Finance:** Mr. Chairman, the latest information we have is that the bill to provide authority for ratification by Germany has passed the German Parliament, and it now awaits signature by the president, but that has been held up by the presidential elections. However, the parliamentary proceedings have been completed.

**Senator Aird:** Has it passed any of the parliaments of the European Common Market countries?

**Mr. Handfield-Jones:** It has not yet been recognized by any of the Common Market countries.

**Mr. Hockin:** The lists that are provided periodically do not include any of the Common Market countries, but they do include the United States and the United Kingdom.

**Senator Connolly (Ottawa West):** What are their percentages? Have you that information handy?

**Mr. Hockin:** The United States is 21.61 per cent, and the United Kingdom is 10.27 per cent. Australia has already ratified it. A number of African and Latin American countries have also ratified it, as has Norway, Sweden, New Zealand, India, Israel, Indonesia, Iceland—we can provide you with a list, if you like, senator.

**Senator Aird:** My understanding is that 37 countries have signed. How does that affect the weighted voting power.

**Mr. Hockin:** We now have 52.85 per cent of the required votes.

**The Chairman:** It would be a good idea, I think, to have this list of the various countries that have ratified the agreement so far, and from which the witness has been reading, printed as part of our proceedings. There was also another list that we mentioned earlier concerning the voting.

**Senator Connolly (Ottawa West):** The weighted voting power.

**Mr. Hockin:** Yes, we can give you a copy of that.

**Senator Aird:** I have one last question, Mr. Chairman. Do you really think, Mr. Hockin, that the United States loses its veto?

**Mr. Hockin:** No, it does not lose its veto. It shares its veto with the Common Market countries.

**Senator Aird:** I just wanted that on the record.

**The Chairman:** Do you wish to continue?

**Senator Connolly (Ottawa West):** It does not lose its veto because it has 21.61 per cent.

**The Chairman:** But there are other combinations that may affect that.

**Senator Connolly (Ottawa West):** That is right.

**Mr. Hockin:** The other section of the bill to which I would refer is that which amends the Currency, Mint and Exchange Fund Act. This provides the reciprocal to the allocation to Canada of the new special drawing rights that will be available to us when we need them to buy the currencies of other countries. The reciprocity occurs in that we must undertake to accept from other countries their holdings of special drawing rights in return for our currency or holdings, shall we say, of United

States dollars, to enable them to get currencies which they need to intervene in the exchange markets when they are in difficulty. The amendments to the Currency, Mint and Exchange Fund Act provide the authority for us to accept and hold the special drawing rights which we will be allocated in the original allocation, and which we may get from other countries in return for our holdings of currencies.

**The Chairman:** I suppose the need in a particular country for our currency would not necessarily be related to the balance of payments as between that country and our country.

**Mr. Hockin:** No, not at all.

**The Chairman:** So we may be contributing to facilitate international trade relations and adjust the balance of payments between two or three other countries?

**Mr. Hockin:** Yes.

**The Chairman:** Where do we come out at the end of that?

**Mr. Hockin:** There are limitations upon the size of the holdings of SDR's that we must accept from other countries, and these are multiples of the original allocation. For example, if we are allocated 100 units we could end up having to hold 300 units. We could, if we wished, go beyond that.

**The Chairman:** What is the machinery, if any, for cashing in on these units when we have taken them?

**Mr. Hockin:** We can use them only for our own balance of payment needs. However, there are requirements for countries, as they improve their balance of payments position, to restore their holdings, and in that way they will be buying them back from us, as it were, in the process. There is a continual process of countries drawing currency from others in return for SDRs and then either buying their own currencies drawn by somebody else and getting SDRs or buying back the SDRs in response to the requirements of the scheme.

**The Chairman:** If Canada has a substantial number of SDRs and does not have a balance of payments need, what does it do with them?

**Mr. Hockin:** Other countries would be expecting at various times, as their balance of payments position improves, to seek to re-acquire SDRs, and if we had a very high holding they would be directed to us by the IMF in the management of the whole account, so countries would come to us to re-acquire SDRs.

**The Chairman:** Is that the only way in which we can shed them, if some other country wishes to re-acquire them or if we use them in connection with our own balance of payments? Is there any other way?

**Mr. Hockin:** You mean any way in which we can say, "We have got too many of them. We do not want so many"?

**The Chairman:** That is right.

**Mr. Hockin:** We cannot be asked to take more than a certain number; that is the limit of two over one. We may accept more than that if we wish, but we cannot be forced to accept. Up to that moment it will depend upon the workings of these agreements for re-acquiring the units by countries whose balance of payments position has improved, or by drawings by countries, by our drawings of other countries by the sale of SDRs.

**The Chairman:** Let us work on the assumption that re-acquiring by other countries because they improve their balance of payments does not work immediately. Canada may have increased her holdings of SDRs, and then I would take it she just has to sit with them or use them in connection with her own balance of payments as the situation occurs?

**Mr. Hockin:** Essentially that is the case. We have tried to make the holding of them as attractive as possible. They carry a rate of interest. They have, of course, a gold value guarantee, so they have some of the characteristics of both gold and reserve currencies.

**The Chairman:** All I am thinking of is that, even if they have an interest rate and are gold backed to some extent, if my access to a place where I can convert them is limited I am just sitting there with them and drawing interest.

**Mr. Hockin:** You are sitting there and drawing interest, but knowing you can cash them in whenever you need to. You cannot change the composition. You cannot just, as it were, deal in SDRs because you want to change the composition of your reserves. That is in the rules of the game.

**Senator Connolly (Ottawa West):** Suppose you bought SDRs because you were in imbalance with the United States and their balance of payments problem was serious, but it was United States dollars you needed and you were sitting there with this large amount of SDRs. What would the outcome be? I suppose you would be forced to take a credit in some other foreign currency.

**Mr. Hockin:** Which would then be converted at our request into United States dollars.

**Senator Connolly (Ottawa West):** Providing that other foreign countries held a surplus of US dollars.

**Mr. Hockin:** No, we might be able to use this system to buy in the market place through the International Monetary Fund. The currencies which we could buy must be convertible currencies so that we can in fact use them, either directly or indirectly. If we do not have dealings in our own currency exchange—we will say Portuguese escudos and we drew Portuguese escudos—we would make arrangements either with the Portuguese exchange authorities or through the International Monetary Fund to transfer those escudos into US dollars which we could use in our exchange markets.

**Senator Connolly (Ottawa West):** Would you get those US dollars from the Portuguese or would you get them from the International Monetary Fund, or would you acquire them in the market?

**Mr. Hockin:** It would depend on the circumstances at the time as to whether they had US dollars and they were prepared to sell to us, so that we would always be assured of getting the currencies we needed.

**Senator Connolly (Ottawa West):** I see. You could give us that assurance?

**Mr. Hockin:** Yes.

**Senator Burchill:** Would it affect the SDR to strengthen the weak currencies at the time of a crisis?

**Mr. Hockin:** It would have the effect of making available to them quick liquidity which they could use to intervene in the currency market to support the value of their own currency.

**Senator Carter:** Is that gold backing you are referring to? Does that mean you cannot convert them into gold?

**Mr. Hockin:** Excuse me, I said they were gold value guaranteed. That is a short-hand way of saying that the value of those units in terms of gold was assured and that one unit of gold equals so much SDRs and that would be maintained. It is a way of making sure that the changes in par values of other currencies would not affect the value of the SDRs so that they have the same value in terms of other countries that gold had at the beginning of the exercise.

**Senator Phillips (Rigaud):** The SDR really means our own gold standard. Is not that the fact?

**Mr. Hockin:** They have the gold used as a standard of accounting to maintain the value of the SDRs.

**Senator Phillips (Rigaud):** To the layman, that means it puts the SDR on those standards?

**Senator Connolly (Ottawa West):** Further to the layman's position, really what the scheme is and correct me if I am wrong, is a system which provides certain credits for countries who are in difficulty because of international payments and under this scheme they have the right to resort to these credits to tide them over during a time of crisis?

**Mr. Hockin:** That is correct, senator.

**Senator Carter:** When you started out you spoke by saying that this is a device to give more international control of international liquidity, but is not it also a device to sort of get some control or speculation in gold?

**Mr. Hockin:** To the extent that gold speculation arises from the concern around the world, that the present level of reserves available to countries is inadequate and that somehow they are going to have to increase the amount. They feel it is likely to come about through an increase in the price of gold. This is right, because to the extent that we say to them, here is a substitute or here is a supplement so that you do not have to rely upon increases and the volume of gold held in international reserves. You do not have to rely upon the deficits of the reserve currency countries to supply US dollars or sterling to other countries to hold as their reserves. You can create this new unit of account as it were and to the extent that this reassures them that the international system is going to be able to operate smoothly and provide the liquidity that countries feel they need. Of

course then they will be less concerned about the gold problem and this should have the side effect of reducing speculation in gold.

**Senator Isnor:** This fund has been in operation, I think, for 25 years?

**Mr. Hockin:** Yes, the International Monetary Fund has been in operation for 25 years.

**Senator Isnor:** Do they present an annual report?

**Mr. Hockin:** They do, senator. There is an annual meeting of the International Monetary Fund, to which all the governors go, including the Minister of Finance. At that annual meeting they discuss, or there is available for discussion, their annual report. We have a copy here. I am sure there are copies in the library, but we can make sure there are. If you would like a copy, we can make it available.

**Senator Isnor:** I think it would be nice to have it on record, last year's report.

**The Chairman:** This is the 1968 annual report? You can file a copy of that?

**Mr. Hockin:** Certainly.

**Senator Isnor:** I am not asking for the whole report, just the balance sheet.

**Mr. Hockin:** You want just the balance sheet?

**Senator Isnor:** Yes.

**Mr. Hockin:** We can give that

**Senator Connolly (Ottawa West):** And have it put on the record?

**The Chairman:** Yes.

**Senator Isnor:** I think you said the interest rate was 1½ per cent, for bond?

**Mr. Hockin:** That is right, the holdings.

**Senator Isnor:** What is the charge to borrowing countries, what is the rate?

**Mr. Hockin:** It is the same rate both ways, exactly, senator.

**Senator Isnor:** It is 1½ both ways?

**Mr. Hockin:** It is 1½, both ways.

**Senator Phillips (Rigaud):** On page 11 of the bill, where you have the unit of value, in clause 11, it says:

> The unit of value of special drawing rights shall be equivalent to 0.888 671 gram of fine gold.

For the uninitiated, if there were a breakdown in the two tier system in the price of gold, have you provided for the necessary flexibility as to how to determine the dollar value of the unit.

**Mr. Hockin:** That is the present gold content of the United States dollar and if there were a change in the United States dollar price of gold there would be a change in the rate between United States dollars and the SDR. It would follow gold.

**Senator Phillips (Rigaud):** I appreciate that, but is there flexibility at present in the bill, to provide for that adjustment?

**Mr. Hockin:** No.

**Senator Phillips (Rigaud):** It would flow?

**Mr. Hockin:** Yes, it would flow exactly with the price of gold, senator. That is the point of the gold value guarantee.

**Senator Phillips (Rigaud):** I see that. It is the value. The unit value is equivalent to so much fine gold.

**Mr. Hockin:** That is right.

**Senator Phillips (Rigaud):** We know the price of so much fine gold in terms of the United States dollar. I see. If the United States dollar value changes, the unit value changes.

**Senator Connolly (Ottawa West):** In view of the fact—and this arises out of the question by Senator Phillips (Rigaud)—that you have the present value of the U.S. dollar there in gold terms in the legislatiotn, if there is a change in that, does this mean that that section of the bill would have to be amended by another bill?

**Mr. Hockin:** No, senator. It would mean that the relationship between thet U.S. dollar and the SDR, as it were—you could say the exchange rate between those two—would be affected exactly in the same way as the relationship between the U.S. dollar and gold would be affected.

**The Chairman:** I presume the variations in exchange would be reflected in what this constant quantity of gold would sell for?

**Mr. Hockin:** Yes.

**The Chairman:** Senator Isnor. I think we interrupted you in your questioning.

**Senator Isnor:** I have one other question, in connection with the other one. Could we have a list of the countries involved, showing the amounts, over the past three years? Would that be possible?

**Mr. Hockin:** We can provide that for you senator, but we do not have it here.

**The Chairman:** Actually, I thought perhaps the balance sheet would be printed as an appendix as well as this list with the various countries, the status of acceptances and also what you have just asked for, senator.

**Senator Isnor:** It was suggested by Senator Connolly (Ottawa West) that it might be made for the last three years.

**Mr. Hockin:** That is fine, and that will be countries and amounts.

**The Chairman:** Now, would you like to pick up where you left off or have we made you lose your place?

**Mr. Hockin:** I think I pretty well finished the summary, Mr. Chairman. I really had reached the place where I said that the amendment to the Currency, Mint and Exchange Fund Act really provides the authority where Canada can accept and hold these SDR's, which is the authority given to us to fulfill our undertakings in the agreements embodied in the act.

**The Chairman:** That is just on the last page of the bill.

**Mr. Hockin:** That is right.

**Senator Carter:** Is it correct to assume that we are bound by the agreements under this act to accept up to the 200? We do not have any choice in that, but have committed ourselves to accept up to 200 units in addition to our own allocations?

**Mr. Hockin:** That is right.

**Senator Pearson:** Is there a set term of repayment of borrowings?

**Mr. Hockin:** In the agreements there is a plan by which countries, as it were, can only use SDRs to a certain amount on average over a certain number of years and that they must restore their holdings in this way. So that there is in fact a series of rules which affect the way in which countries have to, as you put it, repay.

**Senator Pearson:** Suppose they cannot meet these terms?

**Mr. Hockin:** Well, I think, if a country were in that position, you would probably find that it was having to use the other resources of the IMF, the conditional drawing, and in those circumstances they probably would be dealt with in that way.

**The Chairman:** For instance, you may find that a country is in difficulties and in need of drawing for purposes of balance of payments. It may be using, internally, certain mechanics for the purpose of improving its trade position to the detriment of the other people who may be part of the contributing force. What supervision is there of the conduct of a country which makes these drawings for the purpose of balance of payments?

**Mr. Hockin:** In terms of the broad generality of the membership, Mr. Chairman, the International Monetary Fund has regular annual consultations with each member in which they go, in considerable detail, into the internal policies of the country, having particular regard for those policies which bear on the well-being of other countries. They comment on them. They comment in secret. Those comments are not made public. They are frank; they are full. We believe that they have considerable influence on the conduct of those countries.

If, of course, the country has made a drawing under the other part of the IMF, then this is the conditional part of the fund's credit, and in return for the drawing which it makes over and above the first, what we call the gold tranche, the country may be asked to accept certain conditions which bear upon their own conduct, and this is another way in which we all have some influence on each other's behaviour. Then, within the group of ten countries, there is a much more frequent consultation, though not necessarily through the meetings of the group of ten as an organization so-called the Group of Ten Countries. But the same countries belong to the working party on the balance of payments under the umbrella of the OECD, Paris, and meetings of that group take place every five, six or seven weeks, and...

**Senator Benidickson:** Is Canada a member of that group?

**Mr. Hockin:** Yes, Senator Benidickson, Canada is a member of that group, and at those meetings there is opportunity for very

thorough exchange between representatives coming from the home capitals of each of those countries, and once again there is an opportunity here for us to influence the actions of others in their own domestic economies and fiscal and monetary policies and so on, so that we are achieving through this consultative means more influence over the countries which themselves can effect our economies through our balance of payment relations with them.

**The Chairman:** Is there a general underlying agreement to which various countries have subscribed as a term of which they would implement their undertaking by parliamentary action? In other words, I am looking for the source from which the contents of this bill came. It must have been put in some statement form and maybe in some agreement form. I was wondering whether it went along somewhat in the way in which the international agreement on trade and tariff went where there is agreement and common understanding and then there is parliamentary implementation.

**Mr. Hockin:** The actual text you find in here, senator, comes from the proposed amendment of the articles of agreement which were agreed upon by all the countries which met together at the IMF annual meeting.

**The Chairman:** When you say all countries that met, how many countries would that have been? Was everybody represented?

**Mr. Hockin:** There are 108 member countries and while they did not all agree, a sufficient majority did so that they were able to give instructions to the Executive Board to work out all the detailed amendments, which they did, and proposed them in a report to the governors and then sent them back to countries in this same detail so that they could take whatever legislative action was necessary to give effect to this agreement.

**The Chairman:** The agreement really represents the sum total of the effort of the majority of the members of the fund?

**Mr. Hockin:** That's right.

**Senator Connolly (Ottawa West):** In other words, all the other countries who are signatories to the agreement will be passing the same legislation that we are asked to pass.

**The Chairman:** I did not understand that anybody had signed anything.

**Mr. Hockin:** Nobody signed anything.

**Senator Connolly (Ottawa West):** Well then I withdraw what I said about signatories.

**Mr. Hockin:** What they are doing is when they have passed the legislation or whatever is necessary in their own system they will be in a position to ratify the agreement by depositing their signatures.

**Senator Connolly (Ottawa West):** Presumably it will be at least substantially if not actually in the form of the legislation we have before us in all the other countries?

**Mr. Hockin:** All the operative parts must be exactly the same because it is a negotiated agreement.

**Senator Flynn:** Equivalent to ratifying a treaty?

**Mr. Hockin:** This is right.

**Senator Connolly (Ottawa West):** Except that it has not been signed.

Now I come back to the domestic arrangements which are needed to correct any country's exchange fund difficulties. Now this fairly often happens, and we have had it in this country where to preserve our position and save foreign exchange, we have enacted legislation prohibiting the import of certain products from certain countries. That, of course, is all to the good, perhaps, but in the light of these new arrangements with the special drawing rights available under the IMF, is that process likely to continue to the same extent as it has in the past, or will resort rather be had to the special drawing rights, if the country in difficulty has sufficient drawing rights to correct its problem?

**Mr. Hockin:** Senator, I think that the direction that we have all been moving in is that we have attempted to improve the process by which a country's domestic policies, taken altogether, will restore equilibrium in its balance of payments, hopefully without having to resort to controls on either imports or movements of capital. This is the objective.

The problem there is that it takes time for domestic policy measures to show their effects on the balance of payments. The smaller a country's reserves are, the less time it has to have its domestic policy changes show effect before it runs out of reserves.

The purpose of adding liquidity to the system is to give it more time to do so. There are two ways in which we do it. One of them

is by allowing them to hold more unconditional reserves, reserves which they can use as they see fit, when they see fit. We have no control over the country's holdings of gold and reserve currencies; that is up to them. We do now hope to provide a supplement in the form of these SDR's, which will be, in their minds, equivalent to holdings of gold and reserve currencies which they know are there and they can show in their reserves and can spend when they need to. We also think they will go on requiring conditional credit from the IMF and other things in order to give them the time necessary. The more they need, the more they will have to rely on the conditional credit from the IMF, and this will give us a chance to lay down the kind of conditions that are likely to bring back that balance of payments equilibrium. But the hope is that countries will try to improve their own balance of payments through appropriate domestic policy changes, and rely as little as possible on the imposition of these controls on the movement of goods and capital, which we had in such proliferation immediately after the war.

**Senator Connolly (Ottawa West):** I am sorry to hear you say that, and I will tell you why. We might, for example, in this country find ourselves in difficulty because we are short of U.S. dollars, and we might have a great demand, as we do in certain seasons of the year, for tropical products, not necessarily that have to be brought in from the States but that could be brought in from some underdeveloped countries.

It seems to me it would be highly preferable for us, if it were a temporary situation, not to restrict the importation of those products, and thereby try to correct the situation by domestic action, but rather to apply to the fund to use the SDR's, and to continue our trade, particularly with these countries that need to sell their tropical products.

**The Chairman:** And which have a need for exchange.

**Mr. Hockin:** Well, senator, I think we would not likely be in an overall balance of payments difficulty without being in such a situation that we would require to have internal measures taken. For example, we could well have, as we traditionally have, a considerable balance of payments deficit with the United States, but at the same time have a surplus with other countries, the totality of which leaves us in a viable position, taking into account our current account plus movements of capital, so that we do not think of balancing our trade or our balance of payments relationships with individual countries. We look at it in the aggregate when we are considering whether we are in balance of payments disequilibrium or not, or whether we are in averall balance of payments trouble or not. All I am saying is that instead of trying to deal with that as countries used to deal with it by quickly putting on exchange controls and import restrictions, we are trying to move to the place where they do not have to do that; to the place where, in fact, they can go on accepting imports from other countries without putting on these controls, and they can deal with their problems by appropriate changes in their fiscal and monetary policies which will restore equilibrium to their overall position. The role which both the conditional credit and the SDR's play in this is to give them the time in which to enable them hopefully to correct the situation without having to put on restrictions.

**The Chairman:** Mr. Hockin, I was wondering if you have with you what I would call your informed crystal ball, and whether you can project any estimate as to when, if at all, you are likely to have this bill the effective policy of the international monetary fund? In other words, I am asking you how soon, if at all, do you think the required number of countries will pass this legislation?

**Mr. Hockin:** It was hoped, Mr. Chairman, that by the summer sufficient countries would have ratified the agreement to bring the scheme into effect, as it were. That does not necessarily mean that you would immediately have the creation of SDR's, because that is the second stage, or the so-called activation stage. Of course, you cannot contemplate that until you know that the thing is in place. But, we are giving advance thinking to the problem of activation—as to when it should be activated, and how much should be activated, as it were—but we do not know when this will be. I would hope that by the end of the year there will be some more concrete action.

**Senator Willis:** Mr. Chairman, you asked a question that anticipated mine. I should like to ask you, Mr. Hockin, how many countries have passed the required legislation to date.

**The Chairman:** We filed a statement before you arrived, Senator Willis, and it will be part of today's record.

**Mr. Hockin:** Roughly, 37 countries have signed, and they represent 52.85 per cent of the weighted voting power.

**Senator Willis:** That is the same as on March 10. The Leader of the Government gave us that figure.

**The Chairman:** Yes, there has been no change. Are there any other questions?

**Senator Connolly (Ottawa West):** Perhaps this is not completely related to that, but I should like to ask Mr. Hockin this. In the estimates of the Department of Finance, under loans, investments and advances, they carry an item for the amounts you are required to pay into the IMF.

**Mr. Hockin:** That authority came through our Bretton Woods Act itself.

**Senator Connolly (Ottawa West):** That was done years back?

**Mr. Hockin:** That is right. It is a continuing authority. It is one we do not need to have every year in the form of the Estimates. It is statutory.

**Senator Connolly (Ottawa West):** It was made at the time?

**Mr. Hockin:** That is right.

**Senator Connolly (Ottawa West):** And it continues?

**Mr. Hockin:** If there is a change in our quota we have to go back and amend. There was an amendment of our quota and an amendment to the Bretton Woods Agreement Act to cover that in 1966.

**The Chairman:** Whilst that may be a statutory authority and therefore does not need to be renewed each year, there are no assurances, because Parliament in any year could change it.

**Mr. Hockin:** That is right, of course Parliament could change it. They could, as it were, change our relationship to the IMF; they could suggest that we withdraw.

**Senator Carter:** Does the agreement that has already been finalized specify the total number of SDRs or the total value? Is there any limit?

**Mr. Hockin:** No, it does not. That question is left over for the activation stage, and it requires a high proportion of the countries to agree on the activation, including the size of the activation, the amount of the new units which will be created. That has to be done periodically. The plan is that it would be for, say, five years, and there would be a new agreement amongst all the participants on how much was to be created.

**Senator Carter:** So this agreement gives them authority to create any indefinite amount at the moment?

**Mr. Hockin:** That is right. There is no amount set in the legislation.

**Senator Carter:** Not any particular number of units?

**Mr. Hockin:** No.

**Senator Carter:** Let us say for the sake of argument that they decide to create five billion units. Would that be the same as five billion units worth of gold?

**Mr. Hockin:** It would certainly have the effect of adding a very large amount of liquidity to each country's balance of payments reserves. It is hard to say whether it would be exactly the same as using five billion worth of gold, but it would add five billion of a high value to countries holding the reserves, and they would respond accordingly.

**Senator Carter:** But these SDRs do not fluctuate in value?

**Mr. Hockin:** They are related to gold. If you say one unit of SDRs is the same as a unit of gold, that is the case. If you are concerned about the danger that too much may be created, I think you will be reassured to learn that the decision for activation must be taken by this high weight of gold. Given the rather small number that could veto—which we were discussing earlier—it is unlikely that you would in fact have agreement reached for a creation that would be excessive in relation to the needs of the system.

**Senator Carter:** Can you look at it this way? The amount of gold being produced in the world is not sufficient for the world's trade, and the world's trade is expanding much faster than gold production. I understand that one of the purposes is to fill the gap so if you project that into the future there will come a time when you will not need gold at all. Is this a step to get away from gold?

**Mr. Hockin:** I think that it is difficult to foresee all the way down the road, senator,

but certainly in the minds of the people who were discussing this, it was recognized that if the present rate of gold production goes on or if it should decline as it has in some places and if you do not have an excessive amount of deficits of the reserve of currency countries so that you do not have excessive amounts of their currencies being held by other countries in their reserves—that will take a long time for it to happen. The SDR's will really come to be the predominant feature in countries exchanging reserves. They gradually achieve more importance. They start out being a very small proportion and presumably will end up being a very large proportion. Whether that means that countries will no longer be interested in holding any gold or not you simply cannot foresee.

**Senator Carter:** I was going to follow this one step further. Economists did agree on the value of this device. Some think it is only a temporary measure. Under the de Galle business was very much gained? How do you regard this? Do you regard this as a temporary step to just gain time in order to work up something better or is this something that is going to grow and grow and eventually replace gold as an exchange commodity?

**The Chairman:** If you do away with the gold what is the value and how would the SDR's get the value? What do you tie them to?

**Mr. Hockin:** To answer Senator Carter's question first, the proponents of this scheme have never claimed that it answered all the problems in the international payments scheme system by itself. It adjusts itself to a particular problem that was recognized four or five years ago and that was the expected failure of new gold production and accretions from other parts of the world to go sufficiently in order to provide the volume of reserves which countries felt they were going to need. This was paralleled by the fact that although at that time the deficits of the reserve currency countries were very large and were creating vast amounts of reserve currencies for others to hold.

We hold US dollars you see and most other countries do. Every deficit of the US produces more dollars than we can hold, but the US and the United Kingdom had both declared that they were not going to go on allowing their economists to run a balance of payments deficits of the size they had, therefore we had a warning that they were not going to have new accretions of reserve currency as we had been having them at that time. We foresaw that there just would not be enough reserves coming from these two main sources so the whole intent of this scheme was just to look after that problem, the problem of the amount of reserves in the system, because we feared that if there were not enough reserves, countries would respond too quickly I think along the lines that Senator Connolly was worrying about. If they got into a balance of payments trouble they would try right away to stop it quickly, and they might take much more drastic action and the adjustment that the trading partners would have to make would be very severe. So the intent was to make sure there was enough liquidity in the system, that countries could take their time to make their adjustments and other countries could adjust to their improvement when they went along. But it did not do anything more than that. It was designed just to make sure there was enough liquidity.

**Senator Carter:** That was the point I was trying to get at, because I remember that the Social Creditors had a theory that if you created just enough purchasing power to supply the goods, everything would be in balance and be perfect. We are talking about a senior official like that, somebody who is going to determine exactly the exact amount of the SDR which will be available.

**The Chairman:** You think this is a scheme of international social credit, senator?

**Mr. Hockin:** It might be a helpful analogy.

**Senator Connolly (Ottawa West):** In a sense, it is not an inapt description—without the political connotation.

**Mr. Hockin:** It might be more appropriate to think of the analogy in the way in which a national central bank tries to make sure there is enough liquidity in the domestic monetary reserve. It is more like that.

**Senator Phillips (Rigaud):** I do subscribe to that. It is like a central bank affecting the liquidity of the commercial banks.

**Mr. Hockin:** Yes.

**Senator Desruisseaux:** As to the role which Canada plays in this projected agreement that we have, we play a role, are we satisfied that we have carried on in getting what we want out of it?

**Mr. Hockin:** You are dealing with a couple of prejudiced people here, senator, because I was the vice-chairman of the group of ten which worked on this, and Mr. Handfield-Jones was at that time the Canadian executive director in the International Monetary Fund, so we both were very deeply involved in it. I think I can speak for both of us on this, that although there were some features of this we would sooner have seen in a different form, and there were some features which we would like to have seen in it that do not appear at all, by and large, we could with a clear conscience say that we think this is worthy of acceptance. You never get exactly what you want and you have to decide whether you are getting enough of what you want to make it worthwhile, and I think we were feeling that we were getting what we required.

**Senator Carter:** I have one more question. Also, I remember that when I was questioning earlier, you raised a question yourself, Mr. Chairman, which I do not think was answered. I would like to hear the answer to it.

**Senator Connolly (Ottawa West):** Have you got the question?

**Senator Carter:** I do not have the question. I do not quite remember what it was. I remember that you raised it, Mr. Chairman, and if you would do some rethinking of it, I would put my question now.

**The Chairman:** No, at this stage I am not doing any more rethinking. Either anything I asked has been answered, or it was not worthwhile answering. You say you have one more question?

**Senator Carter:** Yes. Mr. Hockin referred to these conditional loans?

**Mr. Hockin:** Conditional credits.

**Senator Carter:** Yes. That brought me back to 1957, when Canada had to get, I presume, some of these additional credits. I think this was a kind of transaction in which Canada entered into, that our reserves were pegged to certain figures and we were allowed to go only a small margin above or a small margin below. Is that the kind of conditions that the IMF attaches?

**Mr. Hockin:** No, senator. I think you may be confusing this with the standard undertaking which all members of the IMF give, and that is that they will not allow the value of their currency to fluctuate more than 1 per cent on either side of a declared parity. That is a condition of the IMF which all countries have to meet. As a country goes in, as it were, to borrow in order to get additional credit, depending upon the volume in relation to its quota, the fund may request it to develop a scheme to bring its balance of payments back into equilibrium, It may be just as simple as that. It may suggest to it that its budgetary position has been inappropriate or that its monetary policy has been too espansive and that, therefore, it should contract it or that it should slow down the rate of accretion. Depending upon the size of the credit in relation to the country's quota, these conditions become more specific and more onerous because, usually, if the country has to draw that much, it is in bad shape and therefore needs to have rather tighter conditions attached to the credit.

**Senator Carter:** Is it not a fact that Canada's reserve was set between fixed limits?

**Mr. Hockin:** No, senator. Well, for a period under agreement with the United States related to our balance of payments arrangement, but even on that score now in the exchange of letters between the Minister of Finance and the then Secretary of the Treasury it was agreed that this no longer had to be expressed in quantitative terms.

**The Chairman:** Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** Thank you very much, Mr. Hockin.

The committee adjourned.

INTERNATIONAL
MONETARY
FUND

# *Directory*

Members
Quotas
Governors
Voting Power
Executive Board
Officers

WASHINGTON, D.C.
March 1, 1969

20029—2½

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## MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

| Member | QUOTA Amount (*Millions of U.S. dollars*) | QUOTA Per Cent of Total | Governor *Alternate* | VOTES Number[1] | VOTES Per Cent of Total |
|---|---|---|---|---|---|
| Afghanistan | 29.00 | 0.14 | Habibullah Mali Achaczai<br>*G. Faruq Achikzad* | 540 | 0.23 |
| Algeria | 69.00 | 0.33 | Seghir Mostefai<br>*Yahia Khellif* | 940 | 0.39 |
| Argentina | 350.00 | 1.65 | Adalbert Krieger Vasena<br>*Pedro Eduardo Real* | 3,750 | 1.56 |
| Australia | 500.00 | 2.36 | William McMahon<br>*Sir Richard Randall* | 5,250 | 2.19 |
| Austria | 175.00 | 0.82 | Wolfgang Schmitz<br>*Hans Kloss* | 2,000 | 0.83 |
| Belgium | 422.00 | 1.99 | Hubert Ansiaux<br>*M. D'Haeze* | 4,470 | 1.86 |
| Bolivia | 29.00 | 0.14 | Jorge Jordán Ferrufino<br>*Wenceslao Alba Quiróz* | 540 | 0.23 |
| Botswana | 3.00 | 0.01 | M. K. Segokgo<br>*S. W. Assael* | 280 | 0.12 |
| Brazil | 350.00 | 1.65 | Antonio Delfim Netto<br>*Ernane Galvêas* | 3,750 | 1.56 |
| Burma | 48.00 | 0.23 | Kyaw Nyein<br>*Tin Tun* | 730 | 0.30 |
| Burundi | 15.00 | 0.07 | Joseph Hicuburundi<br>*Ferdinand Bitariho* | 400 | 0.17 |
| Cameroon | 17.40 | 0.08 | Bernard Bidias à Ngon<br>*Paul Denis Mbog* | 424 | 0.18 |
| Canada | 740.00 | 3.49 | Edgar John Benson<br>*Louis Rasminsky* | 7,650 | 3.19 |
| Central African Republic | 9.00 | 0.04 | Antoine Guimali<br>*Joseph Moutou Mondziaou* | 340 | 0.14 |
| Ceylon | 78.00 | 0.37 | U. B. Wanninayake<br>*William Tennekoon* | 1,030 | 0.43 |
| Chad | 9.00 | 0.04 | Abdoulaye Lamana<br>*René Roustan* | 340 | 0.14 |
| Chile | 125.00 | 0.59 | Carlos Massad Abud<br>*Jorge Marshall Silva* | 1,500 | 0.63 |
| China | 550.00 | 2.59 | Peh-Yuan Hsu<br>*Kan Lee* | 5,750 | 2.40 |
| Colombia | 125.00 | 0.59 | Eduardo Arias Robledo<br>*Germán Botero de los Ríos* | 1,500 | 0.63 |

## MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

| Member | QUOTA | | Governor<br>*Alternate* | VOTES | |
|---|---|---|---|---|---|
| | Amount (*Millions of U.S. dollars*) | Per Cent of Total | | Number[1] | Per Cent of Total |
| Congo (Brazzaville) | 9.00 | 0.04 | Edouard Ebouka-Babackas<br>*Corentin Kouangha* | 340 | 0.14 |
| Congo, Democratic Republic of | 57.00 | 0.27 | Albert Ndele<br>*Cyrille Adoula* | 820 | 0.34 |
| Costa Rica | 25.00 | 0.12 | Omar Dengo O.<br>*Alvaro Vargas* | 500 | 0.21 |
| Cyprus | 20.00 | 0.09 | C. C. Stephani<br>*K. Lazarides* | 450 | 0.19 |
| Dahomey | 9.00 | 0.04 | Mamadou N'Diaye<br>*Gilles-Florent Yehouessi* | 340 | 0.14 |
| Denmark | 163.00 | 0.77 | Erik Hoffmeyer<br>*Erik Ib Schmidt* | 1,880 | 0.78 |
| Dominican Republic | 32.00 | 0.15 | Diógenes H. Fernández<br>*Luis M. Guerrero G.* | 570 | 0.24 |
| Ecuador | 25.00 | 0.12 | Jorge Pareja Martínez<br>*Vacant* | 500 | 0.21 |
| El Salvador | 25.00 | 0.12 | Alfonso Moisés Beatriz<br>*Roberto Palomo h.* | 500 | 0.21 |
| Ethiopia | 19.00 | 0.09 | Menasse Lemma<br>*Yawand-Wossen Mangasha* | 440 | 0.18 |
| Finland | 125.00 | 0.59 | Reino Rossi<br>*Jouko J. Voutilainen* | 1,500 | 0.63 |
| France | 985.00 | 4.64 | Jacques Brunet<br>*René Larre* | 10,100 | 4.21 |
| Gabon | 9.00 | 0.04 | Augustin Boumah<br>*Claude Panouillot* | 340 | 0.14 |
| Gambia, The | 5.00 | 0.02 | S. M. Dibba<br>*J. B. de Loynes* | 300 | 0.13 |
| Germany | 1,200.00 | 5.66 | Karl Blessing<br>*Johann Schöllhorn* | 12,250 | 5.11 |
| Ghana | 69.00 | 0.33 | J. H. Frimpong-Ansah<br>*S. E. Arthur* | 940 | 0.39 |
| Greece | 100.00 | 0.47 | Demetrius Galanis<br>*Costas Thanos* | 1,250 | 0.52 |
| Guatemala | 25.00 | 0.12 | Francisco Fernández Rivas<br>*Mario Fuentes Pieruccini* | 500 | 0.21 |
| Guinea | 19.00 | 0.09 | Balla Camara<br>*N'Faly Sangaré* | 440 | 0.18 |

## MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

| Member | QUOTA Amount (*Millions of U.S. dollars*) | QUOTA Per Cent of Total | Governor *Alternate* | VOTES Number[1] | VOTES Per Cent of Total |
|---|---|---|---|---|---|
| Guyana | 15.00 | 0.07 | W. P. D'Andrade<br>*P. E. Matthews* | 400 | 0.17 |
| Haiti | 15.00 | 0.07 | Antonio André<br>*Clovis Desinor* | 400 | 0.17 |
| Honduras | 19.00 | 0.09 | Roberto Ramírez<br>*Guillermo Bueso* | 440 | 0.18 |
| Iceland | 15.00 | 0.07 | Jóhannes Nordal<br>*Jónas Haralz* | 400 | 0.17 |
| India | 750.00 | 3.53 | Morarji R. Desai<br>*L. K. Jha* | 7,750 | 3.23 |
| Indonesia | 207.00 | 0.98 | Radius Prawiro<br>*Salamun Alfian Tjakradiwirja* | 2,320 | 0.97 |
| Iran | 125.00 | 0.59 | Khodadad Farmanfarmaian<br>*Vacant* | 1,500 | 0.63 |
| Iraq | 80.00 | 0.38 | Abdul Hassan Zalzalah<br>*Subhi Frankool* | 1,050 | 0.44 |
| Ireland | 80.00 | 0.38 | Charles J. Haughey<br>*T. K. Whitaker* | 1,050 | 0.44 |
| Israel | 90.00 | 0.42 | Ze'ev Sharef<br>*Y. J. Taub* | 1,150 | 0.48 |
| Italy | 625.00 | 2.95 | Emilio Colombo<br>*Guido Carli* | 6,500 | 2.71 |
| Ivory Coast | 17.40 | 0.08 | Konan Bédié<br>*Jean-Baptiste Améthier* | 424 | 0.18 |
| Jamaica | 30.00 | 0.14 | Edward Seaga<br>*G. A. Brown* | 550 | 0.23 |
| Japan | 725.00 | 3.42 | Takeo Fukuda<br>*Makoto Usami* | 7,500 | 3.13 |
| Jordan | 16.00 | 0.08 | Khalil Salim<br>*Rashad El-Hassan* | 410 | 0.17 |
| Kenya | 32.00 | 0.15 | J. S. Gichuru<br>*Duncan Nderitu Ndegwa* | 570 | 0.24 |
| Korea | 50.00 | 0.24 | Jong Ryul Whang<br>*Chin Soo Suh* | 750 | 0.31 |
| Kuwait | 50.00 | 0.24 | Abdul Rahman Salim Al-Ateeqi<br>*Hamzah Abbas Hussein* | 750 | 0.31 |
| Laos | 7.50 | 0.04 | Sisouk Na Champassak<br>*Oudong Souvannavong* | 325 | 0.14 |

## MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

| Member | QUOTA Amount (*Millions of U.S. dollars*) | QUOTA Per Cent of Total | Governor *Alternate* | VOTES Number[1] | VOTES Per Cent of Total |
|---|---|---|---|---|---|
| Lebanon | 9.00 | 0.04 | Joseph Oughourlian<br>*Farid Solh* | 340 | 0.14 |
| Lesotho | 3.00 | 0.01 | P. N. Peete<br>*A. Collings* | 280 | 0.12 |
| Liberia | 20.00 | 0.09 | J. Milton Weeks<br>*Frank J. Stewart* | 450 | 0.19 |
| Libya | 19.00 | 0.09 | Khalil Bennani<br>*Faraj Bugrara* | 440 | 0.18 |
| Luxembourg | 17.40 | 0.08 | Pierre Werner<br>*Pierre Guill* | 424 | 0.18 |
| Malagasy Republic | 19.00 | 0.09 | Victor Miadana<br>*Raymond Rabenoro* | 440 | 0.18 |
| Malawi | 11.25 | 0.05 | Aleke K. Banda<br>*D. Thomson* | 362 | 0.15 |
| Malaysia | 115.00 | 0.54 | Tan Siew Sin<br>*Ismail bin Mohamed Ali* | 1,400 | 0.58 |
| Mali | 17.00 | 0.08 | Louis Nègre<br>*Aly Cissé* | 420 | 0.18 |
| Malta | 10.00 | 0.05 | Giovanni Felice<br>*Ph. Hogg* | 350 | 0.15 |
| Mauritania | 9.00 | 0.04 | Sidi Mohamed Diagana<br>*Pierre Braemer* | 340 | 0.14 |
| Mauritius | 16.00 | 0.08 | Veerasamy Ringadoo<br>*Aunauth Beejadhur* | 410 | 0.17 |
| Mexico | 270.00 | 1.27 | Antonio Ortiz Mena<br>*Rodrigo Gómez* | 2,950 | 1.23 |
| Morocco | 82.80 | 0.39 | Vacant<br>*M'Hamed Bargach* | 1,078 | 0.45 |
| Nepal | 10.00 | 0.05 | Yadav Prasad Pant<br>*Kumar Mani Dikshit* | 350 | 0.15 |
| Netherlands | 520.00 | 2.45 | J. Zijlstra<br>*E. van Lennep* | 5,450 | 2.27 |
| New Zealand | 157.00 | 0.74 | R. D. Muldoon<br>*R. W. R. White* | 1,820 | 0.76 |
| Nicaragua | 19.00 | 0.09 | Gustavo Guerrero<br>*José María Castillo* | 440 | 0.18 |
| Niger | 9.00 | 0.04 | Courmo Barcourgné<br>*Charles Godefroy* | 340 | 0.14 |

## MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

| Member | QUOTA | | Governor<br>*Alternate* | VOTES | |
|---|---|---|---|---|---|
| | Amount (*Millions of U.S. dollars*) | Per Cent of Total | | Number[1] | Per Cent of Total |
| Nigeria | 100.00 | 0.47 | O. Awolowo<br>*C. N. Isong* | 1,250 | 0.52 |
| Norway | 150.00 | 0.71 | Erik Brofoss<br>*Thomas Løvold* | 1,750 | 0.73 |
| Pakistan | 188.00 | 0.89 | M. Raschid<br>*M. Majid Ali* | 2,130 | 0.89 |
| Panama | 28.00 | 0.13 | Eduardo McCullough<br>*Fernando Díaz G.* | 530 | 0.22 |
| Paraguay | 15.00 | 0.07 | César Barrientos<br>*Vacant* | 400 | 0.17 |
| Peru | 85.00 | 0.40 | Alfredo Rodríguez Martínez<br>*Emilio G. Barreto* | 1,100 | 0.46 |
| Philippines | 110.00 | 0.52 | Alfonso Calalang<br>*Roberto S. Benedicto* | 1,350 | 0.56 |
| Portugal | 75.00 | 0.35 | António Manuel Pinto Barbosa<br>*Manuel Jacinto Nunes* | 1,000 | 0.42 |
| Rwanda | 15.00 | 0.07 | Masaya Hattori<br>*Jean Birara* | 400 | 0.17 |
| Saudi Arabia | 90.00 | 0.42 | Ahmed Zaki Saad<br>*Abid M. S. Sheikh* | 1,150 | 0.48 |
| Senegal | 25.00 | 0.12 | Jean Collin<br>*Louis Jean Eude* | 500 | 0.21 |
| Sierra Leone | 15.00 | 0.07 | M. S. Forna<br>*S. B. Nicol-Cole* | 400 | 0.17 |
| Singapore | 30.00 | 0.14 | Goh Keng Swee<br>*Hon Sui Sen* | 550 | 0.23 |
| Somalia | 15.00 | 0.07 | Abdullahi Ahmed Addou<br>*Ali Issa Farah* | 400 | 0.17 |
| South Africa | 200.00 | 0.94 | Nicolaas Diederichs<br>*G. W. G. Browne* | 2,250 | 0.94 |
| Spain | 250.00 | 1.18 | Faustino García Monco<br>*Manuel Varela* | 2,750 | 1.15 |
| Sudan | 57.00 | 0.27 | El Sherif Hussein El Hindi<br>*Abdel Rahim Mirghani* | 820 | 0.34 |
| Sweden | 225.00 | 1.06 | Per V. Åsbrink<br>*S. F. Joge* | 2,500 | 1.04 |
| Syrian Arab Republic | 38.00 | 0.18 | Zouhair Kani<br>*Adnan Farra* | 630 | 0.26 |

## MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

| Member | QUOTA Amount (*Millions of U.S. dollars*) | QUOTA Per Cent of Total | Governor *Alternate* | VOTES Number[1] | VOTES Per Cent of Total |
|---|---|---|---|---|---|
| Tanzania | 32.00 | 0.15 | A. H. Jamal<br>*E. I. M. Mtei* | 570 | 0.24 |
| Thailand | 95.00 | 0.45 | Puey Ungphakorn<br>*Boonma Wongswan* | 1,200 | 0.50 |
| Togo | 11.25 | 0.05 | Paulin Eklou<br>*Edouard Kodjo* | 362 | 0.15 |
| Trinidad and Tobago | 44.00 | 0.21 | F. C. Prevatt<br>*A. N. McLeod* | 690 | 0.29 |
| Tunisia | 35.00 | 0.16 | Hédi Nouira<br>*Abderrazak Rassaa* | 600 | 0.25 |
| Turkey | 108.00 | 0.51 | Fahir Tigrel<br>*Naim Talu* | 1,330 | 0.55 |
| Uganda | 32.00 | 0.15 | L. Kalule-Settala<br>*J. M. Mubiru* | 570 | 0.24 |
| United Arab Republic | 150.00 | 0.71 | A. Nazmy Abdel Hamid<br>*Mahmoud Sedky Mourad* | 1,750 | 0.73 |
| United Kingdom | 2,440.00 | 11.50 | Roy Jenkins<br>*C. J. Morse* | 24,650 | 10.27 |
| United States | 5,160.00 | 24.32 | Joseph W. Barr<br>*Eugene V. Rostow* | 51,850 | 21.61 |
| Upper Volta | 9.00 | 0.04 | Tiémoko Marc Garango<br>*Robert Pebayle* | 340 | 0.14 |
| Uruguay | 55.00 | 0.26 | Carlos Sanguinetti<br>*Juan M. Bracco* | 800 | 0.33 |
| Venezuela | 250.00 | 1.18 | Benito Raúl Losado<br>*Carlos González Naranjo* | 2,750 | 1.15 |
| Viet-Nam | 39.00 | 0.18 | Nguyên Huu Hanh<br>*Nguyên Van Dong* | 640 | 0.27 |
| Yugoslavia | 150.00 | 0.71 | Kiro Gligorov<br>*Nikola Miljanic* | 1,750 | 0.73 |
| Zambia | 50.00 | 0.24 | Elijah H. K. Mudenda<br>*J. B. Zulu* | 750 | 0.31 |
| | 21,218.00 | 100.00[2] | | 239,929 | 100.00[2] |

[1] Voting power varies on certain matters with use by members of the Fund's resources.
[2] This figure may differ from the sum of the percentages shown for individual countries because of rounding.

## EXECUTIVE DIRECTORS AND VOTING POWER

| Director<br>*Alternate* | Casting Votes of | Votes by Country | Total Votes[1] | Per Cent of Total |
|---|---|---|---|---|
| APPOINTED | | | | |
| William B. Dale<br>*John S. Hooker* | United States | 51,850 | 51,850 | 22.10 |
| E. W. Maude<br>*Guy Huntrods* | United Kingdom | 24,650 | 24,650 | 10.51 |
| Guenther Schleiminger<br>*Lore Fuenfgelt* | Germany | 12,250 | 12,250 | 5.22 |
| Georges Plescoff<br>*Bruno de Maulde* | France | 10,100 | 10,100 | 4.31 |
| B. K. Madan<br>*S. S. Marathe* | India | 7,750 | 7,750 | 3.30 |
| Francesco Palamenghi-Crispi<br>*Carlos Bustelo (Spain)* | Italy[2] | 6,500 | 6,500 | 2.77 |
| ELECTED | | | | |
| Ahmed Zaki Saad<br>(United Arab Republic)<br>*Albert Mansour*<br>*(United Arab Republic)* | Afghanistan | 540 | | |
| | Ethiopia | 440 | | |
| | Iran | 1,500 | | |
| | Iraq | 1,050 | | |
| | Jordan | 410 | | |
| | Kuwait | 750 | | |
| | Lebanon | 340 | | |
| | Pakistan | 2,130 | | |
| | Philippines | 1,350 | | |
| | Saudi Arabia | 1,150 | | |
| | Somalia | 400 | | |
| | Syrian Arab Republic | 630 | | |
| | United Arab Republic | 1,750 | 12,440 | 5.30 |
| Hideo Suzuki (Japan)<br>*Seitaro Hattori (Japan)* | Burma | 730 | | |
| | Ceylon | 1,030 | | |
| | Japan | 7,500 | | |
| | Nepal | 350 | | |
| | Thailand | 1,200 | 10,810 | 4.61 |
| Robert Johnstone (Canada)<br>*Maurice Horgan (Ireland)* | Canada | 7,650 | | |
| | Guyana | 400 | | |
| | Ireland | 1,050 | | |
| | Jamaica | 550 | 9,650 | 4.11 |
| J. O. Stone (Australia)<br>*G. P. C. de Kock (South Africa)* | Australia | 5,250 | | |
| | Lesotho | 280 | | |
| | New Zealand | 1,820 | | |
| | South Africa | 2,250 | 9,600 | 4.09 |

## EXECUTIVE DIRECTORS AND VOTING POWER

| Director<br>*Alternate* | Casting Votes of | Votes by Country | Total Votes[1] | Per Cent of Total |
|---|---|---|---|---|
| ELECTED (Continued) | | | | |
| Pieter Lieftinck (Netherlands)<br>*Tom de Vries (Netherlands)* | Cyprus | 450 | | |
| | Israel | 1,150 | | |
| | Netherlands | 5,450 | | |
| | Yugoslavia | 1,750 | 8,800 | 3.75 |
| Byanti Kharmawan (Indonesia)<br>*Malek Ali Merican (Malaysia)* | Algeria | 940 | | |
| | Ghana | 940 | | |
| | Indonesia | 2,320 | | |
| | Laos | 325 | | |
| | Libya | 440 | | |
| | Malaysia | 1,400 | | |
| | Morocco | 1,078 | | |
| | Singapore | 550 | | |
| | Tunisia | 600 | 8,593 | 3.66 |
| Leonard A. Williams (Trinidad and Tobago)<br>*Maurice Peter Omwony (Kenya)* | Botswana | 280 | | |
| | Burundi | 400 | | |
| | Gambia, The | 300 | | |
| | Guinea | 440 | | |
| | Kenya | 570 | | |
| | Liberia | 450 | | |
| | Malawi | 362 | | |
| | Mali | 420 | | |
| | Nigeria | 1,250 | | |
| | Sierra Leone | 400 | | |
| | Sudan | 820 | | |
| | Tanzania | 570 | | |
| | Trinidad and Tobago | 690 | | |
| | Uganda | 570 | | |
| | Zambia | 750 | 8,272 | 3.53 |
| André van Campenhout (Belgium)<br>*Jacques Roelandts (Belgium)* | Austria | 2,000 | | |
| | Belgium | 4,470 | | |
| | Luxembourg | 424 | | |
| | Turkey | 1,330 | 8,224 | 3.51 |
| Alfredo Phillips O. (Mexico)<br>*Marcos A. Sandoval (Venezuela)* | Costa Rica | 500 | | |
| | El Salvador | 500 | | |
| | Guatemala | 500 | | |
| | Honduras | 440 | | |
| | Mexico | 2,950 | | |
| | Nicaragua | 440 | | |
| | Venezuela | 2,750 | 8,080 | 3.44 |
| Eero Asp (Finland)<br>*Sigurgeir Jónsson (Iceland)* | Denmark | 1,880 | | |
| | Finland | 1,500 | | |
| | Iceland | 400 | | |
| | Norway | 1,750 | | |
| | Sweden | 2,500 | 8,030 | 3.42 |

## EXECUTIVE DIRECTORS AND VOTING POWER

| Director<br>*Alternate* | Casting Votes of | Votes by Country | Total Votes[1] | Per Cent of Total |
|---|---|---|---|---|
| ELECTED (Continued) | | | | |
| Alexandre Kafka (Brazil) | Brazil | 3,750 | | |
| *Eduardo da S. Gomes, Jr. (Brazil)* | Colombia | 1,500 | | |
| | Dominican Republic | 570 | | |
| | Haiti | 400 | | |
| | Panama | 530 | | |
| | Peru | 1,100 | 7,850 | 3.35 |
| Luis Escobar (Chile) | Argentina | 3,750 | | |
| *Ricardo H. Arriazu (Argentina)* | Bolivia | 540 | | |
| | Chile | 1,500 | | |
| | Ecuador | 500 | | |
| | Paraguay | 400 | | |
| | Uruguay | 800 | 7,490 | 3.19 |
| Beue Tann (China) | China | 5,750 | | |
| *Nguyên Huu Hanh (Viet-Nam)* | Korea | 750 | | |
| | Viet-Nam | 640 | 7,140 | 3.04 |
| Antoine W. Yaméogo (Upper Volta) | Cameroon | 424 | | |
| *Léon M. Rajaobelina* | Central African Republic | 340 | | |
| *(Malagasy Republic)* | Chad | 340 | | |
| | Congo (Brazzaville) | 340 | | |
| | Congo, Democratic Rep. of | 820 | | |
| | Dahomey | 340 | | |
| | Gabon | 340 | | |
| | Ivory Coast | 424 | | |
| | Malagasy Republic | 440 | | |
| | Mauritania | 340 | | |
| | Mauritius | 410 | | |
| | Niger | 340 | | |
| | Rwanda | 400 | | |
| | Senegal | 500 | | |
| | Togo | 362 | | |
| | Upper Volta | 340 | 6,500 | 2.77 |
| | | | 234,579[2] | 100.00[3] |

[1] Voting power varies on certain matters with use by members of the Fund's resources.
[2] This total does not include the votes of Greece, Malta, Portugal, and Spain, which did not participate in the 1968 Regular Election of Executive Directors. These members have designated the Executive Director appointed by Italy to look after their interests in the Fund.
[3] This figure may differ from the sum of the individual percentages shown because of rounding.

## OFFICERS OF THE INTERNATIONAL MONETARY FUND

19th and H Streets, N.W., Washington, D.C. 20431

Managing Director ..... Pierre-Paul Schweitzer

Deputy Managing Director ..... Frank A. Southard, Jr.

The General Counsel ..... Joseph Gold

The Economic Counsellor ..... J. J. Polak

Administration Department
Director ..... Phillip Thorson

African Department
Director ..... Mamoudou Touré

Asian Department
Director ..... D. S. Savkar

Central Banking Service
Director ..... J. V. Mládek

European Department
Director ..... L. A. Whittome

Exchange and Trade Relations Department
Director ..... Ernest Sturc

Fiscal Affairs Department
Director ..... Richard Goode

IMF Institute
Director ..... F. A. G. Keesing

Legal Department
Director ..... Joseph Gold

Middle Eastern Department
Acting Director* ..... John W. Gunter

Research Department
Director ..... J. J. Polak

Secretary's Department
Secretary ..... W. Lawrence Hebbard

Treasurer's Department
Treasurer ..... Walter O. Habermeier

Western Hemisphere Department
Director ..... Jorge Del Canto

Bureau of Statistics
Director ..... Earl Hicks

Office in Europe (Paris)
Director ..... Jean-Paul Sallé

Office in Geneva
Director ..... Edgar Jones

Chief Information Officer ..... Jay Reid

Internal Auditor ..... J. William Lowe

Special Representative to the United Nations ..... Gordon Williams

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* Anwar Ali, Director (on leave)

March 10th, 1969.

## Status of International Ratification of Special Drawing Rights

As of the close of business on March 10, 1969, 37 members, representing 52.85 percent of the total voting power, have accepted the proposed Amendment. These members are listed below:

Argentina
Australia
Bolivia
Burundi
Congo, Democratic Republic of
Dahomey
Dominican Republic
Ecuador
Gambia, The
Ghana
Greece
Guinea
Guyana
Iceland
India
Indonesia
Israel
Jordan
Laos
Malawi
Mexico
New Zealand
Nicaragua
Nigeria
Norway
Peru
Portugal
Sierra Leone
Sweden
Trinidad and Tobago
Tunisia
Turkey
United Arab Republic
United Kingdom
United States
Venezuela
Yugoslavia

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# INTERNATIONAL MONETARY FUND

# FINANCIAL STATEMENT

Quarter ended January 31, 1969

Issued in accordance with Article XII, Section 7(a), of the Articles of Agreement

Washington, D.C.

20029—3

# INTERNATIONAL MONETARY FUND

## BALANCE SHEET

as of January 31, 1969

Values expressed in U. S. dollars on the basis of established parities or provisional rates

| | | | |
|---|---|---|---|
| **ASSETS** | | | |
| GOLD ACCOUNT | | | |
| Gold with depositories (See Note 1) (73,146,926.624 fine ounces at $35 per ounce) | | | |
| Bars | $2,287,927,599 | | |
| General deposits | 272,214,833 | $2,560,142,432 | |
| Investments (See Note 2) | | | |
| U. S. Government securities maturing within 12 months, at cost (face amount $834,660,000) | $799,933,385 | | |
| Funds awaiting investment | 58,126 | 799,991,511 | $ 3,360,133,943 |
| CURRENCIES AND SECURITIES (See Note 3) | | | |
| With depositories | | | |
| Currencies | | $ 3,611,799,294 | |
| Securities (nonnegotiable, noninterest-bearing demand obligations, payable at face value by members in their currencies) | | 15,323,820,052 | 18,935,619,346 |
| SUBSCRIPTIONS TO CAPITAL – RECEIVABLE | | | |
| Balances of original quotas – not due | | $762,382,875 | |
| Balances of increases in quotas – not due (Contra) | | 36,000,000 | 798,382,875 |
| OTHER ASSETS (See Note 4) | | | 52,408,882 |
| TOTAL ASSETS | | | $23,146,545,046 |

NOTES:

1. Excludes 12,432.500 fine ounces earmarked for members.
2. Made with the proceeds of the sale of 22,856,900.312 fine ounces of gold. Upon termination of the investment, the same quantity of gold can be reacquired.
3. Total outstanding drawings of members amount to $5,026 million. Currency holdings in excess of members' quotas subject to Fund charges amount to $3,633 million.
4. The assets and liabilities of the Staff Retirement Fund are not included in this Balance Sheet.
5. Consists of income from investments in U. S. Government securities from November 1, 1957.

# INTERNATIONAL MONETARY FUND

## BALANCE SHEET

as of January 31, 1969

Values expressed in U. S. dollars on the basis of established parities or provisional rates

| CAPITAL, RESERVES AND LIABILITIES | | |
|---|---|---|
| **CAPITAL** | | |
| Subscriptions of members | | $21,201,250,000 |
| **RESERVES** | | |
| Special reserve (See Note 5) | $297,479,853 | |
| General reserve (See Note 6) | 309,764,170 | 607,244,023 |
| **SUBSCRIPTIONS IN RESPECT OF INCREASES IN QUOTAS CONSENTED TO BUT NOT YET EFFECTIVE** | | |
| Balances not due (Contra) | | 36,000,000 |
| **INDEBTEDNESS (See Note 7)** | | |
| To Participants under General Arrangements to Borrow | $1,046,000,000 | |
| Other | 250,000,000 | 1,296,000,000 |
| **PROVISION FOR POTENTIAL REFUNDS OF STAND-BY CHARGES (See Note 8)** | | 622,245 |
| **OTHER LIABILITIES (See Note 4)** | | 5,428,778 |
| TOTAL CAPITAL, RESERVES AND LIABILITIES | | $23,146,545,046 |

6. Includes net income for nine months ending January 31, 1969 amounting to $55,955,153 transferred provisionally to General Reserve pending action by Board of Governors.
7. Represents currencies borrowed under Article VII, Section 2(i) of the Articles of Agreement.
8. The charge for a stand-by arrangement is credited against the service charge for funds drawn under that arrangement which raise the Fund's holdings of currency above 100 per cent of the member's quota. A member that cancels a stand-by arrangement will be paid a refund, which will be the prorated portion of the remaining stand-by charge.

/s/ Walter O. Habermeier
Treasurer

/s/ P. - P. Schweitzer
Managing Director

# INTERNATIONAL MONETARY FUND

## SUMMARY OF TRANSACTIONS

(Millions of Units)

| PARTICULARS | FOR THE QUARTER ENDED JANUARY 31, 1969 | | | |
|---|---|---|---|---|
| | RECEIPTS | | PAYMENTS | |
| | AMOUNT IN CURRENCY | U. S. DOLLAR EQUIVALENT | AMOUNT IN CURRENCY | U. S. DOLLAR EQUIVALENT |
| CURRENCY MOVEMENTS | | | | |
| Use of Fund's Resources | | | | |
| Afghan afghanis | | | | |
| Argentine pesos | | | 2,100.00 | $ 6.00 |
| Australian dollars | | | | |
| Austrian schillings | | | | |
| Belgian francs | | | | |
| Bolivian pesos | 130.63 | $ 11.00 | | |
| Brazilian new cruzeiros | | | | |
| Burmese kyats | | | | |
| Burundi francs | | | | |
| Canadian dollars | | | 25.41 | 23.50 |
| Ceylon rupees | 17.86 | 3.00 | | |
| Chilean escudos | 60.57[1] | 9.00 | | |
| Colombian pesos | 135.00[2] | 10.00 | | |
| Danish kroner | | | | |
| Deutsche mark | | | 140.00 | 35.00 |
| Dominican pesos | 6.00 | 6.00 | | |
| French francs | | | 4.94 | 1.00 |
| Ghanaian new cedis | 2.04 | 2.00 | | |
| Guatemalan quetzales | 3.00 | 3.00 | | |
| Icelandic kronur | 330.00 | 3.75 | | |
| Indonesian rupiahs | 1,500.00[3] | 6.00 | | |
| Iranian rials | 1,156.33 | 15.27 | | |
| Irish pounds | | | 2.08 | 5.00 |
| Italian lire | | | | |
| Japanese yen | | | 5,400.00 | 15.00 |
| Korean won | | | | |
| Liberian dollars | 1.80 | 1.80 | | |
| Mali francs | 493.71 | 1.00 | | |
| Mexican pesos | | | | |
| Moroccan dirhams | | | | |
| Netherlands guilders | | | | |
| Nicaraguan cordobas | 28.00 | 4.00 | | |
| Norwegian kroner | | | | |
| Pakistan rupees | 190.48 | 40.00 | | |
| Panamanian balboas | | | | |
| Peruvian soles | 670.38 | 25.00 | | |
| Philippine pesos | 29.25 | 7.50 | | |
| Rwanda francs | | | | |
| Salvadoran colones | | | | |
| Somali shillings | | | | |
| South African rand | | | 7.14 | 10.00 |
| Sudanese pounds | 1.74 | 5.00 | | |
| Swedish kronor | | | | |
| Trinidad and Tobago dollars | | | | |
| Tunisian dinars | | | | |
| Turkish liras | 90.00 | 10.00 | | |
| United Kingdom pounds | | | | |
| United States dollars | | | 72.82 | 72.82 |
| Uruguayan pesos | 37.00 | 5.00 | | |
| Venezuelan bolivares | | | | |
| | | $168.32 | | $168.32 |
| Repurchases | | | | |
| Afghan afghanis | | | 66.56 | $ 1.48 |
| Argentine pesos | | | | |
| Australian dollars | 28.08 | $ 31.45 | | |
| Austrian schillings | | | | |
| Belgian francs | 8,462.11 | 169.24 | | |
| Bolivian pesos | | | 95.00 | 8.00 |
| Brazilian new cruzeiros | | | | |
| Burundi francs | | | 175.00 | 2.00 |
| Canadian dollars | | | | |
| Ceylon rupees | | | 11.90 | 2.00 |
| Chilean escudos | | | 65.67[1] | 9.00 |
| Colombian pesos | | | 220.05[2] | 13.50 |
| Costa Rican colones | | | 9.94 | 1.50 |
| Carried forward | | $200.69 | | $37.48 |

(Continued

# INTERNATIONAL MONETARY FUND

## SUMMARY OF TRANSACTIONS

(Millions of Units)

| CUMULATIVE TOTALS FISCAL PERIOD MAY 1, 1968 TO JANUARY 31, 1969 | | | | |
|---|---|---|---|---|
| RECEIPTS | | PAYMENTS | | |
| AMOUNT IN CURRENCY | U. S. DOLLAR EQUIVALENT | AMOUNT IN CURRENCY | U. S. DOLLAR EQUIVALENT | PARTICULARS |
| | | | | CURRENCY MOVEMENTS |
| | | | | Use of Fund's Resources |
| 216.00 | $ 4.80 | | | Afghan afghanis |
| | | 15,575.00 | $ 44.50 | Argentine pesos |
| | | 85.27 | 95.50 | Australian dollars |
| | | 1,469.00 | 56.50 | Austrian schillings |
| | | 9,525.00 | 190.50 | Belgian francs |
| 130.63 | 11.00 | | | Bolivian pesos |
| 240.00 | 75.00 | | | Brazilian new cruzeiros |
| 21.43 | 4.50 | | | Burmese kyats |
| 87.50 | 1.00 | | | Burundi francs |
| | | 156.22 | 144.50 | Canadian dollars |
| 98.22 | 16.50 | | | Ceylon rupees |
| 121.14[1] | 18.00 | | | Chilean escudos |
| 367.87[2] | 27.25 | | | Colombian pesos |
| | | 232.50 | 31.00 | Danish kroner |
| | | 2,775.53 | 693.88 | Deutsche mark |
| 6.00 | 6.00 | | | Dominican pesos |
| 3,678.11 | 745.00 | 133.31 | 27.00 | French francs |
| 10.20 | 10.00 | | | Ghanaian new cedis |
| 3.00 | 3.00 | | | Guatemalan quetzales |
| 330.00 | 3.75 | | | Icelandic kronur |
| 7,250.00[3] | 29.00 | | | Indonesian rupiahs |
| 1,156.33 | 15.27 | | | Iranian rials |
| | | 10.20 | 24.50 | Irish pounds |
| | | 239,656.25 | 383.45 | Italian lire |
| | | 36,810.00 | 102.25 | Japanese yen |
| 3,187.50 | 12.50 | | | Korean won |
| 2.90 | 2.90 | | | Liberian dollars |
| 1,974.83 | 4.00 | | | Mali francs |
| | | 506.25 | 40.50 | Mexican pesos |
| 253.02 | 50.00 | | | Moroccan dirhams |
| | | 536.67 | 148.25 | Netherlands guilders |
| 133.00 | 19.00 | | | Nicaraguan cordobas |
| | | 182.14 | 25.50 | Norwegian kroner |
| 190.48 | 40.00 | | | Pakistan rupees |
| 3.00 | 3.00 | | | Panamanian balboas |
| 670.38 | 25.00 | | | Peruvian soles |
| 107.25 | 27.50 | | | Philippine pesos |
| 300.00 | 3.00 | | | Rwanda francs |
| 7.50 | 3.00 | | | Salvadoran colones |
| 8.57 | 1.20 | | | Somali shillings |
| 44.30 | 62.02 | 37.14 | 52.00 | South African rand |
| 1.74 | 5.00 | | | Sudanese pounds |
| | | 442.31 | 85.50 | Swedish kronor |
| 9.50 | 4.75 | | | Trinidad and Tobago dollars |
| 2.16 | 4.11 | | | Tunisian dinars |
| 243.00 | 27.00 | | | Turkish liras |
| 583.33 | 1,400.00 | | | United Kingdom pounds |
| | | 528.72 | 528.72 | United States dollars |
| 148.00 | 20.00 | | | Uruguayan pesos |
| | | 44.85 | 10.00 | Venezuelan bolivares |
| | $2,684.05 | | $2,684.05 | |
| | | | | Repurchases |
| | | 66.56 | $ 1.48 | Afghan afghanis |
| | | 2,668.72 | 7.63 | Argentine pesos |
| 36.05 | $ 40.38 | | | Australian dollars |
| 478.42 | 18.40 | | | Austrian schillings |
| 10,336.37 | 206.72 | | | Belgian francs |
| | | 95.00 | 8.00 | Bolivian pesos |
| | | 256.00 | 80.00 | Brazilian new cruzeiros |
| | | 175.00 | 2.00 | Burundi francs |
| | | 70.04 | 64.79 | Canadian dollars |
| | | 47.61 | 8.00 | Ceylon rupees |
| | | 126.11[1] | 19.00 | Chilean escudos |
| | | 267.30[2] | 17.00 | Colombian pesos |
| | | 41.41 | 6.25 | Costa Rican colones |
| | $265.50 | | $214.15 | Carried forward |

overleaf)

# INTERNATIONAL MONETARY FUND

## SUMMARY OF TRANSACTIONS

(Millions of Units)

| PARTICULARS | FOR THE QUARTER ENDED JANUARY 31, 1969 | | | |
|---|---|---|---|---|
| | RECEIPTS | | PAYMENTS | |
| | AMOUNT IN CURRENCY | U.S. DOLLAR EQUIVALENT | AMOUNT IN CURRENCY | U.S. DOLLAR EQUIVALENT |
| Brought forward | | $200.69 | | $37.48 |
| CURRENCY MOVEMENTS (continued) | | | | |
| Repurchases | | | | |
| Cyprus pounds | | | | |
| Deutsche mark | 487.44 | 121.86 | | |
| Dominican pesos | | | 2.00 | 2.00 |
| Ecuadoran sucres | | | | |
| Egyptian pounds | | | 2.09 | 6.00 |
| Finnish markkaa | | | 131.25 | 31.25 |
| French francs | 39.76 | 8.05 | | |
| Guatemalan quetzales | | | | |
| Haitian gourdes | | | 2.25 | 0.45 |
| Indian rupees | | | 528.75 | 70.50 |
| Indonesian rupiahs | | | 1,300.00[3] | 4.00 |
| Iranian rials | | | | |
| Italian lire | 144,377.64 | 231.00 | | |
| Japanese yen | 1,800.00 | 5.00 | | |
| Jordan dinars | | | | |
| Liberian dollars | | | 2.20 | 2.20 |
| Mali francs | | | 493.71 | 1.00 |
| Mexican pesos | | | | |
| Moroccan dirhams | | | 12.15 | 2.40 |
| Netherlands guilders | 182.63 | 50.45 | | |
| New Zealand dollars | | | 26.13 | 29.27 |
| Pakistan rupees | | | | |
| Panamanian balboas | | | 0.22 | 0.22 |
| Peruvian soles | | | 1,138.12 | 42.44 |
| Somali shillings | | | 27.14 | 3.80 |
| Sudanese pounds | | | 0.87 | 2.50 |
| Swedish kronor | 123.78 | 23.93 | | |
| Syrian pounds | | | 5.48 | 2.50 |
| Tanzania shillings | | | | |
| Tunisian dinars | | | 1.47 | 2.80 |
| Turkish liras | | | - 27.54 | - 3.06[4] |
| United Kingdom pounds | | | 41.67 | 100.00 |
| United States dollars | | | 284.25 | 284.25 |
| Yugoslav dinars | | | 78.13 | 6.25 |
| Zambia kwacha | | | | |
| | | $640.98 | | $628.25 |
| Purchases of Currencies for Gold | | | | |
| Australian dollars | | | | |
| Austrian schillings | | | | |
| Belgian francs | | | | |
| Danish kroner | | | | |
| Deutsche mark | | | | |
| Irish pounds | | | | |
| Italian lire | | | | |
| Japanese yen | | | | |
| Mexican pesos | | | | |
| Netherlands guilders | | | | |
| Norwegian kroner | | | | |
| Swedish kronor | | | | |
| Venezuelan bolivares | | | | |
| Calls Under General Arrangements to Borrow | | | | |
| Belgian francs | | | | |
| Deutsche mark | | | | |
| Italian lire | | | | |
| Netherlands guilders | | | | |
| Swedish kronor | | | | |
| Repayments Under General Arrangements to Borrow | | | | |
| Belgian francs | | | 500.00 | $ 10.00 |
| Deutsche mark | | | 200.00 | 50.00 |
| Italian lire | | | 13,125.00 | 21.00 |
| Japanese yen | | | 1,800.00 | 5.00 |
| Netherlands guilders | | | 36.20 | 10.00 |
| Swedish kronor | | | 20.69 | 4.00 |
| | | | | $100.00 |

(Continued

# INTERNATIONAL MONETARY FUND

## SUMMARY OF TRANSACTIONS

(Millions of Units)

| CUMULATIVE TOTALS FISCAL PERIOD MAY 1, 1968 TO JANUARY 31, 1969 | | | | PARTICULARS |
|---|---|---|---|---|
| RECEIPTS | | PAYMENTS | | |
| AMOUNT IN CURRENCY | U.S. DOLLAR EQUIVALENT | AMOUNT IN CURRENCY | U.S. DOLLAR EQUIVALENT | |
| | $265.50 | | $214.15 | Brought forward |
| | | | | CURRENCY MOVEMENTS (continued) |
| | | | | Repurchases |
| | | 0.08 | 0.20 | Cyprus pounds |
| 950.04 | 237.49 | | | Deutsche mark |
| | | 5.50 | 5.50 | Dominican pesos |
| | | 144.00 | 8.00 | Ecuadoran sucres |
| | | 6.27 | 18.00 | Egyptian pounds |
| | | 262.50 | 62.50 | Finnish markkaa |
| 189.63 | 38.41 | | | French francs |
| | | 4.60 | 4.60 | Guatemalan quetzales |
| | | 7.19 | 1.44 | Haitian gourdes |
| | | 528.75 | 70.50 | Indian rupees |
| | | 6,300.00[3] | 24.00 | Indonesian rupiahs |
| | | 1,156.33 | 15.26 | Iranian rials |
| 187,743.88 | 300.39 | | | Italian lire |
| 8,518.86 | 23.66 | | | Japanese yen |
| | | 0.10 | 0.29 | Jordan dinars |
| | | 3.40 | 3.40 | Liberian dollars |
| | | 1,481.13 | 3.00 | Mali francs |
| 0.98 | 0.08 | | | Mexican pesos |
| | | 12.15 | 2.40 | Moroccan dirhams |
| 330.31 | 91.24 | | | Netherlands guilders |
| | | 57.38 | 64.27 | New Zealand dollars |
| | | 66.66 | 14.00 | Pakistan rupees |
| | | 0.57 | 0.57 | Panamanian balboas |
| | | 1,138.12 | 42.44 | Peruvian soles |
| | | 52.85 | 7.40 | Somali shillings |
| | | 1.31 | 3.75 | Sudanese pounds |
| 194.24 | 37.55 | | | Swedish kronor |
| | | 17.53 | 8.00 | Syrian pounds |
| | | 1.06 | 0.15 | Tanzania shillings |
| | | 3.23 | 6.15 | Tunisian dinars |
| | | - 27.54 | - 3.06[4] | Turkish liras |
| | | 77.09 | 185.00 | United Kingdom pounds |
| | | 284.25 | 284.25 | United States dollars |
| | | 203.13 | 16.25 | Yugoslav dinars |
| | | 0.14 | 0.19 | Zambia kwacha |
| | $994.32 | | $1,062.60 | |
| 21.87 | $ 24.50 | | | Purchases of Currencies for Gold |
| 337.99 | 13.00 | | | Australian dollars |
| 2,799.86 | 56.00 | | | Austrian schillings |
| 45.00 | 6.00 | | | Belgian francs |
| 739.98 | 185.00 | | | Danish kroner |
| 0.62 | 1.50 | | | Deutsche mark |
| 89,999.57 | 144.00 | | | Irish pounds |
| 5,039.82 | 14.00 | | | Italian lire |
| 118.75 | 9.50 | | | Japanese yen |
| 235.28 | 65.00 | | | Mexican pesos |
| 39.28 | 5.50 | | | Netherlands guilders |
| 108.64 | 21.00 | | | Norwegian kroner |
| 8.97 | 2.00 | | | Swedish kronor |
| | | | | Venezuelan bolivares |
| | $547.00 | | | |
| 3,500.00 | $ 70.00 | | | Calls Under General Arrangements to Borrow |
| 1,464.00 | 366.00 | | | Belgian francs |
| 115,625.00 | 185.00 | | | Deutsche mark |
| 271.50 | 75.00 | | | Italian lire |
| 232.79 | 45.00 | | | Netherlands guilders |
| | | | | Swedish kronor |
| | $741.00 | | | |
| | | 900.00 | $ 18.00 | Repayments Under General Arrangements to Borrow |
| | | 372.00 | 93.00 | Belgian francs |
| | | 24,375.00 | 39.00 | Deutsche mark |
| | | 3,600.00 | 10.00 | Italian lire |
| | | 65.16 | 18.00 | Japanese yen |
| | | 36.21 | 7.00 | Netherlands guilders |
| | | | | Swedish kronor |
| | | | $185.00 | |

overleaf)

# INTERNATIONAL MONETARY FUND

## SUMMARY OF TRANSACTIONS

(Millions of Units)

| PARTICULARS | FOR THE QUARTER ENDED JANUARY 31, 1969 | | | |
|---|---|---|---|---|
| | RECEIPTS | | PAYMENTS | |
| | AMOUNT IN CURRENCY | U.S. DOLLAR EQUIVALENT | AMOUNT IN CURRENCY | U.S. DOLLAR EQUIVALENT |
| GOLD MOVEMENTS | FINE OUNCES | | FINE OUNCES | |
| Repurchases with Gold | - 0.364 | - $ 12.73[4] | | |
| Sales of Gold for Currencies | | | | |
| INDEBTEDNESS | FINE OUNCES | | FINE OUNCES | |
| To Participants Under General Arrangements to Borrow | | | | |
| Calls[5] | | | | |
| Transfer of Claim[6] | | | | |
| France | | | | |
| Belgium | | | | |
| Deutsche Bundesbank | | | | |
| Italy | | | | |
| Netherlands | | | | |
| Repayments[7] | 2.857 | $100.00 | | |
| | | $896.57 | | $896.57 |

NOTES:

1. Movements of Chilean escudos made at the provisional rate of 5.75000 per U.S. dollar through June 20, 1968, then 6.73000 per U.S. dollar through December 20, 1968 and 7.58000 per U.S. dollar thereafter.
2. Movements of Colombian pesos made at the provisional rate of 13.5000 per U.S. dollar through December 31, 1968 then 16.3000 per U.S. dollar thereafter.
3. Movements of Indonesian rupiahs made at the provisional rate of 250.000 per U.S. dollar through January 17, 1969 then 325.000 per U.S. dollar thereafter.

# INTERNATIONAL MONETARY FUND

## SUMMARY OF TRANSACTIONS

(Millions of Units)

| CUMULATIVE TOTALS FISCAL PERIOD MAY 1, 1968 TO JANUARY 31, 1969 | | | | PARTICULARS |
|---|---|---|---|---|
| RECEIPTS | | PAYMENTS | | |
| AMOUNT IN CURRENCY | U.S. DOLLAR EQUIVALENT | AMOUNT IN CURRENCY | U.S. DOLLAR EQUIVALENT | |
| FINE OUNCES | | FINE OUNCES | | GOLD MOVEMENTS |
| 1.951 | $68.28 | | | Repurchases with Gold |
| | | 15.628 | $547.00 | Sales of Gold for Currencies |
| FINE OUNCES | | FINE OUNCES | | INDEBTEDNESS |
| | | | | To Participants Under General Arrangements to Borrow |
| | | 21.171 | $741.00 | Calls[5] |
| 4.000 | $140.00 | | | Transfer of Claim[6] |
| | | 0.286 | $ 10.00 | France |
| | | 2.286 | 80.00 | Belgium |
| | | 1.143 | 40.00 | Deutsche Bundesbank |
| | | 0.285 | 10.00 | Italy |
| | | | | Netherlands |
| | $140.00 | | $140.00 | |
| 5.286 | $185.00 | | | Repayments[7] |
| | $5,359.65 | | $5,359.65 | |

4. Reversal of a repurchase obligation as of April 30, 1967.
5. Certificates of indebtedness expressed in terms of fine ounces of gold are issued by the Fund to Participants.
6. In accordance with Paragraph 13 of the General Arrangements to Borrow.
7. Certificates of indebtedness expressed in terms of fine ounces of gold returned to Fund upon termination of obligations.

# INTERNATIONAL MONETARY FUND

## SUMMARY OF TRANSACTIONS

(Millions of Units)

| COUNTRY | CURRENCY | AMOUNT | U.S. DOLLAR EQUIVALENT | NET CHANGE SINCE October 31, 1968 | |
|---|---|---|---|---|---|
| | | | | CURRENCY[1] | U.S. DOLLAR EQUIVALENT[1] |
| Afghanistan | Afghanis | 1,857.68 | $ 41.28 | - 66.64 | - $ 1.48 |
| Algeria | Dinars | 33.33* | 6.75 | | |
| Argentina | Pesos | 86,572.52 | 247.35 | - 2,101.04 | - 6.00 |
| Australia | Dollars | 222.72 | 249.44 | + 28.07 | + 31.43 |
| Austria | Schillings | 399.28 | 15.35 | | |
| Belgium | Francs | 11,033.14 | 220.66 | + 7,961.33 | + 159.22 |
| Bolivia | Pesos | 440.47 | 37.09 | + 35.60 | + 3.00 |
| Botswana | S.A. Rand | * | | | |
| Brazil | New cruzeiros | 1,225.75 | 337.67 | | |
| Burma | Kyats | 264.19 | 55.48 | | |
| Burundi | Francs | 1,528.90 | 17.47 | - 175.68 | - 2.01 |
| Cameroon | CFA Francs | 444.34* | 1.80 | | |
| Canada | Dollars | 570.59 | 527.80 | - 25.42 | - 23.51 |
| Central African Rep. | CFA Francs | 277.71* | 1.12 | | |
| Ceylon | Rupees | 1,008.97 | 169.51 | + 8.09 | + 1.36 |
| Chad | CFA Francs | 277.71* | 1.13 | | |
| Chile | Escudos | 1,523.52 | 200.99 | + 170.84[2] | |
| China | Yuan | * | | | |
| Colombia | Pesos | 3,653.65 | 224.15 | + 580.38[3] | - 3.50 |
| Congo (Brazzaville) | CFA Francs | 277.71* | 1.12 | | |
| Congo, Dem. Rep. of | Zaires | 21.37 | 42.75 | | |
| Costa Rica | Colones | 226.78 | 34.23 | - 9.92 | - 1.50 |
| Cyprus | Pounds | 6.76 | 16.21 | | |
| Dahomey | CFA Francs | 277.71* | 1.13 | | |
| Denmark | Kroner | 582.59 | 77.68 | | |
| Dominican Republic | Pesos | 46.60 | 46.60 | + 6.10[4] | + 6.10[4] |
| Ecuador | Sucres | 441.00 | 24.50 | | |
| El Salvador | Colones | 104.30 | 41.72 | | |
| Ethiopia | Dollars | 35.55 | 14.22 | | |
| Finland | Markkaa | 524.76 | 124.94 | - 131.29 | - 31.26 |
| France | Francs | 4,858.52 | 984.09 | + 34.44 | + 6.97 |
| Gabon | CFA Francs | 277.71* | 1.13 | | |
| Gambia, The | Pounds | 2.03 | 4.87 | | |
| Germany, Fed. Rep. of | Deutsche mark | 911.52 | 227.88 | + 157.66 | + 39.41 |
| Ghana | New cedis | 146.65 | 143.71 | + 2.49 | + 2.43 |
| Greece | Drachmas | 2,249.79 | 74.99 | | |
| Guatemala | Quetzales | 38.39 | 38.39 | + 3.00 | + 3.00 |
| Guinea | Francs | 4,001.57 | 16.20 | | |
| Guyana | Dollars | 27.59 | 13.79 | | |
| Haiti | Gourdes | 102.67 | 20.53 | - 2.25 | - 0.45 |
| Honduras | Lempiras | 33.49 | 16.74 | | |
| Iceland | Kronur | 1,651.08 | 18.76 | + 795.38[3] | + 3.75 |
| India | Rupees | 8,198.01 | 1,093.07 | - 499.05 | - 66.54 |
| Indonesia | Rupiahs | 86,764.09 | 266.97 | + 20,521.97[3] | + 2.00 |
| Iran | Rials | 9,468.38 | 125.00 | + 1,156.27 | + 15.27 |
| Iraq | Dinars | 21.43 | 60.00 | | |
| Ireland | Pounds | 11.36 | 27.26 | - 2.08 | - 5.01 |
| Israel | Pounds | 236.19 | 67.48 | | |
| Italy | Lire | 162,067.75 | 259.31 | +131,248.72 | + 210.00 |
| Ivory Coast | CFA Francs | 444.34* | 1.80 | | |
| Jamaica | Pounds | 9.44 | 22.66 | | |
| Japan | Yen | 162,344.42 | 450.96 | - 5,400.55 | - 15.00 |
| Jordan | Dinars | 4.28 | 12.00 | | |
| Kenya | Shillings | 199.68 | 27.96 | | |
| Korea | Won | 12,744.36 | 49.98 | | |

* As no par value has been agreed, the original currency subscription is not yet due. Where indicated, holdings represent currency portions of increases in quotas accepted by the Fund on a provisional basis.

1. Changes in the Fund's holdings of currencies not exceeding the equivalent of US$100,000 are not reflected in these columns.

2. Represents currency received (net of drawing and repurchases – see Summary of Transactions) in accordance with Article IV, Section 8 following a change in the provisional rate of the Chilean escudo on December 20, 1968.

# INTERNATIONAL MONETARY FUND

## SUMMARY OF TRANSACTIONS

(Millions of Units)

| COUNTRY | CURRENCY | AMOUNT | U.S. DOLLAR EQUIVALENT | NET CHANGE SINCE OCTOBER 31, 1968 | |
|---|---|---|---|---|---|
| | | | | CURRENCY[1] | U.S. DOLLAR EQUIVALENT[1] |
| Kuwait | Dinars | 13.39 | $ 37.49 | | |
| Laos | Kips | * | | | |
| Lebanon | Pounds | 14.76 | 6.74 | | |
| Lesotho | S.A. Rand | 2.07 | 2.90 | + 2.07[5] | +$ 2.90[5] |
| Liberia | Dollars | 30.20 | 30.20 | - 0.40 | - 0.40 |
| Libya | Pounds | 5.08 | 14.22 | | |
| Luxembourg | Francs | 689.15 | 13.78 | | |
| Malagasy Republic | Francs | 740.55* | 3.00 | | |
| Malawi | Pounds | 4.11 | 9.86 | | |
| Malaysia | Dollars | 250.97 | 81.98 | | |
| Mali | Francs | 14,162.36 | 28.69 | + 50.69 | + 0.11 |
| Malta | Pounds | * | | | |
| Mauritania | CFA Francs | 277.71* | 1.13 | | |
| Mauritius | Rupees | * | | | |
| Mexico | Pesos | 1,713.51 | 137.08 | | |
| Morocco | Dirhams | 591.57 | 116.90 | - 12.15 | - 2.40 |
| Nepal | Rupees | 92.15 | 9.10 | | |
| Netherlands | Guilders | 503.80 | 139.17 | + 146.41 | + 40.44 |
| New Zealand | Dollars | 158.61 | 177.64 | - 26.13 | - 29.27 |
| Nicaragua | Cordobas | 232.75 | 33.25 | + 28.00 | + 4.00 |
| Niger | CFA Francs | 277.71* | 1.13 | | |
| Nigeria | Pounds | 32.76 | 91.73 | | |
| Norway | Kroner | 560.74 | 78.50 | | |
| Pakistan | Rupees | 1,185.99 | 249.06 | + 191.11 | + 40.14 |
| Panama | Balboas | 13.45 | 13.45 | - 0.22 | - 0.22 |
| Paraguay | Guaranies | 1,415.24 | 11.23 | | |
| Peru | Soles | 2,379.72 | 88.75 | - 467.86 | - 17.44 |
| Philippines | Pesos | 643.50 | 165.00 | + 29.25 | + 7.50 |
| Portugal | Escudos | 1,616.69 | 56.23 | | |
| Rwanda | Francs | 2,093.57 | 20.94 | | |
| Saudi Arabia | Riyals | 303.75 | 67.50 | | |
| Senegal | CFA Francs | * | | | |
| Sierra Leone | Leones | 16.29 | 19.55 | | |
| Singapore | Dollars | 68.82 | 22.48 | | |
| Somalia | Shillings | 106.78 | 14.95 | - 27.18 | - 3.80 |
| South Africa | Rand | 99.88 | 139.83 | - 7.15 | - 10.01 |
| Spain | Pesetas | 17,498.51 | 249.98 | | |
| Sudan | Pounds | 33.96 | 97.50 | + 0.87 | + 2.49 |
| Sweden | Kronor | 603.24 | 116.61 | + 103.06 | + 19.92 |
| Syrian Arab Rep. | Pounds | 98.43 | 44.92 | - 5.48 | - 2.50 |
| Tanzania | Shillings | 198.25 | 27.76 | | |
| Thailand | Baht | 1,481.74 | 71.24 | | |
| Togo | CFA Francs | * | | | |
| Trinidad & Tobago | Dollars | 84.37 | 42.19 | | |
| Tunisia | Dinars | 27.48 | 52.34 | - 1.47 | - 2.79 |
| Turkey | Liras | 1,407.44 | 156.38 | + 117.52 | + 13.05 |
| Uganda | Shillings | 199.79 | 27.97 | | |
| United Arab Rep. | Egyptian pounds | 76.51 | 219.71 | - 1.81 | - 5.20 |
| United Kingdom | Pounds | 1,964.72 | 4,715.34 | - 35.86 | - 86.05 |
| United States | Dollars | 3,871.98 | 3,871.98 | - 351.54 | - 351.54 |
| Upper Volta | CFA Francs | 277.71 | 1.12 | | |
| Uruguay | Pesos | 560.35 | 75.72 | + 37.17 | + 5.02 |
| Venezuela | Bolivares | 759.47 | 169.33 | | |
| Viet-Nam | Piastres | 1,590.00* | 19.88 | | |
| Yugoslavia | Dinars | 3,036.96 | 242.96 | - 78.13 | - 6.25 |
| Zambia | Kwacha | 31.12 | 43.56 | | |
| | | Total | $18,935.62 | | |

3. Includes currency received by the Fund in accordance with Article IV, Section 8 following a change in the rate of the member's currency.

4. Includes currency portion of an increase in quota (Increases in Quotas of Members - Fourth Quinquennial Review).

5. Represents payment of original currency subscription.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 30

WEDNESDAY, MARCH 26th, 1969

*Complete Proceedings on Bill C-47,*
intituled:
"An Act to regulate products used for the control of pests and the organic functions of plants and animals".

WITNESS:

*Department of Agriculture:* C. R. Phillips, Director-General, Production and Marketing Branch.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 30

WEDNESDAY, MARCH 20th, 1969

*Complete Proceedings on Bill C-157,*
intituled:
"An Act to regulate products used for the control of pests and the organic functions of plants and animals".

WITNESS:

*Department of Agriculture:* C. R. Phillips, Director-General, Production and Marketing Branch.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

20031—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Lang |
| Aseltine | Desruisseaux | Leonard |
| Beaubien | Gélinas | Macnaughton |
| Benidickson | Giguère | Molson |
| Blois | Haig | Phillips (*Rigaud*) |
| Burchill | Hayden | Savoie |
| Carter | Hollett | Thorvaldson |
| Choquette | Isnor | Walker |
| Connolly (*Ottawa West*) | Kinley | Welch |
| Cook | | White |
| | | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 19th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Petten, seconded by the Honourable Senator Eudes, for second reading of the Bill C-157, intituled: "An Act to regulate products used for the control of pests and the organic functions of plants and animals".

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 Petten moved, seconded by the Honourable Senator Eudes, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*



20031—1½

# MINUTES OF PROCEEDINGS

THURSDAY, March 20th, 1969.
(33)

At 11.30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill C-157, "An Act to regulate products used for the control of pests and the organic functions of plants and animals".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Gelinas, Giguere, Isnor, Kinley, Lang, Phillips (*Rigaud*), Savoie and Walker. (17)

*Present, but not of the Committee:* The Honourable Senators Denis, Eudes and Pearson. (3)

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

The following witnesses were heard:

*Department of Agriculture:*
C. R. Phillips, Director-General, Production and Marketing Branch.

*Department of Justice:*
J. C. Pfeifer, Legislation section.

At 12.15 p.m. the Committee adjourned until 2.00 p.m. this day.

---

At 2.00 p.m. the Committee resumed consideration of Bill C-157.

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Carter, Croll, Desruisseaux, Gelinas, Giguere, Lang and Phillips (*Rigaud*). (9)

*Present, but not of the Committee:* The Honourable Senator Pearson. (1)

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

Mr. Phillips and Mr. Pfeifer were again heard. After discussion, it was agreed that a *new* clause 13 be inserted after clause 12.

NOTE: The full text of the amendment appears by reference to the Report of the Committee immediately following these Minutes.

Upon motion, it was *Resolved* to report the said Bill as amended.

At 2.40 p.m. the Committee adjourned.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

THURSDAY, March 20th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-157, intituled: "An Act to regulate products used for the control of pests and the organic functions of plants and animals", has in obedience to the order of reference of March 19th, 1969, examined the said Bill and now reports the same with the following amendment:

*Page 9:* Insert the following next after clause 12 and renumber clauses 13 and 14 as clauses 14 and 15 respectively:

"Appeal Procedure

13. The provisions of section 9 of the Hazardous Products Act apply *mutatis mutandis* in respect of any order made under this Act that directly affects the rights or interests of any person, as if that section were incorporated in this Act and as if the words "Control Products Board of Review" were substituted for the words "Hazardous Products Board of Review" in subsections (1) and (2) of that section."

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, March 20, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-157, to regulate products used for the control of pests and the organic functions of plants and animals, met this day at 11.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** May we have the usual order to print?

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

**The Chairman:** Mr. C. R. Phillips, Director General, Production and Marketing Branch, Department of Agriculture, will carry the explanation of this bill.

**Mr. C. R. Phillips, Director General, Production and Marketing Branch, Department of Agriculture:** Mr. Chairman, this bill is an up-dating of the current pest control products bill, and it is because of the increased use of pesticides and associated products and the greater general concern in Canada with respect to pesticides and their value and potential harmfulness, that it was decided there should be additional authority to regulate the manufacture, handling, use and advertising of such control products. At the moment there is only the authority to cover the product *per se* and its composition. The bill before you brings in these additional provisions to provide tighter control over pest control products.

**The Chairman:** The language in section 3, for instance, would appear to parallel the language in the Food and Drugs Act.

**Mr. Phillips:** Indeed. As the Chairman has said, it parallels the Food and Drugs Act. One reason for the change in the form of the wording is that up until the present time it has been considered that the Pest Control Products Act had an agricultural base, and yet there were many pesticides in use in Canada that did not have an agricultural base—the household pesticides, and so on. The re-wording of this bill makes it legal for the administration—which happens to be the Department of Agriculture—to administer those household pests rather than having a separate bill dealing with household pests.

**Senator Carter:** Would not that be covered by the Hazardous Products Act?

**Mr. Phillips:** Indeed, the Hazardous Products Act excludes pest control products.

**Senator Carter:** Why do you need authority, if it is already covered in another act?

**The Chairman:** No, it is excluded from the other act.

**Senator Carter:** Oh, it is excluded from the Hazardous Products Act?

**Mr. Phillips:** Yes.

**The Chairman:** I am wondering about your definition of "pest". We keep talking about pesticide residue, and you are talking about pests:

> "Pest" means any injurious, noxious or troublesome insect, fungus, bacterial organism,

—etcetera. And then you say:

> . . .and includes any injurious, noxious or troublesome organic function of a plant or animal;

What is the origin of that definition?

**Mr. Phillips:** There are a few products that are not in the normal sense of the word a "pest". For instance, sprout inhibitors are not controlled by anything now, but they can be

harmful in themselves, through misuse or putting them in the way of children, and so on.

**The Chairman:** Do you say a growth inhibitor?

**Mr. Phillips:** Yes.

**The Chairman:** How does that work?

**Mr. Phillips:** I can give you an example of one that is not in use now but was tried If you put a little material on a tobacco plant it will stop the sprouting. It is a growth inhibitor of that particular part of the plant. Also there are top killers on potatoes. You cannot say that the tops of potatoes are pests, but this material is used to kill it before the harvest, so that it will be easier to harvest the potatoes underground.

**The Chairman:** You are using something to kill something?

**Mr. Phillips:** Yes.

**The Chairman:** And the application to the potato plant would be that you would spread something on the plant to stunt its growth?

**Mr. Phillips:** It would kill the tops so they can harvest the tubers and not have as much foliage.

**The Chairman:** That is to allow more juice or sap to get down into the potatoes?

**Mr. Phillips:** Not really, just to kill them and make it easier to harvest them.

**The Chairman:** It is easier to operate the potato picker?

**Mr. Phillips:** Yes.

**Senator Croll:** Stay out of the farming area, Mr. Chairman!

**The Chairman:** What is that?

**Senator Croll:** I was just saying that you should stay out of the farming area, Mr. Chairman. You are not doing so well on potatoes.

**The Chairman:** As a matter of fact, I know, because I did the things that he is talking about when I was a law student, even down to spraying the tops of potatoes and operating a potato picker at harvest time, and it was very helpful to have the growth all dried up.

**Senator Connolly (Ottawa West):** This is the bill Senator Petten sponsored in the house?

**The Chairman:** That is right.

**Senator Connolly (Ottawa West):** The thing I was going to ask in the house . . .

**The Chairman:** I do not think Mr. Phillips is through with his presentation yet. Are you, Mr. Phillips?

**Mr. Phillips:** Yes, I am.

**The Chairman:** I am sorry. Go ahead, senator.

**Senator Connolly (Ottawa West):** —was this—and, incidentally, I think Senator Petten did a splendid job of explaining this bill: under this bill "minister" means the Minister of Agriculture, and I have not got the bill that Senator Carter sponsored about noxious substances. . .

**The Chairman:** Hazardous substances.

**Senator Connolly (Ottawa West):** Hazardous substances, yes; but it seems to me that it was not the Minister of Agriculture who was responsible for administering that bill.

**Mr. Phillips:** No, it was the Minister of Consumer and Corporate Affairs.

**The Chairman:** There was a reason for that, because it was the commercial aspects of hazardous products being dealt with there.

**Senator Connolly (Ottawa West):** There is probably going to be a certain amount of overlap of inspection and that kind of thing, and I wonder if there is any provision made for avoiding duplication.

**Mr. Phillips:** Mr. Chairman, that is certainly the intent. I could give you a little history on it. When the hazardous substances bill was first drafted it was intended to be under National Health and Welfare, and it was intended to cover all those areas which were not covered by other legislation. It was drafted excluding the pest control products bill and several others, but they wanted to pick up areas like fabrics which were inflammable—

**Senator Connolly (Ottawa West):** Paints.

**Mr. Phillips:** Yes, that sort of thing. So, it is a generalized bill which provides for the exclusion of the other legislation—let us say a

fertilizer which is not excluded under that bill, and they could take prompt action until the fertilizer bill was amended. In this way it is a catch-all to provide protection against hazard. When the Government re-organization took place, and since the Minister of Consumer and Corporate Affairs is to look after foods in the economic area as distinct from the health area, this was then transferred from the jurisdiction of the Minister of Consumer and Corporate Affairs.

**Mr. Chairman:** Mr. Phillips, may I come back to the question I asked you earlier? I do not see anything in the bill that covers what you call a growth inhibitor. I have looked at the definition of "control product", and it is certainly not in there.

**Mr. Phillips:** Section 2(c)(i), in the definition of "control product", reads:

> ...any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics...

No, that is not it.

**The Chairman:** No, I read that one, and it does not cover it. Then I looked at the definition of "pest" and found that it does not cover it either.

**Senator Kinley:** This would include veterinary products which are covered by another act.

**Mr. C. L. Stevenson, Plant Products Division, Department of Agriculture:** It is covered under (h) where it says that it includes "any injurious, noxious or troublesome organic function of a plant or animal".

**Mr. Phillips:** Yes, under (h) it includes "any injurious, noxious or troublesome organic function of a plant or animal". That is the one that is intended to cover that. You may think it is pretty general, but it is troublesome.

**Senator Pearson:** I don't see it.

**Mr. Phillips:** Let us take tobacco. If you have to send people around to nip off the sprouts, and that is costly, then it is troublesome, and in the sense that if you can put on one application that will inhibit the growth of the sprouts—and I assume that was the intent...

**The Chairman:** But, Mr. Phillips, taking your example of brussels sprouts, is that the control product?

**Mr. Phillips:** Well, tobacco...

**The Chairman:** All right, let us take tobacco. You put something on the leaves which will inhibit the growth?

**Mr. Phillips:** Yes.

**The Chairman:** Now, what is the control product? Is it not the something that you put on the leaves?

**Mr. Phillips:** The control product is what you put on the leaves, and I believe there is a relationship between the definitions of "control product" and "pest", so we have to take the two together. Section 2(c) reads:

> "control product" means any product, device, organism, substance or thing that is manufactured, represented, sold or used as a means for directly or indirectly controlling, preventing, destroying, mitigating, attracting or repelling any pest...

**The Chairman:** Yes, but is that a pest that you are treating when you put the product on to kill sprouts on the tobacco plant?

**Mr. Phillips:** I was suggesting that the two lines at the bottom of (h) include the sprouts as being a troublesome organic function of a plant.

**The Chairman:** No. Just follow my reading. It says that a control product includes any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics of a control product...

**Mr. Phillips:** Yes.

**The Chairman:** ...to which it is added. This is not the tobacco plant.

**Mr. Phillips:** No, I misled you when I first started to read section 2(c)(i) and then stopped. That is not it. Section 2(c)(i) relates to a material that is put into a control product in its formulation, and it does not cover the point we were discussing. So, if I could leave that aside...

**Senator Aird:** If you look at section 3(1) you will see that it reads:

> No person shall manufacture, store, display, distribute or use any control product under unsafe conditions.

**The Chairman:** I am wondering if killing the sprouts on a tobacco plant—whether that application would create unsafe conditions.

**Senator Aird:** My question to Mr. Phillips is: Is it by design that you do not define "unsafe conditions"? You go to some extent to define "control product", but it is the "unsafe conditions" aspect of a control product about which we are concerned. Is it by design that this is not defined?

**Mr. Phillips:** I believe that the regulatory power provides for the prescription of unsafe conditions by regulation. It is certainly not defined in the bill. I will see if I can find...

**The Chairman:** Yes, you have to power to make regulations respecting the standards for efficacy and safety of any control product. That is in section 5(i) on page 4 of the bill.

**Mr. Phillips:** Yes, Mr. Chairman.

**The Chairman:** So they must have intended to deal with it by regulation.

**Mr. Phillips:** I think unsafe conditions are provided for in subsection (j).

**Senator Connolly (Ottawa West):** If you look at the French text you will see that "unsafe conditions" is translated as "dans des conditions dangereuses", which means that it is the conditions of storage, distribution, and use that create the dangerous conditions.

**Senator Aird:** Are you suggesting, Senator Connolly, that that phrase has a wider connotation?

**Senator Connolly (Ottawa West):** I thought so when I read it first.

**The Chairman:** It is difficult to have anything wider than "unsafe conditions", and I think there is power by way of regulation...

**Senator Aird:** With respect, Mr. Chairman, I think the words we should be concerned with are "unsafe conditions".

**The Chairman:** I notice that in the last paragraph of the authority to make regulations there is a general authority that would certainly give them the right to define "unsafe conditions" by way of regulation. Subsection (o) is:

> (o) generally for carrying out the purposes and provisions of this Act.

**Senator Lang:** Subsection (3) of section 3 contains the word "deemed". It reads:

> A control product that is not manufactured, stored, displayed, distributed or used as prescribed, or is manufactured, stored, displayed, distributed or used contrary to the regulations shall be deemed to be manufactured, stored, displayed, distributed or used contrary to subsection (1).

That ties it in with the regulation. Anything not done in accordance with the regulations is deemed to be stored under unsafe conditions by subsection (1).

**Senator Aird:** I believe this gives a very wide discretion to the minister.

**The Chairman:** Well, to the Governor in Council.

**Senator Aird:** Yes.

**Senator Kinley:** This is a bill giving power to the Governor in Council. First it says you cannot do anything, and then if you do it you cannot get it, and with respect to the rest you have to play it by ear. This bill has no definiteness in it, and furthermore it does not name anything. In the discussion in the house we were told about DDT and mercury. Is this bill going to stop the use of these things? What is the object of this bill?

**Mr. Phillips:** Mr. Chairman, if I may, I will start with the current act, and then try to go on with why there are some of these changes.

In the current act, pest control products as defined in it are controlled, and they are required to be registered before sale. The application for registration is examined in order to determine whether they are efficacious for the purpose intended, and whether they will leave a residue on produce, contrary to the Food and Drugs Act, when used according to directions. Once it has been determined that a product can be used safely under the conditions proposed, and on the basis of the manufacturer's representations, then it can be registered and it is ready for sale if it is properly labelled. That did not cover a number of areas of control that might be necessary for safer use. The trend now is to attempt to get biological control of pests. Two examples were given in the House of Commons Agriculture Committee. With Biologics it may be necessary to have examination of a pest control product manufacturer's premises in order to be sure the products going on the market are safe rather than waiting until the product is on the market before testing it, because the costs would be

lower. That is one reason for the expansion of subsection (3) to include examination of the premises and unsafe conditions on the premises. The other area is a little more difficult and deals with use by farmers and I cannot speak on it with authority.

**The Chairman:** There is no provision in the bill for a control product manufacturer to contest a ruling or decision made by the department prohibiting manufacture and sale.

**Mr. Phillips:** In the Commons committee an amendment was made to the bill in relation to detention.

**The Chairman:** But detention does not deal with this situation.

**Mr. Phillips:** No. This matter was discussed at length in that committee. Indeed the Canadian Agricultural Chemicals Association appeared before the committee and asked for the right of appeal. That was discussed at length. In their explanation they said the need for it had not been experienced, that there had been co-operation and there had been no cases in which there had been a need to use it, but they would like to have it just in case it were needed.

**The Chairman:** Recently we dealt with a bill which is now the Hazardous Products Act. In that act provision is made for putting producers on a prohibited list to be used only in accordance with regulations, and provision is made for what amounts to an appeal by any person injured or interested by reason of that ruling to a Hazardous Products Board of Review. Why in the circumstances is no such provision made here?

**Mr. Phillips:** We looked at that, because it was being considered at about the same time as this bill was before the House of Commons committee. The equivalent in this bill to something going on a hazardous products list would be where the minister cancelled the registration of a product. In other words, if a hazardous product went on a list it could not be sold any more; it was being sold but could not be sold any more In this case the registration would be cancelled and it could not be sold any more.

Regulations just made by the Governor in Council under a bill similar to this provide that before registration of a product can be cancelled 30 days notice must be given.

**The Chairman:** There is nothing of that sort in this bill.

**Mr. Phillips:** No, but there is provision for it. It is not right in the bill, It is in the registration and cancellation provisions.

**The Chairman:** Where is the registration?

**Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** It is section 5(d).

**Mr. Phillips:** It is really section 5(b).

**The Chairman:** That only makes regulations for registration of control products and establishments in which they are manufactured.

**Mr Phillips:** Yes.

**The Chairman:** I am thinking of the case where you have registration and because further research discloses certain things the registration is cancelled. You do not give the person affected any right to challenge that, and you do not provide for any right to compensation.

**Mr. Phillips:** No, there is no provision for compensation, that is for sure.

**The Chairman:** We seem to have a different policy on this bill. Cannot we get a little uniformity? Or is there good reason for not having uniformity?

**Mr. Phillips:** Let me go through the stages involved in registering a pesticide. When it arrives at the Plant Products Division of the Department of Agriculture there is documentation to establish whether it is efficacious or not, indicating all the trials. These documents then go to the Research Branch of the Department of Agriculture, the Wildlife Section of the Department of Indian Affairs and Northern Development and various agencies of government that it might impinge on. It is examined in the light of that and reports are made to the Department of Agriculture. Apart from the manufacturers themselves, the scientists involved are really employees of the federal Government. If a product is registered and subsequently the registration is to be cancelled, there will be provision in the regulations for this 30-day notice period, and they will be able to appear for a hearing before the minister and others.

Another part of the answer is that there has been no case, of which we are aware, in

which there has not been the possibility of appeal to the minister, to the deputy minister, to members of Parliament, about action taken by a civil servant against a manufacturer. Certainly we hear about it and have to examine it. The deputy minister made the point, which he admitted was strictly philosophical, that immediately there is a board of review on this basis there is a tendency for an individual not to take the same care because he thinks it will be reviewed by somebody else anyway. Philosophically he is against the principle of not putting the individual to the test immediately and making a proper judgment on the matter.

**The Chairman:** But where is there any right of the person affected to appear at the stage when such a decision is being considered? There is no notice of a hearing where he might present his side. There is no right of appeal afterwards and yet the effect of taking this product off the registration list is to make it a prohibited product. Is that right?

**Mr. Phillips:** That is right. I cannot tell you a time when a registration was cancelled, but it could occur under these circumstances, that the manufacturer had a record of not supplying what was on the label and after continued pressure and even a court case it is still the same situation. Then the only way for protection is to cancel the registration. That does not prevent the man...

**Senator Connolly (Ottawa West):** What do you mean by court case? In the instance of someone that was injured?

**Mr. Phillips:** Of course any citizen, but usually the department.

**Senator Connolly (Ottawa West):** Did you mention a court case? Oh, it is hypothetical.

**Mr. Phillips:** It is hypothetical. I cannot recall a case in the pest control product area in the recent years, but there have been cases in feeds and fertilizers where samples and results are sent and they do not come up to the proper level. You take the firm to court and they are fined and they still do not comply so then you cancel the registration. It is the only way to protect the public.

**The Chairman:** I am not discussing that feature at all. I am not suggesting that the department should not be able to cancel the registration at any time, but I do say that the person who is affected should have some opportunity and should have his day in court or somewhere to point out that this has not been properly done. If we provide that day in court under the Hazardous Products Control Bill, and it was in the bill when it came into us, we strengthen it a little bit by saying "shall" instead of "may" be referred to the Hazardous Products Board of Review. Why should there not be a right to a board of review here?

**Senator Kinley:** Is there any protection for inventories that are connected under the present way where you have got to register? There is a responsibility when you approve them by registration and then they have got a lot of inventory. What are you going to do with that? Pay for it?

**The Chairman:** There is no provision for compensation.

**Mr. Phillips:** If I could speak to that one. It is a little different. If there were an inventory of goods, and using my previous example where they were not up to standard and that is why the cancellation was made, the goods would be detained and sale would be stopped by that means, not by the registration means. They would be put under detention and until they were corrected they could not be sold. Now, I think the amendment, if my memory serves me correctly, provides for the right of appeal against the detention.

**The Chairman:** I do not see it.

**Senator Kinley:** All of these things have two aspects. You go and spray in the forest and you wind up ruining the salmon in the stream. Which are you going to do, destroy the salmon and save the forest? If you are going to use this product what are you going to do about it?

**Mr. Phillips:** It is a little different matter. That is part of the registration process in determining whether it can be used on the forest. If in using it on the forest spray went over into a stream and affected salmon in the actual operation of the spraying and if it were absolutely necessary for use in those forests then the cautions on the label would indicate that under no circumstances should this be sprayed so that it would run into the stream. This is the type of protection that is provided here. If there is absolutely no way of using it without that effect it has to be a judgment matter. As you say, what are you

going to do, protect the forest and kill a few salmon or are you not going to? It is a judgment matter.

**The Chairman:** I am thinking of a situation, senator, where the department changes by reason of further research. It changes its position in relation to the formulation or the materials to be included in the control product and at that stage then a person who is manufacturing under the old law then finds himself with an inventory he is prohibited from selling. There is no provision for compensation in those circumstances?

**Mr. Phillips:** No.

**The Chairman:** There is no provision for appeal? My own feeling is that there certainly should be an appeal.

**Senator Lang:** May I ask the witness a question? Because of the definition in this subsection 2, this act could control what normally would be considered safe products. I can conceive of many safe products falling within the definition of devices or substances for repelling pests. I know there is a company that sells electric light bulbs. You put them up in your porch to repel mosquitos. I suppose that would be a device for repelling insects and, as such, would fall within the ambit of that definition. Maybe citronella oil for repelling mosquitos also falls within that definition. I can see where many, many normally considered safe products would be falling into that. I think the chairman is expressing the rights of the individual compensation and appeal.

**The Chairman:** When this bill becomes law, if we provided for a board of review similar to the Hazardous Products...

**Mr. Phillips:** Well, can I answer this other question first in terms of the devices? You call it a safe product and there is no doubt about the light bulb being safe, but the question is, does it do that they say it will do? You examine it and determine whether it indeed does repel the insects and if it does not you do not allow them to say so. That is the purpose of the control of the devices. It may be safe in itself, but may be ineffective.

**The Chairman:** This covers the advertising feature.

**Mr. Phillips:** It is the statement on the label. Speaking to your question, Mr. Chairman, it would certainly make it a more formalized approach in the cancellation of a registration. Incidentally, registrations are annual and a cancellation would be in midyear. If there were a change to be made in terms of the requirement and these happened in labelling and so on, the manufacturers are informed that the change will take place usually in the next registration year. It is a matter of changing the labelling more than not allowing the product to be sold any more. It may be that the statement says to use it at a certain concentration and it is decided that it should be of a little less concentration. The directions for use have to be changed. In examining for registration in the subsequent year these things are taken into account after having warned the manufacturer. He is advised that we cannot accept this unless he has made the changes. They come in and say, "Goodness gracious, we have all of these stocks." We are really having a board of review. It is not a formal one in the sense it is spelled out, but this type of review is going on all the time with them. The manufacturers themselves indicated that they had no difficulty at all and their only concern was with the hypothetical, that 20 years from now it may not be the same people.

**The Chairman:** The right to review would not interfere with any action that you might want to take, but it would enable the person affected to challenge that in a subsequent proceeding. In the amendment, what you have done would not be affected?

**Mr. Phillips:** Yes.

**Senator Aird:** That partially answers the point which I was going to make. One thing which emerged in the Committee on Science Policy is that science is such a changing thing and has so many successes and failures, not discovered until a subsequent time. In other words, there is a human error factor in science. And there is a human error factor in nearly everything we do.

My point is that, no matter how efficient or scientific your approach is, there is always an element of possibility of human error. We have got one today, in the case of General Motors recalling automobiles I do not suppose there could be a more stringent examination of a product or a machine than that which must be done in the case of General Motors products. When you have this human error element introduced in anything of this

nature, I think I would certainly support the chairman, that the human error element is something we should provide for.

**The Chairman:** Senator Aird, in what you said, was this supporting the idea that there should be a board of review?

**Senator Aird:** Yes.

**The Chairman:** Not on the other question, of compensation?

**Senator Aird:** No.

**Senator Pearson:** This is something which is continually going backwards and forwards. I find that there is a difference of opinion on nearly everything that you have in this bill. There is a question and an answer, and someone else has another answer that is just as good. For that reason I think we should provide in this legislation for a right of appeal. The manufacturer through no mistake on his own part, but through a change of the product and such like, and cancellation of registration, or detention for six months or more, he should have a right to appeal to a court of law. For that reason, I drew up an amendment to this bill, which would suggest:

> Any proceedings taken under this act against any person shall in no way interfere with or lessen the right of an aggrieved person to any legal remedy to which he may be entitled.

This is just an indication or a copy of a provision in the former act—and I do not know why it has been left out.

**Senator Connolly (Ottawa West):** It was a good deal more explicit than that.

**The Chairman:** I am not sure, senator, whether that does what the committee was wanting or that it does what you want. I think we need something more specific, that any decision in relation to registration or detention or otherwise under this act shall be subject to review, using the section that is in the Hazardous Products Act.

**Senator Connolly (Ottawa West):** Why should we not instruct the officials to have a look at that section of the Hazardous Products Act and see whether it would not be, in their view, a valid section to insert in this bill?

**The Chairman:** Time marches on. If the other provisions of the bill are satisfactory to the committee, I would suggest that we simply stand for consideration the form of our amendment to provide for a review, similar to what is in the Hazardous Products Act; and that our Law Clerk get together with the departmental officials; and that they come back here at 2 o'clock and report the result of their conference. Is that satisfactory?

**Hon. Senators:** Agreed.

**Senator Burchill:** Mr. Phillips, what has been the experience of the department so far in respect to the situation we have under consideration? Have you had any cases?

**The Chairman:** That would be under the present act.

**Mr. Phillips:** We have had manufacturers themselves appearing before the Agricultural Committee of the House of Commons. They had indicated they had no problem. Indeed, when talking about the detention, one committee member asked what experience the manufacturers had about detention and the reply was: "I have had only two products detained in five years, and it was my fault." That was the type of answer they gave.

It was somewhat in the same vein as the chairman is saying, that it was in terms of principle he was taling about, not in terms of whether there would ever be a need for it.

**Senator Carter:** Before we cut off the discussion, there is one point I would like to clarify. When a substance or product is decertified, what part of this bill covers the disposition of that product, after that?

**The Chairman:** The detention section, I would think. Is that right, Mr. Phillips?

**Senator Croll:** On page 6, clause 9 (2).

**The Chairman:** Clause 9.

**Senator Carter:** This is what is seized. This is a decision on stuff that is seized. I am not thinking about stuff that is seized. This is something that prohibits.

**The Chairman:** That would follow. First of all, you have a seizure and the product may still be registered; or you might have a registration cancelled, and the product seized.

**Senator Carter:** I am thinking about something left on the shelf in the store. You cannot sell it any more.

**Senator Connolly (Ottawa West):** That goes to the question of the chairman's point, as to whether or not there should be compensation.

**Senator Kinley:** Under this bill, there is provision for two years in jail, whereas in the other bill you could get thirty days.

**The Chairman:** What would you wish to do? Would you like to have a choice given—in the range of thirty days to two years?

**Senator Kinley:** It is too much to put a farmer for two years in jail for getting into trouble. That is a bad thing.

**The Chairman:** The penalty provision here is that if the prosecution proceeds as an indictable offence the person, if convicted, is liable to imprisonment for two years. But he might be sentenced for one month.

**Senator Kinley:** I know, it is a question of might. It should not be so big.

**The Chairman:** There might be a very notorious case. Now, senators, we have a motion to adjourn until 2 o'clock.

**Senator Kinley:** Are we going to take any notice of what was said in the house, about people wanting to appear on this bill, from the west?

**The Chairman:** The question there was, if when this bill comes up for third reading, which would be next week, and if the senator who was raising the question is there, if he then feels that there is more evidence that should be before the committee, he could raise the issue on the third reading, and have the matter referred back.

**Senator Kinley:** This bill is big business and I think it should be a perfect. I think there is duplication with other acts and that we had better be careful about it. It is affecting classes of the public which do not know the law and who could be caught very easily.

**The Chairman:** Senator, there is right now a pest control statute.

**Senator Kinley:** I know that, but this goes further. This is preventive legislation.

The committee adjourned until 2 p.m.

Upon resuming at 2 p.m.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order. We left one item open when we adjourned this morning, the question of a provision for a right to have any order or direction made under this bill the subject matter of review. What we have done is to take the provisions of the Hazardous Products Act and make them apply *mutatis mutandis* to any order that is made under this bill, as being the simplest way instead of repeating the procedures.

I will read it to you in a moment. We did attempt to discuss what we were proposing to do, but so far as the department was concerned, I do not think they were in the position where they felt that they had the necessary authority to discuss and to say that they did or did not approve, and, so far as they are concerned, they still stay with the bill.

Now, I will read a proposed amendment which simply contemplates renumbering clauses 13 and 14 of the bill as clauses 14 and 15, and inserting a new clause 13 entitled "Appeal Procedure." This is the way it reads:

> "Appeal Procedure
>
> 13. The provisions of section 9 of the Hazardous Products Act apply *mutatis mutandis* in respect of any order made under this Act that directly affects the rights or interests of any person, as if that section were incorporated in this Act and as if the words 'Controlled Products Board of Review' were substituted for the words 'Hazardous Products Board of Review' in subsections (1) and (2) of that section."

**Senator Croll:** Mr. Chairman, that is a nice, easy way of doing it.

**The Chairman:** Sure, it is.

**Senator Croll:** But at the same time it is a complicated way of doing it. When I pick up an act and read it I do not want to have to go over to some other act in order to get the section there to see what the interpretation of the procedure is. Admittedly, this is the easier way, but are we not really better off to incorporate the procedures into our bill so that, when someone has the act in front of him, he has the whole act in front of him and does not have to go to another act which he may not have in front of him.

**The Chairman:** He has a heading entitled "Appeal Procedure". We have done this before, you know.

**Senator Croll:** Where? I am trying to think of it now myself.

**The Chairman:** We incorporated procedures *mutatis mutandis*. Was it in the Income Tax Act?

**Mr. Hopkins:** We have done it before and it is easily adaptable, in my opinion, to provide for the same sort of appeal in this bill. I can also tell you that it would take me at least a week to do it in any other way.

**Senator Croll:** What do the drafters of the department say?

**The Chairman:** So far no comment. Do you wish to ask them?

**Senator Croll:** Yes.

**Mr. Pfeifer:** I would not wish to express an opinion on a colleague's drafting procedures. I know that appeal provisions are very complicated and do take time. Even in a day of intensive work it is not too easy, because one must always consider the implications of the appeal, who is to hear it, and who is to pay the person on the appeal tribunal; is there going to be an appropriation and if so, from where. The *mutatis mutandis* procedure is used frequently but again there are other acts which spell it out. But the *mutatis mutandis* procedure is to be found frequently in the statutes.

**Senator Lang:** Is the Hazardous Products Act now law?

**The Chairman:** It is still in the House of Commons.

**The Law Clerk:** This Act comes into force on proclamation. In the recent past we have had the same situation in anticipation of an act coming into force where the timing can be adjusted by proclamation.

**The Chairman:** Are there any questions?

This bill we are now dealing with has been before the Commons and it has come to us, and when we make this amendment it will go back to the Commons where they will consider whether they accept it or not. If they do not accept it, then we will receive a message saying that it has not been accepted and we will have to try to resolve the issues. Certainly as a matter of principle I cannot see why any person should say there should not be a right of review. The decisions taken could be very serious and drastic.

**Senator Croll:** I move the amendment.

**The Chairman:** Shall I report the bill as amended?

**Honourable Senators:** Agreed.

The committee adjourned.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

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The Honourable LAZARUS PHILLIPS, *Acting Chairman*

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No. 31

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WEDNESDAY, MARCH 26th, 1969

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***Complete Proceedings on Bill C-173,***

intituled:

"An Act respecting the organization of the Government of Canada and matters related or incidental thereto".

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WITNESS:

*Treasury Board:* A. R. Bailey, Organization Adviser to the Secretary.

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REPORT OF THE COMMITTEE

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The Queen's Printer, Ottawa, 1969

20033—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gelinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 25, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Langlois moved, seconded by the Honourable Senator Roebuck, that the Bill C-173, intituled: "An Act respecting the organization of the Government of Canada and matters related or incidental thereto", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Roebuck, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
*Clerk of the Senate.*



20033—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, March 26th, 1969.

(34)

At 9.30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill C-173, "An Act respecting the organization of the Government of Canada and matters related or incidental thereto".

*Present:* The Honourable Senators Beaubien, Burchill, Connolly (*Ottawa West*), Croll, Desruisseaux, Haig, Hollett, Isnor, Kinley, Macnaughton, Phillips (*Rigaud*), and Welch—(12).

*Present, but not of the Committee:* The Honourable Senators Denis, Langlois and Smith—(3).

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

Upon motion, the Honourable Senator Phillips (*Rigaud*), was elected *Acting Chairman.*

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witness was heard:
*Treasury Board:*

A. R. Bailey, Organization Adviser to the Secretary.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 11.00 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, March 26th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-173, intituled: "An Act respecting the organization of the Government of Canada and matters related or incidental thereto", has in obedience to the order of reference of March 25th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

LAZARUS PHILLIPS,
*Acting Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Wednesday, March 26, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-173, respecting the organization of the Government of Canada and matters related or incidental thereto, met this day at 9.30 a.m to give consideration to the bill.

**Senator Lazarus Phillips** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, the intention is to proceed, with your concurrence, with Bill C-173, which in short term is described as the Government Organization Act, 1969. May we have the usual motion to print?

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

**The Acting Chairman:** Honourable senators, the gentleman who will explain this bill in some detail is Mr. A. R. Bailey, Organization Adviser to the Secretary of the Treasury Board.

Mr. Bailey, as you are probably aware, this bill has received second reading in the Senate and is now before this committee for detailed examination. Would you be good enough to give us a basic analysis of the bill and reference to any details thereof to which you think we should give particular attention. You will also be good enough, of course, to answer any questions which may be put to you.

**Mr. A. R. Bailey, Organization Adviser to the Secretary of the Treasury Board:** Mr. Chairman and honourable senators, the bill makes provision for the establishment of five new departments of Government. I think the five new departments all represent attempts to consolidate existing components of Government agencies, either complete departments or portions thereof.

For example, the new Department of Regional Economic Expansion is formed by combining elements from four ministries and for the first time groups the agencies involved in facing or working on the problem of regional economic disparity, placing them all under one minister and in one department.

The Department of Fisheries and Forestry, on the other hand, combines two departments of Government which traditionally have been well known for many years. The Fisheries and Forestry portfolio brings together two departments traditionally concerned with renewable resource problems and as such provides a focus through one minister on renewable resource problems.

The Department of Communications is one which looks more towards the future. It brings together traditional agencies, such as the Post Office Department, but it also concerns itself mainly with bringing together elements which have been working on and concerned with the communications problems of the country. The largest component in the new Department of Communications, apart from the Post Office Department itself, is the group from the Defence Research Board, the Telecommunications group, and another group from the Department of Transport. These two together constitute the main communications elements in this new ministry.

In the new Department of Industry, Trade and Commerce, we have a new ministry which simply combines two departments of Government. The Department of Trade and Commerce has a long history in Government operations over many years. The Department of Industry, on the other hand, was formed in 1963 and at that time brought together various scattered components of staff which were concerned in work on industrial development activity. It put considerable emphasis on bringing together staffs from elsewhere in the Government which were working on problems of industrial research and supporting

efforts at product development and process development in Canadian secondary industry.

The Department of Supply and Services is being formed mainly as a result of the recommendations of the Glassco Commission. Honourable senators will remember that the Glassco Commission in 1962 placed considerable emphasis on the virtue of consolidating supply and common services throughout the federal Government, and at that time certain steps were taken to start this process in the Department of Defence Production.

However, it is only with the advent of this proposed legislation that it will be possible to bring together the legislative mandate and the components to form a common service agency that will truly be in a position to carry forward this program of consolidation, which, as Glassco pointed out, should represent considerable administrative savings and benefits to the federal Government.

Now, the first five parts of the bill constitute the major changes in the sense that each one of them creates a new ministry. The remaining parts deal with lesser, but not necessarily unimportant, changes. Indeed, some of them, I think, are quite significant. For example, the changes in respect to the Department of Consumer and Corporate Affairs provide added capabilities to that ministry by bringing into it elements from elsewhere in the service. For example, the Standards Branch in the Department of Trade and Commerce, as a result of this reorganization, was moved into the Department of Consumer and Corporate Affairs. With the moving of the Standards Branch this does provide the new department with a field force and the capability to engage in a much more effective consumer-type activity in regard to ensuring that standards are adhered to, and, presumably, carrying forward consumer protection activity.

The changes in Part VIII respecting the Medical Research Council bring the Council itself under the responsibility of the Minister of National Health and Welfare. This is the basic change. There is no substantive change in the corporate status of the Medical Research Council. In this respect it will operate very much as it has for the last several years. However, it will provide the Minister of National Health and Welfare with a better opportunity to co-ordinate departmental activities along with the activities of the Council itself.

The changes relating to the Science Council are designed to place the Science Council on the same footing as the Economic Council now is. That is, it becomes a separate employer for its staff and it has the authority to publish in its own right. These changes, I believe, are designed to give it more effectiveness by having its own secretariat and staff capable of doing some of the necessary support work on behalf of the Council itself.

The changes in respect to the Royal Canadian Mint are designed to place the Mint in a better position in two respects: First of all, by making it a Crown corporation, it should be able to manage its activities more efficiently in respect to adjusting to the fluctuating demands for coinage and currency; secondly, I think there is the intention that it will also be able to engage in a certain amount of export activity on behalf of the Government regarding demand by other countries for coinage.

As you probably know, there is a considerable interchange among countries with respect to coinage requirements, and putting the Mint on a Crown status should enable it to operate more effectively in respect to opportunities in foreign markets for coinage.

The change in regard to the ferries legislation simply moves the responsibility from the Department of Public Works to the Department of Transport. I think it is a relatively minor change, but it does identify licencing of ferries with the Minister of Transport who is obviously more concerned from a viewpoint of transportation, generally.

Parts XII, XIII and XIV represent small changes which perhaps we could go into, if it is so requested. Part XV, in effect, covers all the transitional changes that are a result of bringing forward such a sizeable piece of legislation. There are a lot of involvements with each of the five new ministries with legislation they are responsible for, and, quite naturally, most of these changes had to make transitional recognition for the changes of ministry and for provision to have existing acts continue in full effect under the new ministries being established.

Mr. Chairman, that is all I have to say as an introductory comment.

**The Acting Chairman:** Thank you, Mr. Bailey. Before honourable senators question you, may I put this one general question to you: With the reorganizations effected in existing departments and with the creation of new

departments, have you available any information with respect to the amount of personnel that will now be employed by these various departments as compared with what the position was before? Put differently, my question directs itself to the question as to whether, in the organization of these departments, we are dealing with the question of efficiency in administration aside from the mere question of symmetry in organization.

**Mr. Bailey:** Well, Mr. Chairman, I think, if you look at the five ministries being established, that in no instance has there been any increase of staff as the result of forming the ministries. In three cases the staffs involved have been reduced. I think the reorganization in total has resulted in savings. For example, in the case of the Department of Industry, Trade and Commerce I believe the initial savings in that particular case exceed $1 million, although it is extremely difficult to arrive at precise figures of total savings because it is not really possible to make a specific determination until the changes have actually been carried out and a certain period of time has elapsed in which to determine how much savings will actually have been made.

I think, for example, in the case of the Department of Supply and Services the formation of the ministry would result in major savings into the future. Indeed, the purpose behind the consolidation of the common service element in government is to pursue economies of scale. As you well know the Glassco Commission documented the general case for the extensive savings that might be made by carrying out such a program. For example in the last three years I believe the Department of Defence Production has made significant savings in various areas where they have introduced consolidated activity. One example I might mention is the savings that have resulted from the formation of their central traffic management group where they have been instrumental in reducing costs associated with freight movement on supplies among departments of government. I think generally, however, the service savings is a saving into the future and as the Glassco Commission suggested if you organize an agency that has the mandate to consolidate common services and give it the legal status to operate into the future it is bound to make substantial savings on behalf of the government simply because it is in the position to introduce economies of scale. I know that the department does keep track over the detailed savings that it feels are directly related to its efforts of common service activity, and I am sure that in the future there will be more and more specific comments and reports by that department on the savings it has generated as a result of its common service efforts. Some of the major efforts, however, in this reorganization, I think are directed not so much towards efficiency but towards creating more effectiveness in government operation, effectiveness in the sense of wanting to achieve the goals and objectives established by government in various program areas, and I think most particularly that the Department of Regional Economic Expansion is the best case in point. Obviously the criteria for judging this merger or reorganization is the extent to which it will enable the government more effectively to reach some of its objectives that it is setting for itself in respect to solving problems of regional economic disparity. This gets you more into assessment of economic and social objectives and less into the field of efficiency and administrative savings. In the case of regional economic expansion I do not think there are any significant administrative savings as a result of this merger.

**The Acting Chairman:** Thank you. Senator Burchill?

**Senator Burchill:** Mr. Bailey, I am interested in the Department of Regional Economic Expansion. I understand the Atlantic Development Corporation is going to disappear under this, is it?

**Mr. Bailey:** No. What is happening is this; part of the staff of the Atlantic Development Board has been merged into the new department. Indeed Dr. Weeks, the executive director of the Atlantic Development Board, is assuming a very much senior executive position in the ministry and all of the staff that he had with the Board are with him or will be with him in the new ministry. In addition, as you know, the legislation makes provision for an Atlantic Development Council and the Council in effect will provide for and have the same counselling and policy guidance value that the Atlantic Development Board had.

You will probably note from the debate in the House of Commons that they are intending to appoint Professor Smith as chairman of the Atlantic Development Council, and I think from the debate in the House everyone seemed to agree that he was a highly qualified individual...

**Senator Burchill:** Yes, indeed. I know him well, and that is the case.

**Mr. Bailey:** And that his efforts will greatly enhance the work of the council, and the competence that resides in the staff of the Atlantic Development Board will be very much part of this new ministry.

**Senator Burchill:** The Atlantic Development Corporation did a good job, and I was sorry to think they were going to be abolished, but now it appears they are not.

**Mr. Bailey:** The people that were there are still there. Indeed to the extent that they are now merged with the personnel of the area development agency and the personnel of ARDA and to the extent that in the new ministry they are all inter-related one with another it should be possible to get increased benefits from their ability and from their policy-thinking and development.

**Senator Burchill:** I have one other question; is the Industrial Development Bank to be transferred to the Department of Industry?

**Mr. Bailey:** Trade and Commerce? No. The Industrial Development Bank is an agency reporting through the Bank of Canada.

**Senator Burchill:** There is no change there at all?

**Mr. Bailey:** There is no change with regard to the Industrial Development Bank at all.

**Senator Burchill:** When you say that regional development is concerned, that in my mind is the change. If you induce an industry to go into one of these areas, they generally have to have financial assistance and if you have not got the wherewithall through the Industrial Development Bank as an agency to provide that assistance you are out of luck.

**Mr. Bailey:** As you know, sir, under the provisions of part IV of the Regional Economic Expansion legislation they have very extensive powers of assistance in that legislation and indeed in regard to grants or loans directed towards industrial development perhaps it will have a capability here that exceeds that of the Industrial Development Bank itself. In effect I do not think the problem of regional economic disparity is dependent on the Industrial Development Bank's position or capability. In other words, the new department has its own authority to enter into arrangements for industrial development assistance.

**Senator Burchill:** Does that mean they would have the power to lend money to industry?

**Mr. Bailey:** Yes, I think.

**Senator Burchill:** Regardless of the Department of Industry?

**Mr. Bailey:** I think if we might turn to section 27(1), on page 10, you will note there that:

> The Minister, with the approval of the Governor in Council and subject to the regulations, enter into an agreement with any province providing for the payment by Canada to the province of a grant or loan in respect of a part of the capital cost of establishing, expanding or modernizing any work or facility for the economic expansion of a special area.

In effect, that is the designated power to enable the new department to engage in extensive industrial development activity in a special or designated area.

**Senator Desruisseaux:** Is this without limitations?

**Mr. Bailey:** No, I think the power is here. The intention is to pass specific legislation. I believe that specific legislation will be presented in the immediate future in regard to their industrial incentive activities, but this is the specific power resident in the main statute to entertain this type of program.

**Senator Burchill:** I was wondering how this would work out in practice.

**Mr. Bailey:** There has already been rather etxensive experience in this regard. As you know, the Area Development Agency, which was a component of the Department of Industry, engaged in extensive incentive loan and grant activity respecting industrial development generally in designated areas. That experience, going back to 1964, has been built on. As you know, all the people who were skilled in handling this type of program will now be part of the new ministry and, as such, will be able to carry forward this program of lending and granting in regard to industrial development.

**Senator Burchill:** Will that division of the Department of Industry become part of the new department?

**Mr. Bailey:** Yes. Indeed, it is already part of Mr. Marchand's responsibilities. On June

12, under the Transfer of Duties and Powers Act, the Area Development Agency was moved to his portfolio, which currently is Forestry and Rural Development; but that component is also part of the Department of Regional Economic Expansion.

**Senator Hollett:** Could you tell me what are the real reasons behind changing the ADB to the ADC? Has the ADB gone down the drain, or what?

**Mr. Bailey:** No, sir, I think it was not a matter of going down the drain. I think it was a matter of special components coming together—ther Area Development Agency component, the Atlantic Development Board Secretariat component, the ARDA component, indeed the PFRA component, as well as some minor transfers. For instance, there was a small component from Manpower and Immigration. All these were involved in a complementary way with programs related to regional economic disparity. I think it was decided, with the merger of all these groups, that the Atlantic Development Board should become part of an integrated department in terms of its staff, but regarding the concept of a Maritime council engaging in and participating in policy development and formulation and guidance and direction in respect of the problem, it was felt that this could well be done by this council.

Really I think the Atlantic Development Council is a very true successor to the board itself. The real distinction is that the board, which had its own staff, will now be served by the staff of the entire department and, to that extent, they probably have more teeth and more assistance to do detailed examination of problems they regard as important and meaningful to the Atlantic region.

So, I do not think anything is lost. Indeed, I think there is a lot of positive gain by the present arrangement going forward as suggested.

**Senator Isnor:** If I followed Mr. Bailey correctly, there were 17 organizations now merging into five departments, is that right?

**Mr. Bailey:** I am not exactly sure of the total number, but that would be a reasonable figure—approximating that, yes.

**Senator Isnor:** Coming from the Maritimes, as I do, Mr. Chairman, I was interested in the same question as was raised by Senator Burchill, namely, doing away with what we look upon as a connecting link with developments in so far as the Maritime provinces are concerned. I venture to say that in a year or less you will not hear anything of the Atlantic Development Board, as such; it will just be merged into a large organization, without any definite regional objective in mind. I think Senator Burchill will agree with me, that we were very proud of and pleased with the manner in which the Atlantic Development Board was operating, and I am concerned as to whether, with the losing of its identity, we will not have the same attention paid to our problems in the Atlantic provinces as we did under the ADB.

I heard what Mr. Bailey had to say, that the same staff will be operating, but there will be a different atmosphere altogether, and they will not be concentrating their efforts on the region in which they were intended to operate, namely, the Atlantic provinces. What do you say to that?

**Mr. Bailey:** If you look at the act, the legislation itself, you will see that there are ten clauses, clauses 29 to 39, in the legislation which deal specifically with the Atlantic Development Council. There are a further ten that deal with that department generally. In effect, if you were to look at the legislation you would see that it clearly makes detailed provision for this focus on the maritime problem through the Atlantic Development Council. I think the first thing that is clear in the legislation is the fact that it makes provision for the special nature of the maritime situation.

The next factor here, in my opinion, is to view what has been happening over the last five years. For example, the Area Development Agency, which was not a part of the Atlantic Development Board, always had a major interest and a major program in the maritime region. What I am suggesting, in effect, is that there were other activities concerned with the maritime regional disparity problem which were well outside the Atlantic Development Board, and which in terms of the last several years have been vigorously pursued by other ministers and other elements.

**Senator Isnor:** Such as?

**Mr. Bailey:** Well, I think the Area Development Agency is a prime example, and I think to a lesser extent ARDA. ARDA has been very active in New Brunswick. Certainly the recognition of these other elements is important to the total consideration, and I

think that the best intent and the best spirit in respect to this bill is one that has attempted to increase the focus of interest on the Maritime problem. Indeed, Mr. Levine and the staff formerly with the Area Development Agency as well as Dr. Weeks and all his staff, plus the elements and the staff in the ARDA operation are now involved in the ministry, where the Atlantic Development Council has a very dominant position. I think there is a much increased emphasis on the Maritime problem, and I think the fact that they are now all in a position to be integrated and co-ordinated by one minister will mean a great deal of greater effectiveness in respect to all the regional disparity programs that are directed through this department.

**Senator Isnor:** Well, I hope you are right, Mr. Bailey. I think we are following the example of the large corporations in this amalgamation process. The trust companies are amalgamating, the insurance companies are amalgamating, and, of course, we all know that the large departmental stores are trying to grab up the small ones. I think the same thing applies so far as that first group is concerned, because it seems that there are something like nine organizations merged into one. I still believe, notwithstanding what you have said, that we will miss the direct influence of the Atlantic Development Board in our region.

Would you care to comment, Mr. Bailey, on what I have said—or did I say anything worth while?

**Mr. Bailey:** Certainly this concern in respect of the Atlantic Development Board...

**Senator Isnor:** I am from Nova Scotia, by the way.

**Mr. Bailey:** ...was clearly registered in the debate in the House of Commons. I think that if you look at the operation of the Atlantic Development Board you will understand that it was essentially a board composed of highly esteemed Maritimes citizens who were concerned about the general problem area. They had their secretariat and their resource funding, which they were directing towards the resolution of these problems. I do not think that that has really in any way changed. Indeed, we still have the provision for a council. It can be equally good as, or better than, the old board in terms of its membership. There is nothing preventing the members of that council from being as highly knowledgeable and effective as the previous board. Certainly when it comes to the staff I think there is very little likelihood that Dr. Weeks and his staff are going to be swallowed up by the larger group. Indeed, it is quite clear that the skill and understanding of Dr. Weeks and his staff is very much a key element, and a prominent element, in the new agency.

**Senator Connolly (Ottawa West):** They continue, do they?

**Mr. Bailey:** Yes, they continue, and in this sense it seems to me to be a strengthened rather than a weakened situation.

**Senator Connolly (Ottawa West):** We may be a little unfair to Mr. Bailey here, in so far as we are talking about policy, and an official should not be asked questions about policy.

The Atlantic Development Board, when it was originally set up, had no money allocated to it, and subsequently it did have a sum of money allocated to it which was to be used for its own purpose, and which it has used subject to the approval of the Governor in Council. The situation is now going to be—and this is perhaps the gut problem, so to speak, involved in Senator Isnor's comment—that whereas before there was a specific amount allocated to the Board, the council, now being part of the department, will simply participate in the department's estimates.

**Mr. Bailey:** Yes.

**Senator Connolly (Ottawa West):** And those estimates for the undertakings and programs in the coming year will be what the minister considers to be proper in the circumstances. Will the decision as to the amounts required be made in approximately the same way under the new system?

**Mr. Bailey:** Well, I think essentially under the previous arrangement it was still a matter of the Government's determining how its budgetary resources were to be allocated. That process is not being changed. The Government still has to decide how much of its financial resource it is willing to devote to the total regional economic disparity problem or program. Having done that, of course, the minister and his officials must make their recommendations as to the apportionment of their resource to the various problems that come under their jurisdiction.

**Senator Connolly (Ottawa West):** Would you have, by any chance, a statement of the

various amounts that have been allocated annually to the Board since these allocations were started?

**Mr. Bailey:** No, I am sorry, sir, that is one particular piece of information I do not have. I can get it, but I am not privy to it.

**Senator Connolly (Ottawa West):** The other point is really not a question but a comment. It arises out of what Senator Isnor said. I think there is a danger that the Atlantic problems will perhaps be obscured a little because the new department will be concerned not only with the Atlantic region but with regions now covered by PFRA, perhaps PFAA, and you mentioned two or three others. This is something that I think should be put on the record here to emphasize its importance.

There was one other aspect, though, that did concern me, and I thought particularly of the Maritimes when I read it in the press. You may not be in a position to comment, Mr. Bailey, but I understood that the former idea of the designated area was to take an area not developed and try to inject some development into it, much as is being attempted in under-developed countries, where the skills are not there, perhaps the resources are not as readily available, and perhaps the transport facilities are inadequate, or for other reasons. As I understand it, instead of that the reorientation of that designated area program will be focused on areas where there is more development because you can make more progress. I do not suppose you need much more help in development around Toronto, Montreal, Southwestern Ontario, Vancouver, or some of our other larger centres. Can you make any comment at all on this proposed new orientation?

**Mr. Bailey:** It has been suggested by Mr. Marchand that the concept of major growth centres is a more attractive and effective way of encouraging development, which will do something substantive to correct the disparity problem. As I understand it, the concept of the growth centre does not specifically tie itself to the more rigid unemployment criteria that were always associated with the ARDA designated area scheme. Essentially what has happened, as I understand it, is that they have learned, or are learning, from their experience during the last five or six years. They are attempting in their special area designation concepts—this is under section 24 of this part of the legislation—to take the best experience from their designated area activity and, in effect, develop more effectiveness in the way they handle industrial development, incentives and activities designed to encourage growth. I think the problem of scale, the ability to trigger adequate growth in a growth centre, is probably the new dimension in current thinking, and this in itself will undoubtedly make a major improvement in the whole program of assistance to these areas.

**Senator Connolly (Ottawa West):** That raises two questions in my mind. The first is this. If this is going to concentrate on growth areas, does that mean that areas where there is little prospect of growth will be depopulated, that people will be attracted from those areas with or without training and, not put into the new growth areas, but attracted there? I think that would be the first problem that flows from the new concept.

**Mr. Bailey:** I think a key factor, apart from the growth centre concept, is the pronounced emphasis in the legislation, as was brought out in the debate in the House of Commons, on federal-provincial co-operation. Indeed, it is quite clear that co-operation with the provinces is a key element in this whole scheme, and I suspect that the provinces will have a great deal to say about how the growth centre concept emerges.

**Senator Connolly (Ottawa West):** Are we encouraging federal and provincial authorities to develop huge urban centres and demolish small towns and villages? Is that the trend? Are we working towards the encouragement of greater urbanization? I cannot ask you to say what the policy is. All I can ask you to say is whether it seems logical from a layman's point of view that this effect will flow from this legislation.

**Mr. Bailey:** I think the growth centre will undoubtedly bring a focus on smaller cities, smaller communities, and there is a clearer growth concept in that type of plan. I believe that mobility problems have to be related to the proximity of these growth centres to the smaller communities that conceivably might lose people to a larger centre. It is a matter of the regional analysis of the problem. Traditionally there has always been so much emphasis on large urban centres like Toronto and Montreal, drawing all the people. I think one should also consider the smaller city drawing people more locally or regionally.

**Senator Connolly (Ottawa West):** This is precisely the point that I am making. Is the legislation written to make Montreal and Toronto bigger?

**Mr. Bailey:** No, I think it is very clear that the concept of the special area and the concept of the growth centre is not directed to the Toronto or Montreal area. Indeed, quite the reverse.

**Senator Connolly (Ottawa West):** Quite the contrary.

**Mr. Bailey:** Yes.

**Senator Connolly (Ottawa West):** I think that is a salutary thing. Two areas that were very much in the minds of the policymakers when the designated area program and the disparity problem arose were northeastern New Brunswick and the interlake region in Manitoba. I gather that the centre of attention is not going to be in areas like that where there is, practically speaking, nothing and where they would have to start from the beginning and perhaps remake an area, but rather they are going to start from regional areas of potential growth and attract from the region the people that are required to develop. Is that a fair way to say it?

**Mr. Bailey:** I think that is a reasonable way to say it. However, I think we must note that North America is entering the era where complete new cities are being planned, built and developed in open areas. As you know, cities of 50,000 to 100,000 are being planned and built. There are three or four in the United States, and I think this is just the forerunner of more urban development that is essentially going into open ground.

**Senator Connolly (Ottawa West):** We are all in favour of more cities, but I do not think we are in favour of increasing the size of our biggest cities. Thank you Mr. Chairman.

**Senator Desruisseaux:** I would like to ask Mr. Bailey a general question. The Glassco Report was made in 1962. Will this bill be commending all the pertinent recommendations of the Glassco Report?

**Mr. Bailey:** Well, sir, a great many of the Glassco recommendations have already been put into effect. Indeed, what this legislation will do in respect to supplying services is advance many of these recommendations and accelerate the speed with which they intend to carry forward complete programs of common service consolidation. For example, in 1964 and 1965 they did start to consolidate purchasing under the terms of this new legislation. That program will undoubtedly accelerate. The Glassco recommendations have just started in many places and have not had time to be developed. They will now be extended and expanded throughout most of the areas of the service.

**The Acting Chairman:** Further to Senator Desruisseaux's point, does this legislation traverse the entire terrain which was previously not covered in the Glassco recommendations? In other words, we may expect furher legislation on this score or does this really cover the ground?

**Mr. Bailey:** This does not cover it completely. I think there are other recommendations made by Glassco that are still not fully carried forward. There have been literally hundreds of detailed changes recommended and I think this will cover the vast majority. However, Glassco made extensive comments on property management for example, and that problem is still not carried forward.

**Senator Desruisseaux:** My question, Mr. Bailey, was to know whether we are setting aside some of the Glassco recommendations or are we taking into account all of them?

**Mr. Bailey:** I think this legislation takes fully into account and almost in direct line with what they recommended and carries it forward to implementation.

**Senator Desruisseaux:** Thank you.

**Mr. Bailey:** For example, they did recommend the consolidation of purchasing. This legislation legally does that.

**Senator Desruisseaux:** Under Part IV, those appointed to the Atlantic Development Council really have no power or duty, but their function as a council is set out in clause 31. That is all I see.

**Mr. Bailey:** Well, essentially they are an advisory council designed to assist the minister in the formulation of policy. It is true they have no executive responsibility in their own right.

**Senator Connolly (Ottawa West):** They used to have.

**Senator Desruisseaux:** For recommendations.

**Mr. Bailey:** No.

**Senator Connolly (Ottawa West):** But the board did.

**Mr. Bailey:** Yes.

**Senator Hollett:** Mr. Chairman, I note this act is called an act respecting the organization of the Government. I prefer to call it the reorganization. In that connection would you give us some idea as to the increase that this will cause in the Public Service and the approximate cost of same I take it you have figured that out.

**Mr. Bailey:** Well, as I mentioned previously, the organizations represented by this bill do not represent an increase in staff. Indeed they represent a decrease.

**Senator Hollett:** There would be no increase then?

**Mr. Bailey:** No increase. The merging and consolidation have resulted in net decreases.

**Senator Isnor:** To what extent?

**Mr. Bailey:** They are not substantial, although I indicated in the case of Industry, Trade and Commerce that I believe the total saving in staff and otherwise will exceed in the neighbourhood of $1 million.

**Senator Hollett:** There are five additional ministers or so, are there not?

**Mr. Bailey:** No, there are no additional ministers. We have established five new ministries and have eliminated five others.

**Senator Connolly (Ottawa West):** There is no more room at the council table for ministers' chairs.

**The Acting Chairman:** Are there any further questions, honourable senators?

**Senator Beaubien:** Mr. Bailey, if you have fewer bodies on the payroll by putting them altogether and reshuffling, is anybody left off and does a place have to be found somewhere else?

**Mr. Bailey:** There has been a redundancy policy developed as a result of the reorganization, and I think most of the people who were declared redundant by the mergers have been nearly all fitted into other jobs becoming available in the service. The problems of turnover in the service are such that it has not been too difficult to make rearrangements for people who have had jobs declared redundant.

**Senator Burchill:** Following Senator Connolly's (Ottawa West) questions, which I followed with much interest, the policy I understand, according to Mr. Marchand's explanations, and particularly his statement made before the Federal-Provincial Conference, is that the tendency now is rather towards growth centres such as the cities and towns rather than try to industrialize outlying regions which do not lend themselves to being industrialized. All of this I think is sound and I agree with it. But does not this conflict very much with what ARDA has been doing in the development of these outlying regions? A tremendous amount of work has been done in northern New Brunswick and some of us questioned very much whether anything would be done there. But that policy has been carried out in the past. Is this a reversal of that? Perhaps you should not answer that, as to whether that is good policy, but I am putting it to you, anyway.

**Senator Connolly (Ottawa West):** You do not have to ask it as a policy question. Say "does it arise out of the legislation" and you get around it.

**Mr. Bailey:** I expect that the best way of answering the question is to say that ARDA and the industrial incentive scheme are complementary. The attempt to do something meaningful about the depressed and underdeveloped agricultural areas, to entertain schemes to raise the level of income and make them more productive and effective, can certainly complement efforts in cities to develop new plants and new products.

I think the complementary relationship is one of how the manpower mobility schemes are handled. Of course, if the two can be coalesced and managed in an integrated fashion, then surely both elements of the program gain. I think this is one of the key points behind the establishment of the ministry—one man, one minister is now in a position to entertain direction and judgment over this whole process.

This was much more difficult, as you can understand, when the minister responsible for ARDA was not the minister responsible for industrial incentives, who was not the minister relating to the Atlantic provinces development.

**The Chairman:** I think that your ability in answering questions entitles you to ministerial status.

**Senator Connolly (Ottawa West):** You are a diplomat. I would like to direct attention to page 42, where the salaries of ministers are outlined. Are there any specific changes there? I think the Leader of the Government in the Senate has had his rate of indemnity or remuneration, because he is Leader, been increased. Are there any other changes?

**Mr. Bailey:** No, other than the ministry name changes associated with the five new departments.

**Senator Connolly (Ottawa West):** But in so far as amounts are concerned, the amounts are exactly the same?

**Mr. Bailey:** Yes.

**Senator Connolly (Ottawa Est):** Except for the Leader of the Government in the Senate?

**Mr. Bailey:** That is right.

**Senator Connolly (Ottawa West):** Which is increased from what?

**Senator Langlois:** Really speaking, it was not provided for under the Salaries Act. The salary was provided under the House of Commons Act.

**Mr. Bailey:** There was no provision before.

**Senator Connolly (Ottawa West):** What was the provision before?

**Mr. Bailey:** I am sorry. I should know that, but I do not.

**Senator Smith:** I suggest that Senator Connolly would know.

**Senator Langlois:** It was $10,000 before under the House of Commons Act.

**Senator Connolly (Ottawa West):** I know I was paid $8,000 less than all other cabinet ministers, other than ministers without portfolio. I was probably worth that much less.

**The Chairman:** The Chair does not accept that conclusion.

**Senator Connolly (Ottawa West):** The fact is that the indemnity of the Leader of the Government in the Senate as such has been increased from perhaps $12,000 to $15,000—who knows?—what is it—or is it $10,000 to $15,000?

**Senator Hollett:** I am not sure.

**Mr. Bailey:** I believe the differentiation was $5,000.

**Senator Connolly (Ottawa West):** So it will now be that instead of getting $8,000 less than other ministers with portfolio, he will get $3,000 less than other ministers with portfolio—but the reason for the $3,000 differential is the fact that in the Senate the expense allowance is $3,000 and in the house it is $6,000.

The point I want to make and put on the record is this. I have no objection whatever, and I think it is a very good thing, that the Leader of the Government in the Senate should be recognized for pay on the same scale as a minister who has a portfolio to administer. I say this because of my own experience. I think the management and conduct of the business of a house of 102 people—sometimes prima donnas of all kinds, certainly people who have conflicts of interest, one side with another and one group with another, and all the rest of it—and the conduct of the house, is as difficult and requires a skill that is as great as the skills of many ministers with portfolio. I want to see that on the record.

The second thing I want to say is this, and I know that we cannot ask Mr. Bailey to do this. Moreover, we cannot do it. However, I tried to accomplish this, and I think it should be done. There should be special financial recognition given to four other people in the Senate—the two deputy leaders, one of the Government, the other of the Opposition, and the two whips, one on the Government side and one on the Opposition side. For the record, I want to have this done, because I would like it to go back to the Treasury Board and I would like it to be considered.

It is only fair that this kind of thing should happen, because the Leader of the Government in the Senate is the only cabinet minister who is in that body and almost every other cabinet minister has a parliamentary assistant who gets a special allowance, an extra $4,000.

I think the department leaders on the Government and on the Opposition side, who have a good deal of the responsibility and the work load to carry, should have some extra compensation on that account, and the whips, who are responsible for running the operation as the Leader of the Government wants it run, should also get some recognition, financially. I think that should probably be in the neighbourhood of $2,000 per annum.

I have one question only. I wondered why it was necessary to put in a new section 13A in clause 98, page 43 of the bill.

**Mr. Bailey:** I would not want to reply to that question, sir.

**Senator Connolly (Ottawa West):** Is it only because of the vacation of the seat?

**Mr. Bailey:** No. I had it explained to me. It is too bad we do not have here Miss MacDonald from the Department of Justice. She could give the detailed explanation. The explanation given to me did seem to be very precise.

**Senator Connolly (Ottawa West):** It may arise from the fact that, if you are a member of the Senate or the House of Commons and take a payment of some kind, then you do offend against the act and your seat is in jeopardy. Perhaps it is intended to cure that situation.

**Mr. Bailey:** Yes.

**Senator Connolly (Ottawa West):** I had thought that section 14 of the Senate and House of Commons Act was enough. Certainly, it has been enough up to now. Well, perhaps the Law Clerk could get us that information.

**The Acting Chairman:** Honourable senators, if there are no suggested amendments, and no further questions, I should like to ask the guidance of honourable senators as to whether we should take the bill clause by clause or move the bill be passed as a whole.

**Senator Connolly (Ottawa West):** Mr. Chairman, I move that the bill be approved without amendment.

**Senator Desruisseaux:** I second that motion.

**The Acting Chairman:** All in favour please indicate in the usual fashion. The bill is passed. Thank you, honourable senators. Thank you, Mr. Bailey. You have been very helpful.

**Senator Connolly (Ottawa West):** Mr. Chairman, before we adjourn I wonder if we could revert to the discussion in connection with clause 98, page 43 of the bill. This clause repeals section 14 of the Senate and House of Commons Act and substitutes a new section 13A. The marginal note reads: "Seat of member not vacated by accepting certain travelling expenses."

I am informed that members of the Senate were not included because section 16 of the Senate and House of Commons Act applies only to members of the House of Commons. Section 16 provides that the member's seat must be vacated in the event that he accepts any office or commission or is concerned or interested in any contract or performs any service for the Government for which any public money of Canada is paid or is to be paid. That applies only to members of the House of Commons.

I am informed that the new section 13A would clarify the position of the members of the House of Commons in so far as section 16 is concerned. There does not appear to be any section equivalent to section 16 which applies to senators. This is the explanation I have just been given and I wanted to place it on *Hansard*.

**The Acting Chairman:** We are indebted to you, Senator Connolly, because otherwise the reading of the new section 13A might be difficult to understand by the mere reference to members of the House of Commons. Thank you very much indeed.

The committee proceeded to the next order of business.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable LEZAMAN PHILLIPS, *Acting Chairman*

No. 12

WEDNESDAY, MARCH 26th, 1969

*Complete Proceedings on Bill C-170,*

*intituled:*

"An Act to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act".

WITNESSES:

*Department of Finance:* M. D. Clark, Director, Pensions and Social Insurance.

*Department of National Defence:* Captain J. F. Dewis, Deputy Judge Advocate General.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable LAZARUS PHILLIPS, *Acting Chairman*

No. 32

WEDNESDAY, MARCH 26th, 1969

***Complete Proceedings on Bill C-178,***

intituled:

"An Act to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act".

WITNESSES:

*Deparment of Finance:* H. D. Clark, Director, Pensions and Social Insurance.

*Department of National Defence:* Captain J. P. Dewis, Deputy Judge Advocate General.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

20035—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gelinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 25, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Denis, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of the Bill C-178, intituled: "An Act to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation 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.

With leave of the Senate,
The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*



20035—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, March 26, 1969.
(35)

At 11.00 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

*Bill C-178,* "An Act to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act.

*Present:* The Honourable Senators Lazarus Phillips (*Acting Chairman*), Beaubien, Burchill, Connolly (*Ottawa West*), Croll, Desruisseaux, Haig, Hollett, Isnor, Kinley, MacNaughton and Welch. (12)

*Present, but not of the Committee:* The Honourable Senators Denis, Langlois and Smith. (3)

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

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

*Department of Finance:*

H. D. Clark, Director, Pensions and Social Insurance Division.

*Department of National Defence:*

Captain J. P. Dewis, Deputy Judge Advocate General.

Upon motion, it was *Resolved* to report the Bill without amendment.

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

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, March 26, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-178, intituled: "An Act to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act", has in obedience to the order of reference of March 25th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

LAZARUS PHILLIPS,
*Acting Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, March 26, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-178, to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act, met this day at 11 a.m. to give consideration to the bill.

**Senator Lazarus Phillips** (*The Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, the next bill for consideration is Bill C-178, the omnibus superannuation bill that received its second reading in the Senate yesterday. The witnesses necessary for the purpose of explaining this bill are here, but we have suspended our meeting for a few moments only in an attempt to reach our colleague, Senator Choquette, who indicated in the debate yesterday that he might wish to get some clarification of this bill. I hope, with your indulgence, that we might wait a few minutes, even though the witnesses are here. In the meantime, may we have the usual motion for the printing of the bill?

**Hon. Senators:** Agreed.

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

**The Acting Chairman:** May we proceed on a provisional basis and I will introduce the witnesses who are with us this morning. They are: Mr. H. D. Clark, Director of Pensions and Social Insurance Division, Department of Finance, Captain J. P. Dewis, Deputy Judge Advocate General in the Ministry of National Defence, Mr. G. C. Cunningham, Superintendent in Chief of the RCMP, and Mr. W. Riese, Chief Actuary, Department of Insurance. I hope I have mentioned them correctly with their proper designations.

Honourable senators, you have before you copies of the old bill. We are now making copies of the amendments that were referred to in the house yesterday afternoon, and they will be available within five minutes. Therefore, we will have a complete set of the documents with regard to the legislation.

I will now call upon Mr. H. D. Clark, who, as I have already said, is Director of the Pensions and Social Insurance Division. Will you be good enough, Mr. Clark, to give us the usual survey of the bill, with particular emphasis on the most pertinent sections that you think call for our attention?

**Mr. H. D. Clark, Director, Pensions and Social Insurance Division, Department of Finance:** Mr. Chairman, honourable senators: Senator Denis gave you a very good description of certain features of the bill in his statement in the Senate yesterday. There is not too much more that I would need to say to bring out the more important facts, but perhaps I could just run over them again to refresh your memory.

Unfortunately, as is so often the case in these bills amending superannuation acts, the provisions are rather complicated; but I can say that these amendments provide some improvements in the benefits and remove a number of anomalies and inconsistencies which have become evident in the operation of these acts since they were last before Parliament.

**Senator Hollett:** When was that?

**Mr. Clark:** In 1966, Senator.

I might say that some of these amendments were being considered at that time, but the Department of National Defence had in mind some far-reaching changes in the structure of their benefits with which they were not pre-

pared to proceed then, but these are incorporated in this bill. Captain Dewis will be able to enlarge on those, as you desire.

The other two major changes are designed to bring the Canadian Forces Superannuation Act and the R.C.M.P. Superannuation Act in line with the Public Service Superannuation Act, from the contributions point of view.

At present the contribution under the Public Service Superannuation Act are 6½ per cent for men and 5 per cent of salary for women, less the contributions under the Canada Pension Plan. Under the Canadian Forces Superannuation Act they have been 6 per cent for both men and women, less the Canada Pension Plan contributions. And in the case of the R.C.M.P. Superannuation Act, 6 per cent and 5 per cent, respectively, again less the Canada Pension Plan contributions.

This has been the case despite the fact that the benefits are more costly under the other two acts than under the Public Service Superannuation Act. Partly because of this but also because there have been amendments which have improved benefits over the years as well as certain improvements proposed in this legislation, the Government announced its intention last fall to couple the latest pay increases for both forces with an increase in the male contribution rate to the same level of 6½ per cent as it is for the Public Service.

**Senator Isnor:** Does that make it uniform right across the board now?

**Mr. Clark:** That will make them uniform in that regard. In the case of the female members of the Canadian Forces the rate is being reduced to 5 per cent which is charged under the other two acts. So that when this becomes law the rates will be uniform under all three acts now aplying to new members of the Public Service and the Forces.

Another amendment I might mention is the one that appears in each of the three main acts dealing with accounting provisions. As you may be aware, the interest that has been charged against the consolidated revenue and credited to these accounts over the years has always been at the rate of 4 per cent. The Government has in mind that this should be increased so that it is more in line with the interest rate of current bond yields. In contemplation of this a technical change had to be made in the accounting sections of the three superannuaton acts, and this is proposed in three of the clauses of the bill.

**The Acting Chairman:** Mr. Clark, does that have an adverse effect on the beneficiary?

**Mr. Clark:** No, it has no adverse effect.

**The Acting Chairman:** It is an internal accounting item only?

**Mr. Clark:** In so far as its effect on the beneficiary is concerned. It has other side effects in overall budgetary considerations. In other words, the additional interest will appear as an item in relation to interest on the public debt. It will be applied to offset special budgetary charges which the Government is called upon to make on an annual basis in respect of deficiencies which the basic current contributions by the members and the corresponding contributions by the Government are inadequate to cover.

**Senator Isnor:** What has that amounted to, roughly on a percentage basis?

**Mr. Clark:** The Government contribution?

**Senator Isnor:** No, the difference between the two—the amount that the Government had to make up?

**Mr. Clark:** In the current year it is estimated that the figure will be in the neighborhood of $220 million.

In the case of the civil service plan, the basic Government contribution is a matching contribution. In the case of the armed forces at the moment it is one-and-two-thirds times the members' contributions. At the present time in the R.C.M.P. plan it is twice the members' contributions. One of the results of this co-ordinating, as it were, of the contribution rates will be to permit the Government contribution to the Public Service plan and the R.C.M.P. to be on the same basis. But in both of those cases they will still have to be on a higher basis than the Government's contribution to the Public Service plan because basically the benefits are still better. This is largely due to the fact that the retirement ages are lower and pensions, therefore, commence at an earlier time under the other two acts than is the case with the Civil Service one.

**Senator Burchill:** Do I understand that that amount of $220 million is necessary to make the fund actuarially sound?

**Mr. Clark:** This is the purpose of it, yes, senator. Mr. Riese, the chief actuary of the

Department of Insurance, advises us each year of the additional credits that are required—

**Senator Burchill:** It is done each year, is it?

**Mr. Clark:** That is right. He carries out a full scale valuation every five years, and then every year he keeps track of the additional liabilities arising out of pay increases that have been authorized during that year. This figure of $200 million-odd arises from a combination of the pay increases and the latest actuarial valuation that he has made.

As I mentioned there are a few benefit improvements. One amendment that is not expensive, but which will help the persons involved, permits the continuation of the children's benefits beyond the age of 18 up until the age of 25 if the child is continuing his or her education. This is patterned on the provision in the Canada Pension Plan under which children's benefits are now being paid.

**The Acting Chairman:** Is this entirely new in so far as the armed forces and the R.C.M.P. are concerned?

**Mr. Clark:** Yes, and it is new for the civil service too—that is, the extension beyond age 18.

**The Acting Chairman:** Yes, to age 25, provided they continue their education?

**Mr. Clark:** Yes.

**Senator Hollett:** The Government must have been listening to the moderator of the United Church. Perhaps you are not acquainted with his views.

**Senator Connolly (Ottawa West):** If they are not, they should be.

**Mr. Clark:** Apart from that there is a provision that has been welcomed by all sides whereby the widow of a pensioner under one of these plans who remarries may have her pension, which is normally suspended on remarriage, reinstated not only in the case of the death of her second husband, as is now the case, but also in the case of annulment or dissolution of that marriage. We have run into a few cases during the last year or two where the second marriage ended in divorce, and until the husband of the second marriage died the lady could not benefit from a resumption of the pension coming from her first husband.

**Senator Connolly (Ottawa West):** I wonder if I could interrupt you there to ask about the situation in which the second husband, in the event of annulment or dissolution of the marriage, is well able and liable to pay for the maintenance of his wife, and where he might try to take the easy way out and say that she is getting her pension. Have you any discretion there?

**Mr. Clark:** This provision does not make a distinction in those cases, Senator Connolly.

**Senator Connolly (Ottawa West):** Another aspect of it would be where you had a marriage that broke up, and the spouse was a grasping person. Perhaps she could go to the court and get alimony and at the same time take this.

**Mr. Clark:** That would be possible, yes.

**The Acting Chairman:** Have you anything further, Mr. Clark?

**Mr. Clark:** Running through the notes I have here, and from my recollection of the bill and the discussion in the House of Commons, I do not believe I have anything else I want to draw attention to.

**The Acting Chairman:** Could you tell us, for the guidance of honourable senators, whether the amendments, copies of which you have just given us, were of a basic nature or procedural?

**Mr. Clark:** Three of them were purely drafting amendments. The Department of Justice, in running over the bill following first reading, concluded that the intended effect was not provided by the original wording.

**The Acting Chairman:** That happens often.

**Mr. Clark:** Fortunately we caught it in time. The other two amendments were of a purely technical nature and arose in two of these accounting provisions to which I referred. The word "quarterly" was dropped by an amendment to one clause and it should have been added to a subsequent clause in the same part of the bill. This was just overlooked. It was of no more significance than that.

**Senator Hollett:** How long is it since there has been any increase in the amount paid to ex-service men, for instance?

**Mr. Clark:** In the benefits?

**Senator Hollett:** In the superannuation plan. How long is it since they have had an increase?

**Mr. Clark:** In the benefits?

**Senator Hollett:** Yes.

**Mr. Clark:** They have enjoyed some benefit increases as a result of the 1966 legislation.

**Senator Hollett:** Not very much though.

**Mr. Clark:** No, not very much. Again in the 1959 legislation there were improvements.

**Senator Hollett:** Slight.

**Mr. Clark:** So far as the Armed Forces are concerned, I would say that probably the amendments in this bill represent the more costly amendments of the three I have mentioned.

**Senator Hollett:** You mean more costly to the Government?

**Mr. Clark:** To the account, to the plan.

**Senator Hollett:** I understood they had not been getting increases since 1966.

**Mr. Clark:** Increases in benefits?

**Senator Hollett:** Yes.

**Mr. Clark:** The simple integration with the Canada Pension Plan produced this result at a cost to the account maintained under this act.

**Senator Hollett:** What about somebody who cannot avail himself of the Canada Pension Plan, who retired some time ago?

**Mr. Clark:** If he had retired he is not subject to the increase in the contributions.

**Senator Hollett:** That is only one half of one per cent. Does he not get any increase?

**Mr. Clark:** He would get the additional protection for his children out of these amendments. Captain Dewis could tell you better than I what other changes over the years might assist the person who has already gone. Basically the extension of increased benefits to persons already retired is provided under an act like the Public Service Pension Adjustment Act rather than under this bill.

**The Acting Chairman:** While honourable senators are thinking about further questions, if any, as we have here technical men, particularly Mr. Riese, I should like to ask whether consideration was given to the problem of attempting to bring about an automatic increase in benefits, having regard to the increase in the cost of living based upon the Dominion Bureau of Statistics review from time to time, rather than being obliged to proceed statutewise by way of revision?

**Mr. Clark:** I can safety say that the Government did consider this. Mr. Drury, in his statement at the second reading stage in the House of Commons mentioned that the present Government had requested a study of this problem and a special report, and that the report had been recently received, which report was under study by the Government. If I can quote his words, he said:

> I regret to say that it has not been possible for the government to reach a decision at this time which would permit the inclusion of amendments to the Public Service Pension Adjustment Act in this bill.

This is the act I mentioned a moment ago.

**The Acting Chairman:** I think honourable senators would like to read into the record, if I sense the opinion of my colleagues in the Senate, that this is one of the very few instances in which increased expenditures are made with the approval of, may I say, the upper chamber, more particularly having regard to our defence forces, the RCMP and other forces protecting us, in terms of law and order, and national defence. I think there would be welcome acceptance of any statutory provisions that provided for legitimate increase, having regard to the increased cost of living.

**Senator Isnor:** Are you speaking of increases in salary?

**The Acting Chairman:** No, increases in benefits provided here, and relating them to increases in the cost of living.

**Senator Isnor:** They are two separate things.

**The Acting Chairman:** At least, that is how I sense the view of my colleagues in the Senate on that score. If I am wrong on that I should be corrected, but I should like to read into the record certainly my own view on this matter, and I think it is the view of my colleagues at large on the point.

**Senator Desruisseaux:** Time and again before the Senate a point has been made of the inequality in the pension plan for sena-

tors. If there are inequalities, it seems to me they should be rectified. If studies are to be conducted, I think it should be done with a view to having retroactive legislation to correct some of these injustices.

**The Acting Chairman:** Are there any further questions? If not, are we ready for the question to report this bill without amendment?

**Senator Hollett:** Before that question is put I have one further matter. Here I am thinking more of those who served overseas and came back all right who probably were retired ten years ago, say. How much superannuation or pension would, say, a private get per month or year?

**Mr. Clark:** I think I should ask Captain Dewis to hazard an opinion on that.

**Captain J. P. Dewis, Deputy Judge Advocate General, Department of National Defence:** Mr. Chairman, the amount of pension that any former member of the forces would receive is based, of course, on length of service. Your example, senator, applies to a World War II overseas veteran?

**Senator Hollett:** And who has been retired for ten years.

**Captain Dewis:** He may have been in the service before the war, but if he had war service he probably was not in the regular force or he could have transferred on October 1, 1946. A closer example would be if he had 20 years' service and was retiring. The question, of course, arises as to whether he goes out voluntarily or by reason of age. Assuming that he leaves by reason of age, we would have to know the rate of pay during the last six years of his service. Whether I could give you that, I do not know. It would only be a wild guess but he would get 2 per cent of whatever his average annual pay was for each year of service. He would be entitled in effect to 40 per cent of whatever his private's pay was. We would have to know what the pay was for the last six years.

**Senator Hollett:** He has no increase then.

**Captain Dewis:** No. If he went out in 1960...

**Senator Hollett:** His cost of living has gone up like yours and mine, therefore, I want to put on the record that I think he should be considered and I raised the point.

**Senator Denis:** If I understand well, it is based on the six best years.

**Captain Dewis:** Yes. Generally, the last six years. He may have been reduced in rank.

**Senator Denis:** If his salary was higher than the one in 1966...

**Senator Burchill:** That is the principle the pension is based on. Is it the same for the RCMP and other forces?

**Captain Dewis:** Yes, sir.

**The Acting Chairman:** Honourable senators, are there any further questions?

**Senator Burchill:** What percentage of the pension does the survivor or the widow receive?

**Captain Dewis:** The widow would get half of whatever pension the husband was receiving or that he would have received if retired on medical grounds.

**Senator Burchill:** And the children would get one.

**Captain Dewis:** One-fifth of the widow's pension.

**Senator Burchill:** Each child. If he has five children.

**Captain Dewis:** Up to a maximum of four children.

**Senator Hollett:** In case he was injured or wounded and he was receiving also a disability pension and dies what percentage does his wife get?

**Captain Dewis:** She would get the same percentage of the Canadian Forces superannuation pension, that is one-half, and under the Disability Pension Act, a specified amount depending on his rank. I think for a widow it is in the order of $2,000, $3,000 or $4,000.

**The Acting Chairman:** Are there any further questions? If not, honourable senators, are we ready for the question?

**Senator Burchill:** I move we report the bill.

**Hon. Senators:** Agreed.

The committee adjourned.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS OF THE SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 13

WEDNESDAY, APRIL 23rd, 1969

*First Proceedings on Bill C-165,*

intituled:

"An Act to amend the Income Tax Act and the Estate Tax Act".

WITNESSES:

*Department of Finance:* J. R. Brown, Senior Tax Adviser, Taxation Branch. E. H. Smith, Tax Policy Division.

*Department of National Revenue:* W. I. Linton, Chief, Income Tax Division.

APPENDICES:

"A"—Letter from The Canadian Institute of Chartered Accountants to Minister of Finance.

"B"—Clipping from Montreal Star—March, 1969.

"C"—Departmental Tables with respect to proposed changes in Estate Tax.

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS OF THE SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 33

WEDNESDAY, APRIL 23rd, 1969

***First Proceedings on Bill C-165,***

intituled:

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WITNESSES:

*Department of Finance:* J. R. Brown, Senior Tax Adviser, Taxation Branch. E. H. Smith, Tax Policy Division.

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The Queen's Printer, Ottawa, 1969

20037—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

"A Message was brought from the House of Commons by their Clerk to return the Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products",

And to acquaint the Senate that the Commons have passed this Bill with one amendment, to which they desire the concurrence of the Senate.

The amendment was then read by the Clerk Assistant, as follows:—

1. *Page 7, Line 6:* Delete subclause (3) of clause 8 and substitute the following:

"(3) Every order adding a product or substance to Part I or Part II of the Schedule shall be laid before the Senate and the House of Commons not later than fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

(4) If both Houses of Parliament resolve that an order or any part thereof should be revoked, that order or that part thereof is thereupon revoked."

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the amendment be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
*Clerk of the Senate.*



20037—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, April 23rd, 1969.
(36)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gélinas, Haig, Isnor, Kinley, Leonard, Martin, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch, White and Willis. (24)

*Present but not of the Committee:* The Honourable Senators Inman, Laird, McDonald, Methot and Paterson. (5)

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

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-165.

Consideration of the House of Commons amendments to Bill S-26 and the Messages from the House of Commons disagreeing with the amendments to Bills C-155 and C-157 was deferred until a later meeting of the Committee.

The following witnesses were heard:

*Department of Finance:*

J. R. Brown, Senior Tax Adviser, Taxation Branch.

E. H. Smith, Tax Policy Division.

*Department of National Revenue:*

W. I. Linton, Chief, Income Tax Division.

It was *Agreed* that the following documents be printed as Appendices "A", "B" and "C", respectively:

Letter from The Canadian Institute of Chartered Accountants.

Clipping from the Montreal Star.

Departmental Tables respecting changes in Estate Tax.

It was *Agreed* that the Minister of Finance be invited to appear before the Committee.

At 12.15 p.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

# THE SENATE

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, April 23, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-165, to amend the Income Tax Act and the Estate Tax Act, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** On the notice of the meeting we had included a number of bills. First, S-26, the hazardous products bill, on which the amendment was referred back to this committee. We had also included bills C-155 and C-157 that originated in the other place and to which the Senate made some amendments. The message involving the refusal of the other place to accept the amendments has been referred to this committee. Discussions are going on concerning those bills with the people in the other place who are particularly concerned about it. As a result a request was made that we not proceed with our consideration of the message in two cases, and the amendment in the other case, for a week in order to permit opportunity for further discussion. I agreed to meet the request made that we delay consideration of those bills until next Wednesday. That leaves us this morning with Bill C-165, to amend the Income Tax and Estate Tax Act. First we should have a motion for printing.

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

**The Chairman:** A number of requests have been made from organizations to be heard, and briefs have been submitted. For instance, the Trust Companies Association of Canada requested that they be permitted to be heard not earlier than next Wednesday because they have meetings this week, I think today and tomorrow.

**Senator Croll:** Were they heard before the other place?

**The Chairman:** I am not aware of that.

**Senator Croll:** Then let us make ourselves aware of it.

**The Chairman:** I will in the meantime. They made representations to departmental committees.

**Senator Croll:** I do not mean that.

**The Chairman:** I told the Trust Companies Association that we would hear them next Wednesday. Then there are the Canadian Construction Association and the Ontario Branch of the Canadian Bar Association. I have also had a letter from the Chartered Accountants Association who had some submissions and wrote a letter saying they would like to be heard.

I was proposing that we go into that part of it next Wednesday and that today we would hear the departmental officers, who would be open for any general questions that you might want to put. I would suggest that we might deal first with the gift tax sections, and then if we have time we could pitch into the estate tax sections, but that we not have a complete section by section examination today after which we say "Yes" or "No" to them, reserving that until after we have heard the representations that are to be made. That is the general outline of policy, if that is agreeable.

**Senator Thorvaldson:** What type of representations will be made by the officials here this morning? The debate on this bill in the Senate was not so much in detail, although the bill was very well explained in detail. Consequently, I think most members of the committee are well aware of what is in it. As I understand it, the issue was the policy lying behind the enormous changes being proposed to the estate and gift tax laws that we now have, and it would therefore appear

to me that the minister should be the first person we should try to hear.

**The Chairman:** I had thought about that. I thought there were some questions on which we would want to hear the minister, or at least we would invite him. However, there is general information that I think we need. For instance, it is said that in order to achieve an equal amount of revenue from estate tax following the granting of these spouses' exemptions the estate tax rates must be increased by the amount in the bill in order to produce $45 million extra. The moment the word "exactly" is used it is logical to assume that there have been calculations, and I for one would like to know what those calculations were and how they were proceeded with. I should also like to know if the calculation was made on the basis of the 50 per cent rate starting at a $1 million estate and what would be the difference between where they have started in achieving this figure of $45 million.

There is also the question Senator Phillips (Rigaud) raised in the house on the gift tax situation in Quebec and the provisions in the Quebec Civil Code. I would also think a matter of policy on which we should hear the minister was the point made in the house that the rates proposed should not be rates that go on in perpetuity, but that there should be a fair period of rum at them to see how they work out. They may have overestimated, they may have underestimated. Therefore, there should be an opportunity to have some time, perhaps two or three years, when the Government should be able to say what the performance has been. It may well be the performance will be such that they will achieve much more than $45 million a year extra by increasing the rates, in which event the question arises whether they have changed their viewpoint as against giving the rate so as to produce exactly the amount they give away in the exemptions or whether they want to use this extra income for other purposes. If it is for other purposes we should have a run at it to see whether we think it is right or not.

**Senator Thorvaldson:** I agree with you on these large questions, that we should try to get these calculations.

**The Chairman:** There is a whole range of questions that these departmental officers could be asked. If any question involves policy, then obviously these witnesses must be protected because they are not in a position in which they may speak on policy. We must have the minister on that. Is it agreed that we should go ahead in that manner?

**Hon. Senators:** Agreed.

**The Chairman:** We have here this morning Mr. J. R. Brown, Senior Tax Adviser, Taxation Branch, Department of Finance; Mr. E. H. Smith of the Tax Policy Division, Department of Finance; Mr. W. I. Linton, Chief of the Income Tax Division, Department of National Revenue; and Mr. W. O. B. H. Fleming of the Foreign Estates Section, Department of National Revenue.

The way is now open to questions of a general nature, if you like, honourable senators.

**Senator Croll:** Mr. Chairman, I am particularly keen to listen to the statement from the estates people, but I think the record should be complete since people will be reading this so perhaps we should have statements from each of these gentlemen and then questions can follow.

**The Chairman:** Well, Mr. Brown, there is one principle in this whole bill that strikes me, namely, the matter of spouses' exemptions. I would think that even the increase in rates is consequential to the granting of these exemptions. Have you any general statement to make on that?

**Senator Flynn:** I would suggest, Mr. Chairman, that it might be vice versa; they may have given the exemptions in order to justify the increase.

**The Chairman:** You mean justify the amount of the increase, yes.

**Mr. J. R. Brown (Senior Tax Adviser, Taxation Branch, Department of Finance):** Honourable senators, I think that I may be bordering on the edge of policy here, and I am sure you will understand that, if I do, I am really overstepping myself. However, I think that there were more purposes involved than simply providing complete exemptions of spouses and the recouping of the money. Clearly, however, that is the one that perhaps has the most effect.

There are, in addition, the provisions of larger exemptions for minor children and for infirm dependent children, and the provision of some exemptions for adult children which differentiate somewhat the tax on estates passing to children from the tax on estates passing outside the immediate family. The next issue is the linking of the gift tax and the

estate tax, and it is no secret, particularly to members of this committee, that there has been a wide divergence in the incidence of tax between those circumstances where people choose to leave property on death and those other cases where people have begun to dispose of the estate at some considerable time before death.

This is well known to anyone who has been in the field, it is well marked in the literature, and it has been the subject of considerable criticism and consternation. So the other major change that has been made is to link the two taxes in such a way that the difference between the two methods of transferring property will no longer result in such a large difference in the tax effect.

**Senator Phillips (Rigaud):** I do not wish to interrupt your line of thinking, but on this particular point, did the department give consideration to the fact that in attempting to correlate the estate tax and gift tax there are instances of giving by the donor not being related to, say, the estate taxes. For instance, a father wanting to take his son into a business in order to provide the incentive for that son on, for example, marriage, would be an example of what I mean. I merely ask at this stage of your presentation whether collateral social considerations of that nature were overlooked.

**Mr. Brown:** No, sir, they were considered and it was acknowledged that there were these reasons.

**Senator Phillips (Rigaud):** They were considered?

**Mr. Brown:** Yes.

**The Chairman:** On that point, Mr. Brown, would you say we would have had the proposal to integrate gift tax rates with estate tax rates whether spouses' exemptions were being created in relation to gifts in the lifetime or not?

**Mr. Brown:** I think the answer to that question is yes. The decision was that gift taxes and estate taxes should be linked. It is very hard, once you start a review of an existing legislation, to separate one branch of the conclusions from the other.

**Senator Phillips (Rigaud):** But the net result of your answer to my question is that you isolated all other considerations in considering gift tax rates and related them exclusively to estate tax problems.

**Mr. Brown:** That is the result of the deliberations, yes.

**Senator Phillips (Rigaud):** Thank you very much.

**Mr. Brown:** It is very difficult to determine intent in a transaction, as you are very well aware.

**Senator Phillips (Rigaud):** I understand. I interrupted you because I wanted to get that basic point clear.

**The Chairman:** To the extent that intent leads to a decision—or we would hope it does—your decision to integrate must have been preceded by an intent in the preparation of this.

**Mr. Brown:** Yes.

**Senator Kinley:** Mention has been made of exemptions for spouses and certain other legatees in estate matters. In compiling the value of the estates, will these exempted legatees have to pay a second time for the things that were made free in the first instance? Is there a second taxation?

**Mr. Brown:** You mean when the widow dies, sir?

**Senator Kinley:** Is it absolutely free? Is it taken out of the estate altogether, when you compile it? For example, if the widow gets $20,000, that $20,000 is added to the value of the estate for taxation purposes, is it?

**Mr. Brown:** Of the husband's estate, sir?

**Senator Kinley:** Yes.

**Mr. Brown:** No. It does not come into the computation of rates on the rest.

**Senator Kinley:** Is that also true of the other legatees, say, the children? Is that taken out of the value of the estate as well, when they compile it for taxation?

**Mr. Brown:** Yes, the exemptions are.

**The Chairman:** If I may just interrupt, Mr. Brown. Answering your earlier question, Senator Croll, there was no committee in the House of Commons except a committee of the whole. Therefore, they heard no witnesses. You may continue, Mr. Brown. I am sorry to have interrupted you.

**Mr. Brown:** These are, I think, the main thrusts of the bill, if I can put it that way.

Then one comes to the question of the weight of the tax.

**Senator Croll:** Could you just go back for a moment, Mr. Brown. Would you recapitulate the thrusts of the bill, as you put it.

**Mr. Brown:** Yes. There is the complete exemption of properties passing to widows and to widowers, although, obviously, the more common case is that of the widows. Secondly, there is the matter of increased exemptions to minor children and adult children dependent by reason of infirmity. Then there is some differentiation by reason of an exemption to adult children, some differentiation between those estates where the property is going within the family and those where it is going without, and, finally, there is the linking of the gift and estate taxes. Those are, shall we say, the main thrusts in quality. In terms of quantity, there is the decision as to the weight of the tax.

**Senator Thorvaldson:** Mr. Brown, would you mind explaining more clearly what you mean by the linking of the estate taxes and the gift taxes. Is that in amounts and rates, and so on?

**Mr. Brown:** Yes. Previously, senator, as you know, the gift tax has been an annual affair. The amount of gifts made in one year determined the tax for that year, but had no effect on the tax for any previous or subsequent year. The system in the bill now calls for a cumulative computation over the lifetime of the donor. This is the first stage of the rationalization of the gift tax. Finally, the amount of taxable gifts during the lifetime of the donor and after the budget date—the cumulative computation—affects the rates of taxes to be levied on the estate at the time of death. Consequently, early gifting no longer does what it used to do, which was to remove completely from the estate tax both the gift and the gift tax and, consequently, as I said earlier, there is a far lesser difference in the tax impact.

**The Chairman:** What you mean is that as and from October 23, 1968 this cumulative effect of gifting begins to operate.

**Mr. Brown:** Yes.

**The Chairman:** And you must carry forward the gifts so long as the donor lives.

**Mr. Brown:** Right.

**The Chairman:** And when he dies, the accumulation of those comes into the aggregate net value of the estate, is that right?

**Mr. Brown:** Not precisely. It comes into the computation of rates to be applied, but the effect is much the same.

**The Chairman:** I am wondering how you can apply the rate before you have the aggregate net value and you reduce that to the aggregate taxable value.

**Mr. Brown:** It is a complicated piece of machinery, but it works more or less like this. You work out the estate to be taxed, first of all. Then you have to make two Tax computations. You compute the tax which would have been levied on that estate plus the cumulative gifts. That is one computation, which gives you figure "A", if you like. Then you compute the estate tax which would have been levied if the taxable estate had consisted only of the amount of the cumulative gifts—that is figure "B". "A" minus "B" is the amount of the estate tax to be paid. The existence of taxable gifts has pushed the estate up through the rate bracket, but the gifts themselves are not taxed again.

**Senator Thorvaldson:** Could I ask the witness to explain further by way of an example? Let me give you the case of a deceased who has gifted, say, $100,000 during the course of a few years—let us say, five years. Then, at the end of that period of five years he dies and has a further estate. Does that $100,000 that he has gifted become added to the amount of his total estate for purposes of computation of estate tax?

**Mr. Brown:** For the purposes of the computation of the rate. If I might suggest a figure for the estate, let us assume there was a $200,000 estate left subject to tax.

**Senator Thorvaldson:** Yes.

**Mr. Brown:** Instead of paying estate tax as though it was an estate of $200,000, he will pay tax using the portion of the rate brackets that lie between $100,000 and $300,000. He only pays on the $200,000, but at higher rates.

**Senator Thorvaldson:** So the gifts do come into the computation?

**Mr. Brown:** Yes, the gifts do come into the computation.

**Senator Thorvaldson:** And that has the effect of increasing the estate tax.

**Senator Beaubien:** But the amount paid in gift tax, that is deducted?

**Mr. Brown:** The gifts themselves are not taxed again; consequently, it is not deducted. We still bring back into the complete computation gifts within three years of death, but beyond the three-year period the gifts do not themselves become subject to tax on death and, therefore, that gift tax is not offset.

**Senator Thorvaldson:** They increase the rate on the remainder.

**Mr. Brown:** They increase the rate on the remainder, yes.

**Senator Thorvaldson:** What about the $2,000 you can give every year?

**Mr. Brown:** That is not accumulated. It is only taxable gifts which are accumulated.

**Senator Thorvaldson:** In regard to the $2,000 gifts, do they become taxable unless you live three years beyond the time of the gifts?

**Mr. Brown:** I think the short answer is: Yes. There are perhaps qualifications as to normal giving, but if they were gifts of the sort I think you are contemplating, the answer is yes.

**The Chairman:** If they were made within three years of death.

**Mr. Brown:** Yes.

**The Chairman:** There is nothing new in that?

**Mr. Brown:** No.

**The Chairman:** That is in the existing law.

**Mr. Brown:** Right. I think those are the main thrusts of the bill.

**Senator Walker:** Is not the main thrust of the bill that you are really introducing confiscatory legislation?

**Mr. Brown:** There are two things: I am not introducing it...

**Senator Walker:** But I think that you, in the back room, had a lot to do with educating Benson on this, is that not correct?

**Mr. Brown:** I do the staff work; he educates me.

**Senator Walker:** Have not you and he been amazed at the outrage across the country and the complaints, and are you not considering withdrawing the bill until the fall, when you can have a composite taxation bill?

**Mr. Brown:** No, sir.

**The Chairman:** Senator Walker, I do not want to interrupt, but the feeling I have is that the direct and clear question you put jumps right into the middle of policy. I think questions on policy should be directed to the Minister; and we are going to invite the Minister here at some stage. I do not think it is fair to ask a representative from his department such questions. I think the Minister should defend the policy of the Government in this regard.

**Senator Walker:** He will be here, will he?

**The Chairman:** We are going to invite him to attend.

**Senator Phillips (Rigaud):** Mr. Brown, have you any departmental estimates as to the amount of gift tax loss in respect of any particular recent years that would be involved resulting from the exemption of gifts between consorts?

The reason I put that question to you—so as to get the feel of my question—is this, that the Department of Finance in its news releases has placed considerable emphasis on the fact the exemptions between spouses involve the necessity of a drastic—and that is my word—escalation in the gift tax rates; and the line of thinking, in terms of the press releases, was related to exemptions rather than to correlation between the gift tax aspects of the bill and the estate tax aspects.

Having regard to this drastic escalation of rates, my question repeated is: Have you any departmental material to guide us in respect of computations of gift tax that have been paid resulting from gifts between husband and wife, say, in the last three years, so we can relate that to the loss of revenue resulting from the exemption provided by this bill?

**Mr. Brown:** Senator, there may have been a misleading cast to the press releases.

**Senator Phillips (Rigaud):** I am glad to hear that. This is the first time we have got that explanation.

**Mr. Brown:** In as much as I have something to do with press releases, I should blush, if they have been misleading. However, the rationale for the increase in rates of gift tax was not directed to the exemption of inter vivos gifts between husband and wife.

**Senator Phillips (Rigaud):** You will agree the release said otherwise, and that the debates in the Senate having regard to the utter confidence we had in releases from your department were based upon that assurance and explanation.

**Mr. Brown:** Well, sir, I have not the releases in front of me...

**Senator Phillips (Rigaud):** I have them here and...

**Mr. Brown:** ...but I rather thought they were hinged more in terms of a combination of the two rather than in isolation on the gift tax.

**Senator Phillips (Rigaud):** We will save the time of the committee if I put the question: Is there a part of the material that would be helpful to us in terms of what were the taxes received by the Crown resulting from gifts between spouses, say, in the last three fiscal years?

**Mr. Brown:** No, sir.

**Senator Phillips (Rigaud):** Therefore, we are not in a position to determine what was the loss resulting from the exemption from gift tax?

**Mr. Brown:** If we lost all of the gift tax, senator, it could not amount to more than $7 million. $7 million is the order of magnitude of the total gift tax.

**Senator Thorvaldson:** Is that year by year?

**Mr. Brown:** Yes.

**Senator Thorvaldson:** $7 million?

**Mr. Brown:** Something of that order.

**The Chairman:** To underscore what you said, senator, the minister, when he was speaking on second reading of the bill, put the whole emphasis on the escalation of rates and the need for it in relation to estate tax, and he did not bring into that statement a reference to gift tax, which rather lends point to the view expressed by Mr. Brown when I asked him a question as to whether the integration of gift tax rates with estate tax rates would have proceeded in any event because there were purposes, as a matter of policy, for doing that, quite apart from the matter of the extra revenue that might come from the gift tax. The idea rather was to force or induce some lessening in gifts during the lifetime so as to leave more to be subject to estate tax. At page 5180 of the *Debates of the House of Commons,* the minister is reported as saying:

> I think I made this clear previously both in the house and outside the house.

This is with reference to a question he was asked as to the objective in increasing the extate tax rates. He said:

> The change in estate tax is designed to raise exactly the same amount of money that was raised before. There is a change in the burden of estate tax but the revenue will be exactly the same.

**Senator Phillips (Rigaud):** May I supplement that by reading into the record—I know that this is a money bill and that in respect to it we are probably crying in the wilderness, but I am one of the children of Israel who have been crying in the wilderness for a long time.

**The Chairman:** It is supposed to be good for the soul.

**Senator Phillips (Rigaud):** On January 30, 1969 the Department of Finance issued a news release, on page 1 of which appears the following:

> The budget proposed to exempt from tax outright gifts and bequests from husband to wife and wife to husband. It also proposed to increase the estate tax exemptions for young children and to provide exemptions for older children. To offset revenue losses from these broader exemptions, the estate and gift tax rates were to be increased.

**Mr. Brown:** That is misleading, sir; I am sorry. In the sense that it is not complete it is misleading, and I apologize.

**The Chairman:** It is misleading to the extent, do we conclude, that the reference to the role of the increase in gift tax rates is not properly stated?

**Mr. Brown:** It is not fully stated and, therefore, it is misleading.

**The Chairman:** Do you mean that it is misleading in that it says that the chief purpose of the increase in gift tax rates is to make up the loss of revenue on estate taxes? Is that where it is misleading, in that it does not make that statement clear?

**Mr. Brown:** Yes. If the Government had not been doing anything else at the time but

linking gift and estate taxes there would have been substantial increases in gift tax rates. If that decision had been implemented by itself there would have been an increase in gift tax rates. If on top of that you increase significantly the exemptions in the estate tax act and decide to keep the same general order of revenue, then it is necessary to increase the estate tax rates, and that carries with it a further increase in the gift tax rates. This last reservation was not in the press release.

**Senator Phillips (Rigaud):** To follow up that line of reasoning, with the consent of the chairman, am I right in assuming that the escalation in gift tax rates from 28 per cent to 75 per cent, and the ceiling on the higher rates starting at $200,000 rather than $1.5 million on the old rates, are specifically related to the intention to correlate or synthesize gift tax rates with estate tax rates?

**Mr. Brown:** Yes.

**Senator Phillips (Rigaud):** And you feel that the rates fixed do bring about that correlation and synthesis?

**Mr. Brown:** Yes, sir.

**Senator Phillips (Rigaud):** I am putting the question so that we will get it into the record. I do not want to take up the time of this committee unduly, but having laid the foundation for it I would like now to put a specific question to the witness. On November 18, 1968 the Canadian Institute of Chartered Accountants submitted a rather lengthy letter to the Minister of Finance. It is hardly a formal brief but, in any event, it contains a series of representations. My first question is: Are you aware of the fact that the Canadian Institute of Chartered Accountants wrote such a letter to the minister?

**Mr. Brown:** Yes, sir.

**Senator Phillips (Rigaud):** And I assume that being aware of that fact you are also aware of the contents of the letter.

**Mr. Brown:** I was when I first saw it.

**Senator Phillips (Rigaud):** To refresh your memory, therefore, I would like to read from page 4 of this letter where the Institute is dealing with "Gift Tax—Resolution Number 2". In paragraph 3 of the subject matter under the heading "Gift Tax—Resolution Number 2" is the following considered opinion of the Canadian Institute of Chartered Accountants—and I would like to read this into the record, Mr. Chairman, with your permission.

**The Chairman:** Yes. I was going to suggest that in addition to that, senator, the complete letter might be appended to today's *Hansard* report of our proceedings. Is that agreed?

**Hon. Senators:** Agreed.

*(For text of letter see Appendix "A")*

**Senator Phillips (Rigaud):** I would merely read this paragraph:

> Of perhaps greater concern is the lack of equity between spouses domiciled in Quebec and other parts of the country. The Quebec Civil Code precludes inter-vivos gifts between spouses which are not specifically covered by their marriage contract, thus effectively denying to them the facility available to spouses domiciled elsewhere.

And on the following page:

> With the quasi-integration of the gift tax and estate tax, is there any conflict with the Federal-Provincial tax sharing arrangements since the provinces do share in the estate tax revenues but do not share in the gift tax revenues?

And just preceding that:

> Since *inter-vivos* gifts between spouses are now exempt from gift tax, is it anticipated that the donor-spouse will remain liable for tax on the income earned on such donated property under section 21 of the Income Tax Act? If the donor-spouse is no longer to be liable for tax with respect to such income, doesn't this conflict with the situation in Quebec where the gift will not be recognized for Quebec income tax purposes in accordance with the provisions of the Quebec Civil Code?

Now, Mr. Brown, I do not think you are a practising lawyer in Quebec—quite obviously you are not—and certainly it would be most unfair if I crossed swords with you on any provision of the Civil Code.

**Mr. Brown:** I am relieved.

**Senator Phillips (Rigaud):** A fair question, I think, is this: Was the position of residents in the Province of Quebec in relation to the prohibitions covered by Article 1265 considered by the department, and, if so, is it the subject matter of office memoranda, and, if so, is it in order to ask you to file the same?

**Mr. Brown:** Sir, it was considered. That is the answer to your first question, Secondly, I am not sure that I have a particular piece of paper which would summarize that consideration. This type of discussion or study, if you will, takes place at meetings between officials and ministers, and in subsequent meetings between officials, and a great deal of it is verbal. It is not written down. With respect to the third part of your question, I do not know about the particular situations and traditions as to filing memos between ministers and officials.

**The Chairman:** If there is any call for the production of an interdepartmental memorandum we should have to give serious consideration to what procedures, if any, are available.

**Senator Phillips (Rigaud):** That is why I put the question whether it exists.

**Mr. Brown:** Would you like me to mention some of the considerations that came into this discussion?

**The Chairman:** Yes.

**Mr. Brown:** First and foremost, I think we recognized that there is this prohibition, which was the essential question you asked, and from that what flows. If there are no gifts there are no taxes levied. Consequently, there cannot be any adverse tax, if you will, as a result of the prohibition in the Civil Code. The second consideration in these deliberations was that the Civil Code prohibits gifts between spouses during the lifetime, but there is no prohibition of transfer of property from husband to wife on death. The system contained in Bill C-165 also provides a complete exemption on the transfer of property on death, so that while Quebec law may prohibit a transfer of property as early as Quebec residents might otherwise wish, nevertheless federal law still facilitates a tax-free transfer of that property, perhaps later rather than earlier.

**Senator Phillips (Rigaud):** What is the good of a free transfer allowed by federal law if it is known that under the B.N.A. Act we cannot do so? Surely that is a specious argument, sir.

**Mr. Brown:** Let me put it this way. A federal tax law cannot override the Quebec Civil Code.

**Senator Phillips (Rigaud):** Exactly.

**Mr. Brown:** The federal tax law does not levy a tax on Quebec residents who make gifts from husband to wife, whether those gifts are outside the Quebec Civil Code or carrying out a marriage contract. My first point was therefore to say that there is no tax on transfers between husband and wife. If the property remains to be transferred at death rather than being transferred during life, there still is no tax.

**Senator Phillips (Rigaud):** Residents of Canada in Quebec cannot make a gift between husband and wife and in respect of gifts given now to outsiders, not between husband and wife in Quebec, the entire Province of Quebec is now subjected to a maximum rate of 75 per cent instead of 25 per cent. You have increased the highest amount. The situation to which Quebeckers are now being subjected is that they are in exactly the same position as before in respect of prohibition of gifts between husband and wife, where any exemption is of no use to us as provided by present legislation. Surely as a matter of equity in relation to the application of a federal statute the older rate should apply in so far as gifts to outsiders are concerned—that is to say, to non-spouses—until such time as the repeal of article 1265 puts residents of Quebec in the same position as their fellow citizens across the country.

**Mr. Brown:** There is clearly an aspect of the gift between spouses that relates to gifts from either or both to third parties.

**Senator Phillips (Rigaud):** To third parties?

**Mr. Brown:** To third parties. In other words, in Ontario a husband can give $2,000 to a child.

**Senator Phillips (Rigaud):** Let us stick to Quebec.

**Mr. Brown:** I was proposing to make a point concerning Quebec, if you will permit me. In Ontario a husband can give $2,000 to a child. He can also give his wife $2,000 and if the wife chooses she can give $2,000 to the child. In an Irish manner of speaking, the husband has given $4,000 to the child. In Quebec, we have to consider two types of marriages, those which are in community of property and those where there are marriage contracts. Where there is community of property, the assessing practice of the department, which is based on an appeal board case, is that gifts made out of community of property are deemed to have been made by

each partner in proportion to their interest in the community...

**Senator Phillips (Rigaud):** You are only allowed to do that because you lost a case in the courts. You did not take that position freely.

**The Chairman:** Senator, however they came to it, that is the position.

**Senator Phillips (Rigaud):** Does not the department take the position that the income of the community is the income of the husband, even though the communal income includes income belonging to the wife? You went to the Supreme Court on that in order to be able to get the higher rate of taxation resulting from the income from communal property, even though part of it was the wife's property.

**The Chairman:** Are not we getting a little into a collateral issue?

**Senator Leonard:** I should like to ask something following Senator Phillips' last question. This is probably to clear my own ignorance. It seems that the nub of the point, as I gather it, is that there is a trade between the exemption given for spouses and an increase in rates, and to me Senator Phillips' point seems to be that because there could not have been any granting of an exemption to the spouse in Quebec because there was no right to make it, there should not be the trade as to an increase in rate with citizens who are residents of Quebec. This is how it comes to my mind.

**Senator Phillips (Rigaud):** That is it exactly.

**Senator Leonard:** Can you clear my ignorance?

**Mr. Brown:** I cannot accept your last word but I will try to answer the question. At the beginning of our discussion I tried to make the point that the change in gift tax rates related not to the exemptions in the gift tax but to linking it with estate tax.

**Senator Leonard:** I appreciate that.

**Mr. Brown:** Inasmuch as the estate tax is levied in all provinces and there are no prohibitions in the Civil Code with respect to leaving property on your death to your wife, then I think this follows. May I interject one point, which is perhaps irrelevant and you might rule me out of order, Mr. Chairman. For years people in community of property in the Province of Quebec have had an advantage under the estate tax in that half of the communal property is not subject to the estate tax, even though all the property may have resulted from the labours of the husband, or perhaps in some cases the labours of the wife, whereas in all other provinces that property would be subject to that tax. There may now be a disparity for people in Quebec on marriage contracts. The disability is that the marriage gift in the marriage contract may be restrictive in regard to their ability to permit their wife to make this $2,000 gift. There may be a disability there in some cases.

**Senator Phillips (Rigaud):** Because of the nature of this bill being a so-called money bill, I for one wish to press the department to consider objectively the desirability—because I do not think it constitutes a retreat on the part of the department—of reverting to the old rates of gift tax so far as Quebec is concerned pending the repeal of article 1265, or any other legislation in Quebec which in effect involves the repeal of the provisions of article 1265. I do not think that is discriminatory legislation in favour of the residents of Quebec. I appreciate that this is a money bill and it is difficult to deal with amendments and that sort of thing which may have ramifications that I may not want to invite. I am therefore pressing the department to consider this question on its merits all over again, even though it may have to go back to the other place if you support an amendment in this committee.

**The Chairman:** What you are saying is that since you get the burden of increased rates you have no opportunity to enjoy the benefits.

**Senator Phillips (Rigaud):** Exactly.

**Senator Leonard:** As I understood Mr. Brown to reply to me, he says they get the benefit on death.

**Mr. Brown:** Yes, sir.

**Senator Leonard:** And in so far as they do not get the benefit in their lifetime, that increase in the rates of gift tax therefore has no application in effect, because there is not the power to make the gifts. Therefore, the increase in gift taxes does not affect it.

**Senator Phillips (Rigaud):** Mr. Brown, would there not be a non-sequitur in your reasoning, if the donee spouse disposed of the

subject matter of the gift during the lifetime of the donee but after the death of the donor? You are assuming that the subject matter of the gift remains intact, more or less. And I ask that leaving aside the question that you may be introducing incentives for fortune hunters to get after anxious widows. I am not going to go into that, because that is a social question. But I personally believe that you have introduced that factor. This is a veritable hunting ground for fortune hunters to get after tired widows, if we allow complete exemptions on estate taxes for widows. But leaving that aside, because that is in the realm of ethics and social thinking, I put the direct question that once you give the spouse ownership of the asset, whether by gift or by exemption under the estate tax, you have no assurance of the correlation of your rates under the gift tax and under the estate tax because the entire subject matter of the gift or the entire subject matter of the legacy may be disposed of by the donee or legatee, as the case may be.

**The Chairman:** If it is an outright gift, yes.

**Senator Phillips (Rigaud):** Yes, if it is an outright gift. You are working on assumptions that do not flow; there is not the necessary sequitur between the exemptions and the ultimate computation of tax liability because the entire asset may disappear.

When you talk about integration of gift taxes with estate taxes, by the time you get to the date of the gift and the date of the death, you may have the party leaving the province...

**The Chairman:** Or leaving the country.

**Senator Phillips (Rigaud):** ... and you may have dissipation of the asset in whole or in part. Do you see? And, after all, we are not to blame if we read the departmental releases the way we did, but, dealing with the subject matter the way it is in terms of integration, synthesis and so on, it does not follow, for the reasons I have mentioned.

**The Chairman:** Senator, we have presented the viewpoint pretty clearly to Mr. Brown. Any decision on it will, of course, have to come at a level above him. Since we propose to invite the Minister to come here, I would expect that Mr. Brown would indicate to the Minister the viewpoint and what has been said here today so that the Minister will be ready to deal with this question.

**Senator Phillips (Rigaud):** Thank you.

**Mr. Brown:** I will do that, sir.

**Senator Molson:** Mr. Chairman, I think we see a social purpose in this legislation, and there has been a great deal of discussion on the financial implications of it. I would like to ask Mr. Brown f any study or research was done on the economic effects flowing from these changes.

**Mr. Brown:** As you know, senator, the effect of taxes on motivation is a very difficult subject. We had reference to a wealth of studies that have been published over time on this, but none of them are very conclusive. The usual position, I think, of a reader of these is to remain convinced of his predilections after he has read any of the studies. It is almost a matter of assertion rather than one of conclusive proof.

**The Chairman:** Will you, senator, illustrate your point on the social aspect?

**Senator Molson:** I am speaking of the thought that was expressed that this would be a fairer treatment between members of society in disposing of their wealth by the two different systems, one by legacy on death and the other by gift during the lifetime. It has also been suggested that this would make a fairer distribution. That is the social aspect. Economically, I am wondering whether there was any study or any examination of what would have been the effect over the last few years had these gifts, for exemple, been under the new legislation, and so on. Certainly, if these gifts have had any effect on the economy at all, it has been that there has been certainly a greater amount of money divided up and put in the hands of more people, and more should have been spent and so on than if it had remained in larger masses and blocks. There is this possibility and suggestion. I am wondering if the economic aspect of this was looked at or whether it was examined from the social and financial aspect only. That was my question.

**Mr. Brown:** Senator, the aim of the rates and the structure, ultimately, was to produce about the same revenue. This means, then, that there is the same withdrawal of the ability to consume or the ability to save. It may come from different people, but there is the same withdrawal. The next stage in analyses would be to try to decide whether the people who now will inherit with less estate tax have a greater propensity to save or a propensity to save in different channels and with

different effect than the people who will inherit less after estate tax.

**The Chairman:** Had you thought of the incidence, for instance, in a gift? If you retain the money on the one hand it is likely to remain there and earn money annually so that you have got a recurring amount that comes into the economy; if you make a gift of it, knowing a great many human characteristics, it is likely to be spent. So on that aspect, senator, I do not know whether the economics would work for you or against you.

**Senator Molson:** I asked if a study had been made. That is all. Whether it had been examined. I think the answer is probably no, Mr. Chairman.

**Senator Leonard:** There is nothing conclusive.

**Mr. Brown:** On the examination we made we felt we could not come to a conclusion. That is perhaps a more direct answer.

**Senator Molson:** Was any thought given to the impact on people who tend to settle in this country? Were all the factors involved looked at? And was any thought given to the impact on people who tend to leave this country, and did you look at all the factors involved there?

**Mr. Brown:** Yes, that was thought of.

**Senator Leonard:** What kind of conclusions did you reach there?

**The Chairman:** That it still will happen.

**Mr. Brown:** That it still will happen, yes.

**Senator Burchill:** Mr. Chairman, following Senator Molson's question about the economic effect, I want to ask Mr. Brown if the officials of the department gave any study to the effect that these escalating rates will have on small businesses. I am thinking of family businesses in particular. I want to say to Mr. Brown that I have just returned from New Brunswick where I spent the Easter recess and I had delegation after delegation come to me pointing out what very serious effects these high rates are going to have on these small concerns. I am not going to take up the time of the committee in doing so, but I could tell you of case after case. Moreover, I found the same thing held true in different sections of New Brunswick. It was not only with respect to where I live or in my own small community, but also was in the larger centres, where I had the same reaction, and I think it is going to have a very serious effect. I am thinking particularly of manufacturing concerns who are very much concerned with employment and labour. I think it is a very serious matter, and I am very much concerned about it.

**Mr. Brown:** We did study the possible effects, senator. I think in this area the first thing one has to do is define one's terms. "Small" is a very elastic word, and I would be very interested to know from what point you would like me to discuss it. Is "small" $150,000, $250,000; is it half a million dollars, $1 million, $10 million?

**Senator Burchill:** Up to $400,000.

**Mr. Brown:** Well, less than 1 per cent of Canadians have estates over $250,000. If we were talking in terms of small incomes, to put it in some sort of context, we would be up over an annual income of $50,000 or $60,000 a year to get to roughly the same proportion as estates of $400,000.

I think clearly the effect of the rates is that in families, let me say, with three children, if I remember correctly, the rates are lower—the effect of the rates is to produce a lower tax up to $150,000, and if there are four children it is up to $200,000. If there are two children, the rates are somewhat higher almost from the beginning. So, these are the effects. If I can digress into policy, perhaps the main import of the announcements of October 22, 1968, was that there was going to continue to be death duties in this country, because I think the degree of change in the area in which one speaks of "small" estates—and this is an elastic term—is not very great, but there has been, of course, a greatly increased public awareness of the existence of what was there before.

**Senator Leonard:** What is the line at which the rates are lower? What is the maximum amount, taking your case of three children?

**Mr. Brown:** In the case of three adult children, each of whom we have to assume inherit at least $10,000, the total estate tax will be lower unless the estate exceeds $160,000.

**The Chairman:** But when you are talking about the so-called "small" estates, in order that you may have an exemption for a child at 26, it is $10,000 of an exemption—,the testator has to make the gift in his will, and he may not have the wherewithal to do it.

**Senator Leonard:** If he has $160,000, he has.

**The Chairman:** It is a question of available money.

**Senator Leonard:** Liquidity?

**The Chairman:** Yes.

**Senator Leonard:** Oh, that is another question.

**Senator Connolly (Ottawa West):** There are problems of liquidity.

**Senator Leonard:** That arises in all kinds of estates, and it comes into your valuation to start with. Presumably, your valuation is on the basis of reasonable liquidity.

**The Chairman:** I suppose any small estate could be wholly left to the wife with a simple and small contribution by way of gift to the family that his liquidity would permit. I think the wife would have to make certain dispositions.

**Senator Leonard:** But the essence of the answer is that up to $160,000 there is no increase in duty, in the tax, under this new bill from what there was before, taking the case of a person with three children, and I think it is just as well to clear the air, because there has been some broadcasting of suggestions it represents quite a substantial increase in tax.

**The Chairman:** I am not satisfied that if you made the calculations on this exact basis you would come out with those answers in these cases, because you have different types of exemption before you arrive at the taxable value of the estate under the old law and under the new law.

**Mr. Brown:** The basis of my remarks is an attempt at those computations.

**The Chairman:** If you have such a calculation making the comparison, would you be prepared to file it here?

**Senator Croll:** They are filed in the records of the House of Commons.

**The Chairman:** But we should have them too, Senator. You are the one who wanted the "one-two-three" on the *Hansard* report, because everybody reads it.

**Senator Croll:** I saw the calculations on the record of the House of Commons, and I realize that what he said appeared there. I took a careful look at where it would hit most of you people.

**Senator Leonard:** Let us take, say, an estate of $500,000 as the upper bracket. Assuming the husband has an estate of $500,000, and the wife has nothing, and in their lifetime they make a division and their deaths are at approximately the same time and the ultimate beneficiaries are approximately the same people, at what line or level would there be a tax increase under the new bill compared with formerly? In other words, what is the effect on the ability to give a free gift of 50 per cent of the estate?

**Mr. Brown:** I think these figures were made available in the House of Commons, which indicate something of this order, on an estate of $500,000—this is rather complicated, I am afraid—

**Senator Leonard:** Well, take a figure that is not too complicated.

**Mr. Brown:** It is the situation that is complicated, and not the figure.

**Senator Leonard:** Oh, all right.

**Mr. Brown:** Perhaps at the moment one might say that the typical—if there is one—estate planning will leaves the estate in trust with income to the widow and the capital divided among the children on her death. That is popular because it meets social values and also because it happens to produce the lowest estate tax.

If I may rephrase it a little to suit the basis I have here, on $500,000 at the present time, whether there were one, two, three or four children, the estate tax would be $116,000.

**Senator Leonard:** Before this bill?

**Mr. Brown:** Yes, before this bill.

**Senator Connolly (Ottawa West):** You say "before this bill"—the old tax; but that would apply in what case, the case of the estate going to the widow, and then on to the children?

**Mr. Brown:** The estate is left in trust to the widow, with income to the widow during her lifetime, and the capital to her children on her death.

**Senator Connolly (Ottawa West):** That is all I wanted to know.

**Mr. Brown:** It is in the context of an estate in one of the provinces that does not levy

succession duties but that take our money instead. If we contemplated the situation you suggested, a man with $500,000 who leaves $250,000 to his widow, and gives the rest to his children, and on her death she divides the $250,000, assuming it is still there, equally among the children—if there is one child involved the tax becomes $125,000, which is an increase of $9,000 on the base of $116,000; if two children, $117,000, an increase of $1,000 on the base of $116,000; if three children, $109,000—a reduction; and if four children, $101,000—again a reduction. I should not prophesy, but that may well turn out to be the estate planning will of the future.

**Senator Leonard:** That is for four children?

**Mr. Brown:** Yes, that is for four children.

**Senator Molson:** It is a little late to bring that up now!

**Senator Thorvaldson:** I would like to ask some questions as to the calculations that have been made by the department in regard to the balance of ways and means...

**Mr. Brown:** Yes, sir.

**Senator Thorvaldson:** ...created by this bill. There was some reference to this matter earlier. I think the first thing that I would like to refer to is the statement, which I believe you made, that the loss in tax occasioned by the free gifting between spouses was merely equivalent to the gain in tax under the gift tax; is that correct?

**Mr. Brown:** No, sir.

**Senator Thorvaldson:** Or, there was a difference of $7 million.

**Mr. Brown:** No, the remark I made was that if we did not collect a cent in gift tax because all taxable gifts previously had been from husband to wife or from wife to husband, the maximum loss would be $7 million, because that is the maximum revenue the federal Government receives from the gift tax.

**Senator Croll:** In any one year.

**Mr. Brown:** Yes, in any one year; that is right, senator. I did not make myself clear.

**Senator Thorvaldson:** So, you say there is a dieffrence of $7 million?

**Mr. Brown:** No, sir. I was not saying we would lose $7 million. I was just trying to get the order of magnitude in answer to Senator Phillip's (Rigaud) question as to what the possible loss could be. The revenue picture in respect of this bill has been looked at in aggregate, and the major attention has been on the estate tax. The portion of the revenue that comes from the gift tax is very small. It is not thought that the major change will come there. It is thought that the major change will come, if you will, at the estate tax end.

**The Chairman:** Senator, right on that question, you are asking: Do you think the application of the new gift tax rates will reduce that historic revenue from gift taxes below $7 million?

**Mr. Brown:** I think in the short term the answer is likely to be yes, senator. People take time to become accustomed to these changes, and it will take time for people to tailor their gifting to the new rates.

**The Chairman:** I remember a remark some time ago that provoked a lot of debate. It was: "What's a million?". You are now talking about $7 million as being a very small amount.

**Mr. Brown:** No, I spoke in relative terms.

**The Chairman:** It did not enter into your calculations.

**Mr. Brown:** Yes, it did enter into our calculations.

**Senator Thorvaldson:** A while ago, Mr. Brown, I thought I heard you use the words "the same withdrawal". Did you mean by that that there would be the same withdrawal of tax revenue from the public under this bill as under former legislation?

**Mr. Brown:** The order of magnitude.

**Senator Thorvaldson:** That is what I mean.

**Mr. Brown:** You cannot possibly prophesy the precise amounts.

**Senator Thorvaldson:** So whether we live under the former legislation completely or under this, there is really no difference in the balance of ways and means in so far as the Government is concerned. Is that correct?

**Mr. Brown:** The aim was not to produce a significant difference. There will be a difference. There will be a difference arising, first of all, from the impossibility of precision, and there will be a difference arising, secondly, from the changes made in the legislation to

restore the $50,000 starting point to provide for the payment in instalments and—I should remember it, but I have forgotten the third change that was made and announced.

**The Chairman:** I think the witness should remember the quotation I read from Mr. Benson. He said the changes were designed to produce exactly—this was the word he used, "exactly"—the amount. Have you any comment on that?

**Mr. Brown:** Well, a word is a word is a word.

**The Chairman:** And a buck is a buck is a buck.

**Mr. Brown:** Yes.

**Senator Thorvaldson:** My point is that Senator Phillips (Rigaud) has frequently referred to this as a money bill. My position is, and always has been, that the issue as to whether the Senate has the power to deal with such a bill, to amend it or defeat it, is not a question of whether money is involved but a question of whether the balance of ways and means are affected. I think we will find that that is the position the Senate has taken, and I think these questions are important from that point of view.

So, we can take it definitely that so far as the calculations made by the department are concerned, they indicate that there is an infinitesimal difference—if I might use that expression—and it might be either way? In other words, there might be slightly less revenue or slightly more revenue resulting from this bill?

**Mr. Brown:** I would use the words "not significant", senator.

**Senator Thorvaldson:** Then, I would like to ask this question: What is the total amount now received by the exchequer from the estate and gift tax laws?

**The Chairman:** We have had the amount for the gift tax inter-vivos. That is $7 million. You now want the estate tax?

**Senator Thorvaldson:** Yes, after repayment to the provinces of the 75 per cent in the case of those provinces that have that agreement.

**Mr. Brown:** We calculated the estate tax at roughly $50 million, and the gift tax at $7 million.

**The Chairman:** Yes, it is 25 per cent. The provinces get 75 per cent, including abatements.

**Senator Leonard:** What are the latest figures on that? Of the total amount received under the federal taxing statute, how much is rebated to the provinces?

**Mr. Brown:** Sir, it is a relatively complicated situation in that in our act we have a schedule of rates, and we do not collect those rates in British Columbia; we do not collect those rates in Ontario; and we do not collect those rates in Quebec. In the provinces in which we do collect those rates we send 75 cents of every dollar back.

**The Chairman:** Senator, I think your question was: What amount of revenue would you receive as a result of the assumption that there were no statement of the estate tax?

**Mr. Brown:** We are speaking of just over $200 million.

**Senator Carter:** Could I ask if there is an assessment made of the cost of collecting that?

**Mr. Brown:** Not to the precise dollar. I would ask Mr. Linton if he would like to express a view as to the total cost of the administration of the estate and gift tax legislation.

**Mr. W. I. Linton, Chief, Income Tax Division, Department of National Revenue:** Mr. Chairman, we made some estimates quite a long time ago, but I would think they still have some relevance. In 1959-60 the cost of administering the succession duty and estate tax part of the administration, excluding the gift tax, was about four per cent of the total costs of the department.

**Mr. Brown:** And that would be—what?

**Mr. Linton:** At that time it was about $1.5 million—$1,400,000, I think. In 1966-67, if the four per cent was still valid, the costs would be about $2 million.

**Senator Leonard:** So, four per cent would amount to how much?

**Mr. Brown:** $2 million on the basis of 1966-67.

**Senator Leonard:** It went from $60,000 to $2 million in ten years?

**Mr. Linton:** No, there is no $60,000. In the year 1959-60 the estimated total costs were $1,400,000.

**Mr. Brown:** That is for the estate tax alone?

**Mr. Linton:** Yes, and using the same percentage for 1966-67 would bring it up to $2 million. There would be a little more in relation to the gift tax, but very little. The costs of that are really not very much.

**Senator Walker:** Would you turn your attention to the economic problem? Across Canada there are small businesses in villages, little towns and cities that may be worth perhaps $1 million tied up in fixed assets, which employ a great many people. I presume you have taken that into consideration. On that $1 million going from the owner of the business to his children, what would be the estate tax, keeping in mind the 50 per cent starts at $300,000.

**Mr. Brown:** There is a considerable difference, depending upon how many children there are, whether there is a wife and how the man leaves it.

**Senator Walker:** We have got past his wife now; the whole thing falls in and there is a tax on a $1 million estate going to two or three children.

**Mr. Brown:** In the order of $425,000.

**Senator Walker:** How in the name of heaven can the new owners of the business, the children, possibly raise $425,000 to pay that tax?

**Senator White:** They just can't.

**Senator Molson:** Sell.

**Senator Walker:** There is no answer to that is there? It is impossible

**Mr. Brown:** Until one looks at the facts of the case there is no answer.

**Senator Walker:** If it is impossible, is it not evident that before he dies the father, not being able to gift it because of the 75 per cent tax on everything above $200,000, will seek out an American and sell it, and having done that ship off to Nassau and not pay any tax? Are you not defeating your own ends by raising taxation and making the estate tax so heavy on people who have substantial estates and are contributing so much to our economy by keeping these family businesses in operation? Are you not defeating your own ends?

**Senator Leonard:** Is this not a question of policy which the minister will take care of in due course?

**The Chairman:** I think the witness can answer factually what the effect will be of a set of facts which is put forward. Having regard to those facts we can each draw our own conclusions. However, in the area in which this was formulated it became policy, and I do not think we can ask the witness to comment one way or the other on the policy. That is the view I have consistently held here, and so far the committee has supported me.

**Senator Walker:** I appreciate that this is in the area of policy. Having this in mind, and the impossible conditions that result from the incidence of this high taxation all across Canada, how does it become a matter of policy to destroy our capitalist system, leading to socialism, in the way they have done across Europe?

**The Chairman:** It is open to any conclusion that you or any other member of the committee may draw.

**Senator Leonard:** Could we hear from the witness what would be the tax on a $1 million estate under the present act?

**Mr. Brown:** In the circumstances posed it is in the order of $300,000.

**Senator Thorvaldson:** I think Senator Walker's point was that under this new system the relationship between $425,000 and $300,000 is completely destroyed, because under the old system there would not have been an estate of $1 million since most of it could have been gifted over a period of years. That is really the main issue involved rather than the disparity between the estate taxes.

**Mr. Brown:** The gift tax exemptions may in some instances be larger now than they were previously. It depends on the size of the family, and, of course, the size of income. If you postulate a large income and a small family, the gift tax exemptions are lower. The fact that we have had relatively low gift tax collections over the years leads me to hypothesize that there has not been much in the way of taxable gifts made. I think this flows, if you will, from the figure of $7 million. I think perhaps what you are speaking about, to put it in context, is the relationship between the exemptions that existed and the exemptions that now exist.

**Senator Thorvaldson:** I quite agree. You are right on that. It is fairly clear why the gift tax was approximately $7 million. There are two reasons for that. One is a lot of gifting having been done by people with large incomes, and consequently the amounts they can gift without paying tax are high. The other and just as important a reason is that the gift taxes have been comparatively light in this country, for a purpose, which was to enable people to provide for their family during their lifetime, to pass on their business during their lifetime. Our point is that such a thing will become impossible under the present rates of gift tax.

**Mr. Brown:** It will become more expensive.

**Senator Thorvaldson:** It becomes so expensive as to be, to my mind, prohibitive.

**Senator Beaubien:** Can you give us any idea of the estate tax and the gift tax in the three big states below the border—New York, Massachusetts and California?

**Mr. Brown:** I do not have those figures with me.

**Senator Beaubien:** Has the department given any consideration to them or studied them in making a decision what the rate should be here?

**Senator Thorvaldson:** I would suggest to my honourable friend Senator Beaubien that those figures are all contained in the publication *U.S. News and World Report* of about two or three weeks ago.

**Senator Beaubien:** I think we should compare them. We are part of North America and we are in competition.

**Mr. Brown:** We did compare the rate structure in Canada and the rate structure in the United States. There is no doubt that the rate structure goes up at a higher rate, a steeper incline if you like, in Canada than in the United States. On the other hand, of course, the American rates go up to 77 per cent. They do not get there very quickly, but they get up to 77 per cent.

**Senator Beaubien:** Are we talking about estates now?

**Mr. Brown:** Yes, we are.

**The Chairman:** Is it correct that the 50 per cent rate in the United States is reached at about $1,200,000 or $1,500,000?

**Mr. E. R. Smith, Tax Policy Division, Department of Finance:** I think it is over $1,500,000. Actually there is no 50 per cent. It goes from 49 per cent to 53 per cent.

**Mr. Brown:** We also examined the weight of taxes in these countries. The Americans collect something in the order of 2½ per cent of their revenues through death duties. We collect, and will continue to collect, something of the order of 2 per cent. We are trying to carry a larger government program on a lower per capita income, a lower per capita wealth base. It almost inevitably means that to carry the same program we need a higher rate, and to have a larger program still higher rates.

**The Chairman:** Maybe the answer is that you should spend what you are able to spend, and spend less.

**Mr. Brown:** I have much to answer for, but not spending.

**Senator Thorvaldson:** Would you not agree it is the rate of tax that is important rather than Canada spending a certain proportion of a certain tax vis-à-vis the United States?

**Mr. Brown:** If the Government expenditures are to run over $10 billion, the question is not whether to have taxes but what kind of taxes to have. In total they must come close to $10 billion at least in the long run, if not year by year. There are only so many people to send the bill to and only so many ways of describing the bill. This is why I responded not only in terms of rate but in terms of the over-all weight of the tax and the relative proportions of the tax revenue raised in this manner.

**Senator Beaubien (Bedford):** We were talking of the tax on half a million dollars. What would it be in the state of New York or in the state of Massachusetts, roughly.

**Mr. Brown:** The figures that I have here for the United States speak only of the federal rates.

**Mr. Linton:** There is abatement for estate taxes, and I think you can assume that in most states the federal total rate represents the total payable amount.

**Mr. Brown:** It is an abatement, not a deduction?

**Mr. Linton:** It is a deduction, but the states' rates are geared to the federal rate. There are one or two states that are in excess, but by

and large, if you take the federal rate, you include the rate for the state.

**Mr. Brown:** May I quote a few figures from the half million dollars, then?

**Senator Beaubien (Bedford):** Yes.

**Mr. Brown:** We have four situations on the schedule before me. First, there is the estate that goes to the widow and then, on her death, to the adult children. That, of course, produces the highest tax under our existing system. I should say, first, that under the existing system the Canadian tax is $200,000. Under the proposed system it runs between $170,000 and $185,000. I am speaking now of the range of one to four children. In the United States the figure is $160,000.

If we move to an estate left outright by a widower, where we do not have the double tax and, therefore, the existing system is not nearly so bad, our existing tax is about $123,000; the new tax will still remains between $170,000 and 185,000; and the American tax is about $126,000. There are some assumptions in the American tax that one should get to. If we talk about a trust estate, the one we spoke of or perhaps the current state planners will, the current tax is $116,000; the new tax will be between $170,000 and $185,000. You will notice that the figure for the new tax of $170,000 to $185,000 is common in all of these first three types of devolutions under the new system. The American tax would be about $71,000.

**Senator Beaubien (Bedford):** We go from $71,000 up to $185,000?

**Mr. Brown:** Yes. May I speak of the fourth case? If the estate is left half to the widow and half to the children on the widow's death, the old tax is about $148,000; the new tax will vary from $100,000 to $125,000 and the American tax is $95,000.

**Senator Walker:** What was your third illustration again?

**Mr. Brown:** What I might call the present estate planning will, where you leave the income for life to the wife and then the capital, on her death, to the children.

**Senator Beaubien (Bedford):** That is $185,000?

**Mr. Brown:** No, that is now $116,000. It will be somewhere between $170,000 and $185,000, depending upon the number of children.

**Senator Cook:** Could we return to the case of the businessman leaving a business worth a million dollars? The present rate is $300,000. The new rate will be approximately $425,000. What would happen, if he gave half the business to his wife and they both died leaving $500,000 each?

**Mr. Brown:** Let me find that, sir. It depends, of course, on the number of children involved, but the new law would produce a tax varying between $338,000 and $368,000.

**Senator Cook:** Therefore, by taking proper precautions, the new tax would be only $50,000 more than the existing one.

**Mr. Brown:** The lowest rate he could have achieved under the previous system would be in the order of $305,000. The new rate, depending on the number of children, would vary between $338,000 and $368,000.

**Senator Kinley:** Mr. Chairman, was there a provision in the law that you could prepay succession duties or estate taxes by settlement with the department, that is, with the Government? You could prepay them and it would be advantageous. If you lived the three years, all right. If you did not, they would give you credit for the money with interest.

**Mr. Brown:** I think you could, in effect, accomplish that by gifting, but I do not think it applies to legacies.

**Senator Kinley:** I think it does.

**Mr. Brown:** I am not aware of any system whereby you could pay the estate tax as such in that way. If you gave the money away before you died, then you paid the gift tax; if you lived three years, there was no estate tax. Perhaps in that sense...

**Senator Kinley:** The proposition as I understand it is that it would be advantageous to pay the estate tax while you lived and you would get a consideration if you paid something towards it. There was a three-year limit on it. If you died within the three years the estate would get credit with interest for the money you paid in.

**Mr. Brown:** I suspect that they have devised some way of giving away the estate and simply paying the gift tax, but I presume you found a means whereby the father still controls it. I know of no machinery for prepayment of estate tax as such, at any rate.

**Senator Phillips (Rigaud):** My old friend, Mr. Linton, may be able to answer this through you, Mr. Brown. In dealing with legacies to wives under wills, my experience has been, in close to 50 years, that very little outright gifting is made to wives, aside from a gesture amount. Income is given to the wives and the capital goes to the ultimate beneficiaries who are usually children. Is there a departmental figure in respect of that? For example, taking 100 wills, how many of those wills provide for outright giving to wives, based upon past experience?

**Mr. Brown:** Senator, there is a sharp break at about the $150,000 mark for estates. Up to that that is the normal will. Above that, it becomes a very rare one.

**Senator Phillips (Rigaud):** That being so, it becoming a very rare case, let us take a look at Table II which the Minister filed. In dealing with the situation where we are now providing for the exemption to the wives, we will take the case under his Table II. First of all, I will deal with $200,000 and then with $400,000. The following three conditions are present, according to the Minister in Table II: (1) basic exemption of $60,000 and no gifts within three years of death; (2) spouses' exemption of 50 per cent of the value of the estate plus $20,000 for children and no taxable gifts; (3) exemption of $20,000 for children and the value of the estate capital for the use of wife remains the same.

Now, with these three basic ingredients here is what we find when we make a comparison: the total amount now paid for $200,000 is $21,600; the total amount for $400,000 is $79,400.

If we go back to Table I, without the spouses' exemptions, for $200,000 you now have a payment of $39,700, and for $400,000 you have $129,200. It is an involved question, but I do not think the experience of the department in the study of wills, in terms of outright giving to wives, justifies the escalation of rates based upon the spouse exemption.

**Mr. Brown:** The figures you quoted were not the ones in the tables I have in front of me. They were tables...

**Senator Phillips (Rigaud):** ... produced by the Minister. The remarks are not the official remarks, but the tables are. (*Document handed to Mr. Brown*).

I am trying to get at a rather involved point but, I think, a very important point. I am talking to the gift tax exemptions and to the question of the escalation of rate gift-tax-wise and their synthesis with the estate tax rates. They assume a basic benefit resulting from exemptions to the spouse, whereas in practice, based on experience of matters to which you have referred, there is very little outright giving to the wife, and it is common sense when there is a disparity of life expectancy of between four and five years between the male and female spouse that there is very little given to the wife outright because, first of all, the male assumes his wife will outlive him by only four or five years, and the ultimate giving, in terms of capital, is to the beneficiaries who are usually the children. I have been in law practice close on 50 years, and my experience has been that insofar as capital is concerned there is usually a mere complimentary giving to the wife to let her know she has been a dutiful consort, and you then provide income on the capital for her during her lifetime, which usually consists of a limited number of years in excess of her husband's, and on her demise the capital is then handed over to her children or others. In light of my own experience of some 50 years, I would say there is not one in a hundred wills which provides for major giving of capital to the wife. In light of that experience of my own, and of the life expectancy of the wife not being more than four or five years more than her husband, we have this tremendous escalation of the gift tax rate in relation to the estate tax rate, based on the spouse exemption, when it is not a realistic consideration in terms of present and past practice. I may say it looks like a case of the mountain trembling and a mouse coming forth.

**The Chairman:** It is a pretty big mouse.

**Senator Phillips (Rigaud):** As I said in the debate, the mountain trembled and there was a lot of shaking in small businesses in the process and the foundations were destroyed. However, I am dealing with this practice of giving, and the commonsense relationship of giving between husband and wife does not justify this approach to the problem, in terms of rate gift-tax-wise or estate-tax-wise.

**Mr. Brown:** I obviously cannot get into the subject of trade-offs. But, as I said earlier, our examination of estates left us with quite a cleavage in what is left to the wife at about $150,000. Up to that point wives tend to get outright bequests. Beyond that point—and I cannot speak of the unanimous practice—wives tend to get life interest in a trust.

When estates get very large there also tend to be outright gifts to the children at the time of the father's death. The tendency begins then, in our study—and you can find reference to this in the published study of the Ontario Taxation Committee, the Smith Committee, who published on the devolution of estates in Ontario—there begins to be a practice of leaving some property at that time outright to children; in other words, not tying up all the capital.

Under the proposal, if it is an estate whereby the income for life is to the wife and property to the children on her death, that amount is exempt at the time of the husband's death; and I suggest that is not in any way an illusory exemption at that time. It falls in at her death, and that is likely what you are referring to. If there is a substantial amount given to the children at the time of the husband's death, you do find yourself in Cateogry 4 of the tables whereby the husband has taken advantage of the exemptions and low rates—the lower rates—the less high rates, if you will—in the schedule on his death, and the amount exempt in the wife's hands, is taxed when she dies and also gets the advantage of the less high rates.

**Senator Beaubien:** That is $10,000 to each child?

**Mr. Brown:** Yes, and perhaps more, if there is a taxable estate on the husband's death. After all, there are brackets below 50 per cent.

**Senator Beaubien:** He can give $10,000 to each for nothing?

**Mr. Brown:** He can give $10,000 to each for nothing and an aggregate amount beyond that which yields rates below 50 per cent. It is on the assumption that that sort of thing has happened that this fourth category was placed in these tables.

In response to Senator Phillips (Rigaud), I am saying it seems to be a trend for outright transfer to the children as estates get larger. I agree with the senator that what the wife gets is by vritue of an income amount under a trust.

**The Chairman:** Mr. Brown, you were indicating the table of rates you had in these examples differed from the table of rates Senator Phillips (Rigaud) produced. Have you any comment there?

**Mr. Brown:** It is a little hard at the moment to see what the particular circumstances are, but it seems to me, on short examination, that they are discussing a situation in which there is an estate set up with the wife having income for her life and the capital being divided between two children on her death.

In these tables I have before me—and we will be pleased to produce them—they talk of the old estate tax being $6,200 on $100,000. That ties in.

I misunderstood you, Senator Phillips (Rigaud). You spoke of $21,600 on $200,000, but the figure for the old estate tax was $28,600. The new one was $21,600. These seem to have been worked out by Mr. Huggett, a chartered accountant in Montreal. I am not saying they are in any way wrong, but I did not find them in my table, and that may be because he has chosen other examples.

**The Chairman:** Since they have been discussed here and it would be easier to follow them intelligently, perhaps we should attach the table Senator Phillips (Rigaud) produced and also the tables you referred to, Mr. Brown, as appendices to our record of proceedings of today.

**Hon. Senators:** Agreed.

*For tables see Appendices "B" and "C".*

**Senator Croll:** Mr. Brown, you told us the estate tax runs in the area of $7 million.

**Mr. Brown:** The gift tax.

**Senator Croll:** The gift tax runs in the area of $7 million?

**Mr. Brown:** Yes.

**Senator Croll:** Can you explain this general furore about gift tax? Was one of the reasons you dealt with it the way you did perhaps the view that no one was taking advantage of the possibilities of gift tax?

**The Chairman:** No, it could not be that. There were a lot of people taking advantage...

**Senator Croll:** $7 million does not sound like an awful lot...

**The Chairman:** But the exemptions were higher.

**Senator Croll:** What is the relationship in other parts?

**Mr. Brown:** Sir, people were taking advantage of it, and it tended to be, shall I say, a

quite uneven advantage that was being taken. Some people were able or willing to make gifts during lifetime, and some people were unable or unwilling to make gifts during lifetime. Maybe the tax should be widely differentiated on that basis.

**Senator Beaubien:** You can give half of your income after taxes.

**Mr. Brown:** That was the tax free part, but the senator was also asking about the relatively low amount collected which did indicate that some people were making gifts beyond their exemption but, as the senator said, not very many.

**Senator Croll:** Is there a breakdown to indicate where that amount of $7 million came from? Do you know the kind of incomes it came from?

**Mr. Brown:** There is a breakdown in terms of the total gifts made. There are not any statistics available to me on the relationship of the incomes of the donors. If you will give me a minute to find it in these voluminous statistics, I think I can find an indication of the...

**The Chairman:** While you are looking, Mr. Brown, I might mention—and I know you know it, Senator Croll—that the exemption I mentioned under the existing law was quite a substantial exemption in certain areas of income, because you could gift without tax 50 per cent of the difference between the taxable income and the amount of tax that you paid.

**Senator Croll:** I am quite aware of that, but I am trying to get at something else.

**Senator Molson:** That is after the income tax has been paid on it.

**The Chairman:** Oh yes.

**Mr. Brown:** The latest table that Mr. Smith has with him relates to the year 1965. I apologize for the fact that it is somewhat out of date, but there were in the year 1965, 2,670 returns on which gift tax was paid. It might interest you to know that only half of those were entitled only to the $4,000 exemption. The other half were eligible for the higher exemption, or half of the difference between the taxable income and the amount of tax paid.

All but about 230 of these gifts involved circumstances in which the aggregate taxable gifts were below $50,000 in the year. Indeed, in 1,200 of them the taxable gifts were below $10,000 in a year.

In terms of the total tax—the total tax in this year was approximately $7 million, and about $5 million of that $7 million came from people who had made taxable gifts in excess of $50,000.

**Senator Leonard:** Have you any estimate of the impact of that $7 million, or of a part of it, upon the potential estate tax that would have been collected had not this...

**Mr. Brown:** No, sir, we cannot make that correlation from the statistics.

**Senator Leonard:** Can you make it in general terms?

**Mr. Brown:** I suppose one could make this generalization, that if there had not been a substantial saving then it could be asked: Would one have taken the unusual step of paying tax earlier rather than later.

**Senator Leonard:** That is a fair assumption.

**Mr. Brown:** That is the only generalization I can make, sir.

**The Chairman:** Are there any other questions on this aspect?

**Senator Phillips (Rigaud):** Mr. Chairman, is there any reaction from Mr. Brown to the suggestion you made that these rates be tested out for a period of three years?

**The Chairman:** I was going to ask a preliminary question of Mr. Brown on that. First, in arriving at a figure which the minister calls an exact amount of replacement of loss revenue by reason of the exemptions granted—he said that $45 million was needed to restore them. Now, with respect to his use of the word "exact", and your use of the words "no significant difference" in relation to that amount, was there a calculation made, and, if so, how was it made?

**Mr. Brown:** Yes, sir, there was a calculation. As the minister said, the effect of broadening the exemption was calculated to reduce revenue from about $200 million to about $155 million. Then, on the basis of what would have to be assumptions as to the exact distribution of estates, we made estimates of what the increase in the rates would bring in such a manner as to bring in to approximately $45 million. Now, the instructions were to bring in to the very amount. I have no such faith in anyone's power to construct a table to bring in to the exact...

**The Chairman:** You do not operate with a crystal ball? You do not know who is going to die?

**Mr. Brown:** And, of course, we were not that certain as to what effect this will have on wills.

**Senator Thorvaldson:** So this is really not a taxing measure at all. It is not a financial measure. It is just changing methods of acquiring the same amount of revenue pretty much, is it not?

**Mr. Brown:** Certainly the intent was to raise about the same amount of revenue.

**Senator Molson:** To soak the rich.

**Senator Leonard:** Are your figures net to the federal Government after any distribution to the provinces?

**Mr. Brown:** No, sir, the net to the federal Government runs to a little more than a quarter of that figure, because we keep a little more than a quarter of the estate tax from foreign estates.

**Senator Leonard:** That applies both ways, then? Are you not really contemplating a net loss of $11 million, and a quarter of the $45 million to pick up the $11 million?

**Mr. Brown:** Yes.

**Senator Leonard:** It is a great change for that amount of money, is it not?

**Senator Phillips (Rigaud):** Do you think we could get an amendment that would provide that when the provinces remit to their residents there will be something on the cheque to say that the money is given to them through the courtesy of the federal Department of Finance?

**Mr. Brown:** The federal Government, sir.

**The Chairman:** I want to follow this up, Mr. Brown. Is that calculation that was made available?

**Mr. Brown:** Sir, it was—I can describe it to you, if you like. This is not a public calculation. I can describe to you the assumptions that went into it.

**The Chairman:** When you say it is not a public calculation, did not the minister introduce it by giving the result of it?

**Mr. Brown:** Yes, sir.

**The Chairman:** All I was asking you is whether there was something that was available in the sense that it is existing?

**Mr. Brown:** Yes, sir.

**The Chairman:** Now, if I asked you to produce it, are you in a position where you feel you can produce it?

**Mr. Brown:** I can ask my minister, sir.

**The Chairman:** And will you?

**Mr. Brown:** Yes, sir.

**The Chairman:** Now, you were going to tell us how it was made up.

**Mr. Brown:** As I say, we have statistics on existing estates, and from those figures we are able to see certain characteristics. For example, we know that in respect of roughly half the estates there are widows, and in the other half there are not. Given certain simplifying assumptions as to how property is left, we ran a computation based on the existing estates, and found out that that assumption as to the method of leaving produced a revenue which was within one per cent of our current revenues, and we then said: If that is a bench mark estate, what would the effect be under the new system? We re-computed the tax. This is where the $45 million loss came from, It involves the heroic assumption—if I may use that word, and I think I should—that where there is a widow the estate would continue to be left as to about 50 per cent to the widow. If there is a trend of more being left to the widow, clearly the revenue will fall short; if there is a trend of less being left to the widow the revenue will be somewhat larger than it is now. If I may give an order of magnitude, if the trend were to leave the widow 75 per cent in the short term or medium term, there would be a loss of revenue of the order of $30 million on a base of $200 million.

**The Chairman:** In this calculation did you give any consideration to the fact that donee spouses also have a habit of dying, and when they die the revenues would be increased? In other words, what had been lost at the time of the donor's death would be recaptured substantially.

**Mr. Brown:** There is no doubt that there will be some of that.

**The Chairman:** Therefore, in succeeding years it is likely that the revenues will pro-

duce an increase beyond this $45 million which you say is immediately lost.

**Mr. Brown:** This depends, of course, on how much of it is left when the widow dies. In a whole host of estates the widow does not have the value when she dies.

**The Chairman:** You have two distinctions, an outright gift and life interest. To the extent that she has a life interest there is something taxable, which may have appreciated in value by the time she dies.

**Mr. Brown:** Not if the life interest is a pension, which is a typical asset in a small estate in my example. From $150,000 up you have to have these assumptions as to what will happen in the intervening years.

**The Chairman:** Would you agree, no matter what assumptions you make, inevitably when the donee dies, by applying the new rate of tax much additional income will be produced in estate taxes?

**Mr. Brown:** Over time I think there will be additional estate taxes. That is your point.

**Senator Thorvaldson:** I suppose you have also taken into consideration that there could be a deferment of tax in regard to an estate handed from husband to wife. There could in time be deferment for perhaps a couple of hundred years. Let me give you an example. A husband dies at 80 when his widow is 60; all his estate goes to the widow. Then the widow marries a man aged 40; she reaches 80 and dies, leaving everything to the husband who is now 60. This husband marries a woman aged 40, lives till 80, by which time his widow will be 60. That widow marries a man aged 40 and dies at 80 and so on.

**Mr. Brown:** In perpetuity.

**Senator Thorvaldson:** The deferment can be perpetuated under those conditions.

**The Chairman:** It looks as if you have outlined the specifications for a brand new job in the field of Canadian taxation, that of matching!

**Senator Beaubien:** Suppose a grandmother married a grandson!

**The Chairman:** Mr. Brown, has any thought been given to, or has there been discussion of, the additional income likely to result in years subsequent to the first year from the new rates by reason of deaths of donees and the increases in revenue? Has any thought been given to the idea of having a period, say, two or three years, in which the present rates applied, and on the history of performance it would be decided whether the rates were needed, or whether lower rates would produce the result it was sought to achieve?

**Mr. Brown:** I think governments keep rates, exemptions, and tax loads under review year after year after year. It is a normal part of the budget procedure, so in that sense the estate tax rates will be looked at, if not continually, at least at regular periodic intervals.

**The Chairman:** That is not my question. My question is this. Since the design of this increase in rate is to maintain a level of income from estate taxes, should you not have a period of time during which you would have an opportunity of studying whether the design works or not? If it works and produces excess income over what has been speculated, then the Government would be earning more from this field, and this has not been the announced policy at this time.

**Mr. Brown:** I think my answer is that the Government annually has an opportunity to review rates in the light of that and all other considerations.

**The Chairman:** Would you care to illustrate some cases in the period of the last five or six years in which the rates have been reduced in any field of taxation?

**Mr. Brown:** I would have to search fairly hard.

**The Chairman:** Yes, I would think so.

**Mr. Brown:** I could mention the spring budget of 1965 when there was a 10 per cent abatement of personal income tax. I hasten to say that the next year it disappeared.

**The Chairman:** The spring disappeared very quickly. That was just the first blush of spring.

**Senator Leonard:** If the higher rates were applied for only a given number of years some of us might postpone our deaths for a little longer!

**The Chairman:** That might be another occupation arising from this.

**Mr. Brown:** A deep freeze!

**The Chairman:** There is a distinction that you must recognize in an annual internal

review by those charged with studying these rates in the department to see whether revenues are living up to expectations or whether they are in excess of expectations. If they are in excess, very rarely do you find that reflected in a reduced tax rate.

**Mr. Brown:** On that I should like to say two things. First, it is an annual review not within the department basically. It is an annual review by the Government. We do the staff work, so there is a distinction there. Secondly, these reviews have been carried on in the last several years at least against a background of increasing total expenditures for purposes that have been Government policy passed by Parliament. In that framework there is very rarely much room for a reduction of tax rates. If expenditure goes up, taxes go up; if expenditure comes down, taxes come down. The post-war years are perhaps illustrative of a time in which because expenditures were falling taxes were falling. There is an inevitability about the relationship between the two.

**The Chairman:** That is quite true, but if the design of an increased rate is to make up a loss of revenue, when you talk generally about an expense increasing so that there must be an increase in taxes, we should have the opportunity of seeing whether we approve of the areas in which this money is coming from for these new expenditures. We are now asked to deal with that on the basis of supplementing or maintaining the flow of tax revenue from estate taxes.

Now, perhaps in the future you will say that we do not find taxes going down because expenses are going up. We know very well that taxes do increase, but if we cannot control it, at least we should have the opportunity of reviewing those expenses in relation to which they require additional moneys, and they should not get the moneys on the basis of maintaining the level of revenue from the estate tax and then find that in subsequent years it produces more money than was calculated and that that money is going to be used for something else, and we do not get a chance to say anything about it. That is a policy statement. You do not have to say anything about it. I want that on the record so that the Minister will see it.

**Senator Phillips (Rigaud):** Mr. Brown, has the department considered the feasibility of applying different rates of estate taxation to liquid assets as against industrial and commercial enterprises? And, if it has considered it, has it come to any conclusions as to whether it is feasible to apply different rates?

**Mr. Brown:** Administratively, it is feasible.

**Senator Phillips (Rigaud):** It is administratively feasible?

**Mr. Brown:** Yes. You can identify assets and apply different rates, just as, for example, we have different rates of tariff on imported goods coming across the border. It is feasible. It becomes a policy consideration whether that is a fair way to levy tax.

**Senator Phillips (Rigaud):** So we move over into policy.

**Mr. Brown:** And over, too, into this area of administration. I think it would be very difficult to differentiate between the man who bought, shall we say, a farm in contemplation of the lower rate and the man who bought a farm because he wanted to farm. It would not be impossible to set up a framework of tests, but you understand how hard it would be to really distinguish between the two. It could be done only through arbitrary tests.

**Senator Phillips (Rigaud):** Once you agree in principle, the question of the purchase with a view to reducing the rates of taxation could be covered by an income tax amendment, such as 137 and 138 if it were being done for the purpose of minimizing or avoiding taxation.

It is our duty in this committee, once we have officials before us who are, presumably, men of competence, to get their singular points of view, rather than merely dealing with, for example, the current rates of taxation. As a matter of policy, a senior Government department such as yours should give serious consideration to the question of differentiating between liquid and non-liquid assets.

You have a very simple category. Money is money, and security is equivalent to money. Evidences of indebtedness in public companies, and all that sort of thing, should be put in the category of true liquid assets, whether you define liquidity under the Bank Act or under the International Monetary Fund Act, and all other assets are not liquid assets.

There would be a terrific nation wide reaction by way of incentive, if this differentiation were drawn.

**Mr. Brown:** There is the question of shares of a holding company being held by another holding company and so on.

**Senator Phillips (Rigaud):** I would say a holding company of an individual, to the extent that he included and put into his holding company securities, would clearly be a tax minimization plan. You simply look through it the way you look through personal corporations for income tax purposes, which is done over and over again. Obviously, it could make sense. You would look through the corporation to get to liquidity. Once you did that, in my humble opinion, this would be a sensational—well, I do not want to overdramatize, but it would a marvelously constructive factor in encouraging individuals in this country in the building-up of businesses and the like because of this terrific fear of going into a plant, equipment, inventory and commitments in the future, when you begin to get a little flutter of the heart and all the rest of it in trying to decide whether you want to make commitments because you may have to give liquidity. You may receive a message in the middle of the night. So you have a flutter of the heart and you slow down the economy in the process. I think it would be marvelous if you moved in that direction.

**Senator Burchill:** There is an actual case of a gentleman who came to see me last week, a man that I know personally, who during his lifetime—and, by the way, this man cannot read or write but is an able chap—accumulated an estate of $400,000. His estate is all invested in real estate. Some of it is in timberland. He has very little cash. He is a widower. His wife died two years ago. He came to me and said, "What am I going to do? The only thing I can do is get married. She is out in the car. Come out and meet her."

**Senator Beaubien (Bedford):** What was her age, 20?

**Senator McDonald:** During the discussion following second reading in the house, there was some comment made by yourself, Mr. Chairman, and others with respect to the fact that many Canadians are seeking tax havens, some within our country and some outside. I am wondering if there are any Canadian taxes that apply to money that is moving out of Canada to tax havens. Is there any federal tax that applies to this money?

**The Chairman:** Only the withholding tax, if some of the assets that are physically moved out may result in dividends being paid from Canada.

**Mr. Brown:** May I say, too, though, sir, on the death of a Canadian holding assets abroad, those assets come into the computation of the estate tax.

**The Chairman:** Only if he stays in Canada.

**Mr. Brown:** If he is domiciled in Canada.

**Senator McDonald:** But if he leaves this country and takes up citizenship abroad, have you given any thought to taxes of this sort? God forbid that I should suggest another tax. I only suggest it in the hope that, if they could get revenue from this source, it might lighten the burden on people who see fit to remain in Canada.

**Mr. Brown:** It is not true to say that we have not given any thought to it, but we have not given much thought to it.

**The Chairman:** You can not put an embargo on the movement of capital. If a man follows his capital, whether he gives up his Canadian citizenship or not, what is the use of saying he is a Canadian subject to this tax, if there are not any assets here? They certainly could not go into another country and sue for the tax.

**Mr. Brown:** The Americans do follow their citizens.

**Senator McDonald:** It encourages people to leave rather than to stay in Canada. It seems to me that this is a bad principle.

**The Chairman:** Mr. Brown says that Americans follow their citizens. They do follow their citizens to the extent that even though they are outside the United States, for instance, their income tax is based on citizenship in the United States. It is based on residence here in Canada. While an American living in Canada may be obligated to make income tax returns to the United States, if he does not, there is no immediate penalty visited upon him. If he wanted to go back to the United States some time, he would be in a lot of trouble, however.

I was discussing the practical side of it. If there are no assets in Canada, then you can levy a tax and present a bill but you will not get paid.

**Senator Thorvaldson:** Mr. Chairman, does the genesis of this bill reside in the Carter Report? In other words, are the changes made by this bill in any way similar to the recommendations in that report?

**Mr. Brown:** It is fair to say that the genesis of the bill is in the debate that followed the publication of the Carter Report and in the decision of this and the previous Government to make a fundamental review of the tax system. In fact, that decision preceded the report, so far as that goes, but it was coincident with the royal commission and one of the large inputs was, on the one hand, the royal commission report, and, on the other hand, all of the representations and briefs concerning it.

**The Chairman:** It is quite likely that, if one phase of the Carter Report were implemented, that is, the capital gains tax, and were applied to estates, the capital gains tax wether it is at a special rate or at the income tax rate, plus the estate tax rate, would really demolish an estate.

**Mr. Brown:** There would be a double incidence of tax at the same time.

**Senator Connolly (Ottawa West):** What did Mr. Brown say?

**Mr. Brown:** There would be a double incidence; there would be two taxes falling at the same point in time.

**The Chairman:** This was one of the suggestions of Mr. Carter.

**Mr. Brown:** But I was going to go on and say there are some aspects of this bill which indicate some sympathy for some of the points raised in the royal commission report and in almost every other brief. The exemption for widows falls in this category. It is very hard to find a brief put in on the subject of tax reform or review which did not plead for an exemption for widows.

**Senator Molson:** Was that not widows' pensions?

**Mr. Brown:** No, I think the outstanding example of the grievance was pensions, but the Chambers of Commerce's submission did not refer only to widows' pensions, but to widows exemptions. Let us be fair, there is hardly a brief which suggested that the rates should be raised!

**The Chairman:** We would not expect that.

**Mr. Brown:** We have never had such a brief in my brief experience with the department, but you could clothe that change as being in some way parallel to the Carter suggestion. However, the basic Carter suggestion was that a dollar was a dollar was a dollar, and that an inheritance should be treated in the same way as a pension or any other form of annual income, and should be taxed as such. I think that they spoke of a $5,000 lifetime exemption, which would mean that the beneficiary would be taxed on the first dollar of his inheritance over $5,000 at his marginal income tax rate.

**Senator Phillips (Rigaud):** "A dollar is a dollar is a dollar" might be as intelligible as some of Gertrude Stein's poetry: "A rose is a rose is a rose."

**The Chairman:** And other things.

**Mr. Brown:** In some fundamental respects it is turning its back on Carter, and in others it is not.

**Senator Thorvaldson:** I take it also there was no consultation with the provinces before this bill was drafted?

**Mr. Brown:** Only in the sense that there were discussions with the provinces against the framework of knowing we were going to be reviewing the tax system in a fundamental way and the provinces had available to them the recommendations of their provincial royal commissions and committees and a full explanation of Carter and access, by reason of duplicate filing, to almost all the briefs.

Against this background, we had discussions with them and tried to get their views on every aspect of the tax system. In as much as we have a long history of budgetary secrecy, the federal Government could not say, "We propose to do so-and-so. What do you think of it?" But we tried at the officials' committee, and the ministers at the ministers' committee—both Mr. Benson and Mr. Sharp before him—to draw them out on the whole range of issues concerning the tax system and while we could not consult on specifics, we did our best, within the constraints, to get the feel of their views on the general principles.

**The Chairman:** I take it you are aware of the fact that in the Federal-Provincial Fiscal Arrangements Act of 1967, in the portion of it which deals with succession duties payments to provinces, there is no terminal date?

**Mr. Brown:** Yes.

**The Chairman:** Is there any significance to be attached to that?

**Senator Beaubien:** What is that?

**The Chairman:** There is no terminal date. For equalization payments there is a terminal date.

**Mr. Brown:** I was not privy to the discussions leading up to that and, therefore, I would only be hypothesizing.

**The Chairman:** You do know from section 5 of that act that the federal authority is not obligated to pay any specific amount of money out of its estate tax take in the particular province; it is all on a percentage basis.

**Mr. Brown:** Yes, that is perfectly correct. The background of the situation is well known. They cannot levy an estate tax constitutionally. If we are to avoid...

**The Chairman:** But I am talking about succession duty payments, and I am talking about the obligation under this Federal-Provincial Fiscal Arrangements Act to pay 75 per cent of the total amount of estate taxes collected in a province to those provinces who have rented out their succession duties field.

**Mr. Brown:** I was trying to respond to that by saying that they cannot levy an indirect tax and, therefore, they cannot levy an estate tax. When the federal Government, in 1958, decided to move to the estate tax, it had open to it, it seems to me, one of the options: first, to go its own way and leave the provinces either to collect succession duties in those which decided to have them, or to get out of the death duty field altogether. Because they could not have an harmonious system—it is constitutionally impossible—once the decision was made by the federal authorities to move the estate tax, so what the federal government did was to take the second option—you expressed it as a tax "rental" which is good shorthand for it—what they said was, "If you do not levy a succession duty, we will give you three-quarters of what we collect on the estates in your province."

**The Chairman:** That is the only phase I am concerned with at the moment. I was not concerned as to the reasons why the estate tax law, as such, presently had difficulties with relation to the provinces.

**Mr. Brown:** This carries with it a connotation that so long as the constitution is the way it is, the federal Government likely will feel that it wants to continue its offer to the provinces in order that those who wish to can avoid having two complicated laws applying in this field.

**The Chairman:** That raises a question I will deal with in a moment, but you have still not got down to the question that concerned me.

**Mr. Brown:** I am sorry.

**The Chairman:** Of the $45 million, which is the increase in rates designed this year to maintain the level of estate tax revenue, 75 per cent of it is to be paid to the provinces?

**Mr. Brown:** Right.

**Senator Leonard:** In those cases.

**The Chairman:** In the seven provinces that have rented. Then in Ontario and Quebec, we pay them 25 per cent. In British Columbia we abate 75 per cent, and in Ontario and Quebec we abate 50 per cent, so we are bringing up the level of the estate tax revenues so as to be able to continue on the same basis in dollar amount what we paid this year, or what we paid in 1968, without any statutory obligation under the Federal-Provincial Fiscal Arrangements Act, because our obligation was only to pay a percentage of what we collect.

**Senator Leonard:** Is that quite right in the case of Ontario? Is not Ontario 50 per cent?

**The Chairman:** There is an abatement of 50 per cent, and since Ontario did not increase its rates in 1964 the federal authority pays them 25 per cent, and in Quebec the same thing applies.

**Senator Molson:** Mr. Chairman, might I ask Mr. Brown—I want to word it so that it does not get into policy—was there any discussion as to a course of action if all the provinces follow Alberta and Saskatchewan; if all the provinces decide to get out of the death duty business?

**Mr. Brown:** Again, as I said, I cannot say there was not any discussion, but there was not much discussion.

**The Chairman:** But you have an inequity resulting. In Alberta and Saskatchewan now the federal authority pays 75 per cent—that is the cost of the rental—and we are supplementing that to the extent that these rates are increased, and the 75 per cent will maintain the level of the payments in the previous year, and yet in those provinces that amount of money is immediately refunded or rebated to the fortunate estates in those provinces. So, you have these geographic inequities as a result of provincial action, and yet those who cannot take advantage of it are assessed at

the high rate so as to provide more money that can be returned to the estates in those provinces. There seems to be some inequity somewhere in it.

**Senator Molson:** Quebec is at the bottom of the totem pole.

**Senator Phillips (Rigaud):** Quebec is again being discriminated against.

**Mr. Brown:** If we had a comparable situation in respect of estate tax to that in respect of income tax, where we have a schedule of rates and then reduce them by 28 per cent, we could reduce our rates by three-quarters in all of the provinces, and it would then be up to the provincial governments to decide whether to levy estate tax and, if so, at what rate. There would be some difference between provinces, but there could be no suggestion that more money was being obtained from Quebec in order to pay Saskatchewan.

**The Chairman:** No, I was not suggesting that. You said something about the desirability of estates being taxed under a federal statute. You thought that this might lead to a uniform action in the provinces. But, if there was any idea, when sharing originally took place, that it would lead to uniformity, then surely we have enough tangible evidence now to show that it would be difficult to have less uniformity than what we have now?

**Mr. Brown:** Sir, we have an identical determination of the base for tax in all but three provinces, and we have the Ontario White Paper which now has suggested that Ontario will cancel their succession duties, give up the abatement, and collect the 75 cents out of each dollar from the federal Government.

**The Chairman:** Was not that part of the White Paper that constituted quite a substantial amount of wishful thinking that it would establish a basis for negotiations?

**Mr. Brown:** It may be, sir. That remains to be seen.

**The Chairman:** Yes, this was looking into the future.

**Mr. Brown:** But somewhere along the line we lost British Columbia. They went out. In that sense that we have less rather than more uniformity: the hopeful point, as I say, is the point in the Ontario White Paper, the end result of which, as you say, remains to be seen.



**Senator Connolly (Ottawa West):** Could I follow up along those lines a little further? There is certainly confusion arising out of the fact that the federal authority can levy estate tax, and the provincial authorities are restricted to succession duties. Would it make for a simplification of the death duty taxation system if the provinces had the authority to levy an estate tax? I know it would have to come by means of a constitutional amendment, but would it, first of all, simplify the procedures and, perhaps, the application of the law?

**Mr. Brown:** I think, senator, there is no doubt that it would make it possible to have a great simplification on the estate tax basis. Of course, it would depend upon the ability of the provinces and the federal Government to reach a state of harmony.

**Senator Connolly (Ottawa West):** And in an endeavour to streamline the tax system this might be a step forward, if there could be agreement?

**Mr. Brown:** Yes, I think that that is true.

**Senator Beaubien:** Mr. Brown, I want to ask you a simple question: If somebody dies now can his estate apply the old law, or just the new law?

**Mr. Brown:** You have a limited option. You have an option of using the old exemptions if those are more advantageous than the new ones, but not the old rate schedule.

**Senator Thorvaldson:** May I ask whether consideration has been given to this problem, Mr. Brown? I come from Manitoba, and as I see it one part of the great unwisdom of this bill at the present time is in the fact that we seem to be entering into an estate tax jungle in Canada at the present time. Alberta has already passed an act under which they rebate their share of tax. Saskatchewan has done the same thing. Whether we in Manitoba want to do that or not, the fact is that we are compelled to do it. The reason is obvious. In Manitoba, for instance, there are a number of wealthy citizens, many of whom are getting elderly, and those citizens are just not going to remain in Manitoba unless Manitoba passes similar legislation to that passed by Alberta and Saskatchewan. We know from the Throne Speech...

**The Chairman:** Well, the bill is already before the legislature.

**Senator Thorvaldson:** Yes. My question is this: Why interfere with the present situation when we seem to be in a complete state of flux in Canada?

**Mr. Brown:** Senator, there is no satisfactory answer to your question, but I would point out that the Alberta legislation was passed under the old system. Premier Thatcher made his commitment to put through this legislation under the old system. The Premier of Manitoba could have done the same thing. I am sure that there is no doubt that the budget in October brought about an increased awareness of estate tax and death duties in this country, and that may have precipitated the pressure in Manitoba. My hypothesis would be that wealthy people are well aware of death duties, and perhaps the same pressure would have come in Manitoba under the old system as is coming now under the new.

**Senator Leonard:** May I follow up on this line of thought by asking: When the federal-provincial fiscal relations and grants are being considered, do not the discussions and the agreements take into account the fact that the net amount from the estate tax to Alberta and Saskatchewan is being rebated to the taxpayers?

**Mr. Brown:** They take account of it to a limited extent, sir. The basic situation, of course, is that they have their rights to levy tax and they have their rights not to levy tax, if you will. The federal Government position has been that it ought to respect those rights, so there has never been a suggestion that the federal Government should say Alberta should levy a sales tax whether it wants to or not simply because the other provinces have one.

**Senator Leonard:** This goes further than that. It goes to the actual rebating of a federal tax to the taxpayer.

**The Chairman:** You mean whether the federal authority would attempt a tax rebate.

**Senator Leonard:** You really ought to take into account the fact that the fiscal need of the provinces in the general picture of the dominion-provincial grants is reduced by the fact that it does not in effect take this money.

**Mr. Brown:** The equalization formula in the act is based upon what they could get if they levied national average rates, and as a consequence a province such as Manitoba, which may chose to rebate, will not get an increased equalization payment as a result of a decision to rebate. Its needs will be measured as though it had the national average rate. There is no offsetting federal advantage in fiscal terms if a province decides to rebate the estate tax. There is not on the other hand any sort of offsetting...

**Senator Phillips (Rigaud):** Increase because of the fact it has not got it?

**Mr. Brown:** That is right.

**Senator Leonard:** Because of that expenditure on its part it is free to give that money away.

**Mr. Brown:** As free as with any other money it raises.

**Senator Phillips (Rigaud):** I do not want to be crude about it, but I think the federal Government is casting itself into the position of being a patsy in the sense of exposing itself to collection from the citizenry at large for transmission to beneficiaries in certain provinces. That is the net result of it. There has been a hue and cry about this bill because of the escalated rate. There is a sacrifice in terms of salt on wounds because we do not even have the satisfaction of money in the federal treasury to deal with national policy. That would not be so hard in itself to collection from the citizenry at large revenue for the provinces, but when we follow through and find the provinces returning it to individuals in the provinces, that is a little hard to take.

**The Chairman:** Honourable senators, I think we have done pretty well with our general questioning this morning. I would suggest that we do not embark on a consideration of sections of the bill until we have heard representations from the various groups who are coming next week. Is that agreed?

**Hon. Senators:** Agreed.

**The Chairman:** I raised one or two points when speaking in the Senate, which I have discussed with the departmental representatives, concerning clarification of language. The difference between us is that they think the language is satisfactory to accomplish the intent and I think the language leaves some doubt. These are things that we could discuss much better after we have heard the representations. I think that mainly the submissions from those who are coming will be in the area of administration, and clarification

and simplification for administration. I would therefore suggest that this may be a good time to adjourn. We have been at it for two and a half hours.

**Senator Burchill:** Do not forget the minister.

**The Chairman:** No, I will not forget the minister.

**Senator Leonard:** Who are we having next week?

**The Chairman:** Next week, as I indicated, we shall hear from the Trust Companies Association of Canada, the Ontario Branch of the Canadian Bar Association and the Canadian Construction Association, and I think the Chartered Accountants Association.

**Senator Leonard:** I was going to suggest it would be helpful if we asked the secretary if we could have in our hands before Wednesday some of the material they intend to present, rather than wait until Wednesday.

**The Chairman:** Mr. Jackson will get in touch with them today.

**Senator Phillips (Rigaud):** Before we adjourn, I am sure honourable senators would agree with me in wishing to record on my own behalf, and acting as spokesman for my colleagues, thanks to Mr. Brown for his very instructive and helpful presentation.

**The Chairman:** Thank you, Mr. Brown.

The committee adjourned.

## APPENDIX "A"

## THE CANADIAN INSTITUTE OF CHARTERED ACCOUNTANTS

November 18, 1968.

The Honourable Edgar J. Benson,
Minister of Finance,
Government of Canada,
Ottawa, Canada.

Dear Sir:

This letter is submitted by the Taxation Committee of The Canadian Institute of Chartered Accountants in the hope that it may be of some assistance to you and your officials as you prepare for the introduction of legislation amending the Income Tax Act and Estate Tax Act following the budget resolutions introduced in the House of Commons on October 22, 1968.

We realize that some of our comments and concerns may be premature and that many matters will be clarified after the amending legislation is brought down. If this submission proves to be of some asistance to you in the process we will have achieved our primary purpose. We would, of course, be pleased to meet with you or your officials if you would like to discuss any of the points contained in this letter.

Before dealing with specific budget resolutions we wish to mention a matter which is of concern to us. It has been our understanding for some time that the public at large would be given ample opportunity to consider major tax reforms before actual resolutions were proposed. We consider the resolutions with respect to estate tax, gift tax and financial institutions to be of major significance and we are surprised and somewhat disappointed that they have been introduced in this manner. It is also obvious that the public at large did not expect such major reforms to be first presented in the form of Budget Resolutions. We trust that other tax reforms which are to be disclosed in early 1969 will be presented in a manner which will ensure thorough study and representation by the public and by interested bodies such as The Canadian Institute of Chartered Accountants.

### INCOME TAX ACT RESOLUTIONS

*Corporate Instalment Payments*—Resolution No. 16

It will be almost impossible for small companies to base their instalment payments for the first four to six months of the taxation year on the prior year's taxable income. Financial statements and tax calculations will simply not be available in time. Some relief must be granted to alleviate this hardship and particularly potential assessments for interest. Possibly estimated instalments could be based upon the taxable income of the second prior year, as was done when the Special Refundable Tax was first introduced. Alternatively, the estimated payments for the first four or five months could be based upon the taxable income of the second prior year and any underpayment based upon the taxable income of the prior year would be payable at the time of the sixth instalment.

*Non-resident Withholding Tax*—Resolution No. 18

The resolution would appear to require 15 per cent withholding tax on "shared cost" payments to non-residents. It is not unusual for Canadian companies to reimburse non-resident, related companies for the costs of certain research and development programs. Since the non-resident would have no net foreign income, it would not be able to claim a foreign tax credit for the Canadian withholding tax. This could result in Canadian companies having to pay an additional amount in order to obtain "shared cost" know-how which is so desirable and valuable to Canadian companies. It would seem appropriate to exempt specific payments from withholding tax, as was done in the case of management or administration fees.

*Unpaid Salaries, Wages and Bonuses*—Resolution No. 13

The proposed resolution with respect to unpaid salaries, wages and bonuses raises the same question which presently exists with respect to unpaid amounts in non-arm's length transactions under Section 18. Once the deduction is added back to income, no deduction is subsequently permitted when the amounts are actually paid. Provision should be made to allow a deduction in the year of payment with respect to

the above-mentioned expenses. This would be similar to the treatment permitted with respect to the repayment of loans to share holders under Sections 11(1) (da) and (db).

There may be instances where union contracts for example require an employer to accrue extra vacations with pay over a period of say five years. Unless the employee will sign the necessary agreement with the employer there may be an unintentional-penalty.

We do not know whether the new provisions will apply to amounts accrued in the past or only to amounts accured subsequent to October 22, 1968.

We assume that provision will be made so as not to apply both this resolution and Section 18 to unpaid salaries, wages and bonuses in non-arm's length transactions.

*Medical Expenses*—Resolution No. 3

It has been proposed that certain additional types of medical equipment be added to the list of allowable medical expenditures under Section 27(1)(c) of the Income Tax Act. We believe that it would be more desirable if the Act were amended to set out certain general principles as to the types of medical expenses which qualify for the deduction and any detailed recital of the particular types of expenditures were dealt with by regulations made pursuant to such general provisions.

*Grain Storage Facilities*

Are there strong reasons to exclude persons who acquired grain storage facilities prior to August 1, 1968 from the benefits of accelerated depreciation? Would it not be possible for this regulation to apply to grain storage facilities acquired after say December 31, 1967?

*Investment Income in Life Insurance Proceeds*—Resolution No. 6

The investment income being taxed under this resolution is a form of "lump sum payment" since it will have been accumulated over a number of years but will be received in one taxation year. This investment income might well be taxed under some averaging provisions, as are most other types of lump sum payments.

We would assume that assigning a life insurance policy to a bank as collateral or obtaining a loan from the insurance company would not constitute surrender of the policy within the meaning of this resolution.

Where a life insurance policy is transferred by way of gift, the resolution does not indicate what the donee's deemed cost will be. Shouldn't the deemed cost to the donee be the same as the proceeds deemed to have been received by the donor?

A taxpayer who elects on the surrender of a life insurance policy to receive an annuity instead of accepting a lump sum payment in full settlement of the policy should be allowed to pay tax thereon as the annuity payments are received and, in any event, should not be placed in a position less advantageous than a taxpayer who had bought an annuity.

*Reporting of Interest and Dividends*

The requirement that interest and dividends of $10 and over be reported by the payor for the 1968 year will lead to serious inconvenience and hardship to many taxpayers whose accounting systems are not presently programmed to furnish this information to the recipients of such income. It is suggested that this proposal should not be applicable until the 1969 fiscal year.

*Life Insurance Companies*—Resolution Nos. 7 and 8

We are unable to assess the full impact of the proposed changes in the taxation of life insurance companies until the proposed regulations under these provisions are made public. It is noted that the life insurance industry will be consulted in the course of preparing these regulations. We welcome this proposal and express the hope that the industry and any other interested parties will be consulted on all aspects of the proposed changes in this area.

The taxation of investment income at the life insurance company level (as opposed to the policyholder level) discriminates against non-taxable policyholders who would not be taxable otherwise. Would it not be possible to develop some form of gross-up and credit which would provide a measure of relief to the low income policyholder?

*Gift Tax*—Resolution No. 2

Numerous questions have been raised and comments made with respect to the proposed Gift Tax amendments.

1. If the intention of Resolution 2(a)(ii) is to restrict exempt gifts to any one individual to $2,000 a married couple

appear to have the opportunity to broaden the limit by the simple expedient of the husband first making a gift to his wife who in turn may make a similar gift of $2,000 to the same individual. This will have the effect of permitting $4,000 of wealth originating with the husband to be transmitted exempt to one individual donee.

Because this capacity would most likely be exercised in favour of children, one may question the equity of a situation where this is available to a married person but denied to a widower or widow.

Would it not be preferable to increase the exemption to $4,000 and at the same time limit the gift tax exemption of a married couple to the same as an individual, namely $4,000?

2. Of perhaps greater concern is the lack of equity between spouses domiciled in Quebec and other parts of the country. The Quebec Civil Code precludes inter-vivos gifts between spouses which are not specifically covered by their marriage contract, thus effectively denying to them the facility available to spouses domiciled elsewhere.

3 Since inter-vivos gifts between spouses are now exempt from gift tax, is it anticipated that the donor-spouse will remain liable for tax on the income earned on such donated property under Section 21 of the Income Tax Act? If the donor-spouse is no longer to be liable for tax with respect to such income, doesn't this conflict with the situation in Quebec where the gift will not be recognized for Quebec income tax purposes in accordance with the provisions of the Quebec Civil Code?

4. With the quasi-integration of the gift tax and estate tax, is there any conflict with the Federal-Provincial tax sharing arrangements since the provinces do share in the estate tax revenues *but do not share in the gift tax revenues?*

5. Has there not been some retroactive effect in the repeal of the former gift tax exemptions (Section 112(2)) for persons other than the donor's spouse? Taxpayers have relied upon the annual exemption equal to one-half the difference between the prior year's taxable income and federal tax liability, and many persons have consistently made annual gifts at Christmas or towards the end of the calendar year to the extent of their maximum gift tax exemptions. Indeed persons in Western Canada were able to take advantage of such exemptions by "midnight gifts" on the evening of October 22, 1968. It would seem that equity would dictate (and little revenue would be lost) that the old gift tax exemptions be available through December 31, 1968, or alternatively that a taxpayer have a choice of utilizing either the old or the new gift tax exemptions for the calendar year 1968.

6. Section 112(3) of the Income Tax Act exempts gifts of not more than $1,000 from gift tax but if a gift exceeds $1,000 then the exemption is lost. We would hope that it is not the intention to submit to tax the full amount of any gift which exceeds the new $2,000 exemption as set out in Resolution 2(a)(ii).

## ESTATE TAX RESOLUTIONS

1. While we appreciate the difficulty of making major changes in the taxing statutes while at the same time not creating hardship for certain individuals we must comment on the present uncertainties in the field of estate taxation. Individuals who have planned their estates are now in the invidious position of knowing that important and fundamental changes are necessary but not knowing the precise form of the new law. It is vital that the amending legislation be made law as soon as possible so that appropriate action can be taken by taxpayers to avoid being penalized through no fault of their own.

2. Estate taxes and gift taxes are now so high (despite tax-free transfers between spouses) that the undesirable art of "offshoring" might flourish. Senior citizens may seriously consider leaving Canada in order to leave more to their heirs, with the result that the Government may generate less revenue than if it had retained a more reasonable rate structure.

The proposed changes accentuate the "time-honoured" problem of the major shareholder of a closely-held corporation. The income tax liability in removing corporate surplus in order to satisfy death duties too often leaves little or nothing for the heirs. This problem, particularly in light of

the increased estate and gift tax rates, must quickly be remedied.

3. The changes in exemptions have done nothing to facilitate the transmission of a family business within the family. It is desirable for such businesses to remain in the hands of Canadian families, and the transmission is generally to the children and not to the spouse of the deceased person. The old $60,000 exemption will be lost, and the exemption of transfers between spouses will be of little value if the family business is to be transferred to the succeeding generation.

4. Is there any reason why an exemption should not be available for other dependants such as a parent, as is available for a dependent child? The financial responsibility is oftentimes as great, if not greater, and there would appear to be little reason to differentiate.

5. If a testator in one of the provinces imposing succession duties left a life interest in his estate to his widow, with the remainder to his children, provincial succession duties would become immediately due on such estate, even though federal estate tax would be generally postponed until the death of the widow. These provincial succession duties would presumably be paid out of the estate itself, and would then be considered as an immediate transmission, taxable under federal estate tax rules, to the children. This could create a liability for a federal estate which could conceivably be treated as a further transmission to the children, giving rise to additional tax and so on. Thus, the simplicity of a life interest in estates passed free of tax to surviving spouses will not be attained in those provinces which continue to levy their own succession duties.

6. If a decedent resident in a province levying its own succession duties were to leave a life interest in his estate to his widow, no federal estate taxes would become payable on such transmission (as noted above) while substantial provincial taxes could be exigible. If the surviving spouse then moved to a province which did not levy its own succession duties, and subsequently died while domiciled in such province, the federal estate tax would presumably be imposed on the entire value of the life interest passing, without any credit for the provincial tax previously payable. In a reverse situation, it would be possible for a taxpayer to obtain a substantial credit for provincial taxes against his federal estate tax, while in fact no provincial taxes would ever become due.

7. There are trusts and wills presently in existence, with respect to living settlors and grantors, which for various reasons cannot be altered. Should consideration be given to the enactment of some relieving provisions for hardship cases of this kind?

8. From the language of Resolution (b)(ii), it is not clear whether property left in trust for the benefit of a surviving spouse under the will of a person who died prior to October 23, 1968 would be taxable in the estate of the surviving spouse. It must be intended that such property would not be taxable a second time upon the death of a surviving spouse, pursuant to the above resolution, where such property would not have been included in the estate of the surviving spouse prior to such resolution. Compare Resolution (b)(iii) which makes it quite clear that only inter-vivos transfers in trust for a spouse after October 22, 1968 will be included in the taxable estate of the surviving spouse.

The exemptions for a testamentary transfer to a spouse under Resolution (a)(ii) and (iii) appear to require that only the surviving spouse, and not the children, be able to benefit from the property transferred. Wouldn't it be advisable to permit children to receive or enjoy such property for limited and specified purposes, such as medical expenses, education, etc., and still permit the exemptions to apply?

## GROWING COMPLEXITY OF TAX RETURNS

We have been increasingly concerned over the years with the growing complexity of the tax returns which the individual is required to complete. This is particularly true of the calculation of the tax itself. (The 4 per cent Old Age Security Tax; the 3 per cent Surtax related to the basic tax less $200; the 2 per cent Social Development Tax and of course the provincial tax abatement.)

The increasing complexity of tax returns is a factor which contributes to errors. Errors can, in turn, cause taxpayer annoyance to say nothing of additional administrative costs and delays.

Simplicity in taxation is highly desirable but not always achievable and it is undoubtedly difficult to translate complex provisions into simple tax returns. Nevertheless we wish to make a strong plea for continued attention to simple tax form design which contributes not only to greater accuracy by taxpayers but to reduced administrative costs.

In connection with the preparation of these increasingly complex tax returns we believe that serious consideration should be given to allowing the costs of preparing annual income tax returns as a deduction in calculating taxable income. We understand that such a deduction is permitted in other countries.

Respectfully submitted,

E.J. Newman, Chairman,
Taxation Committee,
The Canadia Institute of Chartered Accountants

## APPENDIX "B"

Clipping from Montreal Star - March, 1969. Tax talk

### *RATES TELL ONLY HALF...*

By D. R. HUGGETT, C.A.

Many have decried the estate tax changes passed by the Commons February 20, 1969, and, certainly, a brief glance at the bare rate schedules would seem to indicate that the rates of tax have been increased quite considerably.

However, the rate schedules are only half the story and a realistic appraisal requires that the dollars and cents costs be examined in greater detail. Comparisons of the old and new estate tax rates are complicated because of the inclusion of prior gifts, the elimination of the basic exemption and the different exemptions for children.

However, a rough comparison may be made if one assumes that the deceased was a widower ($40,000 basic exemption under the old act, none under the new) with two non-dependant children (no exemption under the old act, $20,000 under the new) and had not made any taxable gifts after October 22, 1968 (or within three years of death). The effective burden of tax under these assumptions is shown below:

**TABLE I**

**Comparison of Old and New Estate Taxes**

| Value of Estate | Old Estate Tax (1) | New Estate Tax (2) |
|---|---|---|
| $ | $ | $ |
| 100,000 | 10,200 | 10,800 |
| 200,000 | 33,600 | 39,700 |
| 400,000 | 90,700 | 129,200 |
| 600,000 | 157,100 | 229,200 |
| 800,000 | 231,500 | 329,200 |
| 1,000,000 | 313,900 | 429,200 |
| 1,500,000 | 544,300 | 679,200 |
| 2,000,000 | 795,700 | 929,200 |

(1) Basic exemption of $40,000 and no gifts within three years of death.

(2) No spouse exemption, no taxable gifts and exemption of $20,000 for children.

In the majority of cases, the major part of an estate is owned by a husband who is usually surved by his wife. If one assumes again that the couple have two non-dependant children and that the husband uses the marital or spouse exemption to the extent of one-half of his estate, the burden of the new estate tax diminishes without taking into account the benefit derived from postponing a portion of the tax until the death of the wife.

An example under these circumstances is shown in Table II.

Assuming a 5 p. c. simple annual yield, a wife would have to outlive her husband by 13 years at the $2 million level to make the new rates equal to the old. At the $600,000 level, a spouse need only live for three additional years to make the new rates beneficial and, for estates of $485,000 or less the new estate tax is less in absolute terms.

Inasmuch as wives outlive their husbands statistically by about seven years, it can be seen that the new rates of estate tax may not be quite as bad as they have been painted. Moreover, there appears to be more scope for sensible estate planning which, if properly carried out, may make many families rather pleased with the new changes.

**TABLE II**

**Comparison of Old and New Estate Taxes**

| Value of Estate | Old Estate Tax (1) | New Estate Tax Death of Husband (2) | Death of Wife (3) | Total |
|---|---|---|---|---|
| $ | $ | $ | $ | $ |
| 100,000 | 6,200 | 1,500 | 1,500 | 3,000 |
| 200,000 | 28,600 | 10,800 | 10,800 | 21,600 |
| 400,000 | 84,500 | 39,700 | 39,700 | 79,400 |
| 600,000 | 150,100 | 80,200 | 80,200 | 160,400 |
| 800,000 | 223,700 | 129,200 | 129,200 | 258,400 |
| 1,000,000 | 305,300 | 179,200 | 179,200 | 358,400 |
| 1,500,000 | 534,700 | 304,200 | 304,200 | 608,400 |
| 2,000,000 | 785,300 | 429,200 | 429,200 | 858,400 |

(1) Basic exemption of $60,000 and no gifts within three years of death.

(2) Spouse exemption of 50 p.c. of value of estate plus $20,000 for children and no taxable gifts.

(3) Exemption of $20,000 for children and value of the estate capital for the use of the wife remains the same.

## APPENDIX "C"

### Effect of the Proposed Changes in Estate Tax "Notes on the attached Tables"

There are four pages of tables. Pages 1A and 2A are the same as pages 1 and 2 except that they are for larger estates.

Illustration 1 (on pages 1 and 1A) shows the tax where a man dies leaving all of his assets to his widow, and then she dies leaving her estate equally amongst the children. *This is probably the most common will in small estates (including those stretching up to about $150,000).* Under the present rules there can be two sets of estate taxes provided the size of the estate is greater than the exemptions. Under the proposed rules there can only be one estate tax and it is levied when the widow dies; this could mean a postponement of many years.

It will be noted that in this illustration the tax under the proposed law is larger than under the present law for all estates up to about $80,000. However, these examples assume that the full amount left to the widow is passed on intact to children when she dies. In the case of smaller estates some or all of what the widow inherits is likely to be used by the widow for her maintenance during her lifetime. For example, where the amount she received was a pension or annuity it will all be used up during her lifetime. But even if from the amount she inherited, there was left $20,000 (the basic exemption provided in the rate schedule), plus the exemptions in respect of bequests to her children, the amount shown as tax under the proposed law would be zero.

Illustration 2 (on pages 1 and 1A) shows the effect in those instances where the property is left outright.

(a) to a stranger, and

(b) to adult children.

Because the wife has die first there are not two sets of taxes as under the existing system. In these cases the proposed tax is less than the existing tax on all estates illustrated up to $200,000 if there are four children, and up to $150,000 if there are three children. Because of the change in exemptions, there are higher taxes if there are only one or two children. The general effect is fairer than at present because where there are fewer children (and therefore larger bequests) the tax is heavier, and where there are more children (and therefore smaller bequests) the tax is lighter.

Illustration 3 (on pages 1 and 1A) deals with the type of will where all the assets are left in trust with the income going to the widow during her lifetime and the assets to the children upon her death. In this case taxes will have been increased under the proposed system but the increases are not large where there are several children and where the estate is not greater than $200,000. Besides, the tax has been deferred from the time of the husband's death to the time of the widow's death so that widow is able to receive a greater income and has more capital available on which to encroach, if necessary.

Illustration 4 (on pages 2 and 2A) shows the effects where half of the estate was taxed at the time of the husband's death and the other half at the time of the wife's death. In this set of figures the proposed tax is lower than the present tax in all but one instance.

An important relationship brought out in the illustrations is that the proposed new taxes are identical in cases 1, 2 and 3. That is, in the three most common methods of passing on assets, the taxes under the new system will be the same, whereas they were quite different under the old system. Therefore for the great majority of Canadians who die with taxable estates (and these constitute only about 1 out of 20, the rest not being taxable at all), the new estate tax system will be neutral as between the type of will that he is likely to draw, and neutral as well as to whether his wife predeceases him or he dies first. This means that there will be far fewer anomalies under the new system than under the existing system.

In the illustrations:

(1) "adult" children means healthy children over 25 in respect of whom the estate is eligible for a deduction of $10,000 in these examples. (In respect of a bequest to a younger child an estate may be eligible for an additional deduction of

up to $25,000 each, and in respect of a bequest to an incapacitated child up to $70,000 each);

(2) the figures shown are those before any abatement in recognition of the provincial succession duties that are levied by Ontario, Quebec and British Columbia. If property included in an estate is situated, according to the rules in the Estate Tax Act, in the provinces of Ontario and Quebec the tax is reduced by 50%, or if in the province of British Columbia the tax is reduced by 75%; and

(3) it has been assumed that the widow has not used up any of the capital, and that the tax levied on the first death has been taken out of the bequests pro rata, except in the case of Illustration 4, Proposed Tax, in which all the tax on the first death is assumed to have come out of the bequests to the children. This last assumption is made to avoid a complicated calculation and it results in little or no difference from the amount of tax that would result if it were pro-rated.

## ILLUSTRATIONS OF THE EFFECT OF THE ESTATE TAX CHANGES
On Estates between $50,000 and $100,000

| | Estate of $50,000 | | Estate of $60,000 | | Estate of $80,000 | | Estate of $100,000 | |
|---|---|---|---|---|---|---|---|---|
| | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law |
| | $ | $ | $ | $ | $ | $ | $ | $ |
| 1. Estate left outright to the widow, and on her death equally amongst her adult children; where the number of children is: | | | | | | | | |
| One | 0 | 0 | 2,600 | 4,800 | 8,332 | 8,700 | 15,160 | 13,200 |
| Two | 0 | 0 | " | 3,000 | " | 6,600 | " | 10,800 |
| Three | 0 | 0 | " | 1,500 | " | 4,800 | " | 8,700 |
| Four | 0 | 0 | " | 0 | " | 3,000 | " | 6,600 |
| 2. Estate left outright by a widower: | | | | | | | | |
| (a) to a stranger | 0 | 0 | 2,600 | 5,000 | 6,200 | 10,800 | 10,200 | 15,600 |
| (b) equally amongst his adult children; where the number of children is: | | | | | | | | |
| One | 0 | 0 | 2,600 | 4,800 | 6,200 | 8,700 | 10,200 | 13,200 |
| Two | 0 | 0 | " | 3,000 | " | 6,600 | " | 10,800 |
| Three | 0 | 0 | " | 1,500 | " | 4,800 | " | 8,700 |
| Four | 0 | 0 | " | 0 | " | 3,000 | " | 6,600 |
| 3. Estate left in trust with the income to the widow during her lifetime and the assets divided equally amongst the children on her death; where the number of children is: | | | | | | | | |
| One | 0 | 0 | 0 | 4,800 | 2,600 | 8,700 | 6,200 | 13,200 |
| Two | 0 | 0 | 0 | 3,000 | " | 6,600 | " | 10,800 |
| Three | 0 | 0 | 0 | 1,500 | " | 4,800 | " | 8,700 |
| Four | 0 | 0 | 0 | 0 | " | 3,000 | " | 6,600 |

## ILLUSTRATIONS OF THE EFFECT OF THE ESTATE TAX CHANGES
On Estates between $120,000 and $1,000,000

| | Estate of $120,000 | | Estate of $150,000 | | Estate of $200,000 | | Estate of $500,000 | | Estate of $1,000,000 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law |
| | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ |
| 1. Estate left outright to the widow, and on her death equally amongst her adult children; where the number of children is: | | | | | | | | | | |
| One | 22,556 | 18,300 | 34,304 | 26,700 | 55,136 | 43,200 | 201,910 | 184,200 | 496,586 | 434,200 |
| Two | " | 15,600 | " | 23,700 | " | 39,700 | " | 179,200 | " | 429,200 |
| Three | " | 13,200 | " | 21,000 | " | 36,200 | " | 174,200 | " | 424,200 |
| Four | " | 10,800 | " | 18,300 | " | 32,700 | " | 169,200 | " | 419,200 |
| 2. Estate left outright by a widower: | | | | | | | | | | |
| (a) To a stranger | 14,600 | 21,000 | 21,400 | 29,700 | 33,600 | 46,700 | 122,900 | 189,200 | 313,900 | 439,200 |
| (b) equally amongst his adult children; where the number of children is: | | | | | | | | | | |
| One | 14,600 | 18,300 | 21,400 | 26,700 | 33,600 | 43,200 | 122,900 | 184,200 | 313,900 | 434,200 |
| Two | " | 15,600 | " | 23,700 | " | 39,700 | " | 179,200 | " | 429,200 |
| Three | " | 13,200 | " | 21,000 | " | 36,200 | " | 174,200 | " | 424,200 |
| Four | " | 10,800 | " | 18,300 | " | 32,700 | " | 169,200 | " | 419,200 |
| 3. Estate left in trust with the income to the widow during her lifetime and the assets divided equally amongst the children on her death; where the number of children is: | | | | | | | | | | |
| One | 10,200 | 18,300 | 16,800 | 26,700 | 28,600 | 43,200 | 116,300 | 184,200 | 305,300 | 434,200 |
| Two | " | 15,600 | " | 23,700 | " | 39,700 | " | 179,200 | " | 429,200 |
| Three | " | 13,200 | " | 21,000 | " | 36,200 | " | 174,200 | " | 424,200 |
| Four | " | 10,800 | " | 18,300 | " | 32,700 | " | 169,200 | " | 419,200 |

| | Estate of $50,000 | | Estate of $60,000 | | Estate of $80,000 | | Estate of $100,000 | |
|---|---|---|---|---|---|---|---|---|
| | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law |
| | $ | $ | $ | $ | $ | $ | $ | $ |
| 4. Estate left outright with one-half to the widow and one-half divided equally amongst the children, and on the widow's death her estate is divided equally amongst the children; where the number of children is: | | | | | | | | |
| One | 0 | 0 | 0 | 0 | 2,600 | 1,500 | 6,200 | 3,000 |
| Two | 0 | 0 | 0 | 0 | " | 0 | " | 1,500 |
| Three | 0 | 0 | 0 | 0 | " | 0 | " | 0 |
| Four | 0 | 0 | 0 | 0 | " | 0 | " | 0 |

| | Estate of $120,000 | | Estate of $150,000 | | Estate of $200,000 | | Estate of $500,000 | | Estate of $1,000,000 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law | Present Law | Proposed Law |
| | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ |
| 4. Estate left outright with one-half to the widow and one-half divided equally amongst the children, and on the widow's death her estate is divided equally amongst the children; where the number of children is: | | | | | | | | | | |
| One | 11,986 | 9,600 | 20,588 | 15,300 | 35,940 | 26,400 | 147,781 | 125,400 | 380,005 | 368,400 |
| Two | " | 6,000 | " | 11,400 | " | 21,600 | " | 117,400 | " | 358,400 |
| Three | " | 3,000 | " | 7,800 | " | 17,400 | " | 109,400 | " | 348,400 |
| Four | " | 0 | " | 4,500 | " | 13,200 | " | 101,400 | " | 338,400 |

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 34

WEDNESDAY, APRIL 30th, 1969

***First Proceedings on Bill S-34,***

intituled:

"An Act respecting Nova Scotia Savings & Loan Company".

WITNESSES:

*Department of Insurance:* R. Humphrys, Superintendent. *Nova Scotia Savings & Loan Company:* L. J. Hayes, Counsel; G. C. Piercey, President, and G. Ross Guy, General Manager and Secretary-Treasurer.

APPENDICES:

"A"—Newspaper Notice. "B"—Financial Report.

The Queen's Printer, Ottawa, 1969

20114—1

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 29th, 1969:

"The Honourable Senator Urquhart presented to the Senate a Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company".

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury:

That Rule 119 be suspended with respect to the Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
*Clerk of the Senate.*



20114—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, April 30th, 1969.
(37)

At 10.45 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

***Bill S-34,*** "An Act respecting Nova Scotia Savings & Loans Company".

*Present:* The Honourable Senators Hayden (Chairman), Aseltine, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Giguère, Haig, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (24)

*Present, but not of the Committee:* The Honourable Senators Connolly (*Halifax North*), Fergusson, Inman, Macdonald (*Cape Breton*), Smith and Urquhart. (6)

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

The following witnesses were heard:

*Department of Insurance:*
R. Humphrys, Superintendent.

*Nova Scotia Savings & Loan Company:*
L. J. Hayes, Counsel.
G. C. Piercey, President.
G. Ross Guy, General Manager and Secretary-Treasurer.

It was *Agreed* that the newspaper notice of the application to Parliament and the Financial Statement of the Company be printed as Appendices "A" and "B" to these proceedings.

It was *Moved* that the Bill be now reported without amendment.

The question being put, the Committee divided as follows:

YEAS—5 NAYS—7

The *Motion* was declared *lost.*

Upon motion it was *Resolved* that further consideration of the Bill be deferred to a later date.

At 11.45 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

# MINUTES OF PROCEEDINGS

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

The following witnesses were heard:

Department of Insurance:
R. Humphrys, Superintendent.

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The question being put, the Committee divided as follows:

YEAS—5 NAYS—7

The Motion was declared lost.

Upon motion it was Resolved that further consideration of the Bill be deferred to a later date.

At 11.45 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

# THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, April 30, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-34, respecting Nova Scotia Savings & Loan Company, met this day at 11.15 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have a complementary bill, S-34, which is before you. Mr. Humphrys again will be the number one witness. May I have a motion for printing, duly moved and seconded?

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

**Mr. R. Humphrys (Superintendent of Insurance):** Mr. Chairman and honourable senators, this bill proposes that there be an amendment to the act of incorporation of the Nova Scotia Savings & Loan Company. The Nova Scotia Savings & Loan Company is a very old mortgage loan company. It was established in Nova Scotia in the 1840's. It was formed as a provincial association and operated as such for many years. It has been under the supervision of the federal Department of Insurance by agreement with the Government of Nova Scotia, and the company operated as a provincial company until 1964. At that time it sought a special Act of Parliament creating a federal loan company and effected a merger of the new federal loan company with the provincial company, thus having the effect of transferring the old savings and loan association into a new federally incorporated mortgage loan company.

The company now operates under its charter, being a special Act of Parliament passed in 1964. It is a well-established Maritime institution having assets of about $58 million at the end of 1968.

**Senator Thorvaldson:** Are those the sole assets or assets under administration?

**Mr. Humphrys:** These are its own assets. This is a mortgage loan company and not a trust company. It raises its money by the sale of debentures and by the acceptance of deposits from the public. The outstanding debentures amounted to $46 million at the end of the year, and saving deposits amounted to about $6.5 million. The company is in sound financial condition and most of its assets consist of mortgage loans to the total of $58 million of assets. Fifty-six million dollars is in mortgage loans in the Maritimes.

This bill proposes an amendment to the company's charter that will have the effect of restricting the number of shares that can be registered in the name of any shareholder to a maximum of 15 per cent of the outstanding stock of the company, and it provides that if any shareholder acquires, together with associates—and the description of the associates is in the bill—beneficial ownership of more than 15 per cent of the stock then he will lose all voting rights.

My role here is really to explain what the bill will do. I think the justification for the bill must come from representatives of the company themselves. From the point of view of the department and our responsibilities as supervisors, I do not believe that a restriction in ownership of stock of this type would operate to the detriment of the debenture holders or the depositors. It is, therefore, as I see it, a matter for the shareholders of the company to determine if they wish to have such a restriction on the transfer and ownership and voting rights of the shares of their company. From the point of view of the supervisor I do not see that there is anything in the public interest, looking at our responsibilities for the welfare of the depositors and debenture holders, that would be objectionable.

There were two points that I thought were important from a supervisor's point of view.

One was that the legislation should not take away rights that anyone had at the time that notice was given of the proposal, and also that it should not bar the way to any take-over of the company that might be necessary to provide for the welfare of the debenture holders and the depositors. For example, if the company got into financial difficulties—and the only way to solve this situation is really to have another company take it over—I thought that the way should not be barred for that transaction. There is a provision in this bill that leaves the way open for a particular offer under definite circumstances.

**Senator Walker:** What section is that?

**Mr. Humphrys:** This is the last provision in the bill, clause 19. It provides that any restrictions on the transfer of shares or the voting rights will not act to prevent an offer and purchase of the shares if the offer is made pursuant to the Loan Companies Act and subject to the provisions in that act.

Those provisions are that a federally incorporated loan company can make an offer for shares of another loan company provided that it has acceptance of the offer by at least 67 per cent of the shares and that the purchase is approved by the Treasury Board. This saving provision removes the restrictions on the transfer of shares if the offer is made in accordance with that provision and if the Minister of Finance is satisfied that the take-over of the company in this way is justified on the grounds of protection of the debenture holders, namely, the depositors.

The only other comment, Mr. Chairman, is that the wording of the bill is substantially, almost identically the wording in the Loan Companies Act; but the wording in the Loan Companies Act is for the purpose of putting a restriction on the transfer of shares to non-residents and restrictions on voting rights of non-residents. Consequently, the wording of this bill was copied, in so far as appropriate, from the wording in the Loan Companies Act.

**Senator Beaubien (Bedford):** What is the capital structure? How many shares are outstanding? Are these common shares?

**Mr. Humphrys:** There are only common shares. The authorized capital is $2,500,000 in shares at $2 each. The issues have been $1,-694,000, which, at $2 a share would mean 847,000 shares.

This proposal was put before a special general meeting of the shareholders of the company and, as indicated in the debate in the Senate, if my figures are correct, 91 per cent of the shares were represented at the meeting and this proposed legislation was approved by 84 per cent of them.

**Senator Beaubien (Bedford):** What is the last selling price of the shares? What is the price they were selling at?

**Mr. Humphrys:** Perhaps Mr. Piercey could answer that.

**Mr. G. C. Piercey, President, Nova Scotia Savings & Loan Company):** The price of the shares, senator, has been trading at $8, prior to the proposal that was made a few months ago by a particular company attempting to acquire the shares.

**Senator Walker:** What precedents, Mr. Superintendent, have we for this limitation upon shareholders, of 15 per cent?

**Mr. Humphrys:** I know of no precedent in the charter of any federal company. The only corresponding move that I know of, that has been made in the charter of the company, is an amendment that was made to the charter of the Royal Trust Company by the leglislature in Quebec, in 1967, I think, which put a limitation on voting rights as respects shares of that company. It provided that no shareholder could vote more than 10 per cent of the shares of the company. I know of no precedent here.

**The Chairman:** You do have limitations approaching from the other side, that is, limitations on intending purchases, to the extent to which they may acquire holdings.

**Mr. Humphrys:** That is only as respects non-residents, for life insurance companies, mortgage companies and loan and trust companies. In the bank Act there is a limitation both on voting rights and transfer so that no one shareholder can own more than 10 per cent of the shares of a chartered bank.

**Senator Cook:** I understood Mr. Piercey to say that the price was $8 prior to an offer being made. What was the offer?

**Mr. Piercey:** The offer was $10, senator.

**Senator Cook:** For how many?

**Mr. Piercey:** For as many as they could get at the time, senator.

**The Chairman:** Are there any other questions?

**Senator Beaubien (Bedford):** I would like to know who the directors and and how many shares they hold?

**Mr. Piercey:** The chairman and directors own in their own right approximately 7 per cent of the shares of the company. All are Nova Scotians, businessmen, professional men.

**Senator Flynn:** I wonder about shareholders who object to the presentation of this bill, whether an opportunity was given to them to give their views, or has any offer been made to them?

**Mr. Piercey:** The only shareholder who objected was the representative of the shareholders that had been attempting to acquire the shares, for which this legislation was provided—with one other objection.

**Senator Flynn:** Did they offer to sell their shares, if the majority was in favour of this legislation?

**Mr. Piercey:** An offer that was made was not a general offer it was an offer that was made to purchase the largest groups—the shareholders only in the largest groups, at the time, at the annual meeting. Of course, this information was made known to all the shareholders, that this offer had been made in certain instances, and there was no reason for the other shareholders to think that they could not accept and have their shares purchased at the same offer.

**Senator Flynn:** Is there anybody here today representing this minority group?

**The Chairman:** Not that we are aware of.

**Senator Leonard:** Might I ask Mr. Humphrys about clause 18.

> Insofar as the provisions of sections 15, 16 and 17 of this Act are inconsistent with the provisions of section 56 of the *Loan Companies Act*, the provisions of this Act shall prevail.

What inconsistency is there? What is the effect on the clause?

**Mr. Humphrys:** By reason of the fact that this bill modifies or may modify voting rights and may modify the provisions on transfer of shares. It is to remove any conflict. The general act says that each shareholder has one right per share. This was put in to avoid a conflict concerning the general provisions of the act regarding the procedure on transfer of shares.

**Senator Cook:** If 80 per cent of the shareholders want to sell, why do you want this legislation?

**Senator Beaubien (Bedford):** That is what I said last night in the Senate. They do not have to sell.

**Mr. Piercey:** The shareholders who may represent 84 per cent today and voting against this are not necessarily going to be the shareholders tomorrow. We have a lot of these shares passing on in recent times and it is our concern that some of these are held in very large blocks, and we feel this is a very essential part of the bill.

**Senator Cook:** This legislation would bind future shareholders, shareholders in the future, who may want to change their minds.

**The Chairman:** I understood you to say, Mr. Piercey, that 84 per cent of the shareholders present at the meeting voted for this legislation.

**Senator Beaubien (Bedford):** Was that the total number?

**Mr. Piercey:** Eighty-four per cent of those present—that means 86 per cent of the outstanding shares of the company.

**Senator Beaubien (Bedford):** You say there are changes in the stockholders, and so on. The shareholders who now are there may change and in a month's time 84 per cent may want to sell. I do not know where this bill is leading us. It is a bad precedent.

**The Chairman:** I do not know whether we can speculate. I think we have to deal with the situation as we have it.

**Senator Beaubien (Bedford):** Mr. Piercey was saying there may be a change. Perhaps the majority might be in favour of selling later on. It may be those who would change.

**The Chairman:** They might.

**Senator Molson:** Is there not a danger that a group, perhaps not a group of directors—they have not been named and I assume they are all splendid people—but a group amongst them controlling this company from any given date and being unable to be budged, to be moved, by the fact that no one can get a larger vote, that no one can vote more than the 15 per cent? Presumably if a small group acquired amongst themselves a substantial holding, that party could perpetuate them-

selves and there would be no way of assuming the power to get rid of them. Is that not so?

**The Chairman:** They only represent 7 per cent, as I understood Mr. Piercey to say.

**Senator Molson:** But tomorrow they may represent 70 per cent.

**Senator Thorvaldson:** Or only 2 per cent.

**Senator Molson:** Yes. They might each have 10 per cent; they might each have 7 per cent.

**The Chairman:** Senator, if we start speculating as a basis of what we are going to do with the facts as we have them before us or as to what the possibilities are...

**Senator Molson:** This is quite a new principle before us and I think we should speculate to some extent, Mr. Chairman, to see if there are any booby traps or dangers in this as a principle.

**The Chairman:** I think Mr. Humphrys might answer that. What, if anything, does he see from his point of view?

**Mr. Humphrys:** Mr. Chairman, from our point of view, I did not think in respect of this kind of rule these restrictions would deliver the company into the hands of the directors, which I think is the possibility Senator Molson has in mind.

The restriction applies only at the 15 per cent level. Even now, without this restriction, I think that if anyone got 30 per cent of the stock he would probably have a dominant interest because there is only one large block at the present time. The way is still open, even with such restrictions, for shareholders to give their proxies to anyone they want to give them to, so that one person could gather together proxies for 50, 60 or 70 per cent of the votes to vote at a particular meeting, if he were not satisfied with what the directors were doing and wanted to change the board.

What this will do is prevent any one person acquiring more than 15 per cent in his own right and it will prevent, really, a takeover of the company by another company which is, as I understand it, the principal motive that the shareholders had in mind in seeking this legislation.

As I say, I think it is for them to justify the case. If this is the way the shareholders want it and if it is not being delivered into the hands of a small group irrevocably and if the interests of the debenture holders and depositors are not being threatened, I do not feel that I should object to it.

I do not want to be in the position of arguing for it or against it.

**Senator Molson:** I think we are getting the message, actually, Mr. Humphrys.

**Senator Leonard:** May I ask you, Mr. Humphrys, whether copies of all proceedings are on file with you—the notice calling the meeting, the material submitted to shareholders' meetings and proceeding of the meetings themselves? Are these things on file?

**Mr. Humphrys:** Yes, senator, we have seen all these documents.

**Senator Desruisseaux:** Mr. Chairman, I would like to know how many shareholders they have presently and what the book value was when the market value was $8.

**Mr. Ross Guy, General Manager and Secretary-Treasurer, Nova Scotia Savings and Loan Company:** There were 712 shareholders of the company at the time of the annual meeting. Very few of them live outside the province. The shareholders' equity is approximately $4,800,000.

**Senator Desruisseaux:** I meant per share.

**Mr. Guy:** That is $5.65 per share, in round figures.

**Senator Desruisseaux:** Was consideration ever given to changing that company by incorporating it, in view of this situation? Making it a one-man-one-vote company?

**Mr. Guy:** Actually, you know, in 1964 we came to this very room with Mr. MacGregor, the Superintendent of Insurance at that time, and we switched the company over to a federal loan company. That was done at the request of the shareholders at that time, who represented 75 or 80 per cent of the shares.

**Senator Thorvaldson:** Have minority shareholders been given any notice of either this bill or this meeting?

**Mr. Guy:** Mr. Chairman, their solicitor was in attendance at the meeting. He was given notice then and notice was published in the *Canada Gazette*. Copies of the proposed legislation were handed out at the meeting.

**Senator Thorvaldson:** Could we have the letter calling the shareholders' meeting read into the record? Is it available?

**Senator Leonard:** While Mr. Humphrys is looking that up, may I say that I understand that the Royal Trust Company are pretty close to the 15 per cent figure now. Suppose a shareholder dies, having appointed the Royal Trust Company as executor of his estate. What happens to the application for transfer?

**Mr. Hayes:** They would have to have it registered, I understand, senator; it would be a matter of perhaps registering in the name of a nominee. Perhaps Mr. Humphrys could explain what happens in the case of federal legislation, general legislation with respect to those situations.

**Senator Leonard:** This is not a question of a nominee. This is a question of appointing the trust company as executor. They must, therefore, put shares in his name or put it under his control in some way or other. Does this legislation enable the executors to prevent that transfer?

**The Chairman:** Enable the "executors", did you say?

**Senator Leonard:** Yes, the executors of the estate, assuming the Royal Trust Company would then go over 15 per cent of the shares.

**Senator Beaubien:** The trust company would have no beneficial interests.

**Senator Flynn:** They would have control of the voting rights, but would not own them.

**The Chairman:** We are waiting for the answer to Senator Leonard's question.

**Mr. Humphrys:** As I interpret this bill, Mr. Chairman, honourable senators, it would prevent the directors from approving a transfer to a trust company, if the result would be that the shares registered in the name of that trust company would exceed 15 per cent.

The lawyers may correct me on this, but I think that that would apply whether the trust company had the shares registered in its own name as the beneficial owner or whether they were registered as trustee or as nominee.

**Senator Leonard:** The answer is, then, that they could not be registered in the name of the Royal Trust Company, if they were to go beyond 15 per cent, whether the Royal Trust Company were acting in a fiduciary capacity or not.

**Mr. Humphrys:** That is my interpretation of the wording of the legislation, senator.

**Senator Gélinas:** Mr. Chairman, if an individual presently owns 15 per cent of the shares and inherits 1 or 2 per cent more, what happens when he does get those shares? Would they be transferred to his name?

**Mr. Humphrys:** As I interpret the legislation, they could not be transferred.

**Senator Gélinas:** What does he do, dispose of them?

**Mr. Humphrys:** He disposes of them. On the other hand he could have them registered in the name of a nominee holding for him, and I think that would be the course he would adopt. They could be registered in the name of the nominee holding for him. But this bill provides that if there are shares registered in the name of any person or held by or for the benefit of any individual and associates and if they exceed 15 per cent, then they cannot be voted. So those shares held by the nominee, if they were part of a package or one person had a beneficial interest in more than 15 per cent, could not be voted.

**Senator Beaubien:** I asked for the names of the directors and how many shares each owned, and I think we should have that information.

**Mr. Guy:** I can give the information regarding the names but I cannot give the information regarding the shares. There is Mr. Walter W. Barss, Chairman of the Board; Mr. George C. Piercey, Q.C., President; Samuel S. Jacobson, Vice-President; Donald McInnes, Q.C.; A. R. Harrington, Doctor of Engineering; L. R. Shaw; M. S. Grant. As I say I cannot answer the question regarding the shares. As Mr. Piercey has already said they own roughly 7 per cent of the stock.

**Senator Desruisseaux:** Are they equally spread among the directors?

**Mr. Guy:** Yes they are. It may be that some directors only have qualifying shares.

**Senator Beaubien:** Can you tell us who the very large shareholder is that was mentioned?

**Mr. Guy:** There is one shareholder Mr. McInnes who is senior shareholder on the board.

**Senator Desruisseaux:** Do you know approximately the number of shares he would have?

**Mr. Guy:** No.

**Mr. Humphrys:** At the end of 1967 the information I have before me showed that 20,000 shares were in the name of Mr. D. McInnes.

**Mr. Guy:** And there is no change.

**Senator Leonard:** Is the stock listed on the exchange?

**Mr. Ross:** No, sir.

**Senator Thorvaldson:** Someone was going to produce the letter to the shareholders.

**Mr. Hayes:** I am sorry, I did not bring it with me. I thought I had it among my papers, but I do not. I am sorry, senator.

**Mr. Humphrys:** I have a copy on my file of the newspaper notice calling the meeting and as I recall the letter was similar. The information in the letter that went to each shareholder was similar to the information in the notice.

**The Chairman:** What Mr. Humphrys has from the newspaper notice Mr. Hayes says was exactly the same in form and content as the notice that went to shareholders.

**Senator Thorvaldson:** If this bill is going to be passed it should be examined to see that it was the same in tone and content.

**The Chairman:** Do you want it read or appended to the proceedings?

**Senator Thorvaldson:** Appended to the proceedings.

*(For copy of newspaper notice see Appendix "A")*

**The Chairman:** Is that agreed?

**Hon. Senators:** Agreed.

**Senator Leonard:** I would suggest that we do not come to a conclusion on this matter today. This subject was only raised last evening and that was the first knowledge we had of it and special leave was given to have this hearing today because the officials coming from Halifax were having difficulties about transportation. But this is a precedent and I do not like the precedent at all. I have nothing against the company. In fact all that I know of it is in its favour, but I do not like the principle of a precedent being established here and I think we should take our time and consider it thoroughly before reaching a conclusion.

**The Chairman:** Before coming to the point Senator Leonard has made, are there any other questions you want to ask of any of the witnesses here? If not we can deal with Senator Leonard's question as to whether we should proceed to make a decision and report the bill at this time or whether having heard all the evidence we should adjourn for consideration of what we have heard.

**Senator Kinley:** We have not heard the promoters of the bill.

**The Chairman:** They have all been up at different times.

**Senator Flynn:** What is the suggestion of Senator Leonard?

**Senator Leonard:** That we adjourn further consideration until next week.

**Mr. Piercey:** Mr. Chairman, I have a statement . .

**Senator Thorvaldson:** I suggest that Mr. Piercey should come up to the table to speak. It is difficult to hear him when he is speaking back there.

**Mr. Piercey:** Mr. Chairman, I have a statement to make and I will be brief. First of all I would like to thank very sincerely on behalf of the officers of the company the committee for having brought this matter to this stage and for having waived by consent the seven day rule. I may say that if this had not been done we could not have been here next week because transportation arrangements are impossible. We could get no reservations for next week either by air or by train. In fact we do not know how we are going to get home.

**Senator Connolly (Ottawa West):** Why not stay in Ottawa? It is a nice place.

**The Chairman:** I think you could probably get to like Ottawa very much.

**Mr. Piercey:** I am sure we could. In fact what we thought were reservations were not reservations at all.

Now, Mr. Chairman, the comment was made that the purpose of this bill is primarily to prevent a takeover. That should be qualified, and this may sound hollow, but I say in all sincerity that the primary purpose of this bill is not simply to prevent a takeover but to prevent something happening to the Province of Nova Scotia that should not be happening and this applies also to parts of

the Province of New Brunswick. Without any doubt this company which is 125 years old is providing a unique service that no other company whether national or local can perform. We have statistics and figures from the registry of deeds of the Province of Nova Scotia to prove this. This company, not through any personal work of mine or the officers today, has qualified as the leading local company and lending institution in our area. Other companies have their own policies and we respect them.

Our policies have always been to go out into rural areas where there are no central water and sewerage services necessarily. We do not make this a prohibition, or the services a requirement, but national companies do, for the most part, and our figures show we are unquestionably the leader in the rural areas of Nova Scotia and in parts of New Brunswick in the small mortgage lending field. Last year we loaned on 2,200 housing units represented by some 1,200 mortgage applications. The growth of this company during the last five years has been startling because of the housing situation and the crisis that has occurred, and the demand is there and we are trying to do our part in answering it. We know that a national company acquiring our company would, without any question, discontinue most of those policies.

**Senator Beaubien:** If your company is making money with these policies you have had all these years, why would new management change your way of doing business?

**Mr. Piercey:** Because another company acquiring this company would probably use that money to better advantage elsewhere in this country.

**Senator Beaubien:** What are you getting by way of return on your mortgages?

**Mr. Piercey:** We try to get 2 per cent above our cost rate.

**Senator Desruisseaux:** What does it represent; what is the interest rate?

**Mr. Piercey:** It varies, but the prime rate at the moment is 9-1/2 per cent.

**Senator Desruisseaux:** Plus 2 per cent.

**Mr. Piercey:** No. We get 9-1/2 per cent, and we are paying a little over 8 per cent for our money.

**Senator Thorvaldson:** That is pretty much standard, is it not?

**Senator Kinley:** You are offering at a greater rate for your money than any other company in Nova Scotia.

**Mr. Piercey:** No, senator.

**Senator Kinley:** You are offering at how much?

**Mr. Piercey:** Our prime rate is 9-1/2 per cent and our going rate is 9-3/4 per cent.

**Senator Kinley:** How much are you paying?

**Mr. Piercey:** Just over 8 per cent.

**Senator Walker:** I would like to hear Mr. Piercey finish his statement. He is entitled to, as is any other witness.

**Mr. Piercey:** I feel very strongly that this service we are trying to perform is vital to our province. If it were to be curtailed or cut short this would certainly work to the disadvantage of the province because the housing situation in Nova Scotia today is serious—just as I am sure it is serious in other parts of the country—but we feel these policies should be continued.

Some of our local legislators are very concerned about what might happen if a takeover should occur, and although we are a Nova Scotia company we do lend in very large areas of the neighbouring province of New Brunswick as well.

Mr. Guy wanted to correct me on the cost of our money. He shook his head, but I know what he means. I said "just over 8 per cent". Our debentures are 7-3/4 per cent, but when all the costs are added together it comes very close to 8 per cent.

Do you have any other questions, honourable senators?

**Senator Flynn:** Do you see any inconvenience if we were to postpone consideration of this bill until next week, to see whether anybody from the minority group would like to come and raise objections here? Perhaps they will not come, but I think they should be given the opportunity.

**Mr. Piercey:** I do not see how much more notice anybody could have had. We have done everything possible to publicize it and everything within the law, and at our annual meeting we made sure that the dissidents knew the whole contents and purport of the bill. If they are not objecting to it today, I do not think they ever will. However, I have to leave that in your hands.

**Senator Beaubien:** There are other companies making loans in your part of the world. What do they charge?

**Mr. Piercey:** The rates are competitive, senator, definitely.

**Senator Beaubien:** Other people are lending money at 9-1/2 or 9-3/4 per cent?

**Mr. Piercey:** That is correct.

**Senator Beaubien:** Why do you say that if anybody else took over your company they would not service the same people in the same way?

**The Chairman:** That is merely an opinion that he has expressed. He is entitled to it, but whether we accept it or not is another question.

**Mr. Piercey:** They are just not doing it. And why are they going to change?

**Senator Walker:** One of the points you are making is that you and one other company are the only native conventional loan companies?

**Mr. Piercey:** That is correct.

**Senator Desruisseaux:** When making mortgage loans is there an accommodation charge of some sort?

**Mr. Piercey:** There is no other charge at all.

**Senator Desruisseaux:** Do you take deposits?

**Mr. Piercey:** Yes, we do take deposits.

**Senator Desruisseaux:** Have financial reports been filed?

**Mr. Piercey:** They are filed constantly; they have to be.

**Senator Desruisseaux:** Would it be of any use to the senators here, Mr. Chairman, if we had the financial reports?

**The Chairman:** For the last year?

**Senator Desruisseaux:** Yes.

**The Chairman:** Will you produce a copy, so that we can append it to the proceedings today?

**Mr. Piercey:** Yes.

*(For copy of Financial Report see Appendix "B")*

**Senator Leonard:** How many shares are involved?

**Mr. Piercey:** There are 840,000 shares outstanding.

**Senator Leonard:** The largest shareholder apart from the Royal Trust Company, is Mr. McInnes?

**Mr. Piercey:** That is correct.

**Senator Leonard:** With 20,000 shares?

**Mr. Piercey:** Yes.

**The Chairman:** Are there any other questions?

**Senator Connolly (Ottawa West):** Suppose, for the sake of argument—and I hope it does not happen, because the case you have made is a very good one—that the committee does not feel you should have this bill, could you incorporate in Nova Scotia and continue the policies that this company has applied?

**Mr. Piercey:** Could we incorporate in Nova Scotia?

**Senator Connolly (Ottawa West):** Yes.

**Mr. Piercey:** I believe we could under the Provincial Loan Companies Act. However, we would hesitate doing that.

**Senator Connolly (Ottawa West):** You would prefer to be a federal company?

**Mr. Piercey:** Definitely, we would prefer to be a federal company.

**Senator Connolly (Ottawa West):** Senator Isnor tells me you changed from a federal to a provincial company and went the other way in 1964.

**Mr. Piercey:** That is correct.

**Senator Thorvaldson:** I think you understand there is a tremendous amount of sympathy for you in this committee, and quite naturally so, because many of us do not like these take-overs of smaller institutions by these national institutions; and I think most of the people here will want to do everything in the world for you.

However, we are up against the problem of precedents that might become onerous and difficult and present a bad picture. Consequently, I wonder if I might ask you a few questions in regard to the method that has been followed by this company—which we all understand to be the Royal Trust Company—

since your stock is not listed on the stock exchange, to acquire shares in your company. Have they made individual solicitations to shareholders, or have they written letters to shareholders, or have they made a general offer to all the shareholders?

**Mr. Piercey:** They have not made a general offer to all the shareholders. A particular broker—and I think one particular broker, but it may be more than one—who had access to our shareholders' list—and it is easy to get—went to those owning the largest blocks of shares—and they were larger than Mr. McInnes, substantially larger at that time—and they acquired those blocks of shares, and that is what started this thing off, and it brought them to 14 per cent almost immediately.

**Senator Thorvaldson:** Have there been any official communications between that company and yourself as president of your company?

**Mr. Piercey:** Unofficially, . . .

**Senator Thorvaldson:** Either officially or unofficially.

**Mr. Piercey:** On a personal basis between the chief executive officer of that company and one of our directors, who was a personal friend, there has been communication. It was very friendly and the question was asked very bluntly and the answer came back generally, "There is no present intention of the shareholders, but circumstances may change in the future." This is definitely the purport of the answer.

**Senator Thorvaldson:** In other words, they probably contemplated acquiring a number of shares first and then making a general offer to the shareholders?

**Mr. Piercey:** This is what we felt was a very, very real probability.

**The Chairman:** Honourable senators, Senator Beaubien asked a question as to the particular holdings of the directors. I now have this information, and I will read it out if you still want it.

**Senator Beaubien:** Yes.

**The Chairman:** Mr. Barss, 12,595 shares; Mr. Piercey, 10,000 shares; Mr. Jacobson, 5,100 shares; Mr. McInnes, 20,150 shares; Mr. Shaw, 1,250 shares; Mr. Grant, 3,453 shares; and Mr. Harrington, 1,250 shares, which makes a total of 53,798 shares.

**Senator Connolly (Ottawa West):** Out of a total issue of. . .

**Senator Molson:** Of 847,000.

**The Chairman:** If there are no other questions we have to decide what disposition we shall make of the bill. Shall we report the bill now, or shall we adjourn the matter for further consideration at the next meeting of the committee?

**Senator Beaubien:** We should adjourn.

**The Chairman:** Will all those in favour of adjourning for further consideration please raise their hands?

**Senator Thorvaldson:** Before you put this vote, Mr. Chairman, I should like to ask Mr. Piercey if he can suggest any alternative, or if any member of the committee has any alternative to suggest, that would make it unnecessary for Parliament to legislate such a precedent. I do not know where we will go if we legislate in respect of companies in this way. I say this despite the fact that I am in complete sympathy with the directors of the companies in their wishing to retain this company as a provincial institution.

**The Chairman:** Senator, anything that involves the amendment of their charter under the present state of the law must come to Parliament.

**Senator Thorvaldson:** Yes, and I am wondering if it is possible to make some arrangement which would not involve an amendment of their charter.

**The Chairman:** I do not know.

**Mr. Humphrys:** Not without amending the general legislation.

**Senator Thorvaldson:** Perhaps it might not be a bad idea to consider amending the general legislation in regard to trust companies in the same way as the legislation in regard to banks has been amended. Personally I can see the point of such a move.

**The Chairman:** In the meantime we have to work with the tools that are available.

**Senator Beaubien:** Before you put the question, Mr. Chairman, I would like to say that if this bill is passed and a man wants to sell his shares he will get only $8 for them. If the bill is not passed then he will get $10. It seems to me to be terribly wrong to legislate against a man being able to sell his shares in

the best market. If the Royal Trust wants to pay $10, and the best price outside is $8, then why should we decide that a man has to take the $8?

**The Chairman:** We are not making that decision.

**Senator Beaubien:** We are, in a sense, because we are eliminating a buyer.

**Mr. Piercey:** The shares are still trading over the counter.

**Senator Desruisseaux:** How many shares have been acquired so far by this trust company?

**Mr. Guy:** Approximately 120,000.

**Senator Desruisseaux:** Are they being forced to sell their shares?

**Mr. Guy:** No, they are not being forced to sell any shares. They are only at 14.3 per cent, and we are suggesting 15 per cent.

**The Chairman:** Do we adjourn for further consideration at the next meeting of the committee?

**Senator Kinley:** Mr. Chairman, have we satisfied the people who have come here? Have they said all that they want to say in regard to this bill?

**The Chairman:** I assume so. I have asked them, and I have asked the members of the committee, if they have anything more to say. Have you anything further to say, Mr. Piercey?

**Mr. Piercey:** No, I have nothing further to say.

**The Chairman:** Have you anything further to say, Mr. Hayes?

**Mr. Hayes:** No, Mr. Chairman.

**The Chairman:** Have you anything further to add, Mr. Guy?

**Mr. Guy:** No, Mr. Chairman.

**The Chairman:** Have you anything further, Senator Urquhart?

**Senator Urquhart:** No, Mr. Chairman.

**The Chairman:** I do not think Mr. Humphrys has anything more to say. So, are you ready for the question?

**Senator Aseltine:** There might be others who want to be heard.

**The Chairman:** There are not any others here. I take it that there is no person present today who wants to make a representation in respect of Bill S-34. Is that right?

**Senator Isnor:** To bring this thing to a head, Mr. Chairman, I move we now report the bill that is before us.

**The Chairman:** There is a motion that we now report the bill without amendment. Are you ready for the question? Those in favour will raise their hands? Those opposed will raise their hands. The result of the voting is 7 to 5 against. The motion to now report the bill without amendment is not carried at this time.

Is there a motion—

**Senator Leonard:** I move that we adjourn for further consideration of this bill.

**Senator Isnor:** What was the result of the vote?

**The Chairman:** Seven to five.

**Senator Isnor:** In favour of now reporting the bill?

**The Chairman:** In favour of not now reporting the bill.

**Senator Thorvaldson:** There was a prior motion that we adjourn this matter for further consideration. I think we should adjourn the matter. We are not defeating the bill. We are just adjourning our consideration for a week.

**The Chairman:** I am trying to put that motion now. The only thing we can do is adjourn or terminate our proceedings.

**Senator Molson:** We do not want to turn this bill down, but I do not think there was any real notice given of this meeting today. It has been our policy to give reasonable notice of committee meetings. We are considering this bill today because of transportation difficulties, and I think that is all the more reason why we should adjourn our consideration of it.

**The Chairman:** That is what I am asking for. Is there a motion that we adjourn our consideration of this bill until next week? What is the feeling of the committee on that?

**Senator Leonard:** I move that we adjourn consideration until next week.

**The Chairman:** Those in favour? Those contrary? The motion is carried.

Whereupon the committee proceeded to the next order of business.

## APPENDIX "A"

*Copy of newspaper notice.*

NOVA SCOTIA SAVINGS & LOAN COMPANY

NOTICE is hereby given that an application will be made to the Parliament of Canada at the present, the next or the following ensuing session thereof by Nova Scotia Savings & Loan Company for an Act to amend Chapter 72 of the Statutes of Canada, 1964-5, being an Act to incorporate Nova Scotia Savings & Loan Company, for the following objects:

1. To require the Directors of the Company, on and after the prescribed day, to refuse to allow in the books of the Company the entry of a transfer of any share of the capital stock of the Company to any individual, corporation or trust,

(a) when the total number of shares of the capital stock of the Company held by such individual, corporation or trust and by any other shareholder or shareholders associated with such individual, corporation or trust, if any, exceeds fifteen percent of the total number of issued and outstanding shares of such stock; or

(b) if, when the total number of shares of the capital stock of the Company held by the individual, corporation or trust and by any other shareholder or shareholders associated with such individual, corporation or trust, if any, if fifteen percent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares of stock held by the individual corporation or trust and by any other shareholder or shareholders associated with such individual corporation or trust, if any, to exceed fifteen percent of the issued and outstanding shares of such stock.

2. To prohibit the Directors of the Company, on and after the prescribed day, from alloting or permitting the allotment of any shares of the capital stock of the Company to any individual, corporation or trust in circumstances where, if the allotment to such individual, corporation or trust were a transfer of those shares, the entry thereof in the books of the Company would be required to be refused by the Directors.

3. To prohibit, on and after the prescribed day, the exercise of the voting rights attached to shares in the Company held in the name of or for the use or benefit of an individual, corporation or trust, if the total of such shares so held, together with such shares held in the name of or right of or for the use or benefit of associates of the individual, corporation or trust, exceed in number fifteen percent of the issued and outstanding shares in the Company; provided, however, that where the number of shares of the capital stock of the Company, if any, held at the commencement of the prescribed day in the name or right of or for the use or benefit of an individual, corporation or trust, together with the number of such shares, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the individual, corporation or trust exceed fifteen percent of the number of shares of such stock at the time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the individual, corporation or trust may be exercised in person or by proxy so long as the percentage of the shares held by or for the individual, corporation or trust does not exceed either the percentage of such shares held by or for the individual, corporation or trust and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the individual, corporation or trust and associates on any subsequent day.

4. To authorize the Directors of the Company to make such by-laws as they deem necessary to carry out the objects set forth in paragraphs 1 to 3 of this Notice.

In this Notice

(a) "corporation" includes a body corporate, an association, partnership or other organization;

(b) "prescribed day" means the day following the day on which this Notice is first published in the Canada Gazette;

(c) a shareholder is deemed to be associated with another shareholder if

(i) one shareholder is a corporation of which the other shareholder is an officer or director;

(ii) one shareholder is a partnership of which the other shareholder is a partner;

(iii) one shareholder is a corporation that is controlled directly or indirectly by the other shareholder;

(iv) both shareholders are corporations and one shareholder is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other shareholder;

(v) both shareholders are members of a voting trust where the trust relates to shares of the Company; or

(vi) both shareholders are associated within the meaning of paragraphs (i) to (v) with the same shareholder.

(d) "associates of the individual, corporation or trust" means, with reference to any particular day,

(i) any shareholder associated with the individual, corporation or trust on that day, and

(ii) any persons who would be deemed to be shareholders associated with the individual, corporation or trust on that day were such persons and the individual, corporation or trust themselves shareholders.

(e) "shares held by or for the individual, corporation or trust" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the individual, corporation or trust and associates of the individual, corporation or trust on that day.

Dated at Halifax, in the Province of Nova Scotia, this 14th day of March, A.D. 1969.

McInnes, Cooper & Robertson
Solicitors for the Applicant
1673 Bedford Row,
Halifax, Nova Scotia.

## APPENDIX "B"

119th
ANNUAL REPORT
1968
NOVA SCOTIA SAVINGS
& LOAN COMPANY

### BOARD OF DIRECTORS

Walter deW. Barss, Q.C.—Chairman
George C. Piercey, Q.C.—President
Samuel S. Jacobson, B.Com., M.B.A. (Harv.)—Vice-President
Donald McInnes, Q.C., LL.D., D.C.L.
A. Russell Harrington, B.E., D.Eng., P. Eng.
Lloyd R. Shaw, B.A., M.A.
MacCallum S. Grant

### EXECUTIVE

G. Ross Guy, M.C.—General Manager and Secretary-Treasurer
W. Bruce Graham—Assistant Manager
W. L. Flinn—Chief Inspector
Miss P. E. Helms—Assistant Secretary
K. L. Mallory—Mortgage Officer
H. W. Jones—Branch Manager, Dartmouth
C. M G. Blois—Branch Manager, Saint John
A. F Henderson—Branch Manager, New Glasgow

### BANKERS

The Bank of Nova Scotia
The Royal Bank of Canada

Member Canada Deposit Insurance Corporation

### DIRECTORS' REPORT TO THE SHAREHOLDERS

It is gratifying for the Directors to present the 119th Annual Report of Nova Scotia Savings & Loan Company. The year ended December 31, 1968, was the best in the long history of the Company. Profit before taxes was $996,790, an increase of 19.1% over 1967. Our mortgage portfolio had reached $55,599,734, an increase of $8,800,000, or 18.8% over the previous year. Total assets increased by 18.7% and at December 31, 1968, amounted to just under fifty-eight millions of dollars. Despite unprecedented competition from the chartered banks and other financial institutions, the investing public indicated their confidence in the Company through increased debenture purchases. At the year end the debenture account amounted to $45,740,000, an increase of 19.5% over 1967. The savings department was also active during the year and increased by 15.4% to $6,521,146.

### EARNINGS AND DIVIDENDS

In former years, as in the year 1968, the Company took full advantage of the tax relief available through transfers to the mortage reserve. Under the recent announcement of the Federal Government, this reserve must be reduced from 3% to 1½% of the mortgage portfolio within ten years commencing with 1969. Therefore, your Board has set up the deferred tax liability as at December 31, 1968, and further, has restated the position of the Company as at December 31, 1967.

Net profit for 1968, after tax, was $505,790, an increase of 15.5% over 1967. The percentage increase was down slightly from the 1967 increase of 16.7% due to the 3% surtax imposed in 1968. The net profit was equivalent to 59.7 cents per share compared to 51.7 cents in 1967. Dividends amounting to 30 cents per share were paid in 1968, on the basis of a quarterly dividend of 6 cents on January 1, April 1, July 1 and October 1, and an extra dividend of 6 cents on March 1, 1968. Total dividends paid in 1968 were $254,123.

As already announced, the Directors have declared an extra dividend of 7 cents per share payable March 1, 1969 to shareholders of record on February 17, 1969. The regular quarterly dividend has been increased from 6 cents to 7 cents commencing with the dividend payable April 1, 1969.

### MORTGAGES

Interest rates, which had reached record highs in 1967, rose even higher in 1968. By the end of the year new debentures and renewals, maturing in five years, commanded a rate of 7¾%. Interest rates for mortgages rose from 9¼ to 9½% and by the year end had reached 9¾%. At the same time, the interest rate on government guaranteed National Housing Act mortgages rose to 9⅜%.

Despite these disturbing conditions, your Company approved 1,210 mortgage applica-

tions for a total of $22,000,000. Of this amount approximately $15,000,000 was advanced during the year, resulting in a net increase of $8,800,000 in the mortgage portfolio compared to the previous year. In these days of acute shortage of adequate living accommodation for many of our citizens, your Company is playing its part in providing funds to alleviate these conditions. The 1,210 approved mortgage applications represented 2,220 housing units (apartments, flats and individual dwellings).

It has long been a policy of the Company to assist homeowners who require loans of relatively small amounts for taxes, repairs, improvements and other bills. The Company provides mortgage money for such purposes in the cities, towns and rural areas of Nova Scotia and New Brunswick. Every request is considered on its merits and the Company does not refuse an application simply because the loan is too small to be worth the cost of administering it, nor because of an isolated location. This open policy has proved beneficial to the Company and to great numbers of small homeowners over the years.

## MORTGAGE ARREARS AND FORECLOSURES

Four properties came into our hands during the year as the result of mortgage foreclosures. At the end of the year only one of these remained unsold, and a sale has been arranged since that date.

Our computer makes it possible to have an up-to-date record of arrears in mortgage payments at all times. At December 31, 1968, the total arrears were one-half of 1 per cent of our mortgage portfolio. This includes all arrears, even those less than a full month. This remarkable achievement was made possible by an excellent follow-up system administered by a competent staff.

## PERSONNEL

Your Directors cannot overstate their appreciation to the General Manager and staff for their continued loyalty and dedication to the Company. The record-breaking results of the year just ended are due in large measure to their efforts. We wish also to record our sincere thanks to our agents and representatives for their excellent work.

During the past year the Company instituted a comprehensive group life, sickness and accident insurance plan for all employees at no cost to them. Your directors regard this as a sound investment for the future rather than an added expense to the Company.

## DIRECTORS

Effective July 1, 1968, Mr. Walter deW. Barss, Q.C., was appointed Chairman of the Board. On the same date Mr. George C. Piercey, Q.C., was elected President of the Company and Mr. S. S. Jacobson, B. Com., M.B.A. (Harv.) became Vice-President. The Directors met weekly throughout the year, and the Finance and Loan Committees met frequently, as required.

## GENERAL OUTLOOK

The Company has enjoyed a line of credit with our bankers for many years. In 1968 these lines of credit were increased substantially, thus enabling the Company to have a greater degree of flexibility in its day to day operations.

The scarcity of serviced land and the great increase in the cost of money have caused many married couples to forego purchasing a home and to consider apartment accommodation. In the Halifax-Dartmouth area the construction of new dwellings has been reduced to negligible proportions except in a few localities within the enlarged City of Halifax where serviced land is available. The Company can do little to reverse this trend, which will continue until large areas of the recently annexed lands are provided with services and opened up for development. The very high costs involved will postpone such action for an indefinite period. In the meantime your Company has participated in the financing of many fine apartment buildings in the metropolitan areas and its interest in similar projects will continue for some to come.

There are other localities where your Company has been a leader in providing funds for living accommodation. Great industrial development is planned for the Port Hawkesbury-Strait of Canso area and the Company has already participated in the provision of mortgage financing for housing and motel accomodation in that area. Your Directors believe the Company should play a vigorous role in these exciting developments. By blending caution and balanced judgment, and taking advantage of opportunities as they occur, the Company will grow and prosper as these new centres develop. This growth will be reflected in higher earnings for the Company and increased dividends for the shareholders.

In closing this report, your Directors urge all shareholders to support the Company in every way possible. In view of the tremendous competition for savings accounts and debenture sales, we need this support as never before. All banks, trust and loan companies are competing for the savings dollar. Shareholders can assist the Company greatly in this field by bringing our services to the attention of friends and acquaintances. Our present interest rate on non-chequing savings accounts is 5½%, accrued on the minimum monthly balance. In the past our shareholders have supported their Company exceedingly well and we know we can count on this support in these days of vigorous competition and great challenge.

G. C. Piercy
President

NOTE TO FINANCIAL STATEMENT

During the year ended December 31, 1968 the company, which previously used the taxes payable basis for accounting for taxes on income, adopted the tax allocation basis and accordingly, the net income for the year 1968 is stated at $156,000 less than the amount which would have been reported if the previous basis had been used. The statement of revenue and expenditue and undivided profits for the previous year has been restated to place it on a comparable basis with the current year, with a consequent reduction in the reported income for that year of $141,000. In addition to the deferred income taxes arising in the current and prior year, income taxes were reduced in prior years by an aggregate amount of $554,000 as a result of claiming a mortgage reserve and other deductions for income taxes in excess of amounts charged in the company's accounts. No provision is being made in the company's accounts at this time for the latter amount.

## STATEMENT OF
## REVENUE AND EXPENDITURE AND UNDIVIDED PROFITS

**Year ended December 31, 1968 (with comparative figures for 1967)**

| | 1968 | 1967 |
|---|---|---|
| Revenue | $4,269,049 | $3,555,481 |
| Cost of borrowed money | 2,865,075 | 2,362,335 |
| Administrative expense | 389,384 | 340,021 |
| Depreciation and amortization | 17,800 | 16,182 |
| | 3,272,259 | 2,718,538 |
| Net profit before income taxes | 996,790 | 836,943 |
| Income taxes—current | 335,000 | 258,000 |
| —deferred | 156,000 | 141,000 |
| | 491,000 | 399,000 |
| Net profit available for distribution | 505,790 | 437,943 |
| Dividends | 254,123 | 254,123 |
| Undivided profits for current year | 251,667 | 183,820 |
| Undivided profits from previous year | 156,585 | 301,765 |
| Reduction in provision for pension | 3,000 | 3,000 |
| | 411,252 | 488,585 |
| Transfers to: | | |
| Rest account | — | 100,000 |
| Reserve for mortgages | — | 232,000 |
| | — | 332,000 |
| Undivided profits at end of year | $ 411,252 | $ 156,585 |

(See accompanying note to financial statements)

ASSETS

| | 1968 | 1967 |
|---|---|---|
| First mortgages on improved real estate and agreements of sale | $55,599,734 | $46,783,453 |
| Equipment and furnishings, less depreciation | 51,896 | 58,661 |
| Leasehold improvements, less amortization | 39,903 | 42,299 |
| Real estate held for sale | 5,302 | 2,654 |
| Sundry | 14,311 | 14,892 |
| Investments: | | |
| Government of Canada and Government guaranteed bonds and accrued interest | 464,630 | 260,477 |
| Provinces of Canada and Provincial guaranteed bonds and accrued interest | 289,176 | 354,281 |
| Municipal bonds and accrued interest | 826,048 | 776,367 |
| Bank and public utility stocks | 271,250 | 232,007 |
| Total investments | $ 1,851,104 | $ 1,623,132 |

(The investments in bonds and stocks are carried at values, which in the aggregate, are not in excess of quoted market values.)

| | | |
|---|---|---|
| Short-term investment (due January 16, 1968) | $ — | $ 201,603 |
| Cash on hand and in banks | 430,191 | 113,387 |
| Total assets | $57,992,441 | $48,840,081 |

(See accompanying note to financial statements)

LIABILITIES

| | 1968 | 1967 |
|---|---|---|
| Debentures and accrued interest | $45,740,110 | $38,281,054 |
| Savings deposits | 6,521,146 | 5,651,047 |
| Bank loans, secured | 400,000 | — |
| Amounts held for insurance and tax payments on mortgaged properties | 24,151 | 29,836 |
| Dividends payable | 50,825 | 50,825 |
| Income taxes payable | 109,670 | 85,485 |
| Provision for pensions | 61,000 | 64,000 |
| Sundry | 3,137 | 6,099 |
| Total liabilities | $52,910,039 | $44,168,346 |
| Deferred credit | | |
| Deferred income taxes (*see note*) | $ 297,000 | $ 141,000 |
| Shareholders' equity: | | |
| Capital: Authorized 2,500,000 shares, par value $2.00 each. issued and fully paid 847,075 shares | $ 1,694,150 | $ 1,694,150 |
| Rest account | 1,600,000 | 1,600,000 |
| Reserve for mortgages | 1,080,000 | 1,080,000 |
| Undivided profits | 411,252 | 156,585 |
| Total shareholders' equity | $ 4,785,402 | $ 4,530,735 |
| Total liabilities and shareholders' equity | $57,992,441 | $48,840,081 |

The undersigned officials of the Nova Scotia Savings & Loan Company hereby certify that they have examined the financial statement of the Company and that, to the best of their knowledge and belief, the statement is correct and shows truly and clearly the financial condition of the affairs of the Company.

Walter de W. Barss, Chairman. G. C. Piercey, President. G. R. Guy, Secretary-Treasurer.

AUDITORS' REPORT

We have examined the balance sheet of the Nova Scotia Savings and Loan Company as of December 31, 1968 and the statement of revenue and expenditure and undivided profits for the year then ended and have obtained all the information and explanations we have required. Our examination included a general review of the accounting procedures and such tests of accounting records and other supporting evidence as we considered necessary in the circumstances.

In our opinion, and according to the best of our information and the explanations given to us and as shown by the books of the company, these financial statements are properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company at December 31, 1968 and the results of its operations for the year then ended, in accordance with generally accepted accounting principles which, except for the change in the basis of providing for taxes on income as described in the note to the financial statements, were applied on a basis consistent with that of the preceding year.

PEAT, MARWICK, MITCHELL AND CO.
*Chartered Accountants*

Halifax, N.S.
January 22, 1969

SAVINGS ACCOUNTS

4 per cent annum, calculated on the minimum monthly balance. Full chequing privileges.

DEPOSIT ACCOUNTS

5½ per cent per annum, calculated on the minimum monthly balance. Interest credited quarterly. Over-the-counter withdrawals.

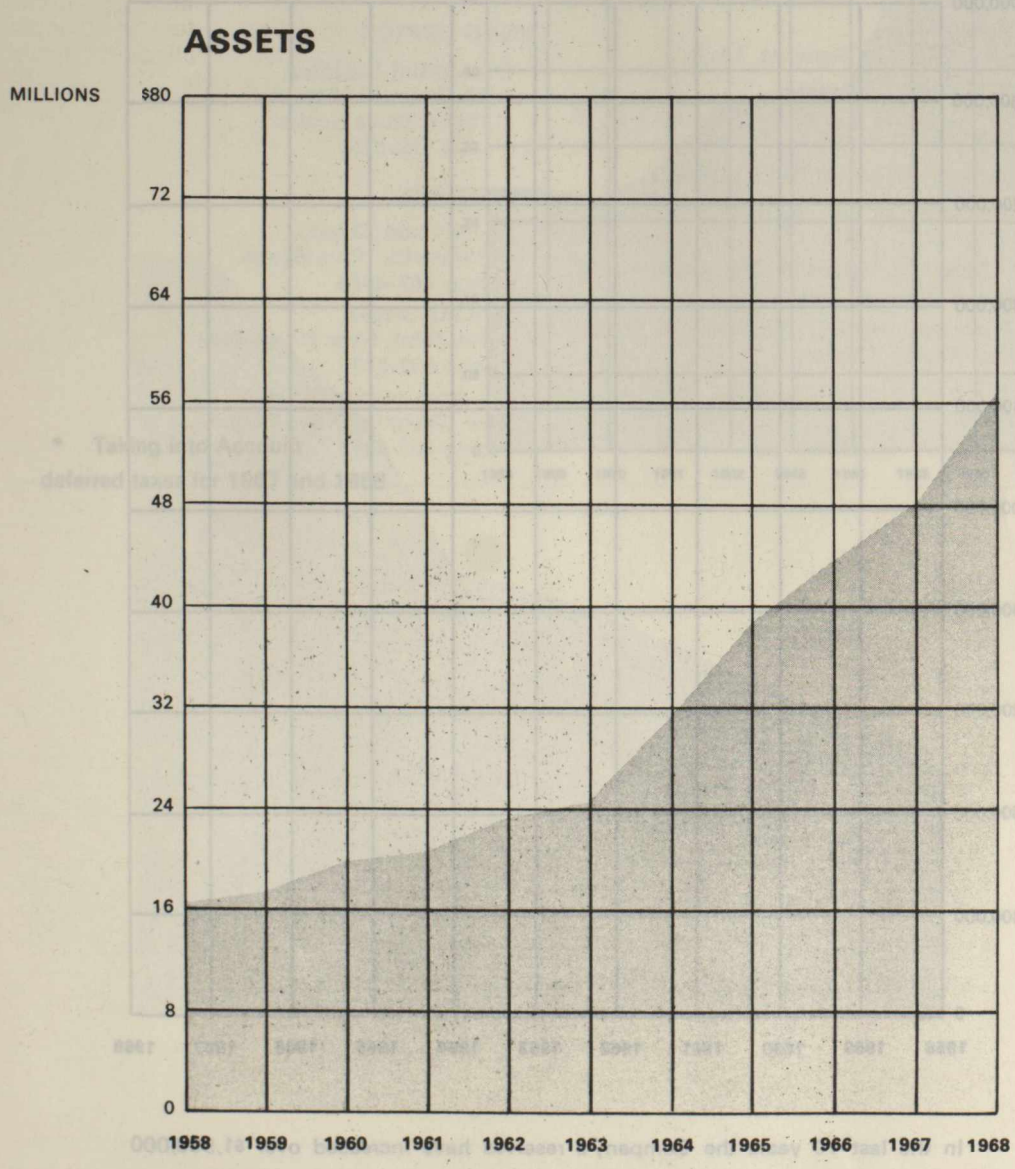
TRUSTEE DEBENTURES

Issued for a one to five year period in bearer or registered form with interest payable by coupon or cheque, or the interest may be left on deposit at the debenture rate and received at maturity. Principal and interest are payable at par throughout Canada at The Bank of Nova Scotia and The Royal Bank of Canada.

MORTGAGES

Mortgage funds are available for prime properties at competitive rates. The Company will also entertain applications for a limited number of multiple family dwellings and new commercial projects with long term leases.

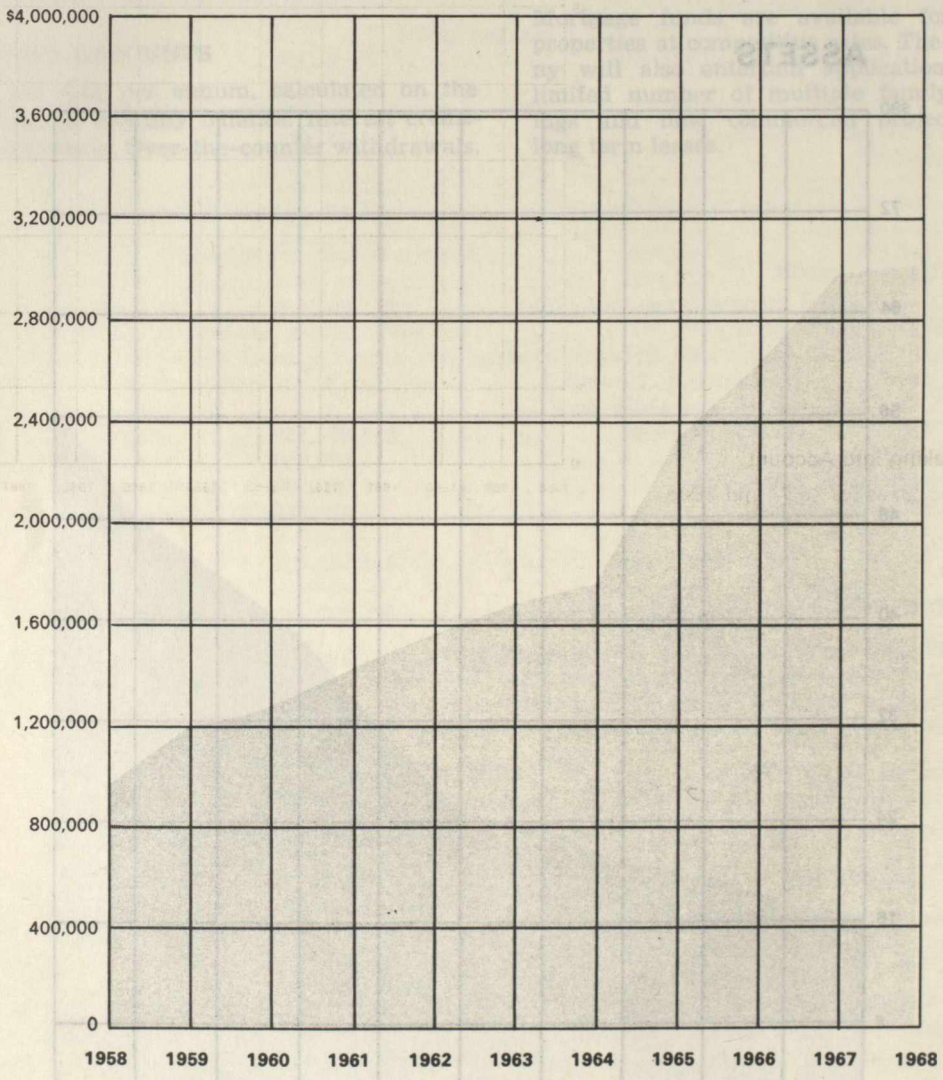
# 10 YEARS OF GROWTH




In the last 10 years the Company's assets have increased over $41,000,000.

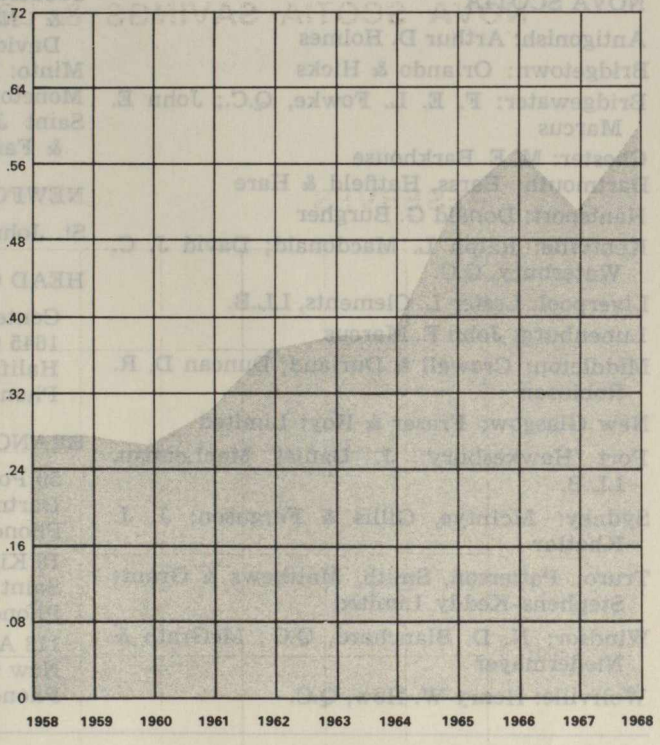
# NOVA SCOTIA SAVINGS & LOAN COMPANY

## RESERVES




In the last 10 years the Company's reserves have increased over $1,900,000

## EARNINGS PER SHARE*




* Taking into Account deferred taxes for 1967 and 1968

COMPANY'S AGENCIES

NOVA SCOTIA

Antigonish: Arthur D. Holmes

Bridgetown: Orlando & Hicks

Bridgewater: F. E. L. Fowke, Q.C.; John E. Marcus

Chester: M. E. Barkhouse

Dartmouth: Barss, Hatfield & Hare

Hantsport: Donald G. Burgher

Kentville: Ralph L. Macdonald; David J. C. Waterbury, Q.C.

Liverpool: Lester L. Clements, LL.B.

Lunenburg: John E. Marcus

Middleton: Crowell & Durland; Duncan D. R. Robinson

New Glasgow: Fraser & Hoyt Limited

Port Hawkesbury: J. Daniel MacLennan, LL.B.

Sydney: McIntye, Gillis & Ferguson; J. J. Khattar

Truro: Patterson, Smith, Matthews & Grant; Stephens-Keddy Limited

Windsor: N. D. Blanchard, Q.C.; McGrath & Niedermayer

Wolfville: Henry W. How, Q.C.

NEW BRUNSWICK

Fredericton: Cochrane, Stevenson, Sargent & Nicholson; Hazen E. Allen, C.L.U.; David A. Lunney & Associates Limited

Minto: Earl B. Glenn Ltd.

Moncton: Stewart and Stratton

Saint John: McKelvey, Macaulay, Machum & Fairweather

NEWFOUNDLAND

St. John's: T. Alex Hickman, Q.C.

HEAD OFFICE:

Centennial Building
1645 Granville Street,
Halifax, Nova Scotia
Phone 422-6591

BRANCHES:

50 Portland Street,
Dartmouth, Nova Scotia
Phone 463-4666

18 King Street,
Saint John, New Brunswick
Phone 692-3337

113 Archimedes Street,
New Glasgow, Nova Scotia
Phone 755-2010

First Session—Twenty-eighth Parliament
1959

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, Chairman

No. 33

WEDNESDAY, APRIL 8th, 1959

Second Proceedings on Bill C-163,

Intituled:

"An Act to amend the Income Tax Act and the Estate Tax Act".

WITNESSES:

The Trust Companies Association of Canada: R. H. Hesney, President (President, National Trust Co. Ltd.); E. F. K. Nelson, Executive Director; J. E. Allison, Asst. Gen. Mgr., Canada Permanent Trust Co., Montreal; K. Bailey, Q.C., Gen. Mgr. and Counsel, Canada Permanent Trust Co.

Canadian Bar Association: Formerly Ronald C. Merriam, Secretary, Canadian Bar Association; Alexander Langford, Chairman, Wills and Trusts Section; F. [illegible], member; Frederick D. Baker, Vice-Chairman, Wills and Trusts Section; Stuart L. Hewell, member.

Canadian Construction Association: Mark Stein, Esq., President (President, Magill Construction Co. Ltd.); [illegible], Esq., member CCA Legislative and Taxation Committee (Vice-President, Eastern Construction Ltd.); S. N. G. Chester, General Manager, K. V. [illegible], Taxation Officer.

APPENDICES:

"D"—Brief from The Trust Companies Association of Canada.
"E"—Brief and appendix from Canadian Bar Association.
"F"—Brief and appendix, a letter to Association, from Canadian Construction Association.

The Queen's Printer, Ottawa, 1959

First Session—Twenty-eighth Parliament
1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 35

WEDNESDAY, APRIL 30th, 1969

***Second Proceedings on Bill C-165,***
intituled:

"An Act to amend the Income Tax Act and the Estate Tax Act".

WITNESSES:

*The Trust Companies Association of Canada:* E. H. Heeney, President. (President, National Trust Co., Toronto). E. F. K. Nelson, Executive Director. J. K. Allison, Asst. Gen.-Mgr., Montreal Trust Co., Montreal. K. Burn, Q.C., Gen.-Mgr. and Counsel, Canada Permanent Trust Co.

*Canadian Bar Association, Ontario Branch:* Ronald C. Merriam, Secretary, Canadian Bar Association. J. Alexander Langford, Chairman, Wills and Trusts Section. F. Douglas Gibson, member. Frederick D. Baker, Vice-Chairman, Wills and Trusts Section. Francis J. Hamill, member.

*Canadian Construction Association:* Mark Stein, Eng., President. (President, Magill Construction Ltd.). Robert Hewitt, Eng., member CCA Legislation and Taxation Committee. (President, Hewitt Equipment Ltd.). S. D. C. Chutter, General Manager. K. V. Sandford, Taxation Officer.

APPENDICES:

"D"—Brief from Trust Companies Association of Canada.
"E"—Brief and appendix from Canadian Bar Association.
"F"—Brief and excerpts of letters to Association, from Canadian Construction Association.

The Queen's Printer, Ottawa, 1969

20116—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

"With leave of the Senate,

The Honourable Senator Connolly, P.C., resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Langlois, for the second reading of the Bill C-165, intituled: "An Act to amend the Income Tax Act and the Estate Tax Act".

After debate, and—

The question being put on the motion,

The Senate divided and the names being called they were taken down as follows:—

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The Honourable Senators

| | | | |
|---|---|---|---|
| Aird, | Davey, | Inman, | McElman, |
| Argue, | Desruisseaux, | Isnor, | Petten, |
| Boucher, | Eudes, | Kickham, | Phillips |
| Bourget, | Fergusson, | Kinley, | (*Rigaud*), |
| Bourque, | Fournier | Kinnear, | Rattenbury, |
| Burchill, | (*de Lanaudière*), | Laird, | Robichaud, |
| Carter, | Giguère, | Lefrançois, | Roebuck, |
| Connolly | Gouin, | Leonard, | Smith, |
| (*Ottawa West*), | Hastings, | Martin, | Urquhart—36. |
| Croll, | Hayden, | McDonald, | |

### NON-CONTENTS

The Honourable Senators

| | | | |
|---|---|---|---|
| Beaubien, | Fournier | Macdonald | Quart, |
| Bélisle, | (*Madawaska-* | (*Cape Breton*), | Thorvaldson, |
| Blois, | *Restigouche*), | MacDonald | Walker, |
| Choquette, | Gladstone, | (*Queens*), | Welch, |
| Flynn, | Haig, | Méthot, | White, |
| | Irvine, | Pearson, | Willis, |
| | | Phillips | Yuzyk—21. |
| | | (*Prince*), | |

So it was resolved in the affirmative.

The Bill was then read the second time, on division.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*



20116—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, April 30th, 1969.
(38)

At 11.45 a.m. the Standing Senate Committee on Banking, Trade and Commerce *resumed* consideration of:

**Bill S-34,** "An Act to amend the Income Tax Act and the Estate Tax Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gélinas, Giguère, Haig, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (24)

*Present, but not of the Committee:* The Honourable Senators Connolly (*Halifax North*), Fergusson, Inman, Macdonald (*Cape Breton*), Smith and Urquhart. (6)

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

The following witnesses were heard:

*The Trust Companies Association of Canada:*

E. H. Heeney, President. (President National Trust Co., Toronto)
E. F. K. Nelson, Executive Director.
J. K. Allison, member. (General Manager, Montreal Trust Co., Montreal)
K. Burn, Q.C., member. (Gen.-Mgr. and Counsel, Canada Permanent Trust Co.)

At 1.00 p.m. the Committee adjourned.

At 4.45 p.m. the Committee *resumed.*

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Desruisseaux, Haig, Hollett, Isnor, Kinley, Leonard, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (17)

*Present, but not of the Committee:* The Honourable Senators Fergusson, Laird and Sullivan. (3)

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

It was *Agreed* that the Briefs presented today be printed as Appendices "D", "E" and "F" to these proceedings.

The following witnesses were heard:

*Canadian Bar Association, Ontario Branch:*

Ronald C. Merriam, Q.C., (Secretary, Canadian Bar Association.)
J. Alexander Langford, Chairman, Wills and Trusts Section.
F. Douglas Gibson, member.
Frederick D. Baker, Vice-Chairman, Wills and Trusts Section.
Francis J. Hamill, member.

*Canadian Construction Association:*

Mark Stein, Eng., President. (President, Magill Construction Ltd.)
Robert Hewitt, Eng., member CCA Legislation and Taxation Committee. (President, Hewitt Equipment Ltd.)
S. D. C. Chutter, General Manager.
K. V. Sandford, Taxation Officer.

At 6.40 p.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, April 30, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-165, to amend the Income Tax Act and the Estate Tax Act, met this day at 11.45 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we now resume our consideration of Bill C-165. We have three groups to make representations today: The Trust Companies Association of Canada, the Canadian Bar Association, and the Canadian Construction Association.

Mr. E. H. Heeney, President of the National Trust Company, is present. I believe you are going to carry the ball, Mr. Heeney.

**Mr. E. H. Heeney, President, The Trust Companies Association of Canada:** Yes, Mr. Chairman.

**Senator Walker:** Mr. Heeney is also President of the Trust Companies Association of Canada.

**The Chairman:** Yes.

**Mr. E. H. Heeney:** Mr. Chairman and honourable senators, if I may, I would like to proceed in this way. First of all I should like to present the delegation so that you know who they are. On my right Mr. E. F. K. Nelson, Executive Director of The Trust Companies Association of Canada; Mr. Kenneth Burn, Q.C., General Manager and General Counsel of the Canada Permanent Trust Company; Mr. W. A. Bean, C.B.E., Deputy Chairman of the Canada Trust and Huron & Erie Mortgage Corporation, from London; Mr. J. K. Allison, Assistant General Manager, Montreal Trust Company, and Mr. J. W. R. Seatle, Vice-President of the Royal Trust Company in Montreal.

I have a few opening comments to make, if I may, then I would suggest that the brief, which is already in your hands, should not be read except with respect to the last nine pages dealing with some technical points that we would like to emphasize. I would like to have Mr. Nelson read that following my few comments.

**Senator Walker:** Have you copies of the brief?

**The Chairman:** Copies of the brief were distributed to all members of the committee. What I would suggest is that the committee now give a direction that we append a copy of the brief to our proceedings today.

**Hon. Senators:** Agreed.

(*For copy of brief see appendix "D"*)

**Mr. Heeney:** We feel that The Trust Companies Association of Canada has a very definite interest in this bill. Our particular reason for being here today is to appear on behalf of our clients, many of whom are very concerned about some of the items of this bill. The Trust Companies Association of Canada represents 31 member companies holding more than $14 billion, and we carry on business in over 500 offices across Canada. We deal in the ordinary course of business with people and with companies. We are very close to people who have money, and many people who have no money, in this country, and all our clients are concerned with what happens under Bill C-165.

Since the brief was prepared we have had the advantage of reading many of the speeches that have been made in the Senate during the debate on the bill and we do not propose today to belabour things that have been said, and said so well in the Senate. We are merely going to underline one or two significant points.

Professional trusteeship is the business of trust companies. Recognition that the appointment as an executor and trustee is one of the most serious and demanding confidences that a person can require another to undertake is

fundamental to the concepts of law governing the trust business. In actual fact the law requires a higher standard of performance from the professional trust company than it does from the inexperienced private individual who finds himself appointed executor and trustee of the estate of a deceased friend or acquaintance.

One of the more exacting duties of an executor is the calculation and payment of taxes and duties before the estate can be distributed to the beneficiaries. In order that the executor can fulfil this responsibility effectively and expeditiously, the charging sections of the applicable legislation must be clear and unambiguous. It seems to us that the bill—particularly the charging sections—is drafted with little concern for the principle that taxation statutes should be framed in such clear and unambiguous language.

Quite apart from the difficulties of construction and interpretation, we believe that this bill will make the settlement of tax liabilities in an estate an extremely complicated procedure. Indeed, in some cases we wonder how this can ever be accomplished. To the degree that it is more complicated to administer, it will reduce the productivity of the legislation and thus the flow of tax revenue to the Government—a point that has already been well covered in the Senate debates.

In our brief we have stated our principal reasons for being strongly opposed to this bill. To recapitulate, the main grounds are, first, the unreasonably high tax rates and, second, the integration of the gift and estate taxes, and the inclusion in the estate for tax purposes of the amount of taxable gifts made in the donor's lifetime with the gift taxes paid thereon. The tax burden imposed by this legislation will now fall more heavily than ever upon the medium-size estates on the death of the surviving spouse. Furthermore, in framing this legislation there has been little apparent concern for the other alarming tax loads that Canadians are being asked to carry by other levels of government, provincial and municipal.

The experience of trust companies in handling estates shows that the expectation of heavy death taxation is frequently a dominant factor leading to sales of privately owned businesses. This point has already been made in the Senate, and some quotations were then made from the annual speeches of the chairmen and presidents of some of our companies.

This bill introduces, for the first time into Canadian life, a whole new philosophy of punitive taxation. The new gift tax rates are, in our opinion, unrealistic. They appear to be conceived as a prohibitive penalty rather than as an equitable tax related to the need to increase public revenues. It is our understanding that the principal function of a gift tax is to prevent avoidance of death tax by gifts made during the donor's lifetime. It is, in a sense, an advance payment of death taxes and it therefore seems illogical to fix the rates for this advance payment above the rates for death taxes. In our brief we have recommended that the rates should be no higher than the estate tax rates and that the provision in the existing law excluding all gifts made more than three years before the death of the donor be maintained. Furthermore, the cumulative formula relating to gift taxes imposes upon a Canadian resident who makes a taxable gift a tax accounting burden which he must carry with him to the grave. On his death the burden will be shifted to his executors and, where there is a tax deferral, even to his widow's executors to account for all the taxable gifts made during his lifetime—a most unnecessary administrative nightmare.

In conclusion we would like to emphasize that we are deeply concerned with the economic consequences of this new taxation. This concern is succinctly expressed in the quotation from the recent Report of the Ontario Economic Council, set out on page 4 of our association's brief:

> Those responsible for guiding the course of our nation's development need only look to history to find proof that nearly every past civilization has hastened its ruin through its dissipation of capital by taxation.

Those are my general comments. I should now like, if you agree, to ask Mr. Nelson to read the technical part of our brief.

**The Chairman:** Before that happens, are there any questions honourable senators would like to ask on the statement Mr. Heeney has made, or is it agreed that we should hear the technical presentation first?

**Hon. Senators:** Agreed.

**Mr. E. F. K. Nelson, Executive Director, The Trust Companies Association of Canada:** Honourable senators, I am starting at the last paragraph on page 10 of our brief.

[*Reading*]

Following the introduction of the budget resolutions it became apparent that they contained retroactive implications inasmuch as subsequent to the introduction of the resolutions but prior to the passing of the enabling legislation some persons would die without being able to determine precisely the state of the law which would apply to their estates. In addition, even after the legislation becomes definitive there will be the tremendous physical task of amending the wills of many people in order that they may be drawn in a manner to attract the minimum impact of federal estate tax.

In recognition of this situation there was included in Bill C-165 an alleviating provision which is contained in section 13(2) of the bill. In effect, it provides that in the case of persons who die after October 22, 1968, but before August 1, 1969, the exemptions which will apply to their estates will be the greater of the exemptions allowed under the act as they applied at October 21, 1968, or the sum of $20,000 plus the exemptions that are proposed by the bill.

We submit that equity would be better served if section 13(2) were to be changed to provide that an executor might elect, in the case of any death occurring between October 22, 1968, and August 1, 1969, that the estate be taxed under the act as it stood on October 21, 1968, or as amended by the enactment of Bill C-165.

The other provision to which we would draw your attention is one of considerable concern to us as professional trustees. It is the enactment of the new section 3(1a) under subsection 2 of section 2 of the amending bill which provides that upon the death of a person who has been the beneficiary of a trust created by his or her spouse which is exempt from gift tax and estate tax, the property comprising such trust is deemed to be property passing on the death of the donee and is included in his or her estate to determine the rates of duty which will apply. Other provisions in the act provide that the duty, as so determined, will be apportioned between the trust property and the other separate assets of the donee.

Under the general scheme of this legislation, if the estate tax or gift tax has been suspended during the lifetime of the spouse who was the donee under the trust, it is understandable that the property comprising the trust should attract taxation upon the death of the donee. However, it is our submission that the treatment of this property as if it were a property of the donee results in inequitable taxation of individuals and presents administration problems to trustees which are in direct conflict with their duties as have been evolved under the law pertaining to the administration of trusts.

We suggest that this concept of the national shifting of the property from one estate to another is an oversimplification and has been done without a full consideration of the actual situations which obtain in a number of estates. We might first point out that where a man leaves his property outright to his wife after this legislation has been enacted he will do so with full knowledge of the implications which will arise upon her death in so far as Federal estate taxes are concerned.

We submit that this combining of estates creates inequities in the taxing of individuals. While the taxing measure which you are considering is the taxing of an estate, the ultimate burden is, of course, borne by the beneficiaries and we think it is only proper to consider the ultimate effect of the tax on the beneficiaries.

It is not uncommon, where there are no children of a marriage and where both parties have separate assets derived independently of each other, for the spouses, after providing mutual protection for each other under their wills, ultimately to dispose of their separate assets to their respective blood relatives. Consider the case where the wife has a maiden sister and the husband has nephews and nieces being children of his brothers and sisters. It is more usual for the husband to leave the larger estate and for him to predecease his wife. If he provides a tax exempt trust for the benefit of his wife during her lifetime the assets of this trust are, upon her death, grossed with her separate assets in determining the rates of duty which are applicable to their combined assets. May we illustrate what we consider to be the inequities arising under this provision by the following example.

It is not unusual for a widow to remarry and, particularly if the remarriage takes place reasonably late in life, she is likely to survive her second husband and she may, for the balance of her lifetime, be the beneficiary under exempt trusts established by both her deceased husbands. If both husbands had had children by their first marriages and the

children are the ultimate beneficiaries under their respective fathers' estates, they will ultimately pay taxes based on the combined amount of the two estates, even though there is no rational basis for treating them as one taxable unit upon the death of the widow. A cursory review of estates in which our companies have been involved would indicate that this situation occurs frequently and often there is considerable disparity between the size of the two estates. One can have the situation where the beneficiaries of an estate of perhaps $100,000 or $200,000 will pay taxes at rates which are designed to apply to estates of a million dollars or more.

We mentioned previously that this same provision leads us to believe that we will face administrative problems which are in conflict with our duties as a trustee. The duties of a trustee must be executed meticulously and the trustee must account to the Court for disbursements made from the trust funds under his control. Perhaps the simplest application of this principle is that a trustee does not issue a cheque in payment of any account unless he is satisfied as to its correctness and this applies to the payment of estate taxes as well as any other accounts incurred.

As the act under consideration is now drafted, if the executor of the surviving spouse is a different person from the executor of the spouse who died first and a tax exempt trust is involved in the first estate, an assessment for tax will be prepared by the Department and levied against both executors made on the basis of information filed and decisions made by the two different executors independently of each other.

Let us refer to two such trusts as Trust A and Trust B. If the beneficiaries of both trusts happen to be the same, the problems can be reduced by obtaining the consents of such beneficiaries but again, there are sufficient instances of cases where the beneficiaries are not the same to pose a problem of considerable magnitude. In order to determine the tax, the assets comprising Trust A and Trust B must be valued. If the assets are principally marketable securities there is very little danger of a mistake being made in either trust. However, in many instances there are holdings of real estate, shares in private companies and other assets, the value of which might be a matter of opinion and very frequently involve prolonged negotiations between the trustee and the taxing authorities before a mutually agreeable valuation is determined. In some cases the matter will have to be referred to the court for adjudication.

The trustee of Trust A has no right to demand disclosure of information concerning the assets which are held in Trust B and as a matter of fact, it would be a breach of trust if this confidential information were disclosed to a stranger without the consent of the beneficiaries. This becomes particularly pertinent where the asset of the trust is a family company. We therefore can envisage that in certain instances we, as trustee, will receive an assessment levying duties upon a trust under our administration where it is factually impossible for us to determine the correctness of such assessment.

Upon the death of a life tenant the remaindermen of a trust are entitled to have the assets of the trust delivered to them within a reasonable time. Obviously if a tax clearance must be received before distribution a reasonable time would encompass the length of time which it would take a trustee with ordinary diligence to obtain that clearance. We are now confronted with a situation where this period of time is not determined by our diligence but it is determined by the diligence or lack of diligence of the person handling the affairs of the spouse who survived. In certain instances it is conceivable that there is no one sufficiently interested in the affairs of the surviving spouse to take the necessary steps to provide the estate tax authorities with even the information that he or she left no assets of any value. We are concerned that this can lead to situations where the administration of Trust A will drag on indefinitely. It is unlikely under the circumstances that any court would hold the trustee responsible but as a practical matter the beneficiaries will undoubtedly associate the delay with his administration of the trust and their relations will deteriorate.

Particularly, as we feel there is no logical justification for the proposed method, we submit that it is a more reasonable approach to consider that the taxing burden always remains with the exempt trust but this burden is merely suspended while the surviving spouse is enjoying the benefits of the trust. Upon he or she ceasing to enjoy those benefits the trust would then become taxable as a separate entity. In determining such taxation any benefits which the testator had given outright at the time of his death would be brought into account for determining the rates applicable to the trust.

If trusts are taxed in this manner, we believe that it would permit a wider application of the principle that benefits between spouses should be tax exempt. We specifically refer to the fact that under the proposed legislation trusts which contain a clause which provides that benefits are diminished or cease upon remarriage are not tax exempt. In a statement issued by the Minister of Finance on December 31, 1968, he indicated that it was not practical to exempt such trusts because this would involve taxing the widow upon remarriage as though she had made a gift of the assets in the trust. With due respect, we submit that it is not the widow who would be taxed but that it would be the trust as such and the burden would be transferred to the ultimate beneficiaries of the trust. It would be a relatively simple matter that such a trust become taxable on the death or remarriage of the surviving spouse, whichever first occurred, and at the same time would extend the same equitable principles of taxation to such trusts.

We understand that there is no intention to levy tax on a trust during the lifetime of a surviving spouse where he or she is the only person who is entitled to receive any portion of the capital or income of the trust during his or her lifetime. We have some concern as to whether this intention is fully implemented under the present wording of Section 3(1)(b) of Bill C-165 and would refer you to its opening paragraph. We are concerned that the present language might lead to an interpretation that the interests of all the beneficiaries under the trust must be absolute and indefeasible at the time of its establishment. We would suggest that this should be clarified by adding such words as "in which the interest of the surviving spouse" to "by his will" on line 16 so that the amended subsection would read—

> (b) the value of any gift made by the deceased whether during his lifetime or by his will *in which the interest of the surviving spouse* can within six months, etc.

Canada is signatory to a number of bilateral tax conventions, intended to eliminate or reduce the double imposition of death taxes. A usual feature of these conventions is a limitation of the period, following the date of death, during which a claim for foreign tax credit or refund may be made. In most cases the period is six years from the date of death, although the Canada-France convention provides for only five years.

Bill C-165, in one kind of situation, would seem to nullify the purpose of these conventions. This is where a trust is involved, in which the spouse of the deceased has an absolute and indefeasible interest and which, therefore, would not be taxable under the Bill. If the trust includes foreign property, the other country, signatory to the convention, can impose tax at the time of death but would not do so again on the death of the surviving spouse, the life tenant.

Canada, on the other hand, would not impose tax on the first death, but would do so on the death of the surviving spouse. Should the surviving spouse die before the limitation expires, presumably the foreign tax credit could apply but, if the surviving spouse outlives the period of the limitation, the foreign tax credit would be lost.

In this shrinking world, many estates or more properly in this case, trusts, will be invested in greater or lesser degree in foreign, probably American, securities. The problem therefore is of some significance and the potential impact on the estates concerned could be serious.

The apparent solution is to obtain a modification of the tax conventions, in which Canada is involved, seeking an extension of the limitation, for Canadians at least, to the lifetime of the surviving spouse. We draw this to your attention in the hope that practical steps can be taken to overcome the difficulty.

Companies have expressed concern to us about the status, under Bill C-165, of voluntary payments by an employer to the widow of an employee.

Section 7 of the Estate Tax Act is amended by section 3 (1)(a) of the bill, to provide that where, within six months or such longer period as may be reasonable in the circumstances, the value of any property passing on the death of the deceased to which his spouse is the successor be established to be vested indefeasibly in his spouse, it would qualify for the exemption from tax of property transferred between husband and wife.

The phrase "or such longer period as may be reasonable in the circumstances" does not make it clear that the payments under discussion, which would come under section 3(1)(l) of the Act, are of a type which would be exempt from estate tax.

Voluntary payments made by an employer to a widow of a deceased employee may not have been contemplated until long after the employee's death. We suggest that it is well within the spirit of Bill C-165 that the exemption should be clearly written into the law and not be subject in each case to administration decision.

Mr. Chairman, there was an additional piece which is not included in our brief. I believe it was our president's hope that this might be presented by Mr. Burn. It would take about two minutes.

**Mr. K. Burn, Q.C., General Manager, General Counsel, Canada Permanent Trust Company, Toronto:** Mr. Chairman and honourable senators, after the preparation of our submission of March 13, a further matter was brought to our attention, to which we would respectfully direct your consideration.

We would ask you to consider the example of where a husband leaves his estate in trust for his wife during her lifetime and as there are no children of the marriage, after her death one-half is to be paid to nephews and nieces and the other one-half to designated charitable organizations. We would hope that it would be the intent of the legislation and the understanding of the Honourable Senators that under such circumstances, there would be no estate taxes payable until the death of the wife and that upon her death the one-half of the estate passing to nephews and nieces would be taxed and the one-half passing to charities would be exempted. We find this result difficult to justify under the wording of Bill C-165 as correlated with the present provisions of the act. There is no problem concerning the exemption from duties during the lifetime of the widow. Under section 2(2) of the amending legislation the trust estate shall be deemed to be property passing on the death of the widow. By section 12(4) of the Bill the nephews and nieces and charities are defined as successors of the deceased widow.

However, in order to qualify for the exemption to the charities you must examine section 7(1) (d) of the present Act, the opening words of which read as follows:

> "the value of any gift made by the deceased whether during his lifetime or by his Will..."

In view of the fact that the tax is applicable on the property passing on the death of the widow we do not believe that as the provisions presently read an exemption can be claimed as the gift in this instance has not been made by the deceased as it was made under the Will of her husband.

In reiteration of the comments made in our main submission, we feel that this is another inequity resulting from the notional shifting of the property from one estate to another.

**Senator Connolly (Ottawa West):** Mr. Chairman, while it is fresh in my mind, may I put a question to the second last witness? Mr. Nelson, just towards the end of your presentation, you talked about a problem arising out of the fact that the company which employed a spouse paid an allowance to that spouse's widow after his death. Would those allowances, if made after his death, not be taxable in her hands as income?

**Mr. Nelson:** Yes, I would assume they would be, sir.

**Senator Connolly (Ottawa West):** If they are income to her and taxable to her—you say this act puts them in his estate as well?

**Mr. Nelson:** Perhaps I answered the question hastily. May I refer you to one of our experts?

**Mr. Burn:** In the present legislation it is not uncommon for estates to be taxed as both income and for estate duty purposes. Presumably that could continue, under certain circumstances, in the future. One of the examples I have in mind would be, if there was a defined pension for a widow upon death of her husband. Under the previous act, as it now stands, that would be exempted.

**Senator Connolly (Ottawa West):** From the estate?

**Mr. Burn:** From the estate.

**Senator Connolly (Ottawa West):** But it would be taxable as income in her name?

**Mr. Burn:** Yes, but let us say that, five years after the date of death, the company, in the goodness of its heart, decided that the pension amount was not sufficient and paid a supplementary pension, it is suggested that this was not absolutely and indefeasibly vested in the widow within a reasonable time after the death of the spouse and presumably could be brought into her estate taxes.

**Senator Connolly (Ottawa West):** Under this bill?

**Mr. Nelson:** Yes.

**Senator Connolly (Ottawa West):** Under normal circumstances you would expect that additional amount of pension that was paid to her to be taxed as income in the year in which she received it.

**Mr. Nelson:** It would be subject to income tax, yes.

**Senator Connolly (Ottawa West):** In any event, it would be subject to income tax.

**Mr. Nelson:** That is right.

**Senator Connolly (Ottawa West):** Would you point out the section of this bill which says that conceivably that additional amount would also be added to the estate of the deceased.

**The Chairman:** I do not think the witness means necessarily, because, if she spent it and did not have it when she died, it would not be any part of her estate.

**Mr. Nelson:** No. With due respect, sir, the example as it now stands says that, in order for this gift to be exempt, it must be vested absolutely and indefeasibly in the widow within six months after the date of death or within reasonable time thereafter. What is within a reasonable time thereafter becomes a question of judgment. The example I have quoted—and I do not know whether my fellow expert has some other examples in mind—has become increasingly common practice, and we feel it is open to the assessors to say that, if this benefit arises ten years after the date of death, that is not a reasonable time.

**Senator Aseltine:** Do you think it would be?

**Mr. Nelson:** I think the nature of the gift itself is reasonable, sir, because it cannot be foreseen at the time of death. No one can project what the cost of living might be.

**Senator Beaubien:** When you say the gift might become part of the estate, do you mean, for example, that five years after the man died, if the widow had not enough to live on and if the company which had employed her husband gave her $4,000 a year, do you mean that that amount might be capitalized as a capital sum bringing in $4,000 a year and be brought into the estate that way?

**Mr. Nelson:** We feel that the act is open to that interpretation.

**Senator Beaubien:** They might say that it was 6 per cent of $70,000, or something like that, and would tax it on the capital value of $70,000.

**Mr. Nelson:** No, it would be only any increase that was made in the payment that was established at the date of death.

**Senator Beaubien:** Let us say the increase was $4,000. That might be capitalized as $70,000.

**The Chairman:** Why do you call it an increase or agree that it is an increase? It may be another payment.

**Senator Beaubien:** Well, it would not matter; it would be the same thing, would it not?

**Mr. Heeney:** If the company had given a pension of X dollars with a widow's benefit, under the proposed law the widow would pay no tax. If there is something which, perhaps for inflation or other reasons, would come later, we feel that it would probably be within the Minister's discretion to grant it. We think it is in the spirit of the amendment. We feel that it should not be taxed.

**The Chairman:** If you follow that alone, if the company has any doubt, they may put her on the payroll for this amount of money. So that you avoid the question entirely.

**Senator Connolly (Ottawa West):** In effect, I would submit that that is what they are doing. This is why I wondered about the objection, because, in any event, the estate passing from the husband to the wife on the husband's death is exempt from tax under this act. Then what does it matter whether it is added to the husband's estate? I would suggest that the clear interpretation in the background is that it would be taxable as income in the wife's name and, if it were to go into the husband's estate, it would not make any difference to the wife. Conceivably, it would make the difference, if the wife saved it all and it was transmitted later to the children.

**The Chairman:** No, it may be that what they are concerned about is that in some fashion, although I do not appreciate just how now, this additional payment, being the capitalized amount of it or the valuation amuont, might increase the aggregate net value of the donee-spouse's estate, and the only effect there would be on rates. Is that not right?

**Senator Connolly (Ottawa West):** And in respect of the next generation.

**The Chairman:** Yes, but, first of all, you have to take the first hurdle. How in those circumstances can it be considered as a gift arising from the husband?

**Senator Connolly (Ottawa West):** That is the first question, yes. I just wonder whether there is really any serious objection so far as the witnesses are concerned.

**The Chairman:** Well, senator, I think it is serious because they presented it. I think it is being presented on the basis not that this is what would occur but that the language in the bill requires clarification.

**Senator Connolly (Ottawa West):** Would they mind pointing out the section again.

**Mr. Heeney:** This case was brought to our attention by a number of financial institutions, members of our association, who were concerned about the future of it. That is how it came to our attention.

**Senator Connolly (Ottawa West):** I do not quarrel with the idea, except to say that I wonder whether it is well founded. Could I have the section of the bill which gives you the concern.

**Mr. Heeney:** Section 7 of the Estate Tax Act, amended by section 3 (1)(a) of the bill.

**Senator Connolly (Ottawa West):** That is page 22 of the bill, is it?

**Mr. Heeney:** Perhaps a better reference in this case might be section 3 (1)(l) of the act.

**Senator Connolly (Ottawa West):** I hope there is a better reference, because that first reference is three pages long.

**Mr. Burn:** May I say a word? The section dealing with these voluntary death benefits has not been changed. It is not in the bill which is before you. It is in the present legislation. It is section 3 (1) (l). It subjects to tax voluntary employer payments and other death benefits. Our difficulty is that these voluntary death benefits are usually made to widows. The amending bill which you have before you exempts from estate taxes the value of any property passing on the death of the deceased to which his spouse is a successor, that can within six months after the death of the deceased, or such longer period as may be reasonable, be established to be vested indefeasibly in the surviving spouse.

We find by practice, and there are certain income tax implications in this, that corporations, when they vote a continuing allowance to a surviving widow, usually couch the resolution so doing in such a way that its continuance is at the pleasure of the board of directors. In other words, it is very seldom that you see a fixed amount or an absolute commitment for life.

Under those circumstances, we think it is difficult to argue, while it is expected that this is going to continue, that you can say, categorically, in view of the resolution, that that capitalized amount is vested absolutely and indefeasibly in the window within six months after death. That is why we say, "or within such reasonable period".

**Senator Connolly (Ottawa West):** In the case you illustrated so clearly, since there is not an indefeasible vesting in the widow because of the resolution of the board of directors you then as a trustee would say that this is income to the widow and would be taxable in her hands.

**Mr. Burn:** It is income to the widow but there would also be the question whether it is taxable by virtue of section 31(1). But then does it qualify for the exemption because it is going to a surviving spouse?

**Senator Molson:** If the resolution of the board of directors is changed with regard to such ex gratia payments, that should correct it.

**Mr. Burn:** That would take care of it for estate tax purposes, but then there is the possibility of the Income Tax Department saying that this widow received an undertaking from the company that she would be paid $4,000 for the rest of her life that it was taxable for its capitalized value in the year in which it was voted.

**Senator Connolly (Ottawa West):** Surely they never tax for income tax purposes on the basis of capitalized value. Surely it is taxed on the amount of income paid in the year.

**Mr. Burn:** In practice that is the case but one must always keep in mind the doctrine of constructive receipt.

**The Chairman:** But that refers to income.

**Mr. Burn:** Receipt of a benefit.

**The Chairman:** If I get $4,000 this year and I know I am going to get $4,000 next year, are you suggesting that they can capitalize that and that that constitutes my income in the first year?

**Mr. Burn:** Well, the Income Tax Act covers the taxing of a death benefit. How do you measure the benefit? It is suggested by some tax people that if in a year a company makes an absolute and indefeasible decision to pay a widow for the rest of her life, that that decision has resulted in a benefit to her in that year even though it is payable over future years. Nevertheless she has benefited by that decision in that particular year and that is where the danger lies.

**Senator Connolly (Ottawa West):** I would like to be on the other side in that, and I would like to have the chairman as my counsel.

**Senator Phillips (Rigaud):** Have there been any representations made to the committee of the House of Commons?

**The Chairman:** There was not any hearing in the House of Comons because the bill was considered in committee of the whole. The only place submissions might have been made was in the department or to the minister. I assume that was done.

**Senator Connolly (Ottawa West):** Could I have one other question. I ask this because I have not read the pertinent sections of the act. Under the new regulations you can make a gift of $2,000 and if you go over that you begin to come into this higher rate of gift tax. Now at the date of death of the donor the amount of those gifts are included in his estate for estate tax purposes.

**The Chairman:** Not to a spouse.

**Senator Connolly (Ottawa West):** Anything taxable over $2,000. If you give $2,000 it is included in the value of your estate. Now, what I want to know is is it clear that you get the benefit of the estate tax paid on the gift which is now assimilated into the estate after the death of the donor?

**Mr. Burn:** First of all I think that all gifts made within a three-year period prior to the death of the donor are brought back into the estate for estate tax purposes unless they can qualify for the exemption on the basis that they were made usual and customary and in keeping with the size of the man's income. That is within the three-year period. For purposes of establishing the rate only the cumulative gift size is added back to the estate, but that is only for the purpose of establishing the rate and the cumulative sum is only the sum by which it exceeds the $2,000.

**Senator Connolly (Ottawa West):** Now I can ask my precise question. Let us say for the sake of argument that a man makes a $10,000 gift and the rate is 35 per cent. What is added back into the estate, the $10,000 or the $10,000 plus 35 per cent because in effect he has divested himself of $10,000 plus 35 per cent.

**Mr. Burn:** In establishing the rate the cumulative gift sum plus the tax plus $20,000 is added to the estate. Because the rates on the rate schedule start at $20,000—that is in the new rate schedule.

**The Chairman:** But it is just a question of putting it in and taking it out. It does not really affect the situation. You have the rate schedule with $20,000, but there is no tax payable if you look at it on a commonsense basis and this is a question of putting it in and taking it out.

Any other questions? We still have some material here to digest before dealing with the departmental officials.

**Senator Walker:** At the bottom of page 4 you have the following:

> Those responsible for guiding the course of our nation's development need only to look to history to find proof that nearly every past civilization has hastened its ruin through its dissipation of capital by taxation.

Is that a quote, Mr. President?

**Mr. Heeney:** That is a quote from the report of the Ontario Economic Council.

**The Chairman:** Mr. Heeney, the moment you accept as a principle of a policy that gifts and gift taxes should be integrated with estates and estate taxes then, some of the things you are talking about are things that inevitably follow.

**Mr. Heeney:** That is right. It is the principle of integration that is the basic problem.

**The Chairman:** By integration it is sought to phase out the field of gifting and to preserve the estate and to have it accountable at the time of death or at the second stage. I suppose that is not necessarily incidental to the principle of integration.

**Mr. Heeney:** I suppose that is so. It is the principle of integration we are attacking. If you accept the principle of integration these other things follow from that.

**The Chairman:** You understand that on questions of policy the Government has made certain decisions and this is in here. What we have to decide is, firstly, whether we should challenge that principle of the policy, and, secondly, whether we can. These are the two questions. Then, if we do, what do we substitute?

**Senator Connolly (Ottawa West):** And the second question is not easy.

**The Chairman:** No, it is not. However, there are other areas we can look at.

**Senator Phillips (Rigaud):** Mr. Nelson, has your association given any consideration to the question of residents in the Province of Quebec with respect to the provision of the making of gifts between spouses?

**Mr. Nelson:** No, we have not, sir, so far.

**Senator Phillips (Rigaud):** You have not considered that?

**Mr. Nelson:** Not so far. I am sorry. May I elaborate on that for a moment? Our association has not only a national framework but also ten provincial sections, and sometimes I tend to forget that when I answer hastily. Mr. Allison, being posted in Montreal, knows about the activities of the Quebec section.

**Senator Phillips (Rigaud):** I should like to mention that in so far as the Chartered Accountants' Association of Canada is concerned, though it is a national institution—and this is not by way of criticism, but merely for the record—it did give consideration to the particular problems of the province in relationship to that particular question.

**Mr. J. K. Allison (Assistant General Manager, Montreal Trust Company):** Of course, we recognize the peculiar situation that spouses are placed in in the Province of Quebec. I was informed this morning that a bill has received first reading in the Quebec Legislature amending the Civil Code; and, again, I was informed that the article prohibiting the conferring of benefits on consorts will be removed from the Civil Code.

**Senator Phillips (Rigaud):** I have before me Bill 10, to which you refer. Also, Mr. Chairman and honourable senators, I wish to read into the record that I am informed that the Bar of the Province of Quebec has objected to provisions of Bill 10, and that as of the present the National Assembly of the Province of Quebec does not propose to proceed with this bill.

**The Chairman:** Mr. Heeney, another general question. There is a very satisfactory provision in this bill which provides for spouses' exemptions, and I think you would not find any place in Canada where there is not support for it.

**Mr. Heeney:** In all fairness, I think we should have given the bill credit at the beginning for that.

**The Chairman:** That is what I thought. So, we start off with something that is very beneficial and welcomed by everybody. Then we have the minister's statement that he will lose so much revenue at a time when he needs revenue and cannot afford to give up that much and, therefore he has to replace it somewhere else. He makes his next decision, where he decides he is going to replace it, right within the area where he has created the loss of revenue. That is the first principle that he has made. The second one is that he has said that these rates will produce exactly the amount of income which is lost by reason of these exemptions. It is pretty hard to fault that as a principle, is it not?

**Mr. Heeney:** I think it is rather difficult to fault that in principle, but it is an awfully complicated way—this is one of our concerns—of going about it, we think, from an administrative standpoint, and from our own standpoint of trying to act as executors and trustees. Our tax people tell me with regard to some of these things it is difficult to see how they are going to be resolved, and from the standpoint of estate administration it will slow up the wheels of progress and will make it more costly, if you take into account the cost of administrators of estates and tax returns, and the estate tax does not provide that much money net; and if more cost of administration is added on the part of the Government and more cost on our part, the meat in the sandwich gets a little thinner all the time.

**The Chairman:** The moment you say it is a complicated way of doing something, this principle the minister has decided on, you have to find a way, within the limits of the field, to raise the revenue that he is losing. The moment you say it is complicated, the

next question is: Have you an easy and more direct way of suggesting how it might be done?

**Mr. Heeney:** I think we could make some suggestions that would be helpful.

**The Chairman:** For instance?

**Mr. Heeney:** For instance—I do not have one at the moment, but I think perhaps Mr. Allison or Mr. Burn could make a suggestion.

**Mr. Burn:** In our brief we make a great deal of the fact of this notional shifting of the tax on a trust estate. At first glance, we thought it was inserted to minimize any avoidance or evasion of tax. Upon reflection, we came to the conclusion it did not have that effect, but it does place what we consider a very difficult burden upon trustees, and it would be our submission that the same result could be obtained, as we say in our brief, if this tax is considered to be suspended while the wife receives the benefits from it and then, upon her ceasing to receive those benefits, the tax then descends upon the original estate. This is the same concept as is used under, particularly, our present provincial acts, but to some extent in the federal act—what we call an interest expectancy, where a man dies, and there is an entitlement to receive something in the future and the incidence of taxation is postponed to that time in the future, but still remains with his estate. We suggest this concept should be used in relation to the period when the wife is receiving the benefits; but the control of the administration of the estate always rests with the person charged in provincial law with that control—with the executor.

**The Chairman:** You used the word "suspended." Other people have called it a deferral of tax. I am not sure it is either, because it does not carry through completely. If the wife gets outright gifts and spends them, they are not part of the estate when she dies.

**Mr. Burn:** That is correct.

**The Chairman:** And what comes into her estate on that theory, under the spouse exemption, is value, and it is value at the time of her death. Therefore, it may be lower or higher. So, you are not necessarily dealing with the same quantum of dollars.

**Mr. Burn:** We would have no objection to that re-evaluation in the husband's estate at the time the interest of the widow ceases.



**The Chairman:** You could not go back. It would be even more difficult to go back to the husband's estate, open it up and put some of these things in there at that time.

**Mr. Burn:** I am simply referring to the case where there has been a trust maintained and for many reasons—I will mention a simple one, the illness of a wife—and it is preferable to have the estate remain in trust. Upon the cessation of that trust the assets remaining in trust could be valued and, for the purpose of determining the rates, if there are benefits given on the husband's death, they could be added back in.

**The Chairman:** I follow what you say.

**Senator Aseltine:** I do not think I would like to be an executor.

**The Chairman:** If you are smart, you will not be.

Are there any other questions?

**Senator Walker:** Are there any submissions of amendments you have worked out, Mr. Nelson—that your association has worked out to implement your suggested changes?

**Mr. Nelson:** Do you mean, amendments to the bill?

**Senator Walker:** Yes.

**Mr. Nelson:** We did make some attempts to do this, but they are not included in the brief.

**Senator Walker:** We shall have to give these a great deal of consideration. Would that be helpful, Mr. Chairman?

**The Chairman:** Yes, it would, but we shall have to test these proposals or suggestions that are being made here by getting the departmental viewpoint on them. We shall have to obtain the department's interpretation, but in the end, mind you, we shall exercise our own judgment.

**Mr. Nelson:** I suppose, Mr. Chairman, that although we are essentially unhappy about the economic and philosophical aspects of this bill, we are also unhappy about the mechanics of it.

**The Chairman:** I think you would find most people you question are unahppy about the substantial increase in rates, but if we realize that the money has to be provided then within those limits we have to see how we can make the bill workable.

**Mr. Nelson:** I suppose one could say that, but I do point out that the damage to the taxpayer does seem to be out of proportion in respect to what the minister gets.

**Senator Walker:** Whether or not we accept the suggested amendments I think it would be very helpful if they were incorporated in a draft which we could consider.

**The Chairman:** Do you want to supplement their submission by presenting their ideas in draft form?

**Senator Walker:** Yes.

**Mr. Nelson:** We would be happy to take a whack at it.

**Senator Fergusson:** I should like to ask whether the proposals suggested by Mr. Nelson in respect to the bill that is before us were submitted to the minister at the time representations were made to the minister?

**Mr. Nelson:** I do not know whether I can answer that accurately from memory. We made quite a number of submissions on this. Of course, the thing first appeared in the form of resolutions in the house, and we wrote to the minister at that time. There were other things in his budget speech. We had several exchanges of correspondence with the minister. Later on we sent him a three page letter under date of December 24, 1968 on the estate tax proposals. We had consultation with the officials of the department, and I think probably in those discussions with the officials we covered in one form or another most of the technical problems that we have outlined. But, you must remember that that was at a difficult stage for them, because it was at the resolution time, and one can only talk at that stage to officials about whether or not the budget resolutions implement what the minister's budget speech appeared to say. You cannot ask them to change policy. So, we did not go beyond that point with those people, but we did with the minister.

**Senator Fergusson:** I gather that these were not presented to the minister?

**The Chairman:** Do you mean in the form in which they are presented here?

**Mr. Nelson:** This is the first time we have made this detailed presentation.

**The Chairman:** Time is running along, and we have fixed today for the hearing of various representations, and we are certainly going to hear them before the day is over.

**Senator Walker:** Can we call back any one of these people if we feel that is necessary, Mr. Chairman?

**The Chairman:** Yes. I suggest that we adjourn now until 2 o'clock when we will continue with the Canadian Bar Association. If we have not finished by the time the Senate sits, we will adjourn again until 4.30 in the hope that the Senate will rise by that time. In some fashion or other we are going to hear all the people who were invited here today.

**Senator Phillips (Rigaud):** There is some embarrassment for those of us who are members of the Legal and Constitutional Affairs Committee, Mr. Chairman in that that committee is meeting at 2 o'clock. I wonder whether it would be possible to hear the representations of the Canadian Bar Association at 4.30?

**The Chairman:** Mr. Merriam, I do not intend to impose any restriction upon you in the way of time, but how long do you think your presentation will take? In making that estimate you must allow for a lot of questions from the committee.

**Mr. R. Merriam, Secretary, Canadian Bar Association:** Of course, that will depend upon the extent of the questions, but I would hope that the committee will agree to give us half an hour.

**The Chairman:** I will double that. If you say half an hour, then I think you will take an hour.

**Mr. Merriam:** You are probably more accurate than I am, Mr. Chairman.

**The Chairman:** In order to be sure that we have a full attendance, because there is a conflict with another committee meeting, I suggest that we adjourn until 4.30 this afternoon, at which time we will sit and listen to the Canadian Bar Association and the Canadian Construction Association.

The committee adjourned until 4.45 p.m.

Upon resuming at 4.45 p.m.

**The Chairman:** Honourable senators, we propose to hear at this time the representations of the Ontario branch of The Canadian Bar Association. Mr. R. Merriam is here to make the introductory remarks and he will introduce the other members of the panel, if I may call it that.

**Mr. R. Merriam, Secretary, The Canadian Bar Association:** Mr. Chairman, honourable senators, first of all may I say to you how much we appreciate the opportunity that you have accorded us to be present and to make our representations to you, particularly your willingness to sit at this hour of the afternoon so that our men would not have to make a further trip to Ottawa.

The brief which we propse to present, Mr. Chairman, was prepared by the Wills and Trusts Section of the Ontario Branch of the Association.

In a moment we will relate the originally submitted brief to the green covered brief which you have in front of you.

The Wills and Trusts Section of the Ontario Branch is made up of practising lawyers, all of whom have had much experience and are continually engaged in the field of advertising clients with respect to estate matters. They have all had wide experience in that field and are all speaking from the point of view of their practical experience.

The brief which I filed with Mr. Jackson last week, and which was distributed to members of the committee, was the brief as it was originally submitted to the Minister of Finance in February. That was filed with this committee because at that stage the members of our association, who are appearing before you this afternoon, had not had an opportunity to revise it in the light of certain amendments made in the House of Commons and also because they did not have time to make the few additions to it that they had come up with as a result of further study which they had been able to give to the bill subsequent to preparing the brief for presentation to the Minister of Finance.

The brief, then, that you have had distributed to you this afternoon in the green covers, which I see all honourable senators now have, is the brief to which we will be speaking this afternoon. It is not our intention, Mr. Chairman, unless you so direct, to read the brief, but we would like to speak to the brief and, for that purpose, I would like to introduce to the members of the committee, if I may, Mr. J. Alexander Langford of Toronto, who is the Chairman of the Wills and Trusts Section, Mr. Fredrick D. Baker of Toronto, who is the Vice Chairman of that section, Mr. F. Douglas Gibson of Toronto and Mr. Francis J. Hamill of Toronto. All of these gentlemen are members of the Law Society of Upper Canada and are practising lawyers in Ontario.

Mr. Chairman, I should now like Mr. Langford to speak to the brief. I am sure that, if there are any questions that honourable senators wish to ask at any time during our presentation, one or other of the four gentlemen whom I have introduced will be only too delighted to answer them for you.

**Mr. J. Alexander Langford, Member, The Canadian Bar Association:** Mr. Chairman and honourable senators, before beginning I would like to deal with the question as to whether the National Bar Association will be presenting a more general brief. The Wills and Trusts section is normally dealing with provincial matters and so it is in ten sections. The section is not too active on the national level but when the Estate Tax Act is being amended something has to be done. I do not think there will be any other submissions by the Bar Association. We will be talking to you from the experience of common law lawyers and we must defer to civil law lawyers in other matters because we do not pretend to be authorities on civil law. We would have to refrain from comment on that aspect of it.

This purports to be a brief presented by The Bar Association and it is true that it is being presented by The Ontario Branch.

The three parts into which we propose to divide our presentation are based on a logical division. First of all we would like to address our comments to the breaking-in period involved in this new legislation. It is quite true to say that as far as planning is concerned lawyers are going to take quite a while learning how to apply this. There are a few specific matters in the bill which in our submission ought to be the subject of change having regard to that necessary educational period. I am going to address you on those factors.

Secondly, when we have finished being educated in our profession there still remains a number of testimentary provisions which in our submission people need to be able to use and which the present bill renders unusable by imposing onerous taxes. Mr. Gibson will present submissions dealing with a number of small technical changes which we would suggest should be made in order to promote the use of these provisions.

Finally there are some very technical matters which may be the result of oversight or may be deliberate. In any event in our submis-

sion they will work out in a capricious manner and in our submission there are easy amendments which can be made to improve them. Mr. Baker will deal with those.

We abstained from making comment on the policy of the bill in that we felt that such comments should not be made about these matters by an association which includes government tax lawyers as well as non-government tax lawyers. Our association includes partisan supporters and partisan opponents of the government so we do not feel it is expedient to enter into the politics of the bill. We are simply dealing with the ordinary problems which ordinary lawyers are going to find in practice.

Now we would first of all submit on this question of the breaking-in period that the preparation of wills is a pretty everyday task for an ordinary lawyer. All of us can think of matters which comprises a field for experts or for a few lawyers, but the drawing of wills is an everyday matter for ordinary lawyers and for notaries across the country. We have to assume therefore that there is going to be a certain passage of time before these people can adjust themselves to the new provisions. Ordinary lawyers, and no one of us claims to be very different from that, make use of well-known texts from which we can draw precedents or we have our own collection of precedents. If you think about it all of these sources are now out the window and we have to revise them. The authors of well-known texts are presently busily engaged in a revision. We are all reviewing our own sources and our own precedents, but this will take time. When a client comes in to see us we will have to say we have not had time to deal with all the implications yet and when the bill becomes law we will still be in that position for a while. The best judgment on these matters must mature over a period of time.

If we are not fairly generous in the way the bill is drawn in allowing a certain period of time for education, then I would submit that the minister's intentions are not working out. He really intended when husbands leave property to wives there should not be tax on that property, but unless the gift is drawn in just a certain way the intended exemptions will not apply. The minister really intended to deal fairly and generously with children who receive modest gifts, but unless the gift is drawn in a certain way the result will not be achieved. There are two particular points which are involved in this whole matter. The first is the provision now contained in the bill in the last clause, Clause 13 of the bill which deals with the problem of implementation. It is a transitional clause and sub-clause 2 says, and may I give you a brief summary of it, that in the case of people who die prior to August 1st of this year the estate will be either taxed on the basis of the old exemptions on the basis of the new exemptions. That is not quite accurate. It really says that the old exemptions have to be more than $20,000 bigger than the new ones before they are allowed to use the old ones. It is not an even comparison. We suggest it is not generous enough. In the first instance August is too soon. We would suggest that the Treasury would not really be hurt if perhaps it was extended for one year after the date of coming into force of the bill.

**Senator Phillips (Rigaud):** Extended by way of option?

**Mr. Langford:** By way of option so that you could use either one or the other. We are not suggesting you could just use the old bill rather than the new bill. The new rates will still apply. But the new exemptions with which the minister has concurred do require technical language and for a while this technical language is not going to be found in wills. At least one should have the benefit of the kind of exemptions one could get before without worrying about the new technicalities. In many places across the country hundreds and thousands of wills are gathering dust awaiting the death of the testator. Some of these cannot be changed because the people have become senile and cannot change the will. These wills were drawn before the budget, and they were not drawn to take advantage of the provisions. I suppose most of us could endeavour to get our clients to come in to change their wills, but we are a little diffident about doing this because it might appear that we are calling him to change his will so that we could ask him to pay us another fee. We really are a little diffident about that. To some extent we may be able to do something about it, but sometimes people will not be able to change their wills. You can count on it that for years and years wills will come into force which were drawn before the budget and do not take into account any of these provisions.

To a very limited extent in the common law provinces it is possible to change a will after someone has died. The limited extent is

this, that if all the beneficiaries agree, without exception, and they are all adult and capable of agreement, then you can make a change. If some people who are beneficiaries are not adult or are not born yet, we have in all the common law provinces, save Newfoundland, Variations of Trusts Acts which permit the court to give consent. The condition is that if all the adults agree, the court can give consent for minors or people under disability. Therefore, in a very limited class of case it is possible to change a will after death.

We would submit that if a will is changed after death and before the time of assessment, the tax ought to be applied on the will as changed, giving effect to the changes. It should not be, once you have legally changed a will, that you should apply the tax to what has become a purely artifical situation, the text of the will at the time of death. I would be prepared to advise a client that he could win an appeal if the will had legally been changed and the federal department wanted to tax on the basis of the text of the will before it was changed.

**Senator Aseltine:** Is there any legislation allowing that to be done? I do not know of any.

**The Chairman:** Yes, we have a Variations of Trusts Act in Ontario.

**Mr. Langford:** I think you are from Saskatchewan, senator, and you have it in Saskatchewan.

**Senator Aseltine:** Yes, I guess we have.

**Mr. Langford:** I do not know whether it is always called the Variation of Trusts Act, but I know it is so called in most of the provinces.

The present bill does contain something like this. We did not think this up on our own. The present bill, again in a very limited class of case, seems to envisage the possibility of change, and in the same section 13, the very last paragraph of the bill, is a very hard clause to interpret, but we have come to the conclusion that what it means is this: Suppose there is a man who dies, leaving his property to trustees to pay income to his wife for life. That is the case where the minister has said, "No duties." But let us suppose the will goes on and includes other provisions the effect of which is to take away the exemption, or there is a clause which would lower her income if she married again, or to permit the trustees to dip into the capital for the benefit of children, the presence of the other clause would take away the exemption, and the clause seems to say that in the case of persons dying before August 1 and in the case of gifts to a wife, if people are able to make a legal change, the tax will be applied as before. By inference, the draftsmen are saying that in any other sort of case, say after August 1 or to anybody else except the wife, you are not allowed to change it as far as they are concerned, and they would intend to tax on the text of the will as it stood at the time of death.

I suppose another point to draw to your attention is the possibility of anything being a fact. With regard to dependents' relief or family maintenance legislation, it may be the case that not everyone agrees to vary the will, but the court orders that, notwithstanding what the will says, payment shall be made in some other manner. That is the way in which a will can be legally varied, but it is our submission, regardless of the manner of the variation, if the provincial law says a property is going to be distributed in some way different than the way in the will, it is the actual manner of distribution which, in our submission, should govern the tax. So we would suggest replacing that last paragraph by a declaration of rights provision by which it would be simply said in perpetuity where the provincial law requires that the property be distributed in a particular manner and a manner different from the manner laid down in the will, that should be the manner which governs.

**The Chairman:** Are you suggesting that under the Dependents Relief Act of Ontario that a wife who was not adequately provided for, having regard to her position in life, under the will that if she applies to the court and the terms of the will are varied so as to give here what the court thinks is an adequate amount of income, that that would not qualify under 3 (1) (a) of the bill?

**Mr. Langford:** It is our opinion, Mr. Chairman, that it does not necessarily qualify under the wording contained in the bill. We believe, however, that if that were the exact circumstance the department is presently minded to interpret the statute in such a way as not to impose a tax that way. Their intention might some day be upset by a decision of the court which does not care much about their intention, but cares about the wording of the bill as you pass it.

**The Chairman:** Would not that be property passing on the death of the deceased to the wife even if the court amended the will in that regard?

**Mr. Langford:** Mr. Chairman, it is a principle I think of stututory interpretation that where there is a specific provision that says something is covered, inferentially other cases not mentioned are not covered. In this last subsection there does seem to be the possibility of giving effect to a limited class of change. Inferentially, the bill seems to say, "We will not give effect to any other sort of change."

**The Chairman:** Except the purpose for the change you have referred to and for which you are trying to make your inferential argument, does not fall in the class of things or involve any principle that would be pertinent to 3(i)(a) and the application of the Variation of Trust Act.

**Mr. Langford:** You mean that the Dependents Relief thing does not seem to you to be logically related?

**The Chairman:** It is not in the same class of case. It is like saying in the interest of helping people, because this is new, why wait until a certain period? We will let them take the old exemptions or the new, whichever gives them the greatest benefit.

**Mr. Langford:** Well, we are suggesting, Mr. Chairman, that for a great many years and perhaps to the end of this century there will continue to be wills coming into force which were drawn before the budget.

**The Chairman:** All I meant was that this is not an amendment of the will where they say you can take the old exemption or the new. Under the variation of the trust the court is amending the will.

**Mr. Langford:** Yes, Mr. Chairman. In connection with the first of my two suggestions, I draw your attention to draft legislation which we provide with our brief. Unfortunately we do not have enough copies for distribution for everyone. We did not realize the great aptitude of the members of the committee for statutory language. We had enough copies of our brief but not this one. We only had 10 of these. We are having more prepared and they will be filed with the clerk tomorrow.

**The Chairman:** May I interject by saying that the committee will order the copy of this brief and the appendix will be appended to the transcript of the proceedings today.

(*See Appendix "E"*)

**Hon. Senators:** Agreed.

**Mr. Langford:** We have endeavoured to go beyond merely criticizing, and to the extent that our language is deficient we of course recognize that you have available to you far more adequate statutory draftsmen. We think these amendments will meet our point. We ask our colleague, Mr. Gibson, to deal with the rest.

**The Chairman:** Are you or Mr. Gibson going to deal with the suggested language in the draft that would deal with these points that you have raised?

**Mr. Langford:** Mr. Chairman, I was proposing to file that matter generally.

**The Chairman:** You might just refer to which numbers you mean. You have paragraph numbers here.

**Mr. Langford:** Yes, my colleague, Mr. Hamill, Mr. Chairman, has spoiled my proposition to you. He says that for those two particular points we have not been helpful. We seem to have been helpful otherwise, but for those two particular points we do not have language. However, they do deal with specific provisions in section 13 and, we submit, amendments can easily be drawn and we will file them.

**The Chairman:** All right. We will now hear Mr. Gibson.

**Mr. F. Douglas Gibson, Member, the Canadian Bar Association:** Mr. Chairman and honourable senators, I stand here today not as an expert on taxation but as a simple solicitor who is concerned with the drafting of wills, and, if the drafting of wills appears to you to be a subject which is not properly the concern of federal legislation, I would be quick to agree.

I feel a substantial degree of empathy with my confrères in Quebec on this particular point in this bill. I submit that there has been a substantial effect suggested on the drafting of wills by the tax which is proposed in the amendment to the Estate Tax Act. I urge upon you that you should be very circumspect when you, in the name of federal tax legislation, bring in a provision which can be almost confiscatory to persons when they are making a decision which fundamentally deals with the subject of civil rights.

The four areas that I want to address you on for a few moments, do, I suggest, deal very substantially with the fundamental principle of civil rights, the right of a citizen of this country to draw his will. When that citizen comes before a solicitor such as myself, he first considers the assets and the affairs with which he must deal. He then considers the circumstances of those persons whom he wishes to benefit, giving particular consideration to those persons to whom he owes a moral obligation. As many of you are aware, there is substantial law dealing with a man's duty in that regard and the courts will give consideration to whether he has discharged his responsibilities effectively in the case of dependent children or his wife.

In that regard, I would first ask you to consider for a few moments the subject of remarriage. This question has been raised previously and has been dismissed. I urge you to give further consideration to it. I have suggested that this is possibly a matter of civil rights and that you ought not to consider it, but let me hasten to say that I will now assume that it is your full prerogative to legislate on the subject of remarriage, even though it is a matter of civil rights. I hope that I can persuade you that even in that case it is inappropriate to deny that consideration to the citizens of this country in drafting their wills.

I can give you a few simple examples. Consider the wealthy young wife who has a husband and young children. I think it is certainly usual in my experience, and probably the experience of most of us, that a wife in those circumstances will leave a substantial benefit to her husband, usually in the nature of a life interest with a substantial benefit to her children as well. In my experience it is very common for the interest of the husband to be reduced or extinguished in the event of re-marriage.

**Senator Isnor:** What percentage would come under that heading for a rich young widow?

**Mr. Gibson:** I couldn't actually give you statistics anymore than I could give names or addresses or references, but I have had the experience.

**The Chairman:** I think it is a reasonable assumption that there are such cases.

**Mr. Gibson:** Well certainly there are such cases and another not uncommon circumstance where the same conditions prevail, I suggest, is in the case of the re-marriage of a man to a woman considerably younger than himself with the resulting conflict of interest, upon his death, of the widow and the children of the former marriage. Frequently, whether that man is wealthy or not, he must consider the conflicting moral claims, and there is a moral swing that may take effect on remarriage.

If I am speaking more in favour of the wealthier at the moment I do not blush for it. They are entitled to our concern.

**The Chairman:** It is nice to hear a voice in their favour for a moment.

**Mr. Gibson:** And if I do not blush when I am speaking about the wealthy, may I say that I burn when I see unjust interference with the estates that are substantially more modest, and this is where the damage is going to be done, and I think I can prove it to you.

Consider a fourth example: take a man whose estate is not sufficient to set aside trusts that are adequate to look after both the wife and the children. I have spent many hours with such testators where they have tried to make up their minds as to what they should do and where they have sincerely tried to search out their moral responsibility; remarriage frequently is the grain which, when placed on the scales, swings the balance in favour of the children. Gentlemen, you cheat if you place a legislative thumb on those scales to swing the balance.

Now, if I am correct there, I have given you examples which merit consideration. If you swing policy considerations back in favour of allowing an exemption, notwithstanding the remarriage clause, then what goes against it? Is it the scheme of the bill? If the estate is going to be reassessed on death, I suggest it could be equally reassessed on remarriage; it might be a little more difficult, but it could be done. We have drafted legislation that would do it and have filed it with the committee.

Let me go on and put another point to you, honourable senators. Often the question of administrative difficulty is raised. I regret that here I am going off the track slightly, but the Departments of National Revenue and Finance should be concerned with the administration of the Income Tax Act and should be as concerned with the alleviatory provisions as they are with the other provisions.

What happens when you look at the other side of the coin and the question of administrative difficulties arises? Now, a subject came up this morning and I would like to draw your attention to it and to the provisions of the Estate Tax Act which deals with it. The first I wish to refer to is Section 3(1)(1) which provides that any

> property disposed of by any person on or after the death of the deceased...
>
> (ii) under the terms of any agreement made by the deceased for valuable consideration given by him providing for the disposition of such property on or after his death, whether or not such agreement is or was enforceable according to its terms by the person to whom such property was so disposed of;

that is the section which would bring into effect and make subject to tax gratuitous payments, especially to a widow. The value of those payments could be capitalized and included in the estate and made subject to estate tax.

We presume and we hope that, even though those payments might be considered as not absolute and indefeasible, they would be subject to the exemption. There is a possibility that a gratuitous payment might be made or increased subsequent to death. Is there not that same administrative difficulty? How are we going to bring that in and make it subject to tax?

Our draftsmen had no trouble in providing in section 12(5)(b) that:

> (b) within four years from...
>
> (ii) the date any property is disposed of under a disposition or agreement described in paragraph (1) of subsection (1) of section 3,
>
> in any other case, re-assess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require.

I suggest there is as much a duty to accept administrative difficulties if civil rights and the just rights of the citizens of this country require it, as it is to make the effort to collect taxes.

The second subject I would like to direct a few remarks to is the matter of the charitable exemption which was also referred to this morning. May I go back to the present Estate Tax Act and refer briefly to the exemption that is allowed. Under section 7(1) (d), exemption is allowed to the value of any gift made by the deceased, whether during his lifetime or by his will, where such gifts can be established to have been absolute and indefeasible, and then goes on to describe charitable organizations.

When the Estate Tax Act was first brought into force many of you will recall there were strong representations made by the charities of this country urging that the charitable exemption be allowed on a residual gift to a charity under a will where there is a life estate to a widow or life tenant, even though there is a power to encroach on capital. The answer was that if there is the power to encroach on capital in favour of a widow or life tenant, the gift to charity is not absolute and therefore it will be taxed. The argument that that could not be made subject to the exemption was, first, administrative difficulty, and, second, that it was contrary to the whole tenor of the Estate Tax Act. Those arguments were followed and they prevailed. The result was that the charitable exemption existed in respect of bequests made immediately on death or bequests which were to take effect on the death of a life tenant, so long as there was no power to encroach which could defeat that gift.

Ironically we now find ourselves in the position that the estate tax bill proposes an amendment which overcomes both those objections. Surely, the policy is established by the exemption if it is made at the date of death, so why not an exemption if it is made at the death of a life tenant? It appears likely and there is a strong possibility that rather than increasing that exemption you have taken it right away; and it is entirely probable, on the reading of the present estate tax bill, that the only charitable exemption that if allowed is the exemption that is made by a testator to take effect at the date of his death, because if the testator leaves a life estate in a fund to his widow and gives a power to encroach on the capital to the widow, that is exempt and there is no tax. But the fund that passes on her death is taxed not in respect of his death but in respect of hers.

To obtain the exemption it appears that you would have to bring that charitable bequest into property passing under her will. Probably this can be overcome by giving her a broad power of appointment. But why? This is not a difficult job of draftsmanship. Was it overlooked? Is it intentional policy? I

do not know. Whereas you have the opportunity to grant the charitable exemption which was previously refused on the basis of circumstances that no longer exist, you have instead made a very substantial reduction in the charitable exemption under the Estate Tax Act.

**Senator Walker:** Has the minister made any reply to your submissions to him in that regard?

**Mr. Gibson:** None that I am aware of.

**Senator Walker:** Before you leave that, have you a corrective amendment?

**Mr. Gibson:** We have an amendment. It is No. 4 on page three, the third paragraph of the chartreuse-coloured brief. It is not complete. This is something to which we will be glad to direct our attention and improve.

The third area is the matter of dependent children, and this is a little difficult. I am not here referring to the deductions that are allowed for children, $10,000 plus.

**The Chairman:** Mr. Gibson, looking at that amendment, could you put it the other way? This is one of those "deemed to be" provisions; that is, the widow who is receiving a life interest and then there is a gift over, maybe to a charity. That is a "deemed to be" situation, a "deemed to be" gift by her.

**Mr. Gibson:** That is correct.

**The Chairman:** If you restricted the scope of what it was deemed to be and for what, you would accomplish the same result as you are suggesting, would you not?

**Mr. Gibson:** Yes, I think you would. Unless somebody is intentionally trying to cut out charities, my submission is that the test here, assuming it is the husband, is that he should be entitled to select the charity himself; it should not be left to even the good will of his widow or someone else.

**The Chairman:** If the will provided a residual benefit to a charity you would say the "deemed to be" gift would exclude it?

**Mr. Gibson:** That is correct.

**The Chairman:** You would exclude such a residual benefit?

**Mr. Gibson:** Yes, that is correct.

**The Chairman:** And therefore the exemption would apply?

**Mr. Gibson:** Yes.

Now I turn to the question of dependent children. In normal cases this will not be a problem. I will refer to the husband dying, leaving an estate for his wife. It could, of course, be the reverse. The husband can leave an estate to pay income to a wife for life and so much of the capital as the trustees think is appropriate, and on her death divide the estate amongst the children, or whoever he likes. Where the husband has dependent children who require maintenance, education and necessary assistance, in the majority of cases the husband can rely on his wife to do that. The cost of this will vary with the standard of living, with the people and with the finances that are there. Again, however, I would point out that this is a most serious problem in the case of the modest estate. Where the estate is large enough to set up a separate trust to maintain the children, this may not be a problem; but in those many estates where there is a balancing, it becomes a very serious problem in the not insignificant instances when the husband or the wife is unfortunately not able to rely on the discretion of the surving spouse to apply funds properly in the necessary maintenance and education of children.

I have seen those cases. I have had to draw wills for those cases. And I am sure that most lawyers in this room have had to provide that the discretion must be there in the hands of the trustee or someone else to step in and apply funds for the maintenance and education of dependent children while they are dependents.

The effect of that provision under the Estates Tax Act is that if the discretion is given to the trustee to apply money, even for necessary maintenance and education of dependents, the entire fund will be subject to tax. It is going ot hit the modest estate which cannot afford it.

Once again we have drafted legislation that will exempt that trust from tax, so long as the discretion of the trustee is limited to applying necessary maintenance and education for dependent children. It may be that that is important, it may be that you are going to lose some taxes. If necessary, I would rather have it that way and I think it is not unreasonable, but I would be glad to give it up. I will even accept a provision that imposes a 50 per cent tax on everything that is paid out for the children and exempt the trust, exempt the trust that is set aside for the widow, before a discretion is given to the

executor to apply funds that are necessary for dependent children.

**Senator Phillips (Rigaud):** Are you saying that is the law, or that the law may be so interpreted under the present act?

**Mr. Gibson:** There is no doubt in the present act that if the trust is set up to pay income to the widow, with discretion to pay capital to the widow, but if there is power to reduce that fund, to apply that fund, paying to anyone else, including dependent children, the entire fund will be taxed.

On page 7A of the appendix we have set out a provision which will meet this objection.

My final point deals with dependents who are infirm. Here again I urge you to accept my proposition that the draftsmen of this legislation had never stood in the feet of executors or testators. They have never considered the actual working out of these problems, because what could be more unworkable than what I am now about to refer to?

They give a very generous exemption, if it is calculated in dollars it is generous, for infirm children—$10,000 and $1,000 a year until the child will be 71. There will not be 10 per cent of the cases where it is needed, but it will be obtained. Why? If you need a trust for an infirm child, if you need a trust, is it logical to assume that you are going to be able to pay it over when the child is 40? If so, there is no need for the trust. In today's world in most cases it is not going to be a matter of physical but of mental infirmity so that he just cannot administer his own money.

**Senator Aseltine:** How would you draw the will to cover that event?

**Mr. Gibson:** I would require the will that is drawn to pay it over. The normal provision in setting aside a trust is that you say that "a trust will be set aside, the annual income and so much of the capital as is required to meet the needs of my infirm dependent child." On the death of that child any money left over will be paid to his issue, if there is issue—and the chances are that there will not be—or to my issue.

Now, I suggest that that trust should be exempt to the extent that it confers a benefit upon the dependent children. If that trust which I have just dictated was put in a will today, it would be taxed. The entire trust would be taxed under the Estate Tax Bill.

How many of you who have ever drawn such a clause would have drawn one that would be exempt? If you were in my position, talking to the parent of that infirm dependent child, and you were faced with a choice in which you could have a fund that will be secure and managed by trustees for the lifetime of that child, but it will be taxed, or you could set aside a fund to look after the child until he is 40 years of age and then give it over to him, what are you going to do? You are going to pay the tax, because if you do not the chances are that you will pay it over to him when he is 40, and he will be mentally incompetent so that it will be paid into the hands of the Public Trustee, and when that child dies, because he is mentally incompetent and cannot make a will, it will pass on intestacy.

Mr. Chairman, I hope I have not sounded unduly overbearing or critical. I am certainly not critical of this committee or indeed of any part of the house.

**Senator Aseltine:** Do you think that your amendment to clause 7(1) (a) will cover that point?

**Mr. Francis J. Hamill, Member, the Canadian Bar Association:** There is an element of policy involved in this matter, so we did not draft an amendment, pending discussion with the Minister of Finance.

**The Chairman:** Which one are you talking about now?

**Mr. Gibson:** This is the amendment I have just been talking about. We do not have a proposed amendment on this particular point.

**Mr. Hamill:** The dependent child would be covered by 7(1)(a) and 7(1)(b) while the widow is alive, but not beyond that point.

**Mr. Gibson:** Mr. Chairman, and honourable senators, I have referred on a number of occasions to modest estates. It may be in the minds of many of you that there are in fact not many of these modest estates. Are there many estates where there is a life interest to a widow with the residue passing over to children? If there are many, do they fall in this area which cannot afford to be taxed if tax can be avoided? We have available to us some figures which are to be found in a study prepared by the Ontario Committee on Taxation. This table is prepared from information

on file in the Ontario Succession Duties office, and it relates to the proportions of estates of various sizes which were left with a life interest to a widow.

Of estates of less than $50,000, 24 per cent were subject to that provision. Of estates of between $50,000 and $100,000, 32 per cent were subject to that provision. Of estates of between $100,000 and $150,000, 41 per cent were subject to that provision. Of estates of between $150,000 and $250,000, 74 per cent were subject to a life interest to a widow with the residue passing on her death. For over $250,000 it was 84 per cent.

It indicates that a substantial number of the estates of citizens of this country that are in the neighbourhood of $300,000 and less will have to deal with the very problems that I have referred to in these four areas. My submission is that these are areas of property and civil rights where the testator ought not to be injured unnecessarily. I submit that the present bill does do undue and unnecessary injury. I submit that the draft amendments which we have filed can remedy the areas to which we have objected.

Thank you, sir.

**The Chairman:** We will now hear Mr. Baker.

**Mr. Frederick D. Baker, Member, The Canadian Bar Association:** Honourable senators, there are two points that I would like to deal with; they are not very difficult, but they are very fundamental. The first point is in your index as item No. 7 and it deals with the loss of foreign tax credits. You may recall that the trust company people this morning were concerned with this point.

May I just illustrate what we are talking about when we say foreign tax credit? A Canadian citizen, for example, dies owning New York City bonds which are in New York. Canada wants to tax them and the United States wants to tax them. If they both tax them at 50 per cent rates, he might just as well not have had the asset to begin with.

Civilized countries have got over this difficulty. They have established rules, many of them by convention, that one country taxes and one country gives up. In the case I have cited, Canada would not tax. The civilized rule would be that the United States would tax because the asset was situate in the United States.

Now, the old Estate Tax Act did fair justice to this. If the American Government taxed, the Canadian Government gave us a reduction on that asset, based on the fact that the bonds were situate in the United States.

Now, the new act is not able to do this, or the draftsmen have not been able to do it, and the reason for it is this: we envisage that most estates will have the tax deferred until the death of the wife. So it is awkward. You have the American tax payable when the husband dies. You have the Canadian tax payable ten years later, when the wife dies. How do you get your foreign tax credit? Well, the drafters of the legislation apparently felt that the problem was insuperable and we have in fact a bill which has no provision at all for this civilized thing that I call the foreign tax credit.

**The Chairman:** Mr. Baker, if the Canadian, in those circumstances, had a holding company into which he put all his foreign securities, the problem would not arise.

**Mr. Baker:** Sir, you are absolutely right, but surely that is not a total answer to the matter of principle.

**The Chairman:** The effect is total.

**Mr. Baker:** This is true, but, if a person has 100 shares of I.B.M., does he want to incorporate a holding company to hold those shares?

**The Chairman:** He might find somebody else with the same problem. There can be conglomerate companies.

**Mr. Baker:** Well, he could buy mutual funds.

**Senator Walker:** Mr. Chairman, surely Mr. Baker is talking about ordinary people.

**The Chairman:** Any person can do it.

**Senator Walker:** Form a company?

**The Chairman:** Sure.

**Senator Beaubien:** He can put it in the bank in a nominee's name. He can get the bank to hold it for him.

**Mr. Baker:** With the greatest of respect, I would suggest that the nominee name is not effective. The stock is still situate in New York City. Surely the better answer is to find a way to give foreign tax credits as we did before.

We have devised a rather crude and primitive way of doing this, but we would rather see a crude and primitive way of getting a foreign tax credit than the anomaly—and I

call it an uncivilized anomaly—of getting none at all. The crude way is simply to say, "How much did you pay to the United States on those bonds, when your husband died? We will give you a total credit for it."

It is crude, but we think it is better than no tax credit at all. May we go to another point?

**Senator Phillips (Rigaud):** By that you mean ultimate tax credit?

**Mr. Baker:** Total tax credit. You make a note of what you paid to the American Government when your husband died and then you would get it back.

My second point is item No. 10 in your index and once again may we start by looking at the matter of principle. I find I get a headache if I look at the act without seeing it as a matter of principle. We are talking about the relationship between gift tax rates and estate tax rates, and I interject here that this is the only time in our submissions to you that we are discussing principle rather than technicalities. Here we have strayed somewhat into the question of rates.

What is the principle? What did the drafters try to do with the gift tax? What they are trying to do is to guarantee the principle of equality so that the man who passes his assets from father to son, from generation to generation by lifetime gift should pay roughly an equivalent tax burden to the man who does it by his will. Is not this what they tried to do? We approve of that; we think it is fair and we think it is equality. But the fact is that the department in its enthusiasm to make it fair has made the burden of lifetime gifts so far as gift tax is concerned so intolerable that they have blended the two systems by simply killing off any possibility of making gifts. If you compare the gift tax rates on $100,000 with the equivalent death duty rates you will find that the gift tax rates are 10 per cent less. At that point you may ask me what am I talking about because the rationalization is a fair one. But the point is, and it is easy to miss, that you pay the gift tax rates at an earlier point in time than the death tax rates.

Let us illustrate by taking the case of a man who is a farmer or a businessman and who has a son coming along; it is a broken home and the spouses want to give a gift to the children. These are valid reasons for giving gifts, perhaps not tax reasons, but lifetime family business reasons. He comes to the lawyer and tells him what he wants to do and the lawyer says "Hold it, there is no way I will permit you to make that gift. The tax incidental to it is so appallingly onerous that there is only one thing to do. Tell the young man to wait until you die." Let us assume that man is 40 years old with a life expectancy of 30 years and as we know money doubles itself every ten years at 7 per cent. So the tax gift burden on giving it away at age 40 is three times the estate tax burden.

Now, what is the solution? Our solution is a double one, and the first is rather ingenious. If the act provides when the gift tax is brought forward on the person's death to be added to the estate tax, why not give the man who paid the gift tax on his lifetime gifts a credit of 5 per cent per year for the 30 years for the amount of gift tax he prepaid, and this would take the pain out of the man who really wanted to give a gift for the best reason. He would go into the lawyer's office and the lawyer would say "Go ahead and do it because the tax penalty is not that bad. You will get 5 per cent per year on your money."

**Senator Phillips (Rigaud):** Why not the rate of interest applicable to Bank of Canada rates rather than at the old rate of 5 per cent? I would like to hug you for that suggestion you have made. I referred to that in my speech because there is no correlation between the gift tax rates and the Bank of Canada rate. I am in complete agreement with you.

**Mr. Baker:** One last point. We take it as a valid principle that where an older man wants to give money to a younger man, that property will be better used and more economically; it is in the hands of more active and dynamic people. Surely, the policy of this Parliament should be to encourage this sort of thing rather than to discourage it through its taxation policies?

**Senator Molson:** We were told that was speculative the other day, if I am not mistaken, Mr. Chairman, by Mr. Brown.

**The Chairman:** Mr. Brown, was it?

**Senator Molson:** I think he said that was speculative.

**Mr. Baker:** I will excuse myself now, thank you very much.

**Mr. Hamill:** Mr. Chairman, honourable senators: I am going to deal with points 2, 8 and 9 on the index of the brief.

The first problem, No. 2, is the double one. In the estate of the widow, presuming that

she is the surviving spouse, where there is a lifetime deferred trust set up by the husband, the intent of the act would appear to be to issue one assessment, and if there was a conflict between the residuary beneficiaries of the wife and the residuary beneficiaries of the husband, the executors, and even worse than that, there could be *inter vivos* trusts involved, the trustees would be faced with the problem of apportioning the combined tax payable on the death of the wife.

A very simple example: the wife has $100,000 and the husband has $100,000, and tax is paid on $200,000. Nobody has any real problem; half of it is passed each way. But supposing the husband has $100,000 and the wife has $400,000, or vice versa. The first $300,000 has lower rates of tax available before you come to the flat 50 per cent. Is it right that the whole $300,000 lower rates should be applied against the wife's, or should it be split up three-quarters to the wife and one-quarter to the husband?

Take a situation where all of the husband's assets are entitled to provincial tax credits and none of the wife's are entitled to provincial tax credits, how do you apportion it? We feel this is not a problem to foist on the solicitors of the estate. It is a problem which should be faced by the department which is administering the complex act, and they should take the rough with the smooth and take the complex case with the money.

The second point is the horrible question of the surviving spouse who has a tax deferred trust conferred on him or her, and then remarries and survives a second spouse, again has a tax deferred trust conferred and dies leaving an estate of her own. We have all three estates aggregated. I am, for the moment, the first husband to die and I leave my modest estate to my wife and children. She marries a wealthy man who gives her a life interest and leaves his residue to his children by his first marriage. My children are going to get taxed on the aggregate value of the estate because of his will.

We have devised in pages 2, 3 and 4 of the appendix an amendment which takes care of that by combining the estate of the surviving spouse with each of the pre-deceasing spouses for the computation of tax on them, and all three for the computation of tax on the wife. Once again the advantage of having an assessment apportioned by the estate tax office will be apparent.

**The Chairman:** If I could interrupt for a moment, is what you are saying that where there is a "deemed to be" gift on the death of the donee spouse that should be treated as an estate in each case where there is a different donor but the same donee spouse?

**Mr. Hamill:** The same donee spouse.

**The Chairman:** Each one you would treat as though it were a separate estate. One thing you are doing there is lowering the amount of tax, beccause there would be lower rates applicable' whereas if you lump it the higher rates might well apply.

**Mr. Hamill:** My contention is that these lower rates should apply in the case of...

**The Chairman:** I am not arguing it. I am just saying that.

**Mr. Hamill:** This is the effect. The estate of the ultimate surviving spouse is aggregated with both pre-deceasing spouses.

**The Chairman:** What you say is that the children of the first donor to die should not be saddled with an extra burden of tax because the widow has made a successful second marriage in which there is quite an accumulation of wealth.

**Mr. Hamill:** Yes, sir.

**The Chairman:** Emotionally it seems to make sense.

**Senator Beaubien:** If the tax were applied at the time the two husbands died there would be a separate tax in each case, so the Government would not lose anything. In other words, the tax payable when the first man died would be $100,000, and if the second husband died and left $1 million you would pay on the $1 million, so the Government loses nothing.

**The Chairman:** The point is that since this would be a spouse exemption when the donor dies, to the exent of the spouse exemption the widow takes that and there is no tax payable at that time.

**Senator Beaubien:** That is right.

**The Chairman:** The tax on the donee only falls in when she dies. By that time she may have accumulated three husbands, and in the second and third marriages accumulated very wealthy resources, but the burden of higher tax will affect even the first one, which may be a quite modest estate.

**Senator Walker:** The first residual beneficiary.

**Senator Molson:** Why should not the rate be established the moment an estate is created? If I do not survive until tomorrow morning, do they not add up all the coins in my piggy bank and say what the rate of duty is?

**The Chairman:** You get this argument that the evaluation is at the death on the donee. If the assets making up the trust go down, that helps in the tax rate; if they go up it hurts.

**Senator Molson:** At the rate of inflation in these days I think I would be prepared to take a gamble.

**The Chairman:** You would assume they would go up. You would be surprised how many people will always buy at the wrong time and sell at the wrong time.

**Senator Molson:** In fact, if the widow were very smart she would have "blown" most of it anyway.

**The Chairman:** That is right.

**Senator Walker:** Just by the way, Mr. Chairman, that is a new description of a piggy bank!

**The Chairman:** I do not think that we can put that into any amendment that you suggest.

**Senator Walker:** Put it in quotations.

**The Chairman:** I do not think the law recognizes quotations or commas.

**Mr. Hamill:** The second point is the device which has been used in the bill to determine the amount of provincial tax credit that will be available in a trust which has been deferred until the death of the surviving spouse. The draftsman was conscious of the fact, I think, that trustees could manipulate the assets of the trust so as to secure the provincial tax credit under the present rules on the death of the surviving spouse, when of course there would be no provincial tax payable. So the device by section 9(9) of the act, as amended by the bill, is to relate the amount of the credit to the state of the assets on the death of the first spouse to die.

There is an additional application which I find rather unjust and that is to create a new class of province. We have prescribed provinces that are entitled to a 50 per cent tax credit, and those are the fee taxing provinces. We have designated provinces, which are entitled to an additional 25 per cent, British Columbia. Now under the bill we have appointed provinces, and the intent, it would appear, is this. If I were to die today, domiciled in Ontario, Ontario is an appointed province, presuming the act to come into effect, and if I leave a trust for my wife, so that the tax is deferred until her death, and I leave only that, and after this Ontario goes out of the tax field, Ontario no longer being a designated province, Ontario being an appointed province, so until my death the computation of the tax credit available is based on the fact that Ontario is not at that time a taxing province. The net result is that the full federal tax would be payable, notwithstanding that full provincial tax has been paid on my death. I think that this as it stands is wrong and the act should certainly be reworded to delete references to appointed provinces.

**The Chairman:** Have you a suggested amendment?

**Mr. Hamill:** Not for this one, sir.

**The Chairman:** Do you not think you should?

**Mr. Hamill:** I do not know how to do it. This is a basic problem. This is a policy decision on the part of the federal Government and to try from the outside to draft legislation is a waste of time.

**The Chairman:** It presents a lot of problems. There may be a very substantial gap between the death of the donor and the death of the donee. Rates may go up, rates may go down. The province may go out of the taxing field. Ordinarily, as we say, that is the rub of the green and it may hurt someone.

**Senator Beaubien (Bedford):** If the widow married a much younger man.

**Mr. Hamill:** There is another problem. On page 8 of the amendments is a suggested variation in clauses 7(1)(a) and 7(1)(b) which deal with the deduction allowable on the death of the spouse in respect of property or gifts made to the surviving spouse. The problem here is that in the act as drafted there is allowed to be deducted from the taxable value of the estate the value of any property that is given outright to the surviving spouse. But, when you come to the so-called tax deferred trust—so called because I so call it—what is allowed to be deducted is not the value of the property, but the value of the gift. It seems to me that the minister in his

speeches has clearly indicated that what is intended to be deducted is the property that goes into the trust, but he has linked in clause 7(1)(b) of the bill as it presently stands the trust under which the surviving spouse is entitled to annual payments, and in that case he obviously does not mean the value of the property. The amendment which is on page 8 of this appendix segregates the property which is to be deducted and the gift which is not to be fully deducted, so it is clear that you are dealing with a deduction of the value of property in a tax deferred trust.

In addition, the tax is on gifts *inter vivos*, and this may have been overlooked. Were I to make a gift to my wife in terms of a tax deferral there is no gift tax paid. It becomes property passing on her death. But, should she predecease me, and I die within three years of making that gift, the bill, as it stands, does not seem to me to exempt my estate from duty, so I would be taxed again notwithstanding my wife's being taxed. This amendment clears up that point. I am sure that that is just an oversight.

**Senator Walker:** You have drafted an amendment to cover that?

**Mr. Hamill:** Yes, this amendment is drafted.

**The Chairman:** It is on page 8 of the appendix. Thank you very much, Mr. Hamill. Does that complete the submissions of The Canadian Bar Association?

**Mr. Langford:** Yes, Mr. Chairman.

**The Chairman:** Then, we want to thank you very much for the work you have put into this matter, and for your appearance here today.

**Senator Molson:** Before this is concluded I would like to put one question to Mr. Gibson. You were talking about the seriousness of this measure in regard to property and civil rights. Are you suggesting that constitutionally this bill may be unsound?

**Mr. Gibson:** I am afraid that probably it is not unsound.

**Mr. Langford:** It is our opinion that Parliament can do what it wishes in a taxing statute with respect to what is taxed and what is exempted. We are suggesting that it offends the spirit of the thing when a particular clause can be used in a will to obtain an exemption, and another particular clause cannot be so used. We are not making a suggestion that it is legally unconstitutional.

**Senator Molson:** Sometimes the spirit is very weak.

**The Chairman:** It is usually the other way around; the spirit is strong. We have one more goup, the Canadian Construction Association. I am also conscious of the hour, which is 6.10 in the evening. This committee is going to sit at 9.30 in the morning to deal with the Farm Machinery Bill and I am wondering whether there would be any embarrassment to the Canadian Construction Association if we heard them first thing in the morning.

**Senator Walker:** I understand they are going to be only 10 minutes.

**Mr. Mark Stein, President, Canadian Construction Association:** Mr. Hewitt and myself are here from Montreal. We both have very important business at home tomorrow. Our presentation will not take more than 15 minutes.

**The Chairman:** We shall hear it then.

**Mr. Stein:** Mr. Chairman and honourable senators, I realize and appreciate the lateness of the hour. I will not tax your patience too long. We are, of course, extremely pleased to have this opportunity of expressing our views to you on certain aspects of the bill in question. With me this evening are Mr. Robert Hewitt, a member of our Legislation and Taxation Committee, and engineer and equipment distributor in Montreal; M. S.D.C. Chutter, General Manager of our association, and Mr. Keith Sandford, a staff member who deals with taxation matters of the Canadian Construction Association and represents the construction industry.

**Senator Walker:** Excuse me, you are the president, are you not?

**Mr. Stein:** Yes, I am the president.

The Canadian Construction Association represents the construction industry broadly—general building contractors; road builders and heavy construction firms; trade contractors; manufacturers and suppliers of equipment, materials and services—some 2,700-member firms in all. In addition, we have over 100 member associations with a combined membership of some 12,000 firms. The great majority of contract construction across Canada is executed by these firms.

As you will have seen by our brief, death taxes have caused serious operating problems in the past to our industry, because the industry is composed almost entirely of family firms with very little in the way of liquid assets. Our basic assets are know-how and equipment. The higher rates of tax contained in the new estate tax schedule on certain estates will naturally greatly worsen the problem.

Last fall I was with the Canadian Construction Association president when he visited many of our local affiliated associations. At that time the budget proposals on estate taxes were the top subject of concern at every centre we visited from Newfoundland to British Columbia. At our national convention only this past January, we had some 600 delegates from across Canada and it was a major topic. It was dealt with by three speakers in different parts of the program, and our delegates have adopted a policy statement to this effect, which is quoted in the brief but which I am not going to read to you.

The association has stressed many times in the past the deleterious effect that death duties have on the growth and continuation of family firms and on initiative and enterprise generally. When the budget was introduced last October, the CCA immediately expressed its appreciation of the exemption of spouses from estate taxes but also its grave concern at the increased taxes that would have to be paid in the case of many estates due to the application of higher rates on much smaller estates and the integration of estate and gift taxes. A series of representations have subsequently been made on behalf of the industry.

The main points contained in these submissions have already been dealt with in detail during the Senate debate following the bill's first reading. It was therefore concluded that a lengthy treatment of them in the appended brief was unnecessary. The association would like, however, to stress at this hearing the application of these general principles to the construction industry, rather than to the specific wording and administrative aspects of the bill.

The summary of our recommendations is on page 1 of our brief and, with your indulgence, I will limit myself to this one page. First, there is the fact that the previous schedule of estate taxes should be maintained pending further study. Such action would:

> (a) permit the consideration of estate taxes in the light of other proposed tax reforms to be included in the federal Government's White Paper in a month's time or so;
>
> (b) enable the elements of relief contained in Bill C-165 which enjoy widespread support, such as the exemption for spouses and the option of tax payment in instalments, to be enacted. The option of using either the previous or new exemptions until next August has already been granted;
>
> (c) permit discussions with the provincial governments who currently receive up to 75 per cent of estate tax gross revenues and in several cases are committed to a policy of rebating their shares or have it under serious consideration.

Incidentally, Mr. Chairman, this morning you posed the question as to whether or not there was any logical basis for questioning the finance minister's premise that some estate taxes be increased to offset the revenues lost because of the relief given to spouses and so on in the bill. We would like to suggest two answers. First, the primary recipients of estate taxes are the provinces. Of these, two have already introduced rebates; another is committed to do so, and only last night we heard a report of Quebec's budget which indicates that they have reduced their succession duty.

Second, the higher taxes on sizeable estates will encourage more and more people to seek tax havens, and the federal Government will lose their tax-generating abilities. Also, the deterrents to business expansion, and so on, will tend to cause revenue reductions. Therefore, the higher tax rates and integration of gift taxes may well serve the reduce the federal revenues by more than the $12 million or so which the minister hopes to raise by this action.

We also recommend, sir, that the previous schedule of taxes be maintained to:

> (d) afford some measure of assurance to members of family firms who are adversely affected by the new schedules of estate and gift taxes.

In the way of supplementing our brief, Mr. Chairman, honourable senators, I have brought with me a few letters which exemplify the reactions which we have had across the country from various people in the construction industry, and I propose to read those in.

**Senator Phillips (Rigaud):** May I put one question to you? I am sorry to interrupt but I

think it is important. In speaking of closely held companies are you speaking of non-listed companies or do you include listed companies?

**Mr. Stein:** Yes.

**Senator Phillips (Rigaud):** You suggest that serious consideration should be given to the proposal of the Ontario Economic Council where it says that "the value of such shares be included in determining the rate of transfer tax to be applied to other estate assets, but such value be exempted from transfer tax unless such shares are sold within a period of ten years." Can you pinpoint that proposal so that we can get it into the record. I would like to get the reference on record.

**The Chairman:** I understand that the answer to your question was that this paragraph 2 and the recommendation was not limited to private family held companies. But then in your brief this is what you talk about—closely held companies. Would not this put a company in that situation if the shares were listed and therefore could be traded as against private companies?

**Mr. Stein:** Not listed.

**The Chairman:** You meant not listed. That is a correction, Senator Phillips. He meant not listed.

**Senator Phillips (Rigaud):** That was an error, thank you.

**Mr. Stein:** The recommendation referred to was on page 8 of the Ontario Economic Council report.

**Senator Phillips (Rigaud):** And the date?

**Mr. Stein:** September 1968. It was entitled "Transfer taxes and their effect on productivity and control of our economy" prepared by John K. Savage and D. Vandenbulcke of the Ontario Economic Council, dated September 1968.

Now honourable senators, I want to read a few extracts from letters received by us. One is from a general contractor in the Winnipeg area and in one paragraph it says as follows:

> I think, in a lot of cases, if the people find that the full implementation of these proposed laws is now in effect, the drive to expand ones' business will come to a halt, for there is no sense in building your firm up with more assets to carry out more work, if, in the end, you have to sell most of the assets to pay the taxes and your heirs are left high and dry.

Then a couple of paragraphs later we find the following:

> In relation to my own situation, if there are no modifications in the new law, then I will consider the situation and probably convert all my assets to cash and say, "That's it". When I lose the right to do with my money as I see fit, after all the taxes I have paid to keep it, and then find it is not mine after all, where is the incentive?

Then there is a letter from a manufacturer of concrete products. It says:

> The writer has just turned over control of Universal Concrete Accessories, Limited to a U.K. Company. The prime factor behind this decision was concern about estate duties.
>
> By way of explanation, our Company, incorporated in 1950 from small beginnings has operated effectively, although volume invariably has outstripped any increase in shareholder's equity. We were like many new Companies short of working capital. I owned about 80 per cent of outstanding shares with most of my net worth represented by this and other equities of a non liquid variety. An appraisal of the new succession duties tables clearly indicated that my estate on the demise of my wife and I would indeed be vulnerable. In the circumstances I felt there was really no practical alternative but to dispose of most of my interest in Universal, should a favourable opportunity present itself. I proceeded accordingly.

**Senator Walker:** Mr. Stein, that situation will be applicable to what percentage of your people, approximately?

**Mr. Stein:** It is difficult to estimate percentages accurately but I feel that the percentage would be rather appreciable. Members or practitioners of the construction industry have no real liquid assets. We do not carry inventory because we are basically a service industry. The bulk of assets can be in accounts receivable and to a certain extent in equipment too, various varieties of equipment, quite substantial in the case of those in the road building and heavy engineering and construction.

**Senator Carter:** Would it apply to as much as 10 per cent or 20 per cent? Could you give us some estimate?

**Mr. Stein:** I would suggest it would apply to more than 50 per cent.

**Senator Carter:** More than 50 per cent?

**Mr. Stein:** Yes.

**Senator Walker:** Because the greater number of you people are in smaller companies? There are a few mammoth ones but, generally speaking, would not 80 per cent of your construction companies be family concerns?

**Mr. Stein:** You can count on the fingers of two hands the number of mammoth companies in Canada. The others are all small- to medium-sized who carry out the bulk of the work.

In the interests of time, Mr. Chairman, I will not read some of these other extracts from other letters. However, may I leave them with you?

**The Chairman:** Can I have a motion to append the brief and these letters to the record of today's proceedings?

**Hon. Senators:** Agreed.

*(For text of brief and letters see Appendix "F")*

**Senator Phillips (Rigaud):** As I understand you are through, have you handy the number of people employed by your association?

**Mr. Stein:** Yes, our industry employs some 600,000 people on site, and to supply those on-site employees with goods, materials and equipment they use and install, an equal number at least in the manufacturing plants.

With your indulgence, I would like to ask Mr. Robert Hewitt to amplify a little on his personal reactions as a result of this tax, before I sum up.

**Senator Carter:** Did your association make representations to the Commons Committee?

**The Chairman:** There was not any Commons committee.

**Mr. Stein:** To the minister?

**Senator Walker:** The Committee of the Whole; it did not get past that.

**The Chairman:** Mr. Hewitt may make his statement, but I think he can assume that we are aware of the fact now, from what you have said, that the impact of these higher rates on your industry will be very great. Do you want to add to that, Mr. Hewitt?

**Mr. Robert Hewitt (Canadian Construction Association):** If I may have two or three minutes, Mr. Chairman, I appreciate very much the time and the effort expended by this committee for the welfare and betterment of the Canadian people in our wonderful country, Canada. I know you hope to leave a better Canada than existed in years gone by, and I hope to do the same thing.

I think I represent a typical one of these 12,000 companies referred to. My grandfather started in the construction business before 1900.

**Senator Isnor:** Where are you located?

**Mr. Hewitt:** I am located in Montreal. This was in Ontario. Then it became Robert Hewitt and Sons, and then under my father James Hewitt and Sons. Now it is Hewitt Equipment, and it is in my lap. I have one son and four daughters. We have 650 employees. We have a payroll of over $3½ million. Ninety-five per cent of the companies in my segment of the industry—and there are 140 such companies in Canada—are closely family held companies. This is the success of the business, according to the people who know the situation worldwide.

Now, I am an engineer. I have listened to you men today. I hear the wrangling going on. You cannot imagine what a worried man I am. I talked to Mr. Benson personally. He says, "All you have to do is plan against this. We make the rules. You go and plan against them." This surprises me, as an engineer, as a backward way of going about doing something. How can I possibly preserve the lives of these 600 employee families? They are tied up in our company with pensions. Many of them are beyond the stage in life when they can get a job with some other company. This is what concerns me. Financially I can quit tomorrow. My family think I am a fool to keep working at this. I have one sole desire, which is to keep an enterprise going.

You may say to me, "Why don't you go public?" It is not suited to our type of business. Surely to goodness the country we live in does not want to make a set of rules that is only worrying us all to death. When I think of the fees, money and time that we spend on lawyers and accountants trying to overcome these rules you men are trying to put some

sense into. Take my case. What province am I going to be under? Am I going to integrate a federal situation with a provincial situation? You just do not know where you stand.

What has happened? You must know many people who have left the country. This is what they have done, taken their money and gone. You know people like that as I do. This is not what we want to do in Canada, is it? I do not want to have to leave the country, and I am not going to. That is why I am here trying to put some sense into this.

**Some hon. Senators:** Hear, hear.

**Mr. Stein:** Mr. Chairman and honourable senators, that is an example of what I was trying to say about worry affecting business decisions. That effect is sure. We in the construction industry want to work, and the time now being spent worrying would be much better spent on production. Our motto, which I paraphrase from a speaker at our recent convention, is that Canada needs work, not worry. Thank you for your time.

**Some hon. Senators:** Hear, hear.

**The Chairman:** That concludes the representations from the public. We will sit again next Wednesday to continue our consideration of this bill, when the departmental officers will be here. We may be at the stage when, if the minister is available, we would be ready to hear him. I think we want to hear him.

**Senator Walker:** I wish he could have been here today.

**The Chairman:** We want to hear him so much that I do not see how we can conclude our discussions on the bill and come to any decisions until we have heard him.

**Hon. Senators:** Agreed.

**The Chairman:** We sit tomorrow at 9.30 a.m. to deal with the farm machinery bill. Then we will have our usual meeting next Wednesday, and one of the items for consideration early in the day will be continuation of our study of Bill C-165. Thank you very much for your patience in waiting here.

The committee adjourned.

## APPENDIX "D"

THE TRUST COMPANIES
ASSOCIATION OF CANADA
302 BAY STREET
TORONTO 1, ONTARIO

Executive-Director
E. F. K. Nelson

To: The Chairman and Members of the Committee of the Senate on Banking, Trade and Commerce

Honourable Senators:

Re: Bill C-165—An Act to Amend the Income Tax Act and Estate Tax Act

The Trust Companies Association of Canada appreciates your courtesy in allowing us to appear before your Committee and to make submissions with respect to the Bill C-165, which is before you for consideration.

We share what we believe to be the general approval of the complete exemption from tax for gifts and bequests between husbands and wives. The Minister in his budget speech said that this change recognized the contribution made by wives to the accumulation and conservation of family wealth and would eliminate a deeply felt grievance.

We find the proposed sharply increased rate structure to be objectionable. The progression of the tax becomes very much greater with the maximum rate bearing on taxable estates far smaller than heretofore. We submit that this results in too large a proportion being taken by the State, particularly in the case of estates in the $80,000 to $1½ million range. We are also strongly opposed to the integration of gift and estate taxes, the unreasonably high rates of gift tax and the inclusion of the amount of taxable gifts made in the donor's lifetime with the gift taxes paid in the donor's estate for estate tax purposes.

The general effect of the proposed new estate tax rates would be that estates of $50,000 or less will not be taxed, that the tax burden will be heavier in the approximately $80,000 to $1,500,000 range and somewhat less for larger estates. There seems to be little doubt that the existence of many successful family businesses, including farms and ranches, would be seriously endangered by higher taxes, to the detriment of private business in this country.

Quite apart from any social or philosophical aspects, there are important economic consequences which flow from heavy taxation on the death of the donor of property. The desirability of such taxes will depend upon the circumstances of the country in which they may be applied. In the absence of other reasons to the contrary, they may be less inappropriate to a capital exporting country. If economic considerations are to have any weight in the design of our tax structure, recognition must be given to the fact that Canada is a capital hungry country and appears certain to remain so for some time. Canada will need to rely to a considerable degree on the importation of foreign capital which, in equity form, is sometimes said to carry with it its own dangers. It seems obvious that our own future success in accumulating and preserving the capital generated by Canadians themselves for investment is of great importance, in order to reduce our dependence on foreign sources. Indeed foreign sources may not always be as accommodating as we would like.

It is generally conceded that high rates of taxation make saving more difficult. Our rates are at such levels today that he accumulation of wealth by savings is being discouraged. A taxation policy that makes savings more difficult and at the same time scatters existing pools of capital is economically regressive and disrupting to economic development.

Economic growth, which should be accompanied by increased employment, is dependent on investment. Heavy estate and gift taxes reduce the supply of capital available for investment and impose sometimes impossible demands for liquidity upon individuals and privately owned business, thus reducing further the amount of risk capital available at any given time. The following quotation from a recent Report of the Ontario Economic Council is pertinent to this situation.

"The pressure of death taxation toward maintaining in each potential estate an adequate pool of liquid funds subtracts from the national pool of capital at risk. Failure to maintain such funds contributes to the absorption of increasing numbers of private businesses by large corporations with the attendant displacement of private risk capital. Such pressure toward maintenance of liquidity detracts from an expanding economy dependent upon the need for incentives to sustain adequate supplies of risk capital. Substitute reduced-risk marketable securities for the risk capital of private enterprise and the substitution is investment income for earned income. Substitute investment income for earned income and the substitution can be a reduced level of productivity.

The national econmic effects of death taxation, at this stage of our nation's development are reflected in a dissipation of estates through: a tendency toward increased consumption by predecessors, (e.g., a measurement of this is the lower retirement ages of businessmen who must thereafter live upon capital or investment income); absorption of private businesses into increasingly large corporate concentrations; and significantly increased economic importance of charitable organizations fostered by their tax-exempt receipt of gifts and bequests.

The national economic effects are potentially measureable in reduced productivity both from labour and from capital. Absorption of the private business by the corporate giant frequently assures the first; substitution of readily-marketable public securities for private capital can produce the second. Death taxation fails, therefore, in one extremely important aspect: it fails to provide incentive toward keeping private capital employed at the highest possible rate of return. A less productive allocation of resources ensues.

Those responsible for guiding the course of our nation's development need only to look to history to find proof that nearly every past civilization has hastened its ruin through its dissipation of capital by taxation."

Transfer taxes on death naturally do not touch foreign corporations, but they are most certainly taken into account by immigrants of means who might otherwise establish domicile here.

The Ontario Economic Council has demonstrated, with considerable success, "that transfer taxes, particularly when imposed on the death of a Canadian investor, influence the sale of many Canadian owned businesses to foreign investors. The foreign investor possesses a distinct advantage over a Canadian would-be investor since acquisitons by a privately owned Canadian company serve only eventually to compound the death tax payments of the new owners."

The experience of trust companies in handling estates suggests that it is frequently the expectation of heavy death taxation that is a dominant factor leading to sales of privately owned businesses.

Although Canada is a large importer of capital, its total transfer taxation income as a percentage of total tax revenue is higher than that of many western nations who are exporters of capital. "Tax Aspects of Canada's International Competitive Position" by The Private Planning Association of Canada (1963) indicates that, among thirteen Western nations plus Japan, Canada has the highest percentage of tax on capital in the group. Our heavy municipal real property taxes are an important factor here, although Canada has no acknowledged tax on capital gains. Admittedly the data is such that the conclusions should not be overemphasized, but its significance is, nevertheless, very real.

The total impact of taxation on capital, that is to say on investment, in Canada by all governments has now reached a level which is, in our opinion, extremely unhealthy. That this dissipation of capital should be increased by the current taxation proposals causes us great uneasiness.

Such a situation leads inevitably to flights of capital—then to action to restrain such flights and so on, inevitably, to all the sorry list of restrictions on individual economic liberty.

*Gift Taxes*

Aside from any purpose in connection with the income tax, the principle function of a gift tax is to prevent avoidance of death tax by gifts made during the donor's lifetime. It is, in a sense, an advance payment of death taxes in whole or in part depending upon the relationship between the rates of the two taxes. Put another way, it is a mechanism by which the State exerts a claim on property often long in advance of death occurring. Bill C-165 proposes drastic changes in our gift tax legislation. The rates at the top level are almost three times as high as before. The concept of a cumulative gift sum has been

introduced making taxable gifts more expensive to the donor, as the cumulative gift sum increases with the passage of years. We object most strenuously to the integration of the gift and estate taxes involving the bringing of the cumulative gift sum and gift taxes paid back into the estate, all for estate tax purposes.

Perhaps drawing to your attention some comments of the Presidents of two large Trust Companies and the Chairman of a third to their annual meetings might be a useful method of indicating the views of our industry to these proposals.

Mr. F. E. Case, President of Montreal Trust Company:

"On the surface, levying high estate and gift taxes against the owners of capital gives the impression of helping the wage earner. With due respect, I disagree. High tax rates on capital transfers, in my view, work against labour by reducing the amount of capital available for investment in the development of our resources or in the machinery of production. In fact, the appropriation by the State for its own current operating expenses of a large part of the capital which an individual has been able to save after payment of income and other taxes seems to me to be akin to what the pioneers of this continent regarded as one of the ultimate follies, or disasters—the eating by a settler of his seed corn."

Mr. J. G. Hungerford, Q.C., Chairman of National Trust Company, Limited:

"No-one is going to argue with the proposal to exempt benefits to widows. This, however, is just the sugar-coating. The cruncher comes when gifts are made to the next generation either by will or during lifetime.

The need for private pools of capital for investment by Canadians in their own country requires no emphasis. The need today is greater than ever before. While we are being used to invest in Canada, the Government is doing its best to drain off the means to make it possible."

Mr. C. F. Harrington, President of The Royal Trust Company:

"What seems to emerge from the debate, however, is a re-statement of a government or political philosophy. We in Canada have surely heretofore recognized the need for capital formation wherever it can be done; this is a new country and we still need more capital than we seem to be able to raise. This is partly because we want to give ourselves the best of everything for everyone—not in itself an unworthy ambition, but also an almost sure prescription for national bankruptcy. But we are now being told, in effect, that the accumulation of capital in private hands, and its transmission to succeeding generations, whether in the form of land, family businesses, or stocks and bonds, is not necessarily an estimable goal to strive for. I find this unacceptable, as do any truly responsible Canadians to whomI have spoken, including a number of thoughtful politicians in more than one political party. If the desire and ability to produce, save, create, and pass on to one's descendants is legislated out of existence, then I need not tell you what kind of a country we can expect to have."

The effect of the proposed new gift and estate taxes seems to be that while the State will not intervene in gifts, testamentary or otherwise, between spouses, it is going to interfere drastically with a person's ability to pass property on to his family, creating particular difficulties where the principal asset is a family business.

All of this has unpleasant implications for the future to those who value those basic concepts upon which this country was built. We think that personal saving must be encouraged. We believe that there is a deeply rooted human instinct to want to pass on to a succeeding generation, at least a fair proportion of what one has accumulated, often with much sacrifice and labour. We do not want the State, however reluctantly, to replace the individual as the source of savings and investment, a development which could quickly result from taxation policies which appear to be reflected in the present legislation.

We have considered carefully what we might recommend, for your consideration, in the light of the objections which we have raised. Under different circumstances we would have suggested that, on economic grounds, death taxation should be eliminated while Canada remains a substantial importer of capital. We appreciate, however, that the financial position of the Federal Government is such that even the revenue which it retains from the estate tax, after providing for the Provinces, is of considerable importance. It is

our recommendation that there must be some scaling down of the proposed rate structure where it affects estates in the range of approximately $80,000 to $1,500,000. Bearing in mind that the exemption between husbands and wives results in postponement of the receipt of taxes rather than an actual loss of revenue, we submit that rate reductions can be of considerable significance in reducing the impact of tax on the classes of estates under discussion.

As to gift taxes, we urge that the top rate not exceed 50 per cent, the highest proposed rate of estate tax, and that the balance of the rate structure be reduced accordingly. We recommend that there be no integration of the two taxes so that the amount of the gift and the gift tax not be brought back into the estate for estate tax purposes and a return to the principle that only gifts made three years before death be brought back into the estate for the purposes of taxation.

As a final general comment we would observe that the wording of Bill C-165 is difficult and would make the legislation which it amends more complicated. We would further suggest that taxation which is imposed for purposes other than the raising of revenue is apt to become particularly difficult and complicated. We feel that these tax proposals contain social implications which far outweigh their revenue aspects. Unfortunately, the more complicated tax legislation becomes, the greater is its administrative cost to the government and the greater the cost of taxpayer compliance, leading to less net revenue for government and a greater financial burden for the taxpayer.

Turning to those other matters referred to earlier in this submission we offer these comments and suggestions.

Following the introduction of the budget resolutions it became apparent that they contained retroactive implications inasmuch as subsequent to the introduction of the resolutions but prior to the passing of the enabling legislation some persons would die without being able to determine precisely the state of the law which would apply to their estates. In addition, even after the legislation becomes definitive there will be the tremendous physical task of amending the Wills of many people in order that they may be drawn in a manner to attract the minimum impact of Federal estate tax.

In recognition of this situation there was included in Bill C-165 an alleviating provision which is contained in Section 13(2) of the Bill. In effect, it provides that in the case of persons who die after October 22, 1968, but before August 1, 1969, the exemptions which will apply to their estates will be the greater of the exemptions allowed under the Act as they applied at October 21, 1968, or the sum of $20,000 plus the exemptions that are proposed by the Bill.

We submit that equity would be better served if Section 13(2) were to be changed to provide that an executor might elect, in the case of any death occurring between October 22, 1968, and August 1, 1969, that the estate be taxed under the Act as it stood on October 21, 1968, or as amended by the enactment of Bill C-165.

The other provision to which we would draw your attention is one of considerable concern to us as professional trustees. It is the enactment of the new Section 3(1a) under subsection 2 of Section 2 of the amending Bill which provides that upon the death of a person who has been the beneficiary of a trust created by his or her spouse which is exempt from gift tax and estate tax, the property comprising such trust is deemed to be property passing on the death of the donee and is included in his or her estate to determine the rates of duty which will apply. Other provisions in the Act provide that the duty, as so determined, will be apportioned between the trust property and the other separate assets of the donee.

Under the general scheme of this legislation, if the estate tax or gift tax has been suspended during the lifetime of the spouse who was the donee under the trust, it is understandable that the property comprising the trust should attract taxation upon the death of the donee. However, it is our submission that the treatment of this property as if it were a property of the donee results in inequitable taxation of individuals and presents administration problems to trustees which are in direct conflict with their duties as have been evolved under the law pertaining to the administration of trusts.

We suggest that this concept of the notional shifting of the property from one estate to another is an oversimplification and has been done without a full consideration of the actual situations which obtain in a number of estates. We might first point out that where a man

leaves his property outright to his wife after this legislation has been enacted he will do so with full knowledge of the implications which will arise upon her death in so far as Federal estate taxes are concerned.

We submit that this combining of estates creates inequities in the taxing of individuals. While the taxing measure which you are considering is the taxing of an estate, the ultimate burden is, of course, borne by the beneficiaries and we think it is only proper to consider the ultimate effect of the tax on the beneficiaries.

It is not uncommon, where there are no children of a marriage and where both parties have separate assets derived independently of each other, for the spouses, after providing mutual protection for each other under their Wills, ultimately to dispose of their separate assets to their respective blood relatives. Consider the case where the wife has a maiden sister and the husband has nephews and nieces being children of his brothers and sisters. It is more usual for the husband to leave the larger estate and for him to predecease his wife. If he provides a tax exempt trust for the benefit of his wife during her lifetime the assets of this trust are, upon her death, grossed with her separate assets in determining the rates of duty which are applicable to their combined assets. May we illustrate what we consider to be the inequities arising under this provision by the following example.

It is not unusual for a widow to remarry and, particularly if the remarriage takes place reasonably late in life, she is likely to survive her second husband and she may, for the balance of her lifetime, be the beneficiary under exempt trusts established by both her deceased husbands. If both husbands had had children by their first marriages and the children are the ultimate beneficiaries under their respective fathers' estates, they will ultimately pay taxes based on the combined amount of the two estates, even though there is no rational basis for treating them as one taxable unit upon the death of the widow. A cursory review of estates in which our companies have been involved would indicate that this situation occurs frequently and often there is considerable disparity between the size of the two estates. One can have the situation where the beneficiaries of an estate of perhaps $100,000 or $200,000 will pay taxes at rates which are designed to apply to estates of a million dollars or more.

We mentioned previously that this same provision leads us to believe that we will face administrative problems which are in conflict with our duties as a trustee. The duties of a trustee must be executed meticulously and the trustee must account to the Court for disbursements made from the trust funds under his control. Perhaps the simplest application of this principle is that a trustee does not issue a cheque in payment of any account unless he is satisfied as to its correctness and this applies to the payment of estate taxes as well as any other accounts incurred.

As the Act under consideration is now drafted, if the executor of the surviving spouse is a different person from the executor of the spouse who died first and a tax exempt trust is involved in the first estate, an assessment for tax will be prepared by the Department and levied against both executors made on the basis of information filed and decisions made by the two different executors independently of each other.

Let us refer to two such trusts as Trust A and Trust B. If the beneficiaries of both trusts happen to be the same, the problems can be reduced by obtaining the consents of such beneficiaries but again, there are sufficient instances of cases where the beneficiaries are not the same to pose a problem of considerable magnitude. In order to determine the tax, the assets comprising Trust A and Trust B must be valued. If the assets are principally marketable securities there is very little danger of a mistake being made in either trust. However, in many instances there are holdings of real estate, shares in private companies and other assets, the value of which might be a matter of opinion and very frequently involve prolonged negotiations between the trustee and the taxing authorities before a mutually agreeable valuation is determined. In some cases the matter will have to be referred to the Court for adjudication.

The trustee of Trust A has no right to demand disclosure of information concerning the assets which are held in Trust B and as a matter of fact, it would be a breach of trust if this confidential information were disclosed to a stranger without the consent of the beneficiaries. This becomes particularly pertinent where the asset of the trust is a family company. We therefore can envisage that in certain instances we, as trustees, will reveive an assessment levying duties upon a trust under

our administration where is is factually impossible for us to determine the correctness of such assessment.

Upon the death of a life tenant the remaindermen of a trust are entitled to have the assets of the trust delivered to them within a reasonable time. Obviously if a tax clearance must be received before distribution a reasonable time would encompass the length of time which it would take a trustee with ordinary diligence to obtain that clearance. We are now confronted with a situation where this period of time is not determined by our diligence but it is determined by the diligence or lack of diligence of the person handling the affairs of the spouse who survived. In certain instances it is conceivable that there is no one sufficiently interested in the affairs of the surviving spouse to take the necessary steps to provide the estate tax authorities with even the information that he or she left no assets of any value. We are concerned that this can lead to situations where the administration of Trust A will drag on indefinitely. It is unlikely under the circumstances that any Court would hold the trustee responsible but as a practical matter the beneficiaries will undoubtedly associate the delay with his administration of the trust and their relations will deteriorate.

Particularly, as we feel there is no logical justification for the proposed method, we submit that it is a more reasonable approach to consider that the taxing burden always remains with the exempt trust but this burden is merely suspended while the surviving spouse is enjoying the benefits of the trust. Upon he or she ceasing to enjoy those benefits the trust would then become taxable as a separate entity. In determining such taxation any benefits which the testator had given outright at the time of his death would be brought into account for determining the rates applicable to the trust.

If trusts are taxed in this manner, we believe that it would permit a wider application of the principle that benefits between spouses should be tax exempt. We specifically refer to the fact that under the proposed legislation trusts which contain a clause which provides that benefits are diminished or cease upon remarriage are not tax exempt. In a statement issued by the Minister of Finance on December 31, 1968, he indicated that it was not practical to exempt such trusts because this would involve taxing the widow upon remarriage as though she had made a gift of the assets in the trust. With due respect, we submit that it is not the widow who would be taxed but that it would be the trust as such and the burden would be transferred to the ultimate beneficiaries of the trust. It would be a relatively simple matter that such a trust become taxable on the death or remarriage of the surviving spouse, whichever first occurred, and at the same time would extend the same equitable principles of taxation to such trusts.

We understand that there is no intention to levy tax on a trust during the lifetime of a surviving spouse where he or she is the only person who is entitled to receive any portion of the capital or income of the trust during his or her lifetime. We have some concern as to whether this intention is fully implemented under the present wording of Section 3(1)(b) of Bill C-165 and would refer you to its opening paragraph. We are concerned that the present language might lead to an interpretation that the interests of all the beneficiaries under the trust must be absolute and indefeasible at the time of its establishment. We would suggest that this should be clarified by adding such words as "in which the interest of the surviving spouse" to "by his will' on line 16 so that the amended subsection would read...

> (b) The value of any gift made by the deceased whether during his lifetime or by his will *in which the interest of the surviving spouse* can within six months, etc.

Canada is signatory to a number of bilateral tax conventions, intended to eliminate or reduce the double imposition of death taxes. A usual feature of these conventions is a limitation of the period, following the date of death, during which a claim for foreign tax credit or refund may be made. In most cases the period is six years from the date of death, although the Canada-France convention provides for only five years.

Bill C-165, in one kind of situation, would seem to nullify the purpose of these conventions. This is where a trust is involved, in which the spouse of the deceased has an absolute and indefeasible interest and which, therefore, would not be taxable under the Bill. If the trust includes foreign property, the other country, signatory to the convention, can impose tax at the time of death but would not do so again on the death of the surviving spouse, the life tenant.

Canada, on the other hand, would not impose tax on the first death, but would do so on the death of the surviving spouse. Should the surviving spouse die before the limitation expires, presumably the foreign tax credit could apply but, if the surviving spouse outlives the period of the limitation, the foreign tax credit would be lost.

In this shrinking world, many estates or more properly in this case, trusts, will be invested in greater or lesser degree in foreign, probably American, securities. The problem therefore is of some significance and the potential impact on the estates concerned could be serious.

The apparent solution is to obtain a modification of the tax conventions, in which Canada is involved, seeking an extension of the limitation, for Canadians at least, to the lifetime of the surviving spouse. We draw this to your attention in the hope that practical steps can be taken to overcome the difficulty.

Companies have expressed concern to us about the status, under Bill C-165, of voluntary payments by an employer to the widow of an employee.

Section 7 of the Estate Tax Act is amended by Section 3(1)(a) of the Bill, to provide that where, within six months or such longer period as may be reasonable in the circumstances, the value of any property passing on the death of the deceased to which his spouse is the successor be established to be vested indefeasibly in his spouse, it would qualify for the exemption from tax of property transferred between husband and wife.

The phrase "or such longer period as may be reasonable in the circumstances" does not make it clear that the payments under discussion, which would come under Section 31(1)(l) of the Act, are of a type which would be exempt from estate tax.

Voluntary payments made by an employer to a widow of a deceased employee may not have been contemplated until long after the employee's death. We suggest that it is well within the spirit of Bill C-165 that the exemption should be clearly written into the law and not be subject in each case to administrative decision.

All of which is respectfully submitted.

E. F. K. Nelson

Executive Director

The Trust Companies Association of Canada.

March 13, 1969

## APPENDIX "E"

A Submission to the

BANKING, TRADE AND COMMERCE COMMITTEE

of the

SENATE OF CANADA

by the

ONTARIO BRANCH, CANADIAN BAR ASSOCIATION

represented by

J. ALEXANDER LANGFORD, of Messrs. Miller, Thomson, Hicks, Sedgewick, Lewis & Healy,

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### 1. ALTERNATIVE TAXATION FORMULAE

The new Estate Tax Rules render perhaps one-half of all Wills totally or partly defective.

This, in turn, dictates a massive programme of will drawing. First, the lawyers must educate Then, each property owning citizen must have constructed for him a will which will be much more complex and individual than those of the past.

This process cannot even theoretically be completed in two years. In these circumstances we suggest that the citizen would be best and most fairly served by giving the executors of those who die within one year of proclamation an option to be taxed either on the old or the new schemes.

### 2. COMBINING ESTATES FOR TAXATION

(a) *Separate Assessments to Separate Executors*

Consider the unfortunate case where the executors of a deceased widow are entirely different persons from the executors of the husband who predeceased her, and in whose estate she had a life interest. In such a case it

would be quite probable that different solicitors would be involved.

The policy of the Bill is that for tax purposes the property which produced a life income for the widow is to be lumped together with the widow's separate property. Under the Bill as it now stands one assessment would be issued, presumably to the executors of the widow, and those executors and their solicitors would have the problem of working out the proper apportionment of the total bill to be paid by themselves and to be paid by the executors of the husband. This could be a complicated and expensive problem to what will frequently be a small estate that ought not to be so burdened. The suggested amendment requires the Minister to allocate tax and assess separately the different sets of executors involved.

*See Page 1 of Appendix for draft amendment.*

(b) *Combining Unrelated Estates Where a Widow Remarries*

It is the policy of the Bill to add together the separate estate of a widow with the capital of which she may have been paid the life income under the will of her late husband. No complaint is made about this policy.

Suppose the not uncommon case of a man dying relatively young, who leaves his estate to his wife for life, with the capital going to his small children on her death. Suppose in years later his widow remarries a man who is himself a widower with children of his own. Suppose that the widow suffers the loss of her second husband, whose will also provides her with a life income, the capital going to the second husband's own children.

Suppose finally that our widow dies leaving her own modest estate to her own children. Under the Bill all three estates are lumped together for purposes of establishing the tax payable. It seems to the Bar Association to be unjust that the first husband's estate should be increased by the value of the estate of the second husband. For example, the first husband's $100,000 estate passing to his children on his widow's death might be taxed at a 50% rate because the widow had years later remarried a man with a $1,000,000 estate, which estate is being distributed to entirely different persons on the widow's death. It is, of course, entirely fair and acceptable that each estate would be enhanced by the value of the widow's separate property. The unfairness lies in joining together the two unrelated estates of deceased husbands.

To resolve such a defect in the Bill is a complex undertaking, but the draft amendment shown on *page 2 of the appendix* in our view does complete the task and the problem is sufficiently common that it ought to be removed.

3. THE REMARRIAGE CLAUSES

The Bill contains a basic policy that a gift of income to a widow is exempt provided that such gift is absolute and unconditional. A provision that the widow's interest is reduced or terminated on her remarriage would lose the entire exemption. A slightly different problem would arise in a living trust where the creator of a trust contemplates the possibility of divorce as well as remarriage. He or she might wish to terminate or reduce the benefit on the happening of such an event. In the case of a living trust the gift tax exemption is lost as well as the estate tax exemption.

To deny persons the opportunity of including such a provision in a will or trust is to deny the use of a very common and sometimes even necessary provision. A social argument rages as to the justice of such a provision but we ask you to note that there are cases in which it would be unjust not to include such a provision. Indeed the Bill itself recognizes and allows for it in the case of pension trusts. The exception is no less important in wills and living trusts.

The denial of such a general and presently existing right has no place in a taxing statute.

Consider for example the case of a young couple with small childen. Possibly the wife has substantial inheritance out of which she would be happy to provide a life income for her husband, but the benefit appropriate for him might well change and be more in favour of her children in the event of his remarriage. Consider also the competing claims of a surviving spouse and a disabled adult child. Remarriage of the surviving spouse could well be the factor that should swing the balance.

The draft amendments to the Estate Tax Act shown on *page 5 of the appendix*, and Part IV of the Income Tax Act shown on *pages 7 and 6 of the appendix* would allow the present right to stand unimpaired within the scheme of the proposed amendments.

Incidentally, the cure for this difficulty would be much easier without the "combination principle".

4. LOSS OF CHARITABLE DEDUCTION ON REMAINDER GIFTS

Take the very common will plan of a childless couple in which the man leaves his wife a life interest with remainder over on her death to a charity.

At first glance, one would expect a "Spouse's Deduction" on the husband's death and a "Charitable Deduction" on the wife's death. In fact, however, because of the mechanics of the "combining" of the value of the trust with the wife's estate, charitable deduction is lost.

We do not know if this is an intended result. If it is not, the exemption can be restored by deleting "by the deceased" from Section 7(1) (d).

5. PROTECTION OF DEPENDENT CHILDREN

Suppose the not uncommon case of a man consulting you about his will. The client wishes to provide for his wife by way of a life income, and after the death of the wife to divide the capital among the children. This is an entirely normal situation. Suppose, however, that for good and sufficient reasons the client cannot rely upon his wife to make proper provisions for the maintenance and education of the children during their dependency after his death. The client, therefore, wishes to provide appropriate life income to the wife and to the children during their dependency. His executors and/or trustees will have the right to use some of the income or capital to meet the basic needs of the dependent children. Such a situation is common in every law office. There are many reasons why a testator might not so rely upon his spouse. One has only to think of mental illness, alcoholism and the spendthrift to begin to appreciate some of the common situations.

Unfortunately as the Bill now stands insertion of clauses to protect dependent children in this way during the period when their surviving parent is entitled to a life income would make the entire fund taxable. The problem will be particularly acute in the modest estates not sufficiently large to establish separate trusts for children. The draft amendment shown on *pages 7A to 7B of the appendix* would completely meet the problem without destroying the basic policy of the Bill. The underlined words represent the changes.

6. DEDUCTIONS FOR INFIRM CHILDREN

The Bill permits very generous deductions for dependent infirm children. However, to claim the deduction the benefit must be paid to the infirm child before his 40th birthday.

In most cases of infirmity this is out of the question and parents will set up *lifetime* trusts even though the deduction be lost.

We suggest that the 40 year rule for trusts be relaxed in these circumstances.

7. LOSS OF FOREIGN TAX CREDITS

It is an accepted principle that there shall be a reduction in Canadian tax where tax was properly paid to a foreign Government (i.e. where the asset was situated within that foreign country). The "Deferment Principle" makes this allowance awkward because the Foreign Tax would normally be paid when the first spouse died, and the Canada Estate Tax when the second spouse died.

It seems to us that there should be an allowance on the death of the surviving spouse of the *foreign tax which was actually paid* on the death of the predeceasing spouse. While this would mean that the deduction was unrelated to the amount of Canadian tax which would have been payable on the death of the predeceasing spouse, the alternative works an injustice.

8. LOSS OF PROVINCIAL TAX CREDIT

The complex provisions of Section 9(9) which determine the amount of Provincial tax credit available in respect of a tax-deferred trust are evidently designed to protect the Federal Government in the situation where a Province, which on the death of the predeceasing spouse imposed a succession duty, has abandoned the succession duty field by the time of the death of the surviving spouse.

The device of prescribing appointed Provinces, it seems to us, will inevitably result in an injustice.

We suggest that the clause be amended to relate the determination of the property to which the Provincial tax credit is applicable to the death of the predeceasing spouse, and provide that in the ratio that that property

bears to the whole of the property passing on the death of the predeceasing spouse be available for credit on the death of the surviving spouse.

Basically, all that is involved is the deletion of the references to appointed Provinces, and the substitution of "prescribed" and "designated" where the word appointed appears in Section 9(9).

9. LANGUAGE CLARIFICATION IN SECTION 7

Section 7(1) (a) and (b) as drafted leave ambiguities in the interpretation.

(a) Fundamentally the intention of the Minister is to exempt from tax property transfers between spouses. In our opinion the wording of Section 7(1) (a) and (b) do not necessarily give effect to this decision, and in addition creates ancillary problems in the quantitative of the deductions from taxable values.

It will be noted that in Section 7(1)(a) what is to be deducted is the value of the *property* which passes outright to the surviving spouse.

The Minister's intention, as appears from speeches and press releases, is also to permit the deduction of the value of property which is to be held in trust under Section 7(1)(b)(A). Unfortunately, the deduction is expressed to be in respect of the value of the *gift* conferred, and it is evident from the terms of Section 7(1)(b)(B) that that value is not necessarily the value of the property which is to be held in trust.

The draft amendment shown in the appendix, it seems to us, is more clearly expressive of the Minister's intentions as stated, and in addition ensures that gifts inter vivos to a spouse which are exempt from gift tax under Section 112(1)(d) and (e) of the Income Tax Act are not subjected to tax if the donor spouse dies within three years of the gift.

(b) In addition, we feel that the provision as it stands is undully restrictive. The essential factors should be that the interests of the surviving spouse are absolute and indefeasible. Since tax is to be deferred until the death of the surviving spouse, there would seem to be no valid objection to deferring the vesting of the subsequent interests until that time. This would accord with the age old practice of the legal profession to defer vesting until the time for dealing with the contingent or postponed interests has arrived.

*See Pages 8 to 13 of the appendix for draft amendments.*

10. IMPROVING THE RELATIONSHIP BETWEEN GIFT TAX RATES AND ESTATE TAX RATES

As suggested in our general remarks earlier, we approved the idea of integrating gift tax and estate tax. It does seem, however, that while the framework is provided, the gift tax rates have been made so high that the integration is effected by preventing lifetime gifts with punitive rates rather than a true integration. At first glance, the gift tax rates are about 10% less than estate tax rates, but this omits the factor that in virtually every case the gift tax will be paid many years before the comparable estate tax. If, as has been said, "money doubles itself every ten years compounded" the true burden of gift tax paid say ten years before a man's death would be almost double the burden of his death tax if he retained the asset.

We have two suggestions. The first is to provide a system of interest of annual interest credits on the gift tax paid. Thus, if a man had paid gift tax 20 years before his death, he would get credit not only for the gift tax paid, but for interest on that money paid over the intervening years, possibly resulting in a refund of tax at the time of his death. The other suggestion is that in rationalizing the two rates, there should be a modest tax advantage to gifts, not enough to have it used as a tax device, but enough to encourage or at least not discourage older people from passing assets on to the younger and presumably more active generation.

11. TAXATION WHERE THE TERMS OF A WILL ARE ALTERED AFTER DEATH BY SOME LEGAL ACT

It will be inevitable that during the next 30 years many people will die with old style wills, (i.e. wills drawn to conform with the old patterns of taxation).

Many beneficiaries will suffer, but some of these obsolete will plans will be curable by children disclaiming their encroachment powers or by applications in Court.

Where such changes are effected immediately after the death, the altered will arrangements are recognized as the basis for taxa-

tion in the old Act and in the new Bill up to August 1, 1969.

We recommend that such changes in wills if done immediately after a death are normal and desirable and fair to "national revenue", and that specific approval of the practice be made permanent and not limited to August, 1969.

Similarly, Dependants' Relief Applications in Court should be treated in the same way.

APPENDIX

to the

SUBMISSIONS BY THE ONTARIO BRANCH, CANADIAN BAR ASSOCIATION

to the

BANKING, TRADE AND COMMERCE COMMITTEE

of the

SENATE OF CANADA

ESTATE TAX

—1—

15. A. Where the executor of the deceased and a person who is a successor by virtue only of subsection (viii) of paragraph (r) of subsection (1) of Section 58 so require, it shall be the duty of the Minister to issue notices of assessment showing the apportionment of tax payable under this Part on the persons liable to the payment thereof.

—2—

COMPUTATION OF TAX

8. (1) *Subject to subsection (2)* the tax payable under this Part upon the aggregate taxable value of the property passing upon the death of the person is the amount, if any, by which

(a) the amount determined under subsection *(4)* in respect of his state sum exceeds

(b) the amount determined under subsection (4) in respect of his gift sum.

(2) *Where property passes on the death of the deceased by virtue of subsection (1a) of Section 3 in respect of gifts made by more than one spouse the tax payable under this Part is the aggregrate of the amount obtained*

*(a) by applying to the property passing on the death of the deceased (other than property passing by virtue of subsection (1a) of Section 3) a rate of tax computed as a percentage of the aggregate net value of the property passing on his death of*

*(i) the amount determined under subsection (4) in respect of his estate sum exceeds*

*(ii) the amount determined under subsection (4) respect of his gift sum and*

*(b) by applying to the property passing on the death of a deceased by virtue of subsection (1a) of Section 3 in respect of each gift made by a particular spouse at rate of tax computed as a percentage of the aggregate net value of the proprety passing on his death of*

—3—

*(i) the amount determined under subsection (4) in respect of the special estate sum applicable to that particular spouse exceeds*

*(ii) the amount determined under subsection (4) in respect of his gift sum.*

DEFINITIONS

(2) For the purposes of this section.

(a) a deceased's "estate sum" is the aggregate of

(i) the aggregate taxable value of the property passing on his death *other than property passing on his death by virtue of subsection (1a) of Section 3.*

*(ii) the aggregate taxable value of property passing on his death by virtue of subsection (1a) of Section 3.*

(iii) the amount, if any, by which his cumulative gift sum for the year in which he died exceeds the lesser of

(A) the amount included therein in respect of property the value of which has been included in computing the aggregate net value of the property passing on his death.

or

(B) the amount included in the computation of the aggregate net value of the property passing on his death, in respect of property the value of which has been included in his cumulative gift sum for the year in which he died, and

— 4 —

(*iv*) the amount determined at the time of his death under subsection (3) of section 115 of the Income Tax Act in respect of the cumulative gift sum equal in amount to the excess referred to in subparagraph (*iii*); and

(b) *a deceased's "special estate sum" is the aggregate of*

*(i) the aggregate taxable value of the property passing on his death other than property passing by virtue of subsection (1a) of Section 3.*

*(ii) the total value of gifts made by a particular spouse included as property passing on his death by virtue of subsection (1a) of Section 3.*

*(iii) the excess determined under subparagraph (iii) of paragraph (a) and the amount determined under subparagraph (iv) of paragraph (a) in computing his estate sum*

*(c) a deceased's "gift sum" is $20,000 plus the aggregate of the excess determined under subparagraph (iii) of paragraph (a) and the amount determined under subparagraph (iv) of that paragraph in computing his estate sum.*

Renumber subsections (3) and (4) to (4) and (5)

— 5 —

ESTATE TAX

*Add*

3. (1) (r) property comprised in a settlement for which a deduction was allowed by virtue of paragraph (b) of subsection (1) of section 7, or a gift that as exempt from tax under Part IV of the Income Tax Act by virtue of paragraph (e) of subsection (1) of section 112 thereof to the extent of the value of such property at the date of remarriage as was on the remarriage of the spouse no longer held on such terms that the said deduction of exemption would be granted.

*Add*

7. (1b) for the purposes of paragraph (b) of subsection (1) where any gift was made by the decesased by the creation of a settlement described in that paragraph subject to a provision that the benefit conferred on his spouse or a part thereof ceases to be payable to him if he remarries such gift shall not by reason only of such provision be considered not to be vested indefeasibly in him.

(Renumber 7 (1c) and 7 (1d))



— 6 —

GIFT TAX

112 (1)(e) a gift made by a donnor during his lifetime made by the creation of or the transfer of property to a trust under which

(i) his spouse is absolutely and indefeasibly entitled to receive all of the income of the trust that arises before such spouse's death and

(ii) no person, except such spouse, is entitled (eligible) before such spouse's death to receive or otherwise obtain the use of any of the income or capital of the trust,

provided that for the purposes of this paragraph where any gift was made by the donor subject to a provision that the benefit conferred on his spouse or a part thereof ceases to be payable to him in the event of divorce from the donor or remarriage such gift shall not by reason only of such provision be considered not to be indefeasibly vested in him.

— 7 —

GIFT TAX

DEEMED GIFT WHERE PROPERTY DISTRIBUTED

113 (2) (a) Where a gift

(i) that was, by virtue of paragraph (e) of subsection (1) of section 112, exempt from tax under this Part, or

(ii) the value of which was, by virtue of paragraph (b) of subsection (1) of section 7 of the Estate Tax Act, deductible in computing the aggregate taxable value of the property passing on the death of the donor,

was made by the donor to his spouse by the creation of a trust and, before the death of such spouse, income or capital of the trust was paid out to some person other than the spouse, such spouse shall be deemed to have made a gift to that person of the income or capital so paid out.

(b) Where a gift that was by virtue of paragraph (e) of subsection (1) of section 112 exempt from tax under this Part was made by the donor to his spouse by the creation of a trust and before the death of the donor income or capital of the trust was on or after the divorce of the donor and such spouse paid out to or directed to be held for the benefit of some person other than the spouse or the donor the donor shall be deemed to have made a gift to that person of the income or capital so paid out or directed to be held.

—7 A—

ESTATE TAX

7. (1) (b) The value of any gift made by the deceased whether during his lifetime or by his will that can within a reasonable time after the time of the death of the deceased be established to be absolute and indefeasible and that was made by him by the creation of a settlement under which

(i) the spouse of the deceased is entitled to receive *for the use and benefit of such spouse or for the use and benefit of a child of the deceased while such child is not sui juris*

(A) all of the income of the settlement that arises after the death of the deceased and before the death of such spouse, or

(B) periodic payments in ascertained amounts or limited to ascertained maximum amounts, to be made at intervals not greater than twelve months, out of the income of the settlement that arises after the death of the deceased and before the death of such spouse, or, if that income is completely exhausted by those payments, out of the income and capital of the settlement,

*provided that for the purposes of this paragraph the spouse of the deceased shall be deemed to be entitled to receive any income or capital paid or applied by the trustee of such settlement to meet the reasonable needs of a child of the deceased while such child was not sui juris, and*

—7 B—

(ii) no person such spouse isentitled to receive or otherwise obtain, after the death of the deceased and before the death of such spouse, any of the capital of the settlement or any use thereof, or any of the income of the settlement or any use thereof, or any of the income of the settlement to which such spouse is entitled to any use thereof, *provided that for the purposes of this paragraph the spouse of the deceased shall be deemed to be entitled to receive any income or capital paid or applied by the trustee of such settlement to meet the reasonable needs of a child of the deceased while such child was not sui juris,* and

(iii) if the settlement is not a trust, all interest in and rights to the property subject to the settlement and all interest in and rights of the income of the settlement fall into the possession of the persons entitled thereto not later than *the day after* the day of the death of such spouse;

—8—

7. (1) (a) the value of any property

(i) passing on the death of the deceased that within six months after the death of the deceased or such longer period as may be reasonable in the circumstances

(A) can be established not to be property comprised in a settlement and that has vested absolutely in his spouse for the benefit of such spouse

(B) can be established to be property comprised in a gift to his spouse for the benefit of such spouse that was exempt from tax under Part IV of the Income Tax Act by virtue of paragraphs (d) or (e) of subsection (1) of Section 112 thereof

(C) can be established to be property comprised in a settlement under the will of the deceased under which

(I) the spouse of the deceased is absolutely and indefeasibly entitled to receive all of the income of the settlement that arises after the death of the deceased and before the death of such spouse and

(II) no person except such spouse may receive or otherwise obtain after the death of the deceased and before the

—9—

death of such spouse any of the capital of the settlement or any use thereof of any of the income of the settlement to which such spouse is entitled or any use thereof.

(D) That can be established to be property transferred to a trust that at the time of the transfer was a settlement to which sub-clauses (I) and (II) of clause C. apply the creation of which constituted a gift inter vivos by him to his spouse which was exempt from tax under Part IV of the Income Tax Act by virtue of paragraph e of subsection (1) of Section 112 thereof.

(b) the value of any gift made by the deceased whether during his lifetime or by his will that can within six months after the death of the deceased or such longer period as may be reasonable in the circumstances be established to have been made by him by the creation of a settlement under which

(i) the spouse of the deceased is absolutely and indefeasibly entitled to receive periodic payment in ascertained amounts or limited to ascertained maximum

amounts to be made at intervals not greater than twelve months out of the income of the settlement that arises after the death of the deceased and before the

— 10 —

death of such spouse, or, if that income is completely exhausted by those payments out of the income and capital of the settlement and

(ii) no person except such spouse may receive or otherwise obtain after the death of the deceased and before the death of such spouse any of the capital of such settlement or any use thereof or any of the income of the settlement to which such spouse is entitled or any use thereof.

— 11 —

Section 3

(1a) Where a donee during his lifetime received from his spouse a gift in respect of which a deduction was allowed by virtue of Clause c of sub-paragraph (1) of paragraph (a) or paragraph (b) of sub-section (1) of Section 7 or a gift that was exempt from tax under Part IV of the Income Tax Act by virtue of paragraph e of sub-section (1) of Section 112 thereof made by his spouse by the creation of a trust or other settlement described therein the property subject to the trust or other settlement at the time of the death of the donee (including any amount payable to the trustee of such trust under any policy of insurance effected on the life of the donee) shall be deemed to be property passing on the death of the donee.

— 12 —

Section 3

(1b) For the purpose of sub-section (1a) where any gift referred to therein was made by the donor thereof by the creation of a Trust is a settlement described in paragraph (b) of sub-section (1) of Section 7 the value of the property subject to the Trust at the time of the death of the donee shall be deemed to be the lessor of its value at that time or the value at the time of the death of the donor determined in accordance with the regulations of the payments referred to in that paragraph.

— 13 —

Section 7

(1b) For the purpose of paragraph (b) of sub-section (1) where any gift of the deceased by the creation of a Trust that is a settlement described in that paragraph the value of the property subject to the Trust shall be deemed to be the lessor of its value at the time of the death of the donor or the value at that time determined in accordance with the regulations of the payments referred to in sub-paragraph (1) of that paragraph.

## APPENDIX "F"

CANADIAN
CONSTRUCTION ASSOCIATION

Construction House, 151 O'Connor St.,
Ottawa 4, Canada
Area Code 613/236-9455

April 30, 1969.

Hon. Salter A. Hayden, Chairman, and Members of the Banking, Trade & Commerce Committee,

The Senate,
Parliament Buildings,
Ottawa 4, Canada.

Honourable Senators:

*RE: Bill C-165, Estate & Gift Taxes*

The Canadian Construction Association very much appreciates the opportunity of presenting its views on the above-mentioned Bill in the appended Brief. The matter is of widespread and very special concern to our Members.

The Construction Industry is Canada's largest. Virtually all construction companies, equipment distributors and builder's supply firms are family or closely-held concerns. Moreover, firms in our industry are typically short on liquid assets. This combination of factors has meant that members of the construction industry have found estate taxes and succession duties especially onerous.

The Association has stressed many times in the past the deleterious effect that death duties have on the growth and continuation of family firms and on initiative and enterprise generally. When the Budget was introduced last October, the CCA immediately expressed its appreciation of the exemption of spouses from estate taxes but also its grave concern at the increased taxes that would have to be paid in the case of many estates due to the application of higher rates on much smaller estates and the integration of estate and gift taxes. A series of representations have subsequently been made on behalf of the industry.

The main points contained in these submissions have already been dealt with in detail during the Senate Debate following the Bill's first reading. It was therefore concluded that a lengthy treatment of them in the appended brief was unnecessary. The Association would like however, to stress at this hearing the application of these general principles to the construction industry, rather than to the specific wording and administrative aspects of the Bill.

All of which is respectfully submitted,

(Signed) S. D. C. Chutter
General Manager

(signed) M. Stein
President

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1. *Summary of Recommendations*

1. *That the previous schedule of estate taxes be maintained pending further study:*

Such action would:

(a) permit the consideration of estate taxes in the ight of other proposed tax reforms to be included in the Federal Government's White Paper in a month or so's time.

(b) enable the elements of relief contained in Bill C-165 which enjoy widespread support, such as the exemption for spouses and the option of tax payment in

instalments, to be enacted. (The option of using either the previous or new exemptions until next August has already been granted).

(c) permit discussions with the Provincial Governments who currenctly receive up to 75% of estate tax gross revenues and in several cases are committed to a policy of rebating their shares or have it under serious consideration.

(d) afford some measure of assurance to members of family firms who are adversely affected by the new schedules of estate and gift taxes.

2. *That the passage of closely-held companies from one generation to another be allowed without attracting estate taxes so onerous that they constitute a major factor in selling or closing down such firms.*

In this regard, it is again suggested that serious consideration be given to an Ontario Economic Council proposal that the value of shares of private Canadian corporations be exempted from estate tax when passed to members of the immediate family. (Subject to their not being sold for a minimum period of ten years and other safeguards).

2. *Size and Nature of the Construction Industry*

The Construction Industry is Canada's largest and operates in all sections of the country. The value of the construction program this year is estimated to be some $13.3 billion. (Federal Government's White Paper, "Public and Private Investment, Outlook 1969"). Construction outlays in Canada have on average accounted for roughly one-fifth of the Gross National Product. They now provide jobs in construction operations to the year-round equivalent of some 600,000 Canadians and to an even larger number engaged in the manufacturing, transporting and merchandising of construction materials, components and equipment.

D.B.S. estimates that over 80% of the construction program is carried out by contractors. The balance is executed by Owners ranging from those with sizeable construction crews to the 'do-it-yourself' individual. Even where prime conractors are not used, the construction materials, components and equipment are supplied by private firms. Moreover, equipment may be rented from private firms and some of the construction work to let specialty contractors. The trend is towards increasing use of the Contract Method.

The family firm or one which is "closely-held" appears to have characteristics that are especially appropriate for the construction industry. All but a handful of the general contractor, trade or specialty contractor, equipment distributor and builders' supplier firms are in this category. Many are sizeable concerns with annual volumes of busness amounting to millions of dollars. Even some of those which are publicly listed are still conrolled and operated by the founding family. A good many of the firms manufacturing construction products are also family or closely-held firms.

The very high porportion of such companies in the construction industry is obviously due in large measure to the facts that entry into the industry is easy and that many firms are small or medium-sized. And yet, as mentioned above, there are also a sizeable number of multi-million dollar firms that are family enterprises. Capital investment in equipment etc. is often heavy. Construction is a high risk business with many hazards. Competition for work is extremely keen. These factors are such that a high degree of personal financial stake and involvement in the management of construction companies seem to be particularly important elements in their success. Similarly, many large manufacturing concerns as a matter of policy select family firms to act as their distributors in order to have the same qualities of aggressive, personal operation.

The construction program is made up of approximately 60% building construction, of which half is residential construction, and 40% engineering construction. The high degree of specialization is reflected by the abundant use of sub-contractors and sub-sub-contractors. This and the fact that those directing the operations of each specialist contractor have a personal incentive to see that the work is carried out as quickly and economically as possible, have been cited as the main reasons why construction work is carried out faster and with a smaller on-site labour force in North America than in Europe.

3. *CCA Policy Statement on Estate Taxes*

For many years the Association has contended that the benefits to the state of the relatively small revenues derived from deah duties have been more than offset by their in-

herent deterrents to initiative and economic expansion. Accordingly it was recommended that they be abolished and that, for immediation relief, the exemptions for estate taxes be raised to $100,000 and that an option be provided for the deferment for one year of the evaluation of an estate.

At the last CCA Annual Meeting (Montreal, January, 1969) the views of the Association were incorporated in the following Statement of Policy adopted by delegates at the closing session: "Estate taxes and succession duties work to the detriment of family-owned businesses by preventing them from being passed on in viable form. At the same time, they encourage the removal of large capital holdings together with managerial ability from the country with consequent hardship to employees. It is therefore recommended that estate tax be amended to provide for the passage of family-owned exterprises to members of the immediate family."

*4. Difficulties Experienced By Construction Industry Firms Due to Death Taxes*

It has been recognized by the Minister of Finance that estate taxes place a special burden on family firms and on estates in which the major assets are not liquid. Both factors are the norm in the construction industry. The two main assets of a contracting firm are usually know-how and equipment. Neither are liquid in nature. Moreover, the firm may well also have considerable indebtedness.

The combination of these conditions has caused considerable problems in the continuation of the typical construction firm. Indeed, the very prospects of having to pay estate taxes and succession duties have been an important factor in the sale of firms in the construction industry. It should be noted that there is normally a very limited market for shares of construction firms and that potential purchasers are often only interested if they can acquire a controlling interest.

In addition, difficulties have frequently been experienced in arriving at the proper value of a share in a construction company. Very few are listed. Often the death of a principal shareholder will in itself have a very marked effect on a share's value. That such evaluations can only be arbitrary decisions is reflected by the fact that there are often appreciable differentials between those established by Federal estate tax officials and Provincial succession duty officials.

The above has occasioned serious problems in the past. The provisions of Bill C-165 will further increase the estate tax problems in the case of many members of the construction industry inasmuch as the rates of tax have been increased so that, for example, the 50 per cent rate will apply on estates of $300,000 and gift taxes are to be integrated with estate taxes.

A $300,000 estate is not a large one, relatively speaking, in modern times. Moreover, the integration of gift taxes with estate taxes and the continuation of inflation will likely mean a trend towards an increased number of estates of this size and over. The 50 per cent rate did not previously apply to estates in Canada until they were $1,550,000 and it is understood that it applies in the United States only when the $2,500,000 level is reached. Thus the incidence of the tax is much greater on sizeable estates than in the past and it is very considerably out of line with that levied in the U.S.A.

Accordingly, deep concern has been expressed over the increased problem that the sons in established family firms will face when both their parents die, in term of being able to carry on a business which has little in the way of liquid assets. The exemption afforded to spouses gives relief but it may be of short duration and be more than offset by the higher rates of estate taxes. In some cases the head of a family firm is already a widower.

Similarly, the option of paying estate taxes over a period of years will also be helpful in a number of cases. However, the fundamental question is really whether sizeable sums of money can be paid—even over a five-year period—and still be able to operate the company. Incidentally, the Federal Government's position as a preferred creditor in these circumstances will reduce the ability of construction companies to obtain surety bonds which are required by the Federal Government and many other Owners as a condition of being awarded a contract.

In the past the schedule of rates for estate taxes have been changed infrequently. It is greatly feared, therefore, that if the increased rates of tax contained in Bill C-165 are enacted by Parliament they will likely not be subject to review or revision for a lengthy period. Moreover, there is no knowledge at this time of the Federal Government's intentions with respect to the recommendations of the (Carter) Royal Commission on Taxation. If,

by chance, a capital gains tax is imposed and a deemed capital gain held to occur at time of death, the whole impact and problem of death taxes with respect to the continued operation of family firms with little liquidity would be escalated still further.

The Association is aware that the Carter Commission stated that there was nothing special about family-owned firms that necessarily made them more efficient than others and that a study commissioned by it on Death Taxes stated that there was not much factual evidence to support the contention that such taxes caused family firms to sell out either to large corporations or to foreign interests or to both. With regard to the first opinion, the Association contends strongly that family firms do seem to be well-suited to carry out most construction operations. With regard to the second point, it is not known if the construction industry was included in the authors' study. We do know, however, that our industry has faced serious problems with respect to death taxes in the past leading to sell-outs. The future prospects are for more of this due to higher taxes under the provisions of Bill C-165.

Up until now, the references to difficulties caused by estate taxes have been related to those experienced by members of the family paying them. The position of company employees is often of sincere equal concern to those operating family firms. In many cases these employees have worked most of their adult lives in helping the business to operate and expand. The incidence of onerous death taxes on those operating a family firm will either restrict its operations or lead to its sale or closing down. Alternatively, the prospects of paying death taxes also lead to sell-outs. In the former case where the company business is curtailed the long-term employee may well suffer by way of reduced bonuses, pay increases or scope for advancement. If the firm is sold or closes down, employment in a similar position is by no means guaranteed and there frequently would be losses in terms of fringe benefits.

Another problem caused by the prospects of high rates of death taxes is one experienced by the country as a whole. Reference here is made to the departure of successful executives to "tax havens" or to other regions where the incidence of income and death taxes is lower than in Canada. The capital they take with them constitutes an appreciable loss but perhaps of even greater concern is the loss of executive ability in the persons departing. Their talents and drive are also sorely needed and they may well be a decade or more before normal retirement age.

5. *Deterrents to Establishment, Operation and Exponsion of Businesses*

The Association has no desire to indulge in extreme talk on the deterrent effect which taxes in general or death taxes in particular have on incentives. At the same time, it is believed that greater recognition should be given by the Federal Government to the effects that they have on decisions related to the establishment, operation and expansion of businesses. And it is largely upon the initiatives shown by these enterprises that Canada's economic development and the revenues of governments are based.

It is doubtless true that people are more aware of income taxes than of death taxes, For one thing, payment of income taxes is an everpresent experience. Yet it is possibly due to this awareness of income taxes that causes members of our industry to be especially concerned about death taxes. After having paid corporation income tax and other business taxes and having ploughed back hard-won earnings into the business, the knowledge that they are not free to dispose of their personal savings (notwithstanding the fact that they have borne high rates of personal income tax) causes special resentment.

Accordingly, it is not so much a question of the number of estates which attract the higher rates of tax as it is the effect of the prospects of such taxes in the future on *present* investment and other business decisions. Will a capital outlay be cancelled on the grounds that it may well cause estate tax problems by reducing company liquidity? Will a new business venture or expansion be decided against on the basis that net returns after income and death taxes make the risk involved unattractive.

The number of people who attempt to create and perpetuate businesses in Canada is relatively few. Risk capital and enterprise are urgently needed. Is it worth risking a reduced incentive for the expansion or continued operation of their firms for the relatively small net amount of tax revenues that the higher rates of tax on estates and gifts will bring? Psychological speculation on entre-

preneurial motivation is a luxury that this country cannot afford.

As mentioned, construction is a high risk industry. Years of effort and long hours of labour may go unrewarded or the build-up of company resources wiped out by conditions on one or two contracts. Fluctuations in the construction cycle are marked. Weather and terrain can cause serious problems. Competition is high and the casualty rate is heavy. When times are tough, the employers may pay themselves less than their employees to keep the company from going under. For those who succeed, however, the rewards may be high. This is a powerful incentive.

It is not only vital that there be sufficient incentives to encourage people to establish businesses but also to expand them. Conversely, it is most undesirable if those who have built up a successful family or closely-held firm know that its future operations may well be in jeopardy because of death taxes. Economists predict that the demands to be placed on the construction industry for its services are due to be increased very greatly during the balance of the century. Its growth should be encouraged, not deterred. The risks contained in the new estate tax schedule of rates would seem to be out of all proportion to the revenue involved.

6. *Conclusions and Recommendations**

Several of the Provincial Governments have already recognized the undesirable features of high death taxes. Two rebate their 75% share of gross estate tax revenues; others plan to do so. In such regions capital investment, business expansion and the retention of successful executives have been encouraged. In view of this trend, it would seem inconsistent, to say the least, to proceed with legislation which (while affording measures of relief in some respects) imposes higher taxes on many estates.

Moreover, it is difficult to segregate this one area of tax reform from all of the others. In view of the fact that the Federal Government is soon to publish a White Paper on Tax Reform, it would seem only reasonable to defer enacting at least those portions of Bill C-165 which involve higher taxes until the White Paper can be studied.

The Association has in the past drawn attention to a recommendation in a report published by the Ontario Economic Council which is designed to allow the passage of closely-held corporations from one generation to another or to other members of the immediate family without the attraction of estate taxes, or at least that a significant reduction in the rate of tax be allowed in such cases:

> "That where more than ten percent of the issued and paid-up capital of a private Canadian corporation possessing assets of which not more than ten percent are securities of public corporations or government is represented by shares owned by a deceased at the time of his death, the value of such shares be included in determining the rate of transfer tax to be applied to other estate assets, but such value be exempted from transfer tax unless such shares are sold within a period of ten years."

Such a measure would facilitate the growth of Canadian enterprises and it is recommended that it be given serious study and that it be expanded to include non-corporate enterprises.

When the exemption for spouses from estate tax was announced in the Budget Address last October, reference was made to the fact that the wife had often played a major part in the development of an estate. The same is true of many sons or nephews who have devoted many years of their lives to the building up of a family business in the construction industry. This fact deserves full consideration.

## EXCERPTS FROM LETTERS SENT TO THE CANADIAN CONSTRUCTION ASSOCIATION

"The key problem in a small public company is maintaining continuity of management on which the company's survival depends. The effect of this new legislation is to make the continuation as a family company very improbable, since the only certain method of securing continuation of management and consequent avoidance of disruption of employment for many hundreds of permanent employees is to sell out or merge. This abhorrent alternative *would* have to be faced by the executers of the family estate following a common death, since it is very improbable

* cf. also page 46.

that sufficient liquidity can be secured or retained within the estate to offset the pyramiding tax effect."

---

"I think, in a lot of cases, if the people find that the full implementation of these proposed laws is now in effect, the drive to expand one's business will come to a halt, for there is no sense in building your firm up with more assets to carry out more work, if, in the end, you have to sell most of the assets to pay the taxes and your heirs are left high and dry.

In relation to my own situation, if there are no modifications in the new law, then I will consider the situation and probably convert all my assets to cash and say, "That's it". When I lose the right to do with my money as I see fit, after all the taxes I have paid to keep it, and then find it is not mine after all, where is the incentive?"

Yours truly,

---

"The writer has just turned over control of Universal Concrete Accessories, Limited to a U.K. Company. The prime factor behind this decision was concern about estate duties.

By way of explanation, our Company, incorporated in 1950 from small beginnings has operated effectively, although volume invariably has outstripped any increase in shareholder's equity. We were like many new Companies short of working capital. I owned about 80% of outstanding shares with most of my net worth represented by this and other equities of a non liquid variety. An appraisal of the new succession duties tables clearly indicated that my estate on the demise of my wife and I would indeed be vulnerable. In the circumstances I felt there was really no practical alternative but to dispose of most of my interest in Universal, should a favorable opportunity present itself. I proceeded accordingly.

The foregoing, I submit is one other example of succession duties and concern thereof influencing the sale of one more Canadian Company to non Canadian interests."

---

"After 25 years of working 60 to 70 hours a week the first eight years, with nothing more than one week end Saturday noon to Monday each year for a vacation, all public holidays were full days work for the writer.

After the return from service of our son, who also then worked 60 to 70 hours a week, we made progress by hard work and holding all expenses as low as possible and in the paying of several hundred thousand dollars to our Government. In the words of our Banker, we were doing a wonderful job for our Government.

Our son who is half the business, carries a heavy insurance to cover succession duties which really become part of his estate.

Should this change come into effect, one would be better to wind up his business, as no further earnings are needed as the writer still works hard and is in his 80th year, clear up all holdings into cash and take citizenship in another country. No doubt many will do so as the attraction to work as we have would have no value or inspiration. Surely many hundreds find themselves in the same position. By the old laws our succession duties would have been considerable."

---

"My family have sold building materials in Quebec and Eastern Canada for over 100 years. My brother and I took over the present firm from my father in 1920 and we own several other companies in related fields.

My son has been in the business for some time and hopes eventually to run the companies. I am a widower.

The proposed Estate Tax increase may prevent my son from acquiring my shares in the business and may force me to liquidate and/or to move out of the country. I don't want to see the firm lose its Canadian identity possibly to a U.S. corporation. I don't want to put 200 people out of work in an already depressed industry. I don't want to move my assets out of the country. However, the proposed Estate Tax increase may force me to do just these things.

I think you would develop Canada's economy far more quickly and surely by reducing and eliminating Estate Tax rather than by

increasing it. You want industry to be owned by Canadians, and yet you are forcing private companies, such as ours, to sell to Americans.

By forcing private companies to sell to Americans, or to liquidate, you are depriving the Canadian business community of something basic that no amount of dollars and cents can replace—the daring and courageous *spirit of private initiative* responsible for developing this great country of ours.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 36

WEDNESDAY, APRIL 9th, 1969

Complete Proceedings on Bill S-33,

intituled:

"An Act to incorporate Atlantic Mutual Life Assurance Company".

WITNESSES:

*Department of Insurance:* E. Humphrys, Superintendent.
*Atlantic Mutual Life Assurance Company:* L. J. Hayes, Counsel. T. L. Doyle, Executive-Director, Maritime Hospital Service Association.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 36

WEDNESDAY, APRIL 30th, 1969

***Complete Proceedings on Bill S-33,***

intituled:

"An Act to incorporate Atlantic Mutual Life Assurance Company".

WITNESSES:

*Department of Insurance:* R. Humphrys, Superintendent.
*Atlantic Mutual Life Assurance Company:* L. J. Hayes, Counsel. T. L. Doyle, Executive-Director, Maritime Hospital Service Association.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

20118—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 23rd, 1969:

"The Honourable Senator Urquhart presented to the Senate a Bill S-33, intituled: "An Act to incorporate Atlantic Mutual Life Assurance Company".

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Smith, that the Bill be read the second time now.

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 Urquhart moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
*Clerk of the Senate.*



20118—1½

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 23rd, 1969:

"The Honourable Senator Urquhart presented to the Senate a Bill S-33, intituled: "An Act to incorporate Atlantic Mutual Life Assurance Company".

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Smith, that the Bill be read the second time now.

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 Urquhart moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.



20118—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, April 30th, 1969.
(39)

At 10.30 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

*Bill S-33,* "An Act to incorporate Atlantic Mutual Life Assurance Company"

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill S-33.

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook Croll, Desruisseaux Flynn, Gelinas, Giguere, Haig, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (24).

*Present, but not of the Committee:* The Honourable Senators Connolly (*Halifax North*), Fergusson, Inman, Macdonald (*Cape Breton*), Smith and Urquhart. (6)

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

The following witnesses were heard:

*Department of Insurance:*

R. Humphrys, Superintendent.

*Atlantic Mutual Life Assurance Company:*

L. J. Hayes, Counsel.

T. L. Doyle, Executive-Director, Maritime Hospital Service Association.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.45 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, April 30th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-33, intituled: "An Act to incorporate Atlantic Mutual Life Assurance Company", has in obedience to the order of reference of April 23rd, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, April 30, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-33, to incorporate Atlantic Mutual Life Assurance Company, met this day at 10.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

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

**The Chairman:** Mr. Humphrys, the Superintendent of Insurance, is here, and we have representatives of the counsel for the company present. Our usual procedure is to hear Mr. Humphrys first. Would you come forward, Mr. Humphrys, please?

**Mr. R. Humphrys, Superintendent of Insurance:** Mr. Chairman and honourable senators, the purpose of this bill is to incorporate a new life insurance company with its head office in Moncton. The sponsors of the company are the Maritime Hospital Service Association, which is an association in the Maritime provinces that provides hospital benefit insurance and medical services benefit insurance for a large number of subscribers. It is more familiarly known under the general term of "Blue Cross" or "Blue Shield", which term is used across the country for many similar associations.

The Association desires to incorporate this life insurance company to enable it to provide for its subscribers a more extensive package of benefits than it can now provide. Many of the subscribers are employee groups, and they wish to be able to provide for them life insurance benefits and also disability benefits in the sense of continuation of weekly or monthly income in the event of disability.

Some of the fields of activity of the Association are being narrowed, of course, by the introduction of Government plans of hospitalization and the prospect of the introduction of medical care plans on a governmental basis.

The Maritime Hospital Service Association is a Nova Scotia organization, and is subject to the laws of Nova Scotia. It has over 400,000 subscribers, and assets at the present time of about $15 million, and a substantial periodic subscription income of about $11 million a year.

The bill before you will incorporate a mutual life insurance company. This bill is in substantially the standard form used for incorporating life insurance companies, but since this is to be a mutual company there is a slight difference. There is no capital stock as such, but the bill provides for the establishment of a guarantee fund, and it provides that the company is not to start business until the guarantee fund is at least $1 million. This guarantee fund will take the place of initial capital.

The bill provides that the new company, if it is formed, will be able to accept contributions from the Maritime Hospital Service Association up to the amount of $1 million to the guarantee fund, and that this guarantee fund will stay in the company as protection for the policy holders. It may be repaid to the Maritime Hospital Service Association when the directors consider that it is convenient or desirable for the mutual company, but subject to the approval of the Superintendent of Insurance, so that the interest of the policyholders will be protected.

The company formed will have for its members the policyholders. Each policyholder will have a vote, but so long as any part of this guarantee fund remains in the company and not repaid to the Maritime Hospital Service Association, that Association will have a

vote. It will have one vote for each one thousand dollars of the guarantee fund that is not repaid.

Any member of the company is eligible to be a director, and this bill provides that all policyholders will be members, and also the members of the Board of Trustees of the Maritime Hospital Service Association will be considered as members, and thus will be eligible to be elected as directors.

The company will have the power to issue life insurance, personal accident insurance, and sickness insurance, and in all other respects will be subject to the Canadian and British Insurance Companies Act.

There were some questions raised in the debate on the motion for the second reading of this bill in the Senate in respect of the authority of the Maritime Hospital Service Association to make this investment in the establishment of a life insurance company. This authority was specifically granted to the Association by special legislation in the Legislature of Nova Scotia.

Mr. Chairman, those are all the remarks I have to make on this bill.

**The Chairman:** Are there any questions that the members of the committee wish to ask Mr. Humphrys?

**Senator Flynn:** Mr. Humphrys, you mentioned legislation passed by the Legislature of Nova Scotia which permits the Association to make this contribution. Is this recent legislation?

**Mr. Humphrys:** Yes, sir, it was passed this year.

**Senator Flynn:** And was it for the particular purpose of facilitating the incorporation of this life insurance company?

**Mr. Humphrys:** It was for that specific purpose.

**The Chairman:** Do you mean it was for the purpose of permitting this contribution to the guarantee fund?

**Senator Flynn:** Yes. If this Association ceases to operate with medicare coming into existence, to whom would the assets of the Association go?

**Mr. Humphrys:** Senator, I am not thoroughly familiar with the constitution of the Maritime Hospital Service Association. My understanding is that the members of the association have the voting rights, and I think there are over 400,000 of them. If the association were to be wound up I cannot say positively whether the assets would be distributed among those members, but I do not know who else would have any right or title to them. I should think that probably if it happened it would be another case of going to the legislature with respect to solving the problem. Mr. Hayes, the legal representative, is here, and he may be able to answer more positively than I any questions relating to the constitution of the Association.

**The Chairman:** I notice, Mr. Humphrys, with respect to Senator Flynn's question, that clause 10(2) of the bill talks about contributions and the authority to make repayment of them, which would indicate that there must be intended some right in the people who made the contributions to have them refunded at some stage.

**Mr. Humphrys:** That is the intention, Mr. Chairman. It is established as a mutual company, and the broad intention is that when the time comes that the company has increased its strength to the point that it can get along without this starter fund the money will be repaid to the Association. However, this is at the discretion of the directors of the company, and it requires also the consent of the Maritime Hospital Service Association. But, while the fund is in the life insurance company it is there in the sense of an investment of the association since the life insurance company can pay interest on the amount of the fund.

**Senator Flynn:** There is no reference in this bill to the new company's obtaining contributions from the Maritime Hospital Service Association. Are these clauses which refer to the association of the essence of the bill?

**Mr. Humphrys:** They are essential to the bill because these are the clauses that enable the company to obtain an initial guarantee fund to protect the policyholders. It would be quite dangerous for a company to start issuing life insurance policies with no assets at all. In getting this amount of $1 million to start with they have this as a margin of protection for the policyholders as soon as they start business. Therefore, these clauses enabling the new life insurance company to get, in a sense, a capital fund to begin with are essential. The rest of the bill is in standard form for incorporating a life insurance company.

**Senator Flynn:** Without this contribution they would not be on safe grounds in beginning operations?

**Mr. Humphrys:** It would not be permitted to begin its operations unless the contribution were made.

**The Chairman:** Are there any other questions of Mr. Humphrys?

**Senator Kinley:** I believe a very successful company in Nova Scotia, I think the Maritime Insurance Company, has been taken over by a big American company. It comes at a significant time. Are there any unusual provisions here or is this in accord with insurance legislation generally throughout Canada? Are there any innovations here?

**Mr. Humphrys:** The only unusual provisions are the ones described dealing with the contribution of a guarantee fund rather than the normal case of the provision of initial capital stock. We do have a precedent for exactly this type of bill. A few years ago a mutual life insurance company was formed on the sponsorship of the Wawanesa Mutual Insurance Company. They carried out the same procedure and the bill was in similar form. The Wawanesa Mutual Insurance Company was a mutual company and they wanted the life insurance company to be mutual; they started it with a contribution guarantee fund of $1 million, with similar conditions to this, with repayments to the guarantee fund when the life insurance company became well established.

**Senator Kinley:** The new medicare would have no connection with this new insurance company in the province?

**Mr. Humphrys:** No direct connection, no. It would have an effect on their business.

**Senator Kinley:** You see, we are getting medicare, but the unions always want extra and it may be that this insurance company will have an opportunity there. I do not know.

**The Chairman:** That is another question.

**Senator Molson:** Is there any possibility of a conflict in connection with this guarantee fund between the interests of the members of the Hospital Service Association and the Mutual Life Insurance Company? Can you envisage any situation in which the members feel they must have their $1 million and the insurance company could not exist without it so that a strain is set up?

**Mr. Humphrys:** One could imagine a circumstance such as you describe arising. However, I think it is controlled here in that repayment of the guarantee fund is only at the discretion of the directors of the life insurance company and is subject to the approval of the Superintendent of Insurance. I think there are sufficient controls to insure that, notwithstanding the desire of the association to withdraw the money, the money could not be withdrawn unless the interests of the life insurance company were well protected.

**Senator Molson:** I am not a lawyer, but what would happen in the case of a bankruptcy or winding up, or any other similar situation?

**Mr. Humphrys:** I believe the same comments would hold, because it says:

> The contributions so received may be refunded in whole or any part at such times and in such instalments as the directors...

That is the directors of the life insurance company . . .

> may from time to time determine, but no such refunds shall be made unless approved by the Superintendent of Insurance nor unless Maritime Hospital Service Association agrees to accept the refund.

I therefore think there are controls on it, and even in the event of the bankruptcy of the association I do not think the liquidator could force the association to pay back the money. I think the liquidator would have a contingent asset here if and when the directors of the life insurance company thought they could repay the money.

**The Chairman:** Mr. L. J. Hayes, counsel for the company, is here, and also Mr. T. L. Doyle, the executive director of Maritime Hospital Service Association. Are there any questions the committee would like to ask them?

**Senator Phillips (Rigaud):** I would like to put one question to Mr. Hayes. Where do you get the power of the directors to pass a necessary by-law to call meetings from year to year? I see you have provisional directors, but I do not seem to find any procedure for

carrying that out. Do you have provision? Does it come under section 12 of this or any other act?

**Mr. Humphrys:** I could answer that. Those provisions are found in the Canadian and British Insurance Companies Act.

**Senator Phillips (Rigaud):** That is what I thought.

**Mr. Humphrys:** The general company clauses.

**Mr. L. J. Hayes, Counsel, Atlantic Mutual Life Assurance Company:** Section 12 of the act.

**Senator Flynn:** May I put the same question that I put to Mr. Humphrys? If the association ceased to operate to whom would the assets be distributed?

**Mr. Hayes:** We did consider this question and, as Mr. Humphrys indicated, I think one of two things would happen. Either an application would have to be made to the court to determine whether it was just the present shareholders, or the present subscribers, who were entitled to all the assets, or whether in some way any past subscribers who may have contributed to building up the assets would have any claim; or, perhaps more likely, we would have to go back to the legislature in Nova Scotia and ask them to consider the distribution.

**Senator Flynn:** It is a non-profit organization?

**Mr. Hayes:** It is a non-profit organization.

**Senator Flynn:** You refer to the present subscribers. What are they subscribing to?

**Mr. Hayes:** They are policy holders, in effect.

**Senator Flynn:** What kind of policy?

**Mr. Hayes:** The medical benefits that they provide, Blue Cross or Blue Shield.

**Senator Flynn:** Over medicare?

**Mr. Hayes:** Yes. Some of the benefits certainly are over and above what medicare now provides.

**Senator Flynn:** The association is continuing and complements the medicare benefits?

**Mr. Hayes:** Yes, that is correct, although at the present time, of course, there is some redundancy. This is why the company now feels they should move into these other areas to increase their activities and supplement what medicare now provides.

**Senator Flynn:** The life insurance company would be a subsidiary of the association?

**Mr. Hayes:** In effect to some extent that is right; they would be associated.

**Senator Smith:** What steps were taken by the management of Maritime Hospital Service Association prior to your going to the Nova Scotia legislature to ask them to pass a bill taking $1 million surplus away from the control and putting it into the hands of another company, over which as I understand it the present subscribers, or the past subscribers in particular, would have no control at all, to secure the opinion of at least the subscribers?

**The Chairman:** There is a statute of the Province of Nova Scotia that provides certain authority. I think we have to accept that. I doubt if our inquiry can go into what things encouraged the legislature of Nova Scotia to pass the bill it did. We might be getting on dangerous ground.

**Senator Smith:** Mr. Chairman, I only ask this question in order to get ready for the next one. I am sure the witness has the information.

**The Chairman:** What is the real question?

**Senator Smith:** The real question is what attempt was made or what steps were taken to at least consult with the subscribers of the Maritime Hospital Service Association to applying to the Nova Scotia Legislature for the bill, which was passed at this session?

**The Chairman:** I think you might ask who joined in the request for this legislation. That would give you the answer that you wanted, would it not?

**Senator Smith:** It may not be the answer that I want; that is your answer.

**The Chairman:** Mr. Hayes, would you care to answer that question?

**Mr. Hayes:** I should say, first of all, senator, that historically Maritime Hospital Service Association has extended its benefits from time to time and moved into different areas. Now, on each occasion when this was done there was no hold taken of the subscribers for the simple reasons there are, at the

present time, 450,000 subscribers, many of whom are under various group policies, and this type of thing. The practical difficulties are enormous, as you can imagine. Whenever the company moves into a new field the decision is basically taken by the trustees, who are all members themselves and feel they represent the subscribers.

**Senator Molson:** How many trustees are there?

**Mr. Hayes:** There are 28 at the present time.

**Mr. Doyle:** Eight of whom are subscriber nominees.

**Senator Smith:** What was that last sentence?

**Mr. Hayes:** Eight of whom are subscriber nominees.

**Mr. Doyle:** Let me explain. On the board of 28 there are eight seats, one for each of the provincial governments. There are eight seats for medical nominees of the four medical societies of the province; there are eight hospital nominees named by the eight hospital associations, and eight subscriber nominees who are non-medical and non-hospital people chosen by the board. This board serves the organiaztion without remuneration of any kind.

**Senator Thorvaldson:** That is democratic enough for me.

**Senator Smith:** That answers my question.

**Senator Walker:** With that explanation of the bill by the Superintendent, can I move the question be put?

**The Chairman:** Shall the committee report the bill without amendment?

**Hon. Senators:** Agreed.

Whereupon the committee proceeded to the next order of business.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 37

WEDNESDAY, APRIL 30th, 1969

Complete Proceedings on the Message from the House of Commons, disagreeing with amendments made by the Senate to:

BILL C-51, "An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards"; and

BILL C-52, "An Act to regulate products used for the control of pests and the organic functions of plants and animals".

WITNESSES:

*Department of Agriculture:* The Honourable H. A. Olson, Minister.
S. E. Williams, Deputy Minister.

REPORTS OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 37

WEDNESDAY, APRIL 30th, 1969

***Complete Proceedings on the Messages from the House of Commons,***

disagreeing with amendments made by the Senate to:

Bill C-155, "An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards"; and

Bill C-157, "An Act to regulate products used for the control of pests and the organic functions of plants and animals".

WITNESSES:

*Department of Agriculture:* The Honourable H. A. Olson, Minister.
S. B. Williams, Deputy Minister.

REPORTS OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

20120—1

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Lang |
| Aseltine | Desruisseaux | Leonard |
| Beaubien | Gélinas | Macnaughton |
| Benedickson | Giguère | Molson |
| Blois | Haig | Phillips (*Rigaud*) |
| Burchill | Hayden | Savoie |
| Carter | Hollett | Thorvaldson |
| Choquette | Isnor | Walker |
| Connolly (*Ottawa West*) | Kinley | Welch |
| Cook | | White |
| | | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

"A Message was brought from the House of Commons by their Clerk in the following words:—

WEDNESDAY, April 2, 1969.

*Ordered,*—That a Message be sent to the Senate to acquaint Their Honours that this House disagrees with the amendment made by the Senate to Bill C-155, An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards, for the following reasons:

The amendment changes the principle of the Bill so that compensation is payable even if the pesticide residue resulted through the fault of a pesticide manufacturer or another person. It makes it a responsibility of the Minister to pay and carry court action against a third party. It would also remove the precise requirement that the Minister may require a farmer to take action to reduce losses before paying compensation, such as washing, trimming, changes in storage etc. If this requirement is removed, it would substantially increase the costs involved in applying the provisions of the legislation. The amendment would also increase the possibility of marginal or frivolous claims.

*Attest.*

ALISTAIR FRASER,
*The Clerk of the House of Commons.*

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Message be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

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"A Message was brought from the House of Commons by their Clerk in the following words:—

WEDNESDAY, April 2, 1969.

*Ordered,*—That a Message be sent to the Senate to acquaint Their Honours that this House disagrees with the amendment made by the Senate to Bill C-157, An Act to regulate products used for the control



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of pests and the organic functions of plants and animals, for the following reasons:

It is difficult to foresee all the ramifications of an appeal procedure provided by cross reference to another proposed statute that was substantially amended by the House after the amendment to this bill was made by the Senate;

The amendment provides for a review procedure that was considered by the House of Commons and rejected; and

Any manufacturer, under the proposed statute without this amendment, would have not only an opportunity, but an obligation to present in detail all required technical information, and, in addition, a review procedure already is provided for all cases where goods are detained.

*Attest.*

ALISTAIR FRASER,
*The Clerk of the House of Commons.*

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Message be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

WEDNESDAY, April 30th, 1969.
(40)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 9.30 a.m. this day to consider:

*Messages* from the House of Commons disagreeing with the amendments made by the Senate to Bills C-155 and C-157.

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Giguere, Haig, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (24)

*Present, but not of the Committee:* The Honourable Senators Connolly (*Halifax North*), Fergusson, Inman, Macdonald (*Cape Breton*), Smith and Urquhart. (6)

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

The following witnesses were heard:

*Department of Agriculture:*

The Honourable H. A. Olson, Minister.

S. B. Williams, Deputy Minister.

After discussion and upon motion it was *Resolved* to recommend that the Senate *do not* insist upon its amendment to Bill C-155.

After discussion and upon motion it was *Resolved* to recommend that the Senate *do not* insist upon its amendment to Bill C-157, but that it *insist upon the principle* of such amendment and that a substitute amendment be substituted therefor, as can be found by reference to the Report of the Committee immediately following these Minutes.

At 10.30 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORTS OF THE COMMITTEE

WEDNESDAY, April 30th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Message from the House of Commons disagreeing with the amendment made by the Senate to Bill C-155, intituled: "An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards", passed by the Senate on March 25th, 1969, has in obedience to the order of reference of April 22nd, 1969, examined the said Message and now reports as follows:

Your Committee recommends that the Senate do not insist on the said amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

WEDNESDAY, April 30th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Message from the House of Commons disagreeing with the amendment made by the Senate to Bill C-157, intituled: "An Act to regulate products used for the control of pests and the organic functions of plants and animals", passed by the Senate on March 25th, 1969, has in obedience to the order of reference of April 22nd, 1969, examined the said Message and now reports as follows:

Your Committee recommends that the Senate do not insist on the said amendment, but do insist on the principle of the said amendment and that the following amendment be substituted for the said amendment:

*Page 4:* Strike out paragraph (*d*) and substitute therefor:

"(*d*) respecting the registration of control products and of establishments in which any prescribed control products are manufactured and prescribing the fees therefor, and respecting the procedures to be followed for the review of cases involving the refusal, suspension or cancellation of the registration of any such product or establishment;".

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, April 30, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred the Message from the House of Commons disagreeing with the amendment made by the Senate to Bill C-155, to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards, met this day at 9.30 a.m. to consider the said Message and the Message respecting Bill C-157, Pest Control Products Act.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** We have a number of bills before us this morning. The first two are bills C-155 and C-157. At our previous hearings we had a motion that the proceedings be reported and printed and that motion will continue today.

Let us deal first with Bill C-155. That was:

> An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards.

If honourable senators look at the proceedings, we are not going to consider the bill as such today. What is before us today is the message from the other place indicating that our amendment was not acceptable to them, and they struck out the amendment. What we therefore direct our attention to is the amendment we made and the position in the other place when they refused to accept the amendment. The Minister of Agriculture is here today to give us whatever explanation there is in support of the message, and then we will have to make our own decision.

I should read the message giving the reasons for striking out the amendment:

> The amendment changes the principle of the bill so that the compensation is payable even if the pesticide residue resulted through the fault of a pesticide manufacturer or another person. It makes it a responsibility of the Minister to pay and carry out court action against a third party. It would also remove the precise requirement that the Minister may require a farmer to take action to reduce losses before paying compensation, such as washing, trimming, changes in storage, etc. If this requirement is removed, it would substantially increase the costs involved in applying the provisions of the legislation. The amendment would also increase the possibility of marginal or frivolous claims.

I should add that the amendment we made was on this particular point in the bill. There was provision that compensation would be paid to a farmer because of pesticide residue rendering whatever food product he was growing unfit for sale. The conditions attached in that section were that it must be established that the pesticide residue did not result through the negligence of the farmer. The provision went on in part to say that the minister, if he deems it necessary, may require that as a condition of receiving compensation the farmer take action against the person who caused or contributed to this pesticide residue. The feeling of the committee was that that was an onerous burden to put upon the farmer, that the most the farmer should be asked to do was to subrogate his right. We therefore accordingly made an amendment requiring—

**Senator Isnor:** You mean the Senate committee?

**The Chairman:** The Senate committee. We made an amendment requiring that if the minister deems it necessary he may require as a condition of payment of compensation to the farmer that the farmer subrogate his rights to the minister so that the minister could take action against the person who has caused the particular problem. That is the background, and the minister is here to deal with and, I assume, support the action of the other place.

**The Honourable Horace Andrews Olson, Minister of Agriculture:** Mr. Chairman, I think the explanation we gave in the message that was sent to the Senate in response to their amendment is self-explanatory. However, perhaps I could add to that explanation by explaining that what the Government was seeking from Parliament was the authority to pay compensation to a farmer in a case where pesticide had been used according to the instructions on the lable, and where there had been a loss to the farmer occasioned by a Food and Drug Directorate order; either not the farmers' fault or indeed the fault could not be established in this rapidly changing technology with respect to pesticides. There are cases and there have been cases and we expect there may be additional ones in the future where the changes in technology could in fact establish the responsibility or at least the technical reasons for the damage which may not be apparent at the time. We, in the past, have made some *ex gratia* payments. We really did not have that specific authority from Parliament to make such payments, and we are seeking authority from Parliament so that we can. We did not envisage a situation where a farmer or anyone else would have a right, if I may confine it to the very narrow or limited context of a right, to claim compensation from the public treasury. We wanted the authority to pay this compensation, where our investigation clearly indicated that it was not the farmer's fault and that the specific responsibility could not be identified.

We would appreciate, Mr. Chairman, that the bill provide that before we can make this payment the products must have been removed from the market by another agency of the Government in this case, the Food and Drug Directorate. We believe that by accepting your amendment it may be a substantial change in the bill and indeed in the intent of the bill because it would make it obligatory for us to pay a farmer for losses resulting from faults which, for example, may be the fault of the pesticide manufacturer. There is provision where we can make, if the minister deems it advisable—I believe this is the right word—the payment, and then ask the farmer to subrogate his rights with respect to any follow-up action to the manufacturer if that responsibility lies there. However, we think it needs to be spelled out in the bill, or at least there should be provision in the bill for the farmer to reduce his losses as much as possible.

You have mentioned washing, trimming and changes in storage and that sort of thing. We also believe that we would not like to be in a position where we would interfere with the normal course of law. If the farmer has a case against a pesticide manufacturer, we think he should take that action. The only other provision that is in there is where we would assume that right or ask the farmer to transfer that right to us, and this is where it is not clear. We could then make the proper payment or compensation and, if we deem it necessary, take further action in that respect.

Those, Mr. Chairman, are generaaly the reasons why we would hope that you could be persuaded to withdraw your amendment to that particular clause.

**The Chairman:** Mr. Minister, I notice in the beginning of the message the suggestion that the amendment which we made changes the principle of the bill. This is something that your representative raised when he was here when we were considering the bill, but frankly I have not as yet found any spot in the bill, when I relate the amendment to it, that you can say we changed the intent of the bill.

**Senator Walker:** As an active politician I can understand the minister saying that. I think he has made a very adequate explanation. I suggest that the bill should be restored.

**Senator Molson:** Agreed.

**The Chairman:** Are there any questions that you want to ask the minister? What is the wish of the committee as to how we shall deal with this? The form of report that we make must be made in this way; either we recommended to the Senate that it do not insist on the amendment which we made, or we recommend that the Senate insists on the amendment, one or the other.

**Senator Walker:** I so move, Mr. Chairman.

**The Chairman:** Those in favour? Contrary, if any? The report of the committee, then, to the Senate will be that the committee recommends to the Senate that the Senate do not insist on the amendment which it made.

**Hon. Senators:** Agreed.

**The Chairman:** Honourable senators, in connection with Bill C-157, you will recall there was no provision for appeal from any order or direction that might have been made in connection with a product that was being seized or detained. I think it was Senator Pearson who raised the question in the Senate, and then in committee, and we attached an amendment providing for an appeal.

In the shortness of time the form of the amendment was simply to provide that the appeal procedure, *mutatis mutandis*, would be the appeal procedure in the Hazardous Products Act. The objection in the Commons when this appeal procedure was struck out was stated as follows:

> It is difficult to foresee all the ramifications of an appeal procedure provided by cross-reference to another proposed statute that was substantially amended by the house after the amendment to this bill was made by the Senate. The amendment provides for a review procedure that was considered by the House of Commons and rejected, and any manufacturer under the proposed statute, without this amendment, would have not only an opportunity, but also an obligation, to present in detail all required technical information. In addition, a review procedure already is provided for all cases where goods are detained.

Since the objection basically appears to be that we provided for an appeal by reference to another statute or another bill that was before the house, I asked our Law Clerk to prepare a form of an amendment which would incorporate into the bill an appeal procedure of its own. I gave a copy of this to the minister and I will read it to you shortly, but possibly we should hear the minister's point of view in relation, firstly, to an appeal procedure and secondly, to the form which I submitted to him.

**The Honourable Mr. Olson:** Mr. Chairman, as you have stated, and we agree, in our original message that we sent to the Senate we raised the question of cross-reference to another bill which at that point in time had not been passed by the House of Commons and the Senate. Perhaps I could go a little further and say that that bill, the Hazardous Products Act, has in fact been amended further since your amendment was sent to the House of Commons. We believe that we have at least substantially provided for the review procedure that you envisaged in your amendment under clause 9, subsection (5) of the bill. You will perhaps recall that this matter was under debate and considered by the Standing Committee of the House of Commons on Agriculture wherein they also felt that there ought to be some kind of appeal procedure, particularly for any product that was under detention. So the bill, or that part of the bill, was amended in the House of Commons Committee to provide for appeal where any product was seized and under detention.

We have examined the appeal procedure which you have in the proposed amendment, although it has not been moved as yet; and it does meet part of the objection that we raised, in that it would spell out in this bill rather than have a cross-reference to another bill.

However, with the possible exception of cancellation of registration, it would appear undesirable to provide formally for review procedures. The Senate's proposed amendment in providing appeals where the minister exercises his necessary discretion, creates what we think is an unworkable situation.

A great many federal statutes require responsible actions of the minister in exercising decision-making powers conferred by statutes. If each of these decisions is in future to be made the object of an appeal, if all of these ministerial decisions, with the discretion that is conferred by statute, were to be the object of an appeal, it would become a very cumbersome procedure and, we think, make it virtually impossible to administer many federal statutes, including this one.

I would like to go further and suggest that, in the regulations respecting a number of other acts—such as the Fertilizer Act, for example—we have in those regulations provided an appeal procedure where there is some loss, such as having a product seized and detained or cancelled.

We think that this is the proper place to have it, because of the nature of this kind of thing, where there is rapidly changing technology related to this kind of product.

**The Chairman:** Mr. Minister, I notice, in connection with clause 9(5), to which you referred, this gives power to the Governor in Council by regulation to make regulations respecting the detention of any controlled product seized under this clause and power to establish procedures for the review of any seizure and detention.

If you stop there, there is power in the bill by regulation to establish procedures for review. It becomes a question of whether procedures established in that fashion should not more properly be substantive law and be in the bill itself rather than by way of regulation.

The form of the amendment which the law clerk drafted reads in this fashion, if I may take a moment and read it.

**Senator Thorvaldson:** This is the new amendment?

**The Chairman:** Yes, and even though it spells out in language pertaining to this particular bill the procedure is substantially borrowed from the procedure outlined in the Hazardous Products Bill itself, in that the title is "Board of Review" and subclause (1) of the new proposed clause 13 reads as follows:

> Where any order made pursuant to this Act, in respect of which no other review procedure is provided in this Act, directly affects the rights or interests of any person, that person may, within sixty days of the making of the order, request the Minister that the order be referred to a Control Products Board of Review.

You remember that the procedure in the Hazardous Products Bill was to have a Hazardous Products Board of Review. Then, in subclause (2):

> Upon receipt of a request described in subsection (1), the Minister shall establish a Control Products Board of Review (hereinafter referred to as the 'Board'), consisting of not more than three persons, and shall refer the order in respect of which the request was made to the Board.
>
> (3) The Board shall inquire into the nature and characteristics of any control a product to which an order referred to it under subsection (2) applies and shall give the person making the request and any other person affected by the order a reasonable opportunity of appearing before the Board, presenting evidence and making representations to it.
>
> (4) The Board has all the powers that are or may be conferred by or under sections 4, 5 and 11 of the Inquiries Act on commissioners appointed under Part I of that Act.
>
> (5) The Board, as soon as possible after the conclusion of its inquiry, shall submit a report with its recommendations to the Minister, together with all evidence and other material that was before the Board.
>
> (6) Any report of the Board shall, within thirty days after its receipt by the Minister, be made public by him, unless the board states in writing to the Minister that it believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public.
>
> (7) The Minister may publish and supply copies of a report referred to in subsection (5) in such manner and upon such terms as he deems proper.

This parallels the procedure in the Hazardous Products Bill. The minister receives the report, which expresses the views of the board, but it is his decision finally whether he acts on it or not.

**Senator Cook:** Would you read the first subclause again?

**The Chairman:** It reads:

> Where any order made pursuant to this Act, in respect of which no other review procedure is provided in this Act, directly affects the rights or interests of any person, that person may, within sixty days of the making of the order, request the Minister that the order be referred to a Control Products Board of Review.

**Senator Thorvaldson:** Is sixty days the appeal period in the Hazardous Products Bill?

**The Chairman:** Yes.

**Senator Thorvaldson:** Has this amendment been referred to the minister or the officials?

**The Chairman:** I gave him a copy a week ago and the minister commented on it this morning.

Mr. Minister, would you care to repeat that?

**Hon. Mr. Olson:** Mr. Chairman, one of the problems that we have with this amendment suggested, or this procedure for review, is that it has been stated in subclause (1) where "any" order. It seems to me that this is pretty wide, it is substantially wider with respect to almost any statute that we have. It says "any" order made pursuant to this act would be subject to review.

**The Chairman:** Notice the qualifying words "in respect of which no other review procedure is provided in this act."

**Hon. Mr. Olson:** Yes, Mr. Chairman, I am aware of that, and we realize that clause 9(5) of the bill is a review procedure that is limited to a certain situation and that is where we have any product that has been seized and is under detention, and it was not our intention that all of the orders that may be issued from time to time in the administration of this act would be subject to a review procedure.

I think, too, that it should be noted that in dealing with this kind of product, these kinds of chemicals, is a highly technical matter, where you must call in to have expert advice people who are highly competent in the chemical technology that is related to whatever the product is designed for. We think that it would be perhaps a review, or could be a review, by the same people who are involved, in many cases—and in our opinion that is not desirable. Mr. Chairman, with your permission, perhaps I may be permitted to ask my deputy minister to comment on this with respect to the practical problems that we may have in trying to administer this, based on some experience that we have had.

**The Chairman:** Yes. Mr. Williams.

**Mr. S. B. Williams, Deputy Minister, Department of Agriculture:** Mr. Chairman and honourable senators, I think our problems, from our standpoint, are twofold. First of all, we feel that this bill differs greatly from the Hazardous Products Bill, in that under this bill the person is not actively selling the product and then may have his right to sell that cut off. No product can be sold as a pest control product unless it is registered by the department to start with. In that registration procedure the manufacturer is required to submit to the department detailed evidence as to, among other things, the safety and the efficacy of the product.

As Mr. Olson pointed out, these are highly technical points, particularly those in respect of efficacy.

The manufacturer, therefore, has, essentially, in applying for registration, made his case to the department and it has been assessed by a group of technical people within the department, sometimes with additional tests being carried out by the department itself, particularly those related to efficacy.

To establish a review procedure for this would, in our mind, if it is to be meaningful, mean that we would probably have to set up a duplicate, or a replicate of some sort, of the tests that have been conducted and of the technical expertise that was available for this.

These people are in very short supply and we just feel that the review situation in respect of these aspects of pesticide control would be unnecessary. We agree fully that a review procedure will be useful, if the manufacturer is, in fact, in operation and insists on selling this product for some reason and we are in the position that we feel that we should place some of his products under detention or, perhaps, that we should in fact suspend his operations. Then we believe that a review procedure is necessary, because we would hate to take that action without giving the manufacturer the right to make representations to start with.

The reason there, of course, is that this is only done, if we consider that it is a hazard to health and that it may result in a product that will be unhealthy in so far as human consumption is concerned.

So we have made provision for that aspect of the review but we have not made provision for the review of the original possible rejection of registration, which, as I say, is an extremely technical and lengthy procedure and at which the manufacturer has made very detailed representations already to the department before we can consider the application for registration.

**Senator Leonard:** Mr. Chairman, is it clear from what the Deputy Minister says that it is right that a provision for a board of review does now apply to registered pesticides?

**The Chairman:** I referred you to the authority to make regulations, under clause 9(5). That is in connection with the detention of a product, but, basically, you must apply for registration of the product and you cannot manufacture, sell, import or do anything else

unless it is registered. But there is no procedure by way of appeal or review, as I see it, in the bill, if registration is refused.

**Hon. Mr. Olson:** We agree with that.

**The Chairman:** And the department agrees that that is correct. This was the reason that that was put forward by Senator Pearson both in the Senate and in this committee. That is basic. It affects the manufacturer and whatever product he is producing or proposing to produce, and, if the rule is against his registration of the product, there is no way in which he can have it reviewed.

**Senator Thorvaldson:** It would appear from what was stated by the deputy minister that perhaps the same people would have to make the review who made the original rejection. In other words, because of lack of personnel and the fact that it is a very technical matter and people are not available to do these things. Is that correct?

**Mr. Williams:** That, basically, is what I said, sir. I also said, saving that, it would mean setting up a duplicate technical group whose sole purpose would be the review of these applications, and we feel this is unnecessary. In addition to that, I pointed out that it would be very difficult to staff it, in that we are having difficulty staffing our ongoing program in respect of pesticides.

**The Chairman:** There is no suggestions that there is or is likely to be anything arbitrary here.

**Senator Walker:** With the present minister, perhaps.

**The Chairman:** It is a wholesome thing that, when people are proposing to make such an important decision as whether your product will be registered or not and, therefore, whether you are going to be in business or not, there does exist the possibility of a review of that decision.

**Senator Molson:** Is it not a fairly common situation, Mr. Chairman, with regard to all types of products—and I am not speaking particularly of pest control or hazardous products—that you have to go to a licencing authority? I do not think there is a review procedure in every case for the requests that are turned down.

**Senator Thorvaldson:** Were these explanations made at the time the bill was before the committee, Mr. Chairman, such as the one made by the deputy minister now?

**The Chairman:** No. My recollection is that we were left to our own resources, more or less, as to any provision by way of appeal. And even the draft that we had made of the appeal section, although it was accepted, was not even commented upon, although comment was invited.

So the amendment was made which we originally put into the bill providing for appeal, and that was done on the responsibility of the committee with whatever information they had at that time, and without the specific assistance of the department, although their representatives were here.

I think they felt that since they did not agree with any appeal procedure, then why should they participate in the discussion of it.

**Senator Carter:** Mr. Chairman, I do not think that we should be swayed by the argument that we should not have this kind of review board because the same people would be doing the review, or because there are not enough personnel to go round. You can apply that argument to almost anything to negate it.

**Senator Walker:** Mr. Chairman, there is no principle at stake here. This is a technical review of a product. Now, the result is going to be the same, is it not, no matter how many times it is reviewed?

**The Chairman:** I do not know.

**Senator Walker:** Well, I will ask the deputy minister. This is purely a technical review, is it not, as to the substance of the product, and there is no principle at stake here? It is just purely chemical analysis.

**Mr. Williams:** It is a technical review from two standpoints; safety and efficacy. Probably the more difficult one is the efficacy question, because I think you will appreciate that we do not register products and we do not allow people to advertise products unless they have proven to our satisfaction that they are efficacious for the purpose or purposes claimed. I am talking about pest control products only now. This being the case, I think you will all appreciate that this is a highly technical matter, because circumstances vary greatly across this country, and this is why I said that sometimes we supplement the information by actual investigation of work of our own carried on our experimental farm system.

**Senator Walker:** If you did review it, there would be nothing more disclosed than was disclosed in your original investigation, would there?

**The Chairman:** Senator Walker, how can this witness say, without knowing who the personnel of the board may be or what the problems are?

**Senator Walker:** But I understood that the people doing the review would be practically the same people who did the original work and they would be experts.

**Senator Flynn:** I understand that, but I suggest that neither the minister nor the deputy minister has raised any objection to the principle involved in the amendment. They said it is difficult and cumbersome, but the principle is valid. Certainly it will be difficult in the beginning to operate this system, but that is another thing. I think in the end we should be able to find a solution. I think the rights of the individual are at stake here and I do not think we should be prepared to say that we will forget this principle because the minister or the deputy minister says he will not have the personnel.

**The Chairman:** There is a principle involved in providing the appeal procedure itself.

**Senator Walker:** But the minister himself reviews it or can review it under the terms of the bill as originally submitted to us.

**The Chairman:** I would expect that there are problems created in connection with the application to register, that those dealing with it might refer it to the minister because he is the final authority.

**Senator Walker:** What we are thinking about is the one-shot aspect. I understood that originally when a decision is made it comes to you for a second view of the matter and you make a final decision.

**Hon. Mr. Olson:** That is in practice the way these things usually take place; if any person is not satisfied with the administration of the act with respect to these matters they then appeal to the minister. That is true. And then a report is requested and so on and this constitutes something of a review certainly, but I suppose in complete fairness I would have to say that that is not specifically provided for in the act although that happens, of course. Now the other thing of course is that the review procedure is very clear in the act where there is recourse under clause 9(5) which deals of course with the very limited situation where a product is under seizure or detention. The provision for a review whether or not a registration has not been accepted is not provided in clause 9 at the present time.

**Senator Molson:** What is the wording of that clause, Mr. Chairman?

**The Chairman:** Clause 9(5) says:

> The Governor in Council may make regulations
>
> (a) respecting the detention of any control product seized under this section and the payment of any reasonable costs incidental to such seizure or detention, and for preserving or safeguarding any control product so detained;

etc, etc.

**Senator Molson:** He "may make..."

**The Chairman:** Yes.

**Senator Molson:** How about the procedure that may be demanded at that point?

**The Chairman:** He may make regulations but the kind of regulation and the kind of review is limited to a product which has been registered or in respect of which there is some defect, some chemical impurity or something of that kind as a result of which the department goes in and seizes the product.

**Senator Molson:** I think that is more important than the initial registration. Personnally I would be satisfied.

**Senator Kinley:** Mr. Chairman, do I hear you correctly when you said if there is a refusal of a licence there was no appeal?

**The Chairman:** That is right.

**Senator Kinley:** Well I think that is a principle. You say there is no principle to the bill, but I think there is a principle there. It may have the result of making the department more careful in its decisions if there is an appeal over their head.

**The Chairman:** I should point out that unless there are other questions about the way in which we may proceed in dealing with this referral of the message to this committee we either report recommending that the Senate do not insist on its amendment or alternatively that the Senate should insist on its amendment and that such amendment should be couched in the following language or should be in the language, if it is acceptable, that I have read to you in the present

appeal procedure which our Law Clerk has drafted. So we either make one report or the other. Unless there are other questions from honourable senators I want to say something on the matter. I suggest that we should have a motion—

**Senator Croll:** I move that we do not insist on the amendment.

**Senator Leonard:** Mr. Chairman, I have one question before we come to that. Are there many cases of refusal of registration? Does it happen often?

**Mr. Williams:** I think outright refusal is a difficult thing. I think probably once or twice we have had outright refusals. Usually there are negotiations with the manufacturer about changing his claims by possibly changing his formulation somewhat or changing recommended uses or something of this nature and that then results in its being accepted although probably the original application for registration may not have been accepted in the exact form in which it was made.

**Senator Leonard:** That is in itself a review procedure and it goes on by negotiation.

**Mr. Williams:** This bill has been in effect for some years and the representatives of the Manufacturers Association attending the Commons committee dealing with the matter stated that they had no quarrel with the department in this matter, but in all fairness they did say that as a standby they would prefer to have an appeal procedure but they had worked with this for 30 years. They were asked the question themselves if they had ever had a case where they felt that harm was done to them by the department acting in an arbitrary manner and their statement was no, that they never had. There is a review procedure in these negotiations as to claims and formulation.

**The Chairman:** We have a motion.

**Senator Flynn:** Mr. Chairman, may I ask Senator Croll who moved that we do not insist on our amendment whether when we have the Ombudsman he has been talking about we should have some procedure like that to cover the rights of people?

**Senator Croll:** All I am prepared to say is that if Senator Flynn is prepared to vote for the Ombudsman I am prepared to withdraw the motion.

**The Chairman:** Have you done your trading? Do I still have a motion?

**Senator Thorvaldson:** I think this committee is on very sound ground in insisting upon appeals in some of these cases. I think there is a principle involved there. Consequently it is my view that if we do not insist on our amendment it is not because I think the principle we adopted the last time was bad but because we feel that the officials of the department have given an explanation indicating that no one is likely to be hurt even if we do not insist upon this appeal procedure. That is the position I take on this, but at the same time I certainly think we are right in principle.

**The Chairman:** Senator Croll, do we have your motion still before us notwithstanding your exchange with Senator Flynn?

**Hon. Mr. Olson:** Mr. Chairman, I wonder if I might make a suggestion to the committee? It seems to me that the discussion has more or less come down around the review or registration or a cancellation or a suspension of a registration and that there is no review procedure in that because we think, you have been persuaded that there is sufficient in the act now to take care of goods that have been seized and are under detention.

In our view, the amendment you have suggested—that is, the Board of Review, where any order—is too broad because it would include any order involved with the administration of this act.

If you would consider amending clause 5(d)—that deals with the making of regulations respecting the registration of control products and of establishments in which any prescribed control products are manufactured and the prescribing of fees—with these words:

> (d) respecting the registration of control products and of establishments in which any prescribed control products are manufactured, prescribing the fees therefor, and respecting the procedures to be followed for the review of cases involving the cancellation or suspension of the registration of any such product or establishment.

I think that would cover the point.

**The Chairman:** That would come in where, do you suggest?

**Hon. Mr. Olson:** Clause 5(d), which is that portion of the act that authorizes us to make regulations.

**The Chairman:** What is the view of the committee on that?

**Senator Thorvaldson:** I would be satisfied with that.

**Senator Walker:** Agreed.

**The Chairman:** It means amendment clause 5, which deals with regulations, by adding to subclause...

**Hon. Mr. Olson:** No, by substituting.

**The Chairman:** At least, by substituting for the present clause 5(d) the following:

> respecting the registration of control products and of establishments in which any prescribed control products are manufactured, prescribing the fees therefor, and respecting the procedures to be followed for the review of cases involving the cancellation or suspension of the registration of any such product or establishment.

The review is for cases involving the cancellation or suspension; it does not expand it to include refusal to register.

**Hon. Mr. Olson:** That is right, we agree; but the explanation the Deputy Minister gave was that there is almost automatically a negotiating and reviewing of or accepting for registration of the product in the first place, by minor changes, sometimes in the formula but perhaps mostly changes in the claims that are made and allowed on the label.

**The Chairman:** If the words were added, "for the review of cases involving 'refusal to register' " and then carried on as you have it here, would that be acceptable?

**Senator Leonard:** It would still all be within your own regulations that you have made.

**Hon. Mr. Olson:** It raises the original problem, and that is concerning this matter of reviewing it, and the mechanics of setting up a competent technical review body and the personnel involved. We believe that we work very closely with, and I would like to say that we like to be as co-operative as we can with the technicians we have in the original application for registration.

**Senator Thorvaldson:** Is there any reason, however, that you could not have the same personnel on the Board of Review as the original personnel who refused the application? It would still be a benefit because the people who were refused have a second chance of perhaps producing new material to the same people. I would not insist on different personnel in such a Board of Review. It would merely give the applicant another opportunity to perhaps state his case in a different way or to present other facts.

**Hon. Mr. Olson:** I think we are in agreement. Our problem is that you have to spell it out in the law. We do it now, not in one formal review but by stages of negotiation and discussion with them to make minor changes.

**The Chairman:** So, if we added the words "refusal to register" to what you have in this draft of clause 5(d), I take it that, while you explain, you would not protest too much?

**Hon. Mr. Olson:** No, I would not think so.

**The Chairman:** Then may we take it that what we are considering is whether clause 5(d) shall be amended by striking out the existing clause 5(d) and putting in its place the following:

> respecting the registration of control products and of establishments in which any prescribed control products are manufactured, prescribing the fees therefor,

and then this is new:

> and respecting the procedures to be followed for the review of cases involving refusal to register, the cancellation or suspension of the registration of any such product or establishment.

**Senator Leonard:** I understand the minister is not accepting those words.

**The Chairman:** I asked the Minister if he was protesting, and I gathered from his attitude that he is not protesting.

**Hon. Mr. Olson:** We will accept that.

**The Chairman:** Is the committee ready for the question? Those in favour of this amendment, please indicate. Contrary?

Carried.

**The Chairman:** Senator Croll, having taken that vote, I figured you had withdrawn your motion?

**Senator Croll:** You figured right.

**The Chairman:** Therefore, the report this committee will make is to recommend to the Senate that it insist on its amendment, but that the amendment be couched in the following terms—and those are the terms of the resolution which has just been approved. Is that satisfactory?

**Hon. Senators:** Agreed.

Whereupon the committee proceed to the next order of business.

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 38

THURSDAY, MAY 1st, 1969

***Complete Proceedings on Bill C-112,***

intituled:

"An Act to amend the Farm Machinery Syndicates Credit Act."

WITNESSES:

*Farm Credit Corporation:* George Owen, Chairman. W. H. Ozard, Vice-Chairman.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

20122—1

## THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Lang |
| Aseltine | Desruisseaux | Leonard |
| Beaubien | Gélinas | Macnaughton |
| Benidickson | Giguère | Molson |
| Blois | Haig | Phillips (*Rigaud*) |
| Burchill | Hayden | Savoie |
| Carter | Hollett | Thorvaldson |
| Choquette | Isnor | Walker |
| Connolly (*Ottawa West*) | Kinley | Welch |
| Cook | | White |
| | | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 24th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Roebuck, for the second reading of the Bill C-112, intituled: "An Act to amend the Farm Machinery Syndicates Credit Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Roebuck, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
*Clerk of the Senate.*



20122—1½

# MINUTES OF PROCEEDINGS

THURSDAY, May 1, 1969.
(41)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider:

*Bill C-112,* "An Act to amend the Farm Machinery Syndicates Credit Act".

It was *Agreed* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-112.

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Haig, Hollett, Isnor, Kinley, Leonard, Molson, Thorvaldson, Walker, Welch, White and Willis.—(16)

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

The following witness was heard:

*The Farm Credit Corporation:*

George Owen, Chairman.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 10.10 a.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

THURSDAY, May 1, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-112, intituled: "An Act to amend the Farm Machinery Syndicates Credit Act", has in obedience to the order of reference of April 24th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
*Chairman.*

# THE SENATE

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Thursday, May 1, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-112, to amend the Farm Machinery Syndicates Credit Act, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** Gentlemen, we have a quorum and I am calling the meeting to order. We have Bill C-112 before us this morning. May I have the usual motion for printing?

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

**The Chairman:** We have three representatives from the Farm Credit Corporation, Mr. George Owen, Chairman, Mr. W. H. Ozard, Vice-Chairman and Mr. R. McIntosh, Comptroller. Would you come forward, please.

Mr. Owen, I take it you are going to make the presentation at the first instance.

**Mr. George Owen, Chairman, Farm Credit Corporation:** Yes. Honourable senators, as you recall, the Farm Machinery Syndicates program was first enacted in the fall of 1964. It was a plan designed to make it possible and relatively simple for farmers to group together and share in the use of expensive machinery which each one of them probably could not afford to own or use on his own behalf. The machinery could actually do the work for several farmers during the course of the year. Now, after operating under this program for some time, certain changes seem to be desirable and these are what are incorporated in this bill.

The first situation that became apparent was that very often this machinery had to be installed in specially designed buildings. I am thinking here in terms of the equipment used for grading and drying some types of products, and that sort of thing. It seems sensible that they should be able to finance the building and the machinery together. An extension of that would be certain types of buildings not requiring equipment and for which it seems quite reasonable for three or four farmers to own jointly. Here we would take such things as storage for fruit and vegetables to make an efficient controlled atmosphere for apples. It has to be significantly large, and larger than the individual farmer might be able to afford or need. The facility to build this jointly among a group of farmers seemed desirable.

The next situation was that the act itself provided for farmers to join together in what was called syndicates under the provisions of written agreements. Some groups of farmers wished to go further and actually formally incorporate farm co-operative associations and, as such be specific legal entities. The bill also provides that farmers who wish to do this could still borrow as syndicates without the need of entering into separate and distinct agreements for the purpose of this act.

**Senator Aseltine:** They would not be syndicates? They would be incorporated under the Companies Act?

**Mr. Owen:** That is right. They would be companies or co-operative associations.

**Senator Aseltine:** Either one.

**Senator Kinley:** Is there a joint responsibility when this is not co-operative?

**Mr. Owen:** Are you referring to a corporation?

**Senator Kinley:** If two or three people go together and sign the note personally.

**Mr. Owen:** If three or more go together and the company signs the note as such it would depend upon the security position of that company as to whether or not we might ask for personal endorsement of individual shareholders. If it was making a loan, this is a matter of security judgment and lending judgment.

**Senator Aseltine:** Each individual endorses the debt.

**Mr. Owen:** Each individual endorses the debt under the legislation at the present time. We have not been able to lend to companies as such. Under this proposed bill we would be able to lend to farming corporations and, as such, the farming corporation, the incorporating body, would be borrowing and signing the note.

**Senator Carter:** Could a corporation include a father and his two sons?

**Mr. Owen:** Yes, sir. The other item that this bill would include would be provision that we might lend to Indians farming on reserves and to Indian bands. Our problem in this respect up to date has been that we have not been able to obtain from Indians farming on reserves any form of security, as we would from any other borrower. This bill will authorize the corporation to enter into an agreement with the Minister of Indian Affairs whereby the minister will provide this alternative guarantee which we cannot otherwise obtain. That will then make it possible for us to lend under this legislation to Indians who are farming on reserves.

I think that covers the broad contents of the bill.

**Senator Aseltine:** Before you leave the Indian part of your argument, can you give us an indication about the reserves in the different provinces. For example, in Saskatchewan we have some large reserves. I presume that this bill is intended to allow the Indians living in the reserves to carry on farming operations as a syndicate under this bill, is that right?

**Mr. Owen:** That is right.

**Senator Aseltine:** Must they reside within the reserves?

**Mr. Owen:** We can lend to any farmer anywhere, and these farmers, if they are farming off the reserve, are fine. To get a guarantee from the Minister of Indian Affairs with respect to a loan on the reserve, they must be reserve Indians. I would not want to try to interpret the Indian Act itself, but it would have to be an Indian who is considered to be a reserve Indian.

**Senator Aseltine:** He might be a reserve Indian and actually not reside within the reserve, then?

**Mr. Owen:** If that is possible, that is so.

**Senator Aseltine:** Just as a farmer may be farming in the country and living in the city, or a city person may live in the country.

**Mr. Owen:** The point is that when he is farming on the reserve as a reserve Indian we could not make any claim in any way on the assets, in the event of default. This is the purpose of the agreement, so that the Minister of Indian Affairs gives us security.

**Senator Hollett:** As a co-operative, would they escape the co-operative tax?

**Mr. Owen:** Indians farming on reserves?

**Senator Hollett:** Anybody? Farm syndicate means a cooperative farm association?

**Mr. Owen:** A cooperative farm association. They have the same tax liabilities. We are not doing anything here with respect to the establishment or non-establishment of farming cooperative societies. All we are doing is making it possible to lend to them. This does not in any way change tax status from whatever it might be up to the present time. Not being a tax lawyer, I am not going to try to interpret that.

**Senator Kinley:** Has this been a success, this cooperative machinery scheme? Everyone uses machinery and no one ever looks after it properly. I find that when I lend out machinery it always comes back with something wrong with it.

**Mr. Owen:** From that point of view, it always has been a success.

**The Chairman:** You mean, when it comes back with something wrong with it?

**Senator Kinley:** It is like lending your car.

**Mr. Owen:** Whether it is a success or not, I would expect to see a greater volume of business done, under this legislation.

**The Chairman:** What is the volume at present? How much?

**Mr. Owen:** Until the end of March of this year, in four and a half years, it was $4.6 million.

**Senator Molson:** A million dollars a year.

**Mr. Owen:** I must say, however, that in the last year it was significantly bigger than in previous years. In the year just ended in March, we lent $1,670,000.

**Senator Molson:** Can you break down the figures?

**Mr. Owen:** I can give you the provincial figures for the last fiscal year. They were British Columbia $63,000; Alberta, $557,000; Saskatchewan, $179,000; Manitoba, $272,000; Ontario, $299,000; Quebec, $258,000; Atlantic Provinces, $44,000.

**Senator Leonard:** You have all the Atlantic Provinces together?

**Senator Kinley:** What was the last figure, the one for Atlantic Provinces, how much?

**Mr. Owen:** It was $44,000.

**Senator Kinley:** That is Newfoundland, Nova Scotia, Prince Edward Island and New Brunswick.

**Senator Isnor:** Why do not you break these down?

**Mr. Owen:** I do have a breakdown in some other records. For our administrative purposes we administer the four Atlantic Provinces from one office in Moncton and this is the reason why the figures are set up in that fashion. I am afraid I have not got a breakdown on that with me for the last year.

**Senator Leonard:** There would be only one or two loans, would there not?

**Mr. Owen:** I feel quite certain that the loans made to the Atlantic Provinces constitute about four loans—I think two in Prince Edward Island and two in Nova Scotia.

**Senator Kinley:** Do you think this bill is an improvement? You are building a place to keep machinery. That is an improvement. And if you had someone to look after it, when it is lent, that would be better still, as no one looks after it. That is the trouble now.

**Mr. Owen:** I think that that matter is covered under this program, in that we insist on an agreement. Each syndicate when set up must nominate somebody to maintain that machinery. They must have a written agreement as to how it is going to be maintained and how they are going to share in the cost of maintaining it. There are even agreements providing that the machinery can be inspected at various intervals, at the request of the corporation or of the farmers within the group. I think the factor with respect to legislation which has removed some of the problems of joint use of machinery is the fact that we insist in advance that the men get together and agree among themselves and put it down in writing as to where the responsibilities and rights of each member lie.

**Senator Molson:** It would have to be stored under cover?

**Mr. Owen:** This agreement specifically would have to state who is responsible for storing it and where. In most instances I am sure the individual farmers, for their own protection, would require it to be stored under cover. There may be exceptions to that.

**Senator Kinley:** Everyone wants to use machinery at the same time, that is one difficulty.

**Mr. Owen:** They again have clauses within their agreements as to how they resolve that kind of dispute.

**Senator Kinley:** I gather they have a meeting for rotation?

**The Chairman:** It is written into the agreement as to how they would resolve the question of allocations.

**Senator Leonard:** What has been the repayment record, in general terms?

**Mr. Owen:** Quite good. I do not believe we have yet finally recorded any losses under the program. I know we have certain syndicates that are in trouble, and we may eventually lose.

**Senator Hollett:** When you say "we," what do you mean?

**Mr. Owen:** I am referring to the Farm Credit Corporation.

**Senator Hollett:** Thank you.

**Mr. Owen:** We have a number in trouble but, generally speaking, the repayment record is quite good.

**Senator Leonard:** Under the new bill you can take the security back. Does that mean that if there is a land mortgage, the land can be taken?

**Mr. Owen:** If we were lending for a building, then we could, and we probably would, in many cases, take a land security. If it were a piece of land with a building on it, and we had four or five farmers, relatively good credit risks, and they were jointly and severally responsible for the repayment of the loan, we might not go through the process of taking a mortgage.

**Senator Leonard:** Has the maximum loan, before this bill, been $100,000?

**Mr. Owen:** Yes, it has.

**Senator Leonard:** There is no change in that?

**The Chairman:** Do you take a chattel mortgage on the machinery in many cases?

**Mr. Owen:** We do. I would not think we do it in more than 20 or 25 per cent of the cases. Again, if we have the signatures of a number of farmers, we do not take a chattel mortgage unless we feel it is reasonable to do so.

**Senator Aseltine:** I would not want to sign a mortgage agreeing to charge my land under one of those syndicate agreements. Have you had any occasions where you have taken mortgages?

**Mr. Owen:** So far the only kind of mortgages we have taken are chattel mortgages.

**Senator Aseltine:** No land mortgages?

**Mr. Owen:** That is right, because up to now we have only been lending money to buy machinery. When we start to lend for the construction of buildings, that will be different. Under those cases, I think it would be only the building site, where the building was located, rather than the entire farm.

**Senator Carter:** Does the make of machinery have to be approved or can the farmers import machinery under this legislation?

**Mr. Owen:** We merely need to be satisfied that the machinery they are buying is fit and adequate for the purposes that they are going to use the machinery for.

**Senator Carter:** I have heard that a group of farmers have started to import farm machinery from Ireland. Apparently it is 50 per cent cheaper there than in Canada. Would that be prohibited under this legislation or do you have any regulations governing it?

**Mr. Owen:** We have no regulations to prohibit lending of money merely because machinery originates in a country other than Canada.

**Senator Carter:** You gave some figures for the prairie provinces. It seems to me that Saskatchewan was lower than Alberta or Manitoba. I would have expected Saskatchewan to be higher. What is the reason for that?

**Mr. Owen:** It is rather difficult to pinpoint the reason why farmers in one area come to us more than others. I suppose part of it is that in Alberta we have had a certain amount of activity with respect to the purchase of machinery for clearing and breaking of land, where it is fairly heavy and expensive, whereas there is not so much of that type of development in Saskatchewan. I suspect, too, that there are more farms in Alberta where there is sort of a combination enterprise, grain and livestock, as distinct from purely grain. Many of the strictly grain farmers have been reluctant to give up their independent ownership of their combines, for example, in order to join a syndicate and save. There was quite a change this year with respect to grain dryers, however.

**Senator Willis:** They were in demand?

**Mr. Owen:** Farmers were quite anxious to get in and join with the purchase of grain dryers, because the timeliness is not quite as significant as for combines. They do not need a grain dryer every year, and each farmer did not want, individually, to buy such machines.

**Senator Carter:** You spoke a little while ago about the type of agreement you have to make to get a loan, and that it is written into the agreement who is going to house the machine, look after it and so on. Do you have that kind of agreement with the Indians?

**Mr. Owen:** If they purchase under this legislation, the group of farmers who are going to use this machinery will be required to get together and come to an agreement as to how they are going to store it, use it and maintain it, yes. This is a prerequisite in order for them to obtain credit. We must be satisfied that they have worked out these arrangements. We do not impose the arrangements on them, but we do make sure they have this kind of arrangement.

In other words, they can choose, themselves, the kind of arrangements so long as we are satisfied they will work.

**Senator Carter:** Where does the Minister come in on this?

**Mr. Owen:** The Minister of Indian Affairs?

**Senator Carter:** Yes.

**Mr. Owen:** Once this legislation has been approved, we would be negotiating with the Department of Indian Affairs and entering into an agreement outlining the circumstances under which we would guarantee that, if we cannot recover our loan from the syndicate on the reserve, then we could call upon the Minister of Indian Affairs to pay that loan for the Indians.

**Senator Leonard:** Under the bill it does not have to be new machinery, does it?

**Mr. Owen:** No, it does not.

**Senator Leonard:** In practice do you require it to be new machinery?

**Mr. Owen:** No. This program, to a certain extent, was formulated along the lines of one operating in Britain, where they require new machinery, but we have not required new machinery. However, we do ask that our local representatives ensure that the machinery is in good working order, and if part of its lifetime is gone we would expect the cost of the machine to be repaid somewhat earlier. But there is no prohibition against used equipment.

**The Chairman:** Do you have any inspectors to see whether the machinery is being properly cared for?

**Mr. Owen:** We do have the inspectors in the areas who would see the machinery before it is purchased and who, if we were in difficulty with a syndicate, would go round to see how the security was being maintained. On the other hand, if some of the individual members of the syndicate were dissatisfied with the maintenance of the equipment and brought that to our attention, we would then go have a look at it, but we do not make a regular course of going round once or twice a year to inspect all the equipment.

**Senator Molson:** I notice that the term was extended for 15 years for machinery that is to be installed in buildings. That is a fairly long time for some machinery, is it not?

**Mr. Owen:** That is right, senator. For those machines where the term should not be that long, we will not make it that long.

**Senator Molson:** It would depend upon the type of machinery, in other words.

**Mr. Owen:** That is right. It may be some kind of equipment that is strictly part of the building. If that is the case, then the term would be 15 years. But for the rest the term would be shorter.

**Senator Carter:** In giving approval to the type of machinery and the make or brand that is being purchased, do you take into account the opportunities for servicing the machinery?

**Mr. Owen:** I would have to say that we really have not got deeply involved in that aspect. We advise the farmers of the importance of this type of thing, but we do leave that decision to them, so long as we are satisfied that the equipment will do the work. I think, if you get three, four or five farmers together to buy machinery, the farmers themselves are going to be pretty careful about finding what kind of replacement service and parts service they will be able to get. We would rather leave that to them. We are really lenders and do not want to take their decisions away from them.

**Senator Carter:** What prompted that question was that I had heard about these farmers importing machinery from Ireland, and I wondered who would service the machinery and how they would get parts for them and so on.

**Mr. Owen:** They are doing that, I understand, through a farmers' organization. I am just speaking as a casual observer, you will understand, because I am not involved with it. I believe that the kind of machinery they are buying is the same kind that is available here.

**Senator Willis:** Farm machinery is usually serviced by the people from whom it is bought.

**Mr. Owen:** They would have trouble getting it serviced by the people in Ireland.

**Senator Willis:** It is the man from whom you buy the machinery who services it, the same as for a car.

**Senator Kinley:** I see it reported in the press that Canadian manufacturers are selling farm machinery cheaper abroad than in Canada. Is there anything wrong in that? Do you think it is a wrong thing to do?

**Mr. Owen:** I do not want to get involved in that question. My function is to lend money to people to buy machinery.

**Senator Kinley:** I think it is a good thing to sell your surplus abroad. It doesn't hurt Canada.

**The Chairman:** Any other questions?

Are you ready to report the bill? Shall I report the bill without amendment?

**Honourable Senators:** Carried.

The committee adjourned.

Mr. Owens: I do not want to get involved in that question. My function is to lend money to people to buy machinery.

Senator Kinley: I think it is a good thing to sell your carrying abroad. It doesn't hurt Ontario.

The Chairman: Any other questions?

Are you ready to report the bill? Shall I report the bill without amendment?

Honourable Senators: Carried.

The committee adjourned.

First Session—Twenty-eighth Parliament
1969-69

# SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON

# BANKING, TRADE AND COMMERCE

The Honourable A. A. HAYDEN, *Chairman*

No. 10

WEDNESDAY, MAY 7th, 1969

Second day of Proceedings on Bill S-34,
intituled:
"An Act respecting Nova Scotia Savings & Loan Company".

APPENDIX:
"C"—Letter from Company to shareholders, dated February 11th, 1969.

REPORT OF THE COMMITTEE

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS
## OF THE
## STANDING SENATE COMMITTEE
## ON

# BANKING, TRADE AND COMMERCE

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The Honourable SALTER A. HAYDEN, *Chairman*

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No. 39

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WEDNESDAY, MAY 7th, 1969

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***Second and Final Proceedings on Bill S-34,***
intituled:
"An Act respecting Nova Scotia Savings & Loan Company".

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APPENDIX:

"C"—Letter from Company to shareholders, dated February 11th, 1969.

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REPORT OF THE COMMITTEE

20124—1

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 29th, 1969:

"The Honourable Senator Urquhart presented to the Senate a Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company".

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury:

That Rule 119 be suspended with respect to the Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

WEDNESDAY, May 7th, 1969.
(42)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to *resume* consideration of:

**Bill S-34,** "An Act respecting Nova Scotia Savings & Loan Company".

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Cook, Croll, Desruisseaux, Gélinas, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Walker, Welch, White and Willis. (21)

*Present, but not of the Committee:* The Honourable Senators Fergusson, Macdonald (*Cape Breton*), Methot, Prowse and Urquhart. (5)

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

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

A letter from the Company to the shareholders will be printed as Appendix "C".

At 9.40 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, May 7th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company", has in obedience to the order of reference of April 29th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, May 7, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-34, respecting Nova Scotia Saving & Loan Company, met this day at 9.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** Honourable senators, the first bill we are going to look at this morning is Bill S-34, which carries over from the last time we sat. If you will recall, we heard the witnesses and then adjourned so that a principle of the bill, which seemed to us to be a new principle in legislation, could be given further though by the members of the committee. That was the question of putting some percentage restrictions on the number of issued shares of the company that could appear in the name of one person. At that time Senator Leonard expressed some concern about that, but in the meantime certain bills received first reading in the Senate last night, one of which is the trust companies bill, and having looked at those bills I note that they contain a provision for doing the sort of thing contemplated by Bill S-34. Therefore, if Parliament approves those bills that were passed in the Senate last night, there will be precedent for Bill S-34.

Do you have anything to add, Senator Urquhart?

**Senator Urquhart:** I have nothing further.

**Senator Walker:** Along the line of your argument, Mr. Chairman, the Royal Trust Company itself has in one of its prospectives the following clause:

> When more than ten percent of the outstanding shares are associated with each other (as hereinafter defined) none of such associated shares in excess of ten per cent may be voted at any meeting of shareholders of Royal Trust.

**The Chairman:** Along that line, I was indicating in the bill relating to trust companies which was introduced last night in the Senate that there is provision for the directors and shareholders providing for restrictions on the number of shares and the voting of shares under which the authority to do exactly what is proposed in this bill could be done.

**Senator Molson:** We have not passed those yet, Mr. Chairman.

**The Chairman:** I think it might be a fair assumption that they will be passed.

**Senator Molson:** I would think so.

**Senator Croll:** It is not an unreasonable precedent under these circumstances.

**The Chairman:** Of course not. Is there any further discussion?

**Senator Leonard:** In my opinion the principle in Bill S-34 is different from the principle contained in the bills that were passed last night. Inferentially, it does allow one to own more than ten per cent of the shares, in my opinion. I have not changed my personal views. However, I am prepared to accept the view of the majority of the committee with respect to the bill.

**Senator Isnor:** I move that we report the bill without amendment.

**Hon. Senators:** Agreed.

The committee then proceeded to the next order of business.

## APPENDIX "C"

NOVA SCOTIA SAVINGS & LOAN COMPANY

Halifax, Nova Scotia

FEBRUARY 11, 1969.

To the Shareholders.

In recent weeks a large Canadian Company having its Head Office in the Province of Quebec, has purchased through brokers a substantial number of shares in Nova Scotia Savings & Loan Company. It is possible that such Company may acquire further shares and your Directors consider it proper to write to the shareholders to advise them of this situation and also express the Directors' views concerning our Company's growth and future and their desire that this Company remain independent. They consider that it is in the best interests of the shareholders, the borrowers and the public that any attempt to take over the Nova Scotia Savings & Loan Company or have it become a subsidiary of a larger Corporation, be resisted. The Directors intend to oppose any steps that may be taken by any company to acquire control. They believe that the shareholders in the main will support this position.

It is to be recalled that the Company was organized in the year 1850 and has successfully carried on business through this period of time. In the past five years the equity of the shareholders has increased by 40% and the net profit of the Company by 99%. The year 1968 was an exceptionally good one and resulted in an increase of 19% in operating profit over the previous year. Net earnings per share improved by 15.5% or 51 cents to 59 cents in the past year. Recently the Directors announced an increase in dividends from 30 cents per share in 1968 to 34 cents per share in 1969. During the past five years dividends have increased by 68%.

In 1968 the Company approved 1,210 mortgage applications for a total of $22,000,000 providing for 2,220 housing units. Loans are made both in rural and urban communities and the Company performs a service which it is believed cannot be equalled. It is thought that the Company's lending policies are unique and to the advantage of the Maritime Provinces and to the shareholders.

The Directors firmly believe that the prospects of future growth are excellent. While no absolute forecast can be made of the extent of improvement in the Company's position, nevertheless, it is confidently thought that the Company will enjoy a good future and be in a position to serve its borrowers in the Maritime Provinces, and its shareholders in full measure.

Recently the shares have traded at the highest price in the history of the Company. While your Directors cannot say with any certainty what the value of the stock will be from time to time, nevertheless they believe that the shares should have a good increase in value and consistent with the Company's growth. It is recommended that shareholders have the future of the Company in mind before making any disposition of their shares. The Management would be very glad to furnish any additional information that may assist any shareholder with respect to the Company.

G. C. Piercey,
President.

THE QUEEN'S PRINTER, OTTAWA, 1969

First Session—Twenty-eighth Parliament
1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

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The Honourable SALTER A. HAYDEN, *Chairman*

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No. 40

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WEDNESDAY, MAY 7th, 1969

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***Complete Proceedings on Bill S-32,***

**intituled:**

"An Act respecting The Canada North-west Land Company (Limited)".

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WITNESSES:

*The Canada North-west Land Company (Limited):* H. Graham Gammell, President. Marcel Joyal, Q.C., Counsel.

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REPORT OF THE COMMITTEE

20272—1

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 29th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Beaubien moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill S-32, intituled: "An Act respecting The Canada North-West Land Company (Limited)", 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 Beaubien moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

WEDNESDAY, May 7th, 1969.
(43)

At 9.40 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

*Bill S-32,* "An Act respecting The Canada North-west Land Company (Limited)".

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Cook, Croll, Desruisseaux, Gelinas, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Walker, Welch, White and Willis. (21)

*Present, but not of the Committee:* The Honourable Senators Fergusson, Macdonald (*Cape Breton*), Methot, Prowse and Urquhart. (5)

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

It was *Agreed* that 800 copies in English and 300 copies in French of these proceedings be printed.

The following witnesses were heard:

*The Canada North-west Land Company (Limited):*

H. Graham Gammell, President.

Marcel Joyal, Q.C., Counsel.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 9.55 a.m. the Committee adjourned until later this morning.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, May 7th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-32, intituled: "An Act respecting The Canada North-west Land Company (Limited)", has in obedience to the order of reference of April 29th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, May 7, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-32, respecting The Canada North-west Land Company (Limited), met this day at 9:40 a.m. to give consideration to the bill.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** Senator Beaubien was the sponsor of Bill S-32. May I have a motion for printing, duly moved and seconded?

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

**The Chairman:** Have you anything to add at this time, Senator Beaubien?

**Senator Beaubien:** I do not think so, Mr. Chairman. I think we covered it all in the Senate.

**The Chairman:** Would you like to present the people appearing in support of the bill?

**Senator Beaubien:** Certainly. This is Mr. H. Graham Gammell, President and Chief Executive Officer of the company; to his right is the Right Hon. Lord Shaughnessy, Vice-President and Secretary, and on Mr. Gammell's left is Mr. L. M. Joyal, legal counsel.

**The Chairman:** Would you care to make an opening statement, Mr. Gammell?

**Mr. H. Graham Gammell, President and Chief Executive Officer, The Canada North-west Land Company (Limited):** Mr. Chairman, honourable senators, in this bill we are requesting that our company, which is a special act company, be brought under the provisions of the Companies Act rather than Parliament. This is primarily to make it easier for us to expand the company and to proceed in the normal corporate manner without returning to Parliament to take up the time of Parliament. We are an expanding exploration oil company and there will be times when we need to change our corporate structure in the future, we expect. This is the aim of the bill which is being presented.

**The Chairman:** Are there any questions?

**Senator Molson:** What are the corporate purposes of the company?

**Mr. Gammell:** Oil and natural resources exploration and development.

**Senator Benidickson:** When was it incorporated?

**Mr. Gammell:** It was incorporated in the United Kingdom in 1883 and in Canada in 1893.

**The Chairman:** And it is a special act company in Canada?

**Mr. Gammel:** Yes, it is a special act company.

**Senator Leonard:** Has the company any land left?

**Mr. Gammell:** It has few very small parcels of surface rights, but it is primarily minerals in fee simple in Saskatchewan, Manitoba and Alberta.

**The Chairman:** Are there any other questions of Mr. Gammell?

**Senator Walker:** This is merely bringing it up to date under the Canada Corporations Act?

**Mr. Gammell:** Yes.

**The Chairman:** I think we should hear from Mr. Joyal, who will explain the procedures that are involved in this bill to accomplish the result that is desired. Would you take the floor, Mr. Joyal?

**Mr. Marcel Joyal, Q.C.:** Thank you, Mr. Chairman. Briefly, this is a parallel course to what I believe Parliament has already decided could be done with special act corporations when the corporation is a no share capital corporation. Perhaps some of you will recall Bill S-51 of a couple of years ago, section 147B of the Corporations Act...

**Senator Benidickson:** What company was that?

**Mr. Joyal:** Bill S-51, which was an act to amend the Canada Corporations Act, senator. There was a procedure whereby companies which had been incorporated by special act, no share capital types of company, were allowed to continue in existence under the Canada Corporations Act.

It was felt that in this particular case, using this as a precedent, the same formula could be applied to a share capital corporation; and after discussions, I believe, with your own counsel in the Senate, Mr. Hopkins, and discussions also with the Corporations Branch, it was decided that this particular type of provision added on to the statute of the company with which we are dealing could effectively do what we wish to do.

**Mr. Benidickson:** My point was, is this a precedent?

**Mr. Joyal:** We like to think so, senator.

**The Chairman:** Yes, there is no question about it, and I think we will ask our Law Clerk some questions in a moment.

I believe that again, Senator Leonard, there are some provisions in the four bills introduced last night—the Trust Companies Act, the Loan Companies Act, the Canadian and British Insurance Companies Act, and the Foreign Insurance Companies Act—which will be explained on Thursday, permitting a special act company to proceed to change and vary as though it were a Letters Patent company, without going back to the province. So, while this may have seemed a little daring in breaking new ground and being a precedent at the time the bill was prepared, it now has a lot of company which, I expect, in due course will pass into law.

Have you any comments, Mr. Hopkins?

**Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** No, Mr. Chairman, except I think this company would be better housed under the Canada Corporations Act. We have no powers or regulations to act in this way, and it would be an improvement. It is not without precedent, because this has happened to non-share companies.

**The Chairman:** This company is just applying the principles which were approved in relation to the non-share companies, and a principle which is recognized in bills now standing before the Senate.

**Mr. Hopkins:** Yes. It is not the kind of company we would incorporate now, in any event. It would now be done under the Canada Corporations Act.

**Senator Benidickson:** What was that?

**Mr. Hopkins:** I was saying that if it were to come before us now, it would more appropriately go to the Canada Corporations Branch in the first place.

**Senator Beaubien:** I move we report the bill without amendment.

**The Chairman:** Are you ready for the question? Shall we report the bill without amendment?

**Hon. Senators:** Agreed.

Following a short recess the committee proceeded to the next order of business.

THE QUEEN'S PRINTER, OTTAWA, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 41

WEDNESDAY, MAY 7th, 1969

***Third and Final Proceedings on Bill C-165,***

intituled:

"An Act to amend the Income Tax Act and the Estate Tax Act".

WITNESSES:

*Department of Finance:* The Honourable E. J. Benson, Minister. J. R. Brown, Senior Tax Adviser, Taxation Branch. E. H. Smith, Tax Policy Division.

*Department of National Revenue:* W. I. Linton, Chief, Income Tax Division.

REPORT OF THE COMMITTEE

20274—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex Officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

"With leave of the Senate,

The Honourable Senator Connolly, P.C., resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Langlois, for the second reading of the Bill C-165, intituled: "An Act to amend the Income Tax Act and the Estate Tax Act".

After debate, and—

The question being put on the motion,

The Senate divided and the names being called they were taken down as follows:—

### CONTENTS

The Honourable Senators

| | | | |
|---|---|---|---|
| Aird, | Davey, | Inman, | McElman, |
| Argue, | Desruisseaux, | Isnor, | Petten, |
| Boucher, | Eudes, | Kickham, | Phillips |
| Bourget, | Fergusson, | Kinley, | (*Rigaud*), |
| Bourque, | Fournier | Kinnear, | Rattenbury, |
| Burchill, | (*de Lanaudière*), | Laird, | Robichaud, |
| Carter, | Giguère, | Lefrançois, | Roebuck, |
| Connolly | Gouin, | Leonard, | Smith, |
| (*Ottawa West*), | Hastings, | Martin, | Urquhart—36. |
| Croll, | Hayden, | McDonald, | |

### NON-CONTENTS

The Honourable Senators

| | | | |
|---|---|---|---|
| Beaubien, | Fournier | Macdonald | Quart, |
| Bélisle, | (*Madawaska-* | (*Cape Breton*), | Thorvaldson, |
| Blois, | *Restigouche*), | MacDonald | Walker, |
| Choquette, | Gladstone, | (*Queens*), | Welch, |
| Flynn, | Haig, | Méthot, | White, |
| | Irvine, | Pearson, | Willis, |
| | | Phillips | Yuzyk—21. |
| | | (*Prince*), | |

So it was resolved in the affirmative.

The Bill was then read the second time, on division.



20274—1½

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

WEDNESDAY, May 7th, 1969.
(44)

At 10.30 a.m. the Standing Committee on Banking, Trade and Commerce *resumed* and proceeded to *further* consideration of:

**Bill C-165,** "An Act to amend the Income Tax Act and the Estate Tax Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Cook, Croll, Desruisseaux, Gelinas, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Walker, Welch, White and Willis. (21)

*Present, but not of the Committee:* The Honourable Senators Fergusson, Macdonald (*Cape Breton*), Methot, Prowse and Urquhart. (5)

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

After discussion and upon motion, Mr. Stephen C. Smith was retained as Counsel to the Committee with the undertaking that only his actual travel expenses be paid and that no fee would be charged.

The following witnesses were heard:

*Department of Finance:*

J. R. Brown, Senior Tax Adviser, Taxation Branch.
E. H. Smith, Tax Policy Division.

*Department of National Revenue:*

W. I. Linton, Chief, Income Tax Division.

At 12.30 p.m. the Committee adjourned until 3.00 p.m. this day.

At 3.00 p.m. the Committee *resumed.*

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Connolly (*Ottawa West*), Cook, Croll, Flynn, Gelinas, Giguere, Isnor, Kinley, Leonard, Macnaughton, Martin, Molson, Phillips (*Rigaud*), Walker, Welch, White and Willis. (21)

*Present but not of the Committee:* The Honourable Senators Dessureault, Fergusson, Irvine, Laird, McDonald, Methot and Roebuck. (7)

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

The following witness was heard:

*Department of Finance:*

The Honourable E. J. Benson, Minister.

After discussion and questioning the Minister and the Departmental officials left the hearing at 4.10 p.m.

The Honourable Senator Croll moved that the said Bill be reported without amendment.

The question being put, the Committee divided as follows:

YEAS—9 NAYS—7

The motion was declared *carried.*

After discussion and upon Motion it was *Resolved* that 4000 English and 1500 French copies of these proceedings be printed.

At 4.30 p.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, May 7th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-165, intituled: "An Act to amend the Income Tax Act and the Estate Tax Act", has in obedience to the order of reference of April 22nd, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, May 7, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-165, to amend the Income Tax Act and the Estate Tax Act, met this day at 9.45 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, as you know, we have already had several hearings on this bill. The departmental representatives are to be here momentarily, so that we may discuss with them the points which were made in the submissions by the Trust Association and the Ontario Section of the Canadian Bar Association, in particular.

While we are waiting for the witnesses to arrive, I may say there is a bit of information I should convey to you, because I want a resolution from this committee. You will recall that in the Senate a week ago there was a resolution proposed by the Government Leader, giving authority to this committee to expend moneys for counsel and for accounting services and all such related matters.

In talking to a number of senators, we felt, after we heard the lawyers representing the Ontario Section of the Canadian Bar Association last week, that we should have counsel to assist and to be there to consult with, and then the problem came up of selecting counsel in the circumstances.

Finally, I made a selection, subject to your approval, and I selected a person whom I am accustomed to working with in my office. He is sitting right beside me now. There will be no charge in the way of fees for his services—

**Hon. Senators:** Hear, hear.

**The Chairman:** —because if there were going to be any such charges I could not and would not employ him. However, I wanted to have him, so that the only thing that will be paid in connection with his services will be his actual out-of-pocket expenses, not even a per diem allowance.

In those circumstances, I felt I could ask the committee reasonably to let me have a man I am accustomed to working with. I can assure you that he is familiar with the subject, and that there will be no "shotgun" draftsmanship. If we have to come to drafting, we will take our time on it.

Therefore, if I could have a resolution approving of his selection and of the recital of the facts as I have put them to you, that the only responsibility we have for payment is his actual out-of-pocket expenses, that will be in order. This is Mr. Stephen C. Smith Counsel to the Committee, from my office in Toronto.

**Senator Benidickson:** Mr. Chairman, might I say I think you have acted perfectly properly, and have made an excellent selection. Of course, we need counsel under the circumstances. I think we should select counsel who will work closely with you, and I think all members of the committee will appreciate that fact and, under the circumstances, we should adopt the resolution to pay the actual expenses. Certainly these should be paid.

I commend you for what you have done. I know something of this gentleman's reputation, and I think he will be a great asset to the deliberations of the committee.

**The Chairman:** Then there is a resolution, therefore, in those terms, I take it?

**Hon. Senators:** Agreed.

**The Chairman:** I should tell you that I was talking to the Minister of Finance yesterday and he indicated his desire to appear before the committee. He also indicated that he would be available at 3 o'clock this afternoon, and I accepted this on your behalf as a firm date. He has to leave for Europe some time later in the day because of a death in the family, but he will be available this afternoon at 3 and I would assume he will be able

to spend an hour or two with us and we will hear his answers to the various questions raised.

I also spoke to the departmental representatives, Mr. Smith, Mr. Linton and Mr. Brown, who were here originally, and asked them if they would be here today so that we could discuss the points raised by the Ontario Section of the Canadian Bar. They have not yet arrived, but I expect that they will be here shortly. In view of the fact that the minister is coming this afternoon I think we should get their reaction to the extent they feel they are not intruding on policy to the points made as to whether they are covered in some way in the bill that we did not see and that the representatives of the Canadian Bar did not see, or whether they have any comment to make as to the difficulty in covering such a situation. At the moment, as I see it, the only reason for not including this matter is the difficulty in dealing with it, and it is up to us, perhaps, to find a way through it.

Shall we now recess for a few minutes until the witnesses arrive?

**Senator Molson:** Mr. Chairman, there is a meeting of the Standing Committee on Transport and Communications at 10 o'clock. It may be that some senators serve on both committees.

**The Chairman:** Would an hour be long enough, do you think, for the meeting of that committee?

**Senator Molson:** Well, there is only one bill dealing with the CPR and I would think it would be quite short.

**The Chairman:** Would the members of the committee prefer to recess for a half hour rather than sitting here in contemplation? That would bring us up to 10.30.

**Honourable Senators:** Agreed.

**The Chairman:** And I expect you will all be back at that time.

(Whereupon the committee recessed)

Upon resuming:

**The Chairman:** It now being at least 10.30 we shall resume our deliberations on Bill C-165. You will recall that we had reached the stage where we had heard the departmental representatives, and at our last sitting we heard representations from several groups. We have before us this morning the departmental representatives again. I think we should discuss with them the points that were submitted at our last meeting by those various groups in preparation for the appearance here this afternoon of the minister. It may be that these gentlemen can have a discussion with him in the meantime so that he will be aware of what the points are with which we are particularly concerned.

In order to lead off the discussion may I raise a point that occurs to me right away. You will recall that we were told of the situation where a man dies; he has no family and he leaves the life interest to his widow, and then the residue goes to charity. The objection made by the members of the Ontario section of the Canadian Bar Association was that in those circumstances the charity exemption would not apply. If the husband made the gift there would be a right to deduct. If the wife made the gift there would be a right to deduct. But, because of the manner in which the bill is drawn that result is not achieved by it—or, it does not appear to be. I would like to invite a comment from the panel as to whether there is any reason why it was put in this form. Were the drafters aware of this problem at the time the bill was drafted? Can you offer some explanation? Mr. Brown, are you going to take it on first?

**Mr. J. R. Brown, Senior Tax Adviser, Taxation Branch, Department of Finance:** I guess so, senator.

May I divert for a moment to correct two things that I said here two weeks ago. They bothered me at the time. I checked up on them later, and found to my horror that I had given wrong information to the committee.

The first one had to do with a comparison between the proportion of taxes raised by death duties in the United States and in Canada. At the time I said that we raised about two per cent of our total federal-provincial-municipal revenues through death duties, and that they raised 2½ per cent. The figures should have been 2 per cent for them, and a little less than 1½ per cent for us. The margin was right; one of the figures was right, but I got it on the wrong side.

The second thing had to do with the tax in the United States on an estate of $500,000. You will recall that we ran through it in quite a few situations. In the case of an estate with a life interest to the widow and the remainder to the children on her death, the figure in the table from which I quoted was $71,000 for American tax. It did not look right to me when I saw it, and it turns out that it

is not right. The Americans have a 50 per cent exclusion for property left to a wife, but they do not apply that to property left in a trust unless the terms of the trust are such that the property will be included in the wife's estate. In simple terms, if she has a right of encroachment of capital or the right to direct who the capital goes to, it is exempt when the husband dies and is taxed when the wife dies. If it is the straightforward type of trust that is quite frequent in Canada, it does not qualify for exemption at all when the husband dies. That was the type of trust that was in mind, so the American taxes, instead of being $71,000, should have been $172,000, which compares to a current Canadian tax of $116,000 and a tax under the new system which will vary between $170,000 and $185,-000. I hasten to point out that nobody in the United States uses that kind of will for that very reason. At least, I should say that it is not an estate planner's trust in the United States.

**The Chairman:** In any event, this information was not very relevant nor useful.

**Mr. Brown:** Thank you, senator!

I now turn to the point you raised of the gift for charity. First, there is no doubt that the lack of change in the provisions in the Estate Tax Act has the effect that the Canadian Bar Association suggested it does have. If the particular charity to which the funds are to go is specified in the husband's will, there will not be an exemption when the wife dies, because she is not making the gift. Clearly it would be more in keeping with the principle of the changes we were making at the time if there were an exemption.

**Senator Walker:** We cannot hear you.

**Mr. Brown:** I was saying that it would be more in keeping with the overall principle of the amendments if there had been an exemption; it would be an improvement if there were an exemption.

**Senator Beaubien:** If the husband leaves $1 million, which the wife gets the interest on, and he leaves $200,000 to a hospital...

**Mr. Brown:** At the end of the time?

**Senator Beaubien:** Yes. Then when she dies there is no exemption?

**Mr. Brown:** That is right.

**Senator Beaubien:** The estate would pay tax on the million?

**Mr. Brown:** That is right.

**Senator Beaubien:** Can she deal with that in her will?

**Mr. Brown:** Unless his will gives her the right to specify the charity I suppose she would be unable to overrule his will.

**Senator Leonard:** If we were to draft an amendment accordingly it would be an improvement to the bill?

**Mr. Brown:** I think it would be more in keeping with the original spirit.

**Senator Leonard:** More in keeping with the principle of the bill.

**Mr. Brown:** Yes.

**Senator Phillips (Rigaud):** I think for the benefit of honourable senators we might relate this to the information we received from the Ontario Branch of the Canadian Bar Association. It is item 4 on the list of draft amendments.

**The Chairman:** It is item 4 in the brief.

**Senator Phillips (Rigaud):** We might tick off the views of Mr. Brown as they relate to the data we have.

**The Chairman:** Honourable senators will recall that another point that developed was the effect of lumping the various gifts from different husbands to the same wife. The example quoted was where the husband with a small estate left the life interest in that estate to his widow and the residue to his children; the wife remarried somebody who had been married before and may have a family, but who had greater means; then he died and there was a life interest to this same donee on the second time round with the gift over to his children; then she died. The difficulty presented to us, which appears to be factual and legally true from the bill, is that there would be a lumping of those various deemed-to-be gifts and the rate of tax would be higher as a result; therefore the burden on the children of the first marriage would be substantially greater than it would be if one were just applying the rates to the value of that first estate when she died. I think that is a correct interpretation of what the bill says, is it not?

**Mr. Brown:** Yes, sir.

**The Chairman:** When this provision was being drafted was any consideration given to

the hardship that might result in those circumstances in creating substantially higher rates of tax?

**Mr. Brown:** When the Government asked us to investigate the methods by which this type of trust could be exempt when the husband died, there seemed to be two broad alternatives open. One was to consider the property still part of the husband's estate, and perhaps you might look at it in terms of a postponement of tax, if you will, until the wife died. Then the same thing could have been done with respect to remarriage, and the same thing could have been done with respect to another point raised by the Ontario Branch of the Canadian Bar Association, namely looking after children in the meantime.

The second alternative was to treat this kind of trust in the same manner as if the property had been given outright to the wife.

Those seem to be the two main alternatives open. Each of them carries with it some disadvantages. The Bar has identified one of the problems that can arise under the course that the Government chose, but I think senators last week commented during the hearings on some of the problems that could arise under the other approach: the question of how long an estate stays open and the question of determination of what rates to apply at various times of this postponement process, and the fact that executors like to see an end at some time to their potential liability for estate taxes.

The short answer would have been, yes, we gave consideration to this. I just felt that I would like to indicate some of the considerations that came into play in choosing the legal fiction of treating the property as if it belonged to the wife.

**The Chairman:** It occured to me that it would be helpful if you put what I would call a simple provision in the bill and said exactly what you meant in clear language that would not create any conflict anywhere else. You would say that for purposes of determining the rate of tax to apply in relation to the first estate that is created, the rate of tax shall be governed by whatever is in the amount of the estate. That would be the combination of some part of the donee's own wealth plus the deemed to be gift from her husband and going on to the children. That would give you a rate of tax that would clearly reflect the relationship between the first husband and the wife. It would only be for purposes of determining the rate to apply to that portion of the estate. It would not be difficult to devise language which would say that very simply.

The net result might be that the revenues would be less because obviously if you lump several of these together and get a higher dollar amount you are going to get a higher rate applicable. If you divide for purposes only of determining the rate the net result may be to produce less income. The appealing thing is the fact that because of this way of doing it the income of the children would not be as substantially lessened.

**Senator Beaubien:** It is the small estate in each case that takes the burden of this injustice. It does not seem to make any sense that if a man leaves $100,000, that just because his widow remarries that that man's children, instead of paying a very small tax on the $100,000, would have to pay about half, which is the maximum. It does not seem to make any sense at all. Surely it is just sloppy work in the way the bill was written.

**The Chairman:** Since Mr. Brown has explained how they interpret it, I think we have to accept that there was a consideration or some rationalization. They did not rationalize enough as far as the children's position is concerned.

**Senator Beaubien:** Is there any way ni which the wife could renounce the first $100,000 and let the children pay the tax on that $100,000 and take the money?

**Mr. Brown:** I do not think there is such a method at the moment. Senator, the decision reached and the instructions we were working under when the drafting was being done was to equate the position of a wife who inherits $100,000, as you mentioned, with the position with the wife that got a life interest under the trust. We knew we might be getting into difficulty in the route we selected because it is obviously an artificial legal concept. It is not her property and everybody understood that we were getting into potential trouble when we did that, but not to do it would have meant, in many cases, that there would have been an immediate tax. It was felt that, particularly in a country with three provinces operating on a succession duty principle, it was not open to the Government to do as the Americans do. The Americans do not allow such a trust to qualify for an exemption. It was felt that it was not open to

Canada, not only because of differing views by the governments of the two countries, but also because of the Provinces of Ontario, Quebec and British Columbia, which have succession duty acts. If the federal Government put tax pressure on people to leave gifts to widows outright, it would be putting pressure on them to leave their estates in such a way as to trigger two provincial taxes. This is how we got to where we are, senator, tryin to equate the two positions.

**The Chairman:** Mr. Brown, if you followed the suggestion which I made it would accomplish the result of lightening the burden on the children of the first husband. If you establish rates of tax in relation only to the value of the estate, which was comprised of what the husband had given over and whatever the wife's estate might be, some portion of that, the effect would be lower taxes to be paid.

**Mr. Brown:** In the case given, we had three lumps, to use your expression. Your suggestion would be that we would determine rates by reference to two of those lumps.

**The Chairman:** Yes.

**Mr. Brown:** What would we do with the third lump?

**The Chairman:** My suggestion is that you take the wife's personal estate. That is one lump. You have two other lumps added together, what comes from the first husband and the other which comes from the second husband. I am suggesting that you could not obviously put the wife's personal estate and add it to each one of the other lumps, because that would be really piling tax on tax. You might arrive at some arbitrary division. You might say, for purposes of determining rates, we will take half of the wife's personal estate and add that to the first lump and take the other half and add that to the second lump. The result will be fairer for the children of the first marriage, in relation to what they get, under the will. In other words, it will establish a lower rate. What is objectionable about that?

**Mr. Brown:** I would like to think about your suggestion.

**Senator Molson:** Mr. Chairman, I still do not know the reason why it would be impossible to set the rates at the time of the death of the husband. This puzzles me. There must be a reason why it cannot be done. It sounds, on the surface, rather simple.

**The Chairman:** One factor may be missing at the time the first husband dies and that factor is, what is going to be the amount of the donee's, the wife's personal estate?

**Senator Molson:** That would be only established on her death.

**The Chairman:** That is right.

**Senator Molson:** Why should the other two be accumulated? Why should not the rates on the first and second husband be established first? I am puzzled why it could not be done, to eliminate this problem of the children getting unfair treatment or being treated differently.

**Mr. Brown:** Senator Molson, the amount in that trust may be quite different on her death than on his death. It could be considerably less, as well as being considerably more. I think this would raise, after the event, complaints about setting the rates by reference to something that did not pass. I think that is the simple answer.

**The Chairman:** That is only the question of the time at which you make the calculation.

**Mr. Brown:** If you do not make it immediately you have to decide to give the lower rates in the schedule to the distribution at the time of the husband's death and reserve the high rates for those that inherit on the occasion of the wife's death, who one assumes are the closest family, or decide to recompute the rate on everything at the time of the wife's death, which of course would keep the original estate tax liability open. So I think there may be other solutions. I just want senators to know that we understood the problems we were getting into, and we thought we understood some of the ones we were avoiding.

**Senator Phillips (Rigaud):** There could be a case where the widow would keep on marrying, but realistically, you can think of a great number of occasions where they are remarried once. I think honourable senators are particularly interested in protecting the beneficiaries of the first husband. I do not think honourable senators are too much concerned about beneficiaries if the widow remarries and there are other beneficiaries. We want to consider the greater number of cases where the beneficiaries other than the spouse would be subject to hardship. We want to be realistic about it and we want to see that in the great number of cases that justice is now being done.

**The Chairman:** I think that is a good point, because we were talking realistically about the situation in regard to children. You could also make an assumption—Mr. Brown has made a number—that on the second time round the widow may marry aman who had less means than the first husband and then the rates could go the other way.

I am simply trying to avoid the penalty of any reduced income to the children of the first marriage, where that may arise. It may not arise in the other case.

**Senator Molson:** That would only happen if the first husband were extremely well off—if we are being practical—if he left the widow very well off.

**The Chairman:** I would suggest we cannot make all those assumptions. I think we would have to read the bill realistically, that where there appears to be an obvious penalty and the children are being hurt.

I understand the officials want to have another look at it.

**Senator Leonard:** It is just for consideration in an effort to find a more equitable way of dealing with the problem.

**The Chairman:** Was this a question, senator?

**Senator Leonard:** A suggestion.

**Senator Beaubien (Bedford):** If a man with $100,000 leaves it to his wife, and if she marries again and has children, and they are taxed as to 50 per cent, surely to goodness that is not fair. If he knew that the tax on $100,000 was going to be 50 per cent, surely he might make other dispositions. I think that is terribly wrong. He has left it to his children, or he thinks he has, with his wife having a life interest. I think it is a terrible way of dealing with it.

**The Chairman:** I think Mr. Brown understands the problem. We have presented it realistically and he is going to have a look at it.

There is the other aspect to this. The question was raised as to whether, where you have different executors of the husband's estate and the wife's estate, and whether the situation could be created where the minister, at the request of the executors of either estate or both, is required to divide and give a separate assessment. My understanding is that, I think the bill goes so far, does it, to say that he may. Does it go that far?

**Mr. Brown:** I think we feel the law requires that now. Mr. Linton may like to say something, but I think the practice is to send an assessment to the executors.

**Mr. W. I. Linton, Chief, Tax Base Research Section, Department of National Revenue:** Yes.

**Mr. Brown:** We have this problem now, of course, with property passing directly to some beneficiaries, as well as passing through the executor's hands. The practice is to send one assessment to the executor, and the beneficiaries arrange how they will bear the burden amongst themselves. But any time they ask, the department does provide individual assessments. In fact, I think the law requires that the department do so.

**Mr. Linton:** There is an unreported case relating to a provision in the act which says that a notice of assessment to the executors is taken to be a notice of all successors, and that provision was held not to be adequate to enforce the liability of a successor. Therefore, following that, we would have to issue a separate assessment when it was demanded.

On the other hand, in many, many cases, the executors of the two will be the same people and a separate assessment may not be necessary and forgoing it will save that much paper; but where there is a divergence, in the case that the Bar is worrying about, we would have to assess the people we are trying to collect from if it were demanded.

**The Chairman:** Is there any other question on that?

Now, Mr. Brown, there is another question about the dilemma, as the Canadian Bar brief puts it.

**Senator Phillips (Rigaud):** It might again be desirable to draw honourable senators to the item we have been discussing. It is the amendment, item 2.

**The Chairman:** Yes, item 2(a) in the brief of the Canadian Bar Association.

**Senator Phillips (Rigaud):** Thank you.

**The Chairman:** There is another item in the brief of the Canadian Bar, which we discussed the other day, item 5 and we might look at items 5 and 6 together.

Item 5 is the dilemma of the testator who wished to give his executor power to support dependent children as well as his wife. It may be we should talk about that one first.

**Mr. Brown:** Honourable senators, we did consider this problem. Again you have here one of the results of considering the property her rather than his.

I might point out here that again the American general approach will not consider this as being exempt property. We did not think that was acceptable in Canada, that if the property is under the wife's control, well enough, but if we are going to give this exemption—and we felt we should at the time—then we have the problem of what happens when sums start going to the dependent children. If the system is to be viable, you would clearly have to have some tax on that occasion. Otherwise you would have a massive leak in the dyke, with everything left in trust for the wife but with power to encroach for the children. It is exempt at that time, and it is encroached for the children and the whole estate is passed with not just less tax, but with no tax.

On the other hand, when the wife has nothing to do with what passes to the children in this instance—or even the timing of what passes to the children—and she has not had the use of the property for any length of time before it is given over to the children—then it does not seem an acceptable result to impose upon her the creation of a cumulative gift sum—or, in other words to consider this as being one of her dispositions.

It seems one thing, and acceptable to the Government, to create a situation where it is included in her estate if she had had the use of the property, or the income from the property, throughout her life, but it seems another thing to suggest she will be considered to have made a gift of the property when she may have had it for a very short time.

This was the thinking behind the situation that you find in the bill, whereby the support for the dependent children would have to be either looked after by the wife or alternatively would have to be provided independently and subject to tax at the time her husband died.

**The Chairman:** You have no other comments?

**Mr. Brown:** No, Mr. Chairman.

**The Chairman:** If the life interest goes to the wife and the husband expresses the wish that the wife will take care of the dependent children, she is really doing it out of her money.

**Mr. Brown:** Yes.

**The Chairman:** Suppose her money at the time happens to be the income she has received from the husband's estate; it will be money that she has spent and it will not be there when she dies.

**Mr. Brown:** Right, sir.

**The Chairman:** Therefore, it would not be gathered up, even on the deemed-to-be gift, in the tax on her estate.

**Mr. Brown:** In much the same way that any support payment is no longer there at the end of the time. If the wife drew the capital out of the estate—because there is nothing in the bill that precludes that, as you know—and she used that for the support of the children, it is quite right that the money would be gone when she died.

**The Chairman:** And there would not be any carrying back into the deceased husband's estate?

**Mr. Brown:** In much the same way as if he left it outright to her and she spent it on one thing or another.

**The Chairman:** What you are suggesting, then, is that, on the basis of the bill as it is, it is a matter of the language or the method which the husband employs in the drafting of his will in relation to the children that would either create tax or make no tax payable.

**Mr. Brown:** I think that is true, sir. I would like to add this point, however, that, if the wife encroached for large sums and then gave them to the children, she would then in fact be making gifts to the children, and that would, of course, if the gifts were above the exemption levels, occasion a gift tax.

**The Chairman:** Oh, yes.

**Mr. Brown:** But, to come back to what you said, yes, if the husband accomplishes this purpose by a suggestion to his wife, then the total amount in the trust would be exempt.

**The Chairman:** Except for the problem of gift tax.

**Mr. Brown:** Yes, if the sums were that large.

**The Chairman:** I mean the gift *inter vivos*, where the wife would give to the children.

**Mr. Brown:** If the sums were so large as to trigger the gift tax, if they were beyond the

normal support and if they were beyond the exemptions, then there would be the gift tax problem. Up to that level, and I think it is in that context that I should assume that the Bar puts forward the problem, the testator would have to deal with it by the method you suggested.

**Senator Phillips (Rigaud):** I am inclined to agree with Mr. Brown on this, Mr. Chairman.

**The Chairman:** I am heading in that direction myself. It is a matter of draftsmanship.

**Senator Phillips (Rigaud):** The testator in dealing with dependent and infirm children can do so at the time of making his will. No confusion need arise, if he does so, in terms of anything he gives his spouse.

**The Chairman:** The other aspect of that was put forward by the bar in their item 6; namely, the practical difficulty in obtaining deductions for infirm children. Their point of view was that the bill does permit generous deductions for dependent, infirm children, but that, to claim the deductions, the benefit must be paid to the infirm child before his 40th birthday. The bar says that in most cases of infirmity this is out of the question and parents will set up lifetime trusts even though the deduction be lost. They suggest that the 40-year rule for trusts should be relaxed.

What comment have you on that?

**Mr. Brown:** Mr. Chairman, as the bill is now drafted, with respect to this type of trust the present value of the life interest in this lifetime trust would meet the tests as the bill is interpreted by the Government lawyers. So that they would not lose the total exemption, if they put an amount in and gave the income for life to this infirm child. In that case the full present value of that stream of income for life would be exempt. And, of course, that is computed on normal mortality tables; there are no special tables loaded against the infirm.

It is true that the full capital would not be exempt. The portion that would be exempt would depend upon the age of the child at that time. So they would not lose all of the exemption. Whether there was an exemption for the gift over would depend, I take it, upon whom the gift was to. If it was another child it would come into the computation of the $10,000 exemption for that other child.

**The Chairman:** It would be only the excess that would attract tax.

**Mr. Brown:** Yes.

**The Chairman:** Have you an illustration of that in mind?

**Mr. Brown:** Do you have enough feel for the mortality tables to pull one out, Mr. Linton?

**Mr. Linton:** What a person could do is to leave money in the trust with a provision that the trustee would hold it and use the income for the infirm child or for his needs and, so long as the whole life income was for either him or his needs and for no other person, then the present value of it, depending on his life expectancy, would be an absolute and indefeasible interest and would be entitled to the deduction. The amount of that would depend on how old the child was, of course. The table is here. If the child were 20, for example, the value of the life interest would be about 80 per cent of the capital.

**The Chairman:** You say to that extent there would be an exemption.

**Mr. Linton:** Yes.

**The Chairman:** Where is that under the bill?

**Mr. Linton:** Because the life interest the child has would be absolute and indefeasible.

**The Chairman:** Oh, yes. In that sense, then, there is provision in relation to infirm children and that, in a practical way, would appear to be capable of dealing with the normal situation that might arise.

There would not appear from what you have said to be any need to deal with the recommendation made by the Bar Association.

**Mr. Brown:** That is our feeling, sir.

**The Chairman:** Now we come to another question that is bothersome. In section 3 of the bill, starting at the bottom of page 21 and then carrying over, you find the deductions that you are entitled to under section 7 (1).

Section 3 of the bill at the bottom of page 21 repeals the first three subsections of section 1 of the act and substitutes what you find on page 22. This deals with the exemptions.

The introductory words do not appear in this section as set out on page 21 of the bill, but the introductory words of the act are:

> For the purpose of computing the aggregate taxable value of the property

passing on the death of a person, there may be deducted from the aggregate net value of that property computed in accordance with Division B such of the following amounts as are applicable:

Now the first one is on top of page 22 and you will notice that the language there is as follows:

> "(a) the value of any property passing on the death of the deceased to which his spouse is the successor that can, within six months after the death of the deceased or such reasonable period as may be reasonable in the circumstances..."

be established as being something to which she is indefeasibly entitled. This is the value which is deductible before you start determining the rate of tax on the passing of the husband's estate over to the spouse.

Then when you come to (b) dealing with a gift in the lifetime or by will that is indefeasible and which was made by the creation of a settlement, it is the value of the gift. Again in law there is a great deal of difference between the value of any property which passes outright and in (b) on top of page 22 it is the value of the gift, and if it is a life interest to the wife that is a gift, then that would be the value, isn't that right?

Now when I come to the next point which I need to deal with before I can put my question, what is taxable in the wife's estate is the value of the property under this bill. Now how do I correlate these? I think the Bar Association raised this question in 9(a) under the heading "Language Clarification in Section 7" describing deductions, and the first one is the value of property, but not of the gift. That is on page 4. Now what comment have you on that? I may say that the minister in speeches and otherwise rather looked through the word "gift" and I think he spoke of property.

**Mr. Brown:** Perhaps I can ask Mr. Linton to give the explanation of this. We feel the way it is drafted accomplishes what we set out to do and accomplishes what has been purported to be the intention of it.

**The Chairman:** Maybe you could tell us first of all what you set out to do.

**Mr. Linton:** The intention is in (b) to allow the deduction of the whole amount of the fund which is covered by the life interest of the surviving spouse, and the value of the gift is regarded as the value of one gift to which there are many successors in this kind of case. Where it comes back by 3(1a) into the estate of the spouse—on page 20—it does refer to the fact of a donee receiving from his spouse a gift in respect of which a deduction was allowed so that if the deduction was allowed in respect of a piece of property, that is the property that comes back in. Therefore we regard the exemption as being an exemption of either the whole fund if she is the full life tenant or a limited amount if she is a limited life tenant, limited to a certain annual income.

**The Chairman:** That does not seem to deal fully with the question, Mr. Linton. The problem arises under (b) and then in relation to the large letters (A) and (B). The Bar Association suggests it should be the value of the property which is held in trust.

**Mr. Linton:** Well we think that the language does the job, even though the Bar Association does not think so: the job that the government wanted to do and we think the Bar wanted to do.

**The Chairman:** Maybe you will state it very briefly for us and assume that we only understand very simple words.

**Mr. Linton:** The situation in (B) would be a situation where a spouse was left all the income from a fund up to an amount, say, of $5,000 a year. It is proposed by regulation to provide a deemed capital that will yield that annual income by taking a notional rate of return which has not yet, as far as I know, been determined. The amount deductible under (B) of (b) would be the lesser of the value of the fund or the capital that would notionally produce the annual revenue the spouse was bequeathed.

When in turn the spouse dies the amount that would be brought into her estate would be the lesser of that same notional value or the then value of the fund, and the fact that the reference is to the value of the gift does not, we think, preclude that treatment.

**The Chairman:** And as a matter of interpretation with the present knowledge you have of this bill, is that the way you would interpret it and apply it?

**Mr. Linton:** Yes.

**The Chairman:** Any other questions on that point?

The other question that arises is in that same section at (B) on page 22 where they

talk about periodic payments. It would appear from that section that what you are contemplating is a capital fund which will be large enough not only to provide for the periodic payments of an ascertained amount to the spouse but that there will be an excess and therefore you could have a number of different interests having some shares in that larger capital fund. Is that correct?

**Mr. Brown:** Yes, sir.

**The Chairman:** Then to the extent of the periodic payments there you would have to capitalize or value that because that is where the exemption will occur, and anything in excess of that would come into the husband's estate.

**Mr. Brown:** Yes, sir.

**The Chairman:** That is fine. I can follow that. But then you get into (ii) at the bottom of the page where you impose some restriction, and I think the difficulty arises because we were trying in (ii) to deal with both (A) and (B). You see you say there:

> (ii) no person except such spouse may receive or otherwise obtain, after the death of the deceased and before the death of such spouse, any of the capital of the settlement...

Now if you stop there, of course if she is entitled to all the earnings of the capital fund there will be no problem, but where she gets periodic payments and other people have interests, what you are saying there is that if there are other interests no person other than the spouse, during the lifetime of the spouse, can encroach on the capital of the fund even though you may have other interest, in addition to the spouse, in the fund. I can understand that, but when you go and say, "or any use thereof," to me "any use thereof" seems to imply, for instance, the earning of interest on the money, and if in any year there is an excess of interest over and above the amount of periodic payments that must be made to the wife, it would appear you have shut the door on any payment out of that in any year in which the excess occurs.

**Mr. Brown:** It certainly was not our intention, and we will ask Mr. Linton to comment on it in a minute. I think the feeling of the draftsman was that the phrase that follows—really it is not a phrase, but the long bit that follows "or any use thereof," making specific reference, as it does, to "the income of the settlement" and to that particular part to which the spouse is entitled, that all being there, would cause the phrase "or any use thereof" not to refer to this kind of income payment.

**Mr. Linton:** I think that was the intention.

**The Chairman:** In other words, earnings in the fund or income in the capital fund in excess of what is required to meet the periodic payments of the wife are locked into the fund as long as she lives.

**Mr. Brown:** It can be paid out.

**Mr. Linton:** It is not locked in: locking in is the opposite of what is intended, but the income of the settlement to which such spouse is entitled cannot be invaded.

**The Chairman:** But this use of the words "any of the capital of the settlement", you cannot pay out except if the widow may encroach—that is all right; but then it says, "or any use thereof," and that means any use of that capital.

**Mr. Linton:** Your point is that use of the capital includes the earning of income, but since it goes on to treat specifically of what the provisions are for income, "or any use thereof above," would be use other than the earning of income because the treatment of income earned is specifically dealt with in the next three lines.

**The Chairman:** This is the interpretation which you present, and your administration would be in accordance with that interpretation?

**Mr. Linton:** Yes. Perhaps I should take a sample and make it even clearer. If you had a fund of $100,000 that was yielding $50,000 a year...

**Mr. Brown:** That is a good investment!

**Mr. Linton:** I am sorry—$5,000.

**Senator Molson:** Where can we get that sort of yield?

**Senator Walker:** That is what you call a growth fund.

**Senator Molson:** Perhaps I could have a talk with you after, Mr. Linton.

**The Chairman:** Then it will be too late. I would like to have a private chat with you, Mr. Linton.

**Senator Phillips (Rigaud):** I think Mr. Linton should be financial consultant of all the senators.

**The Chairman:** We have not been able to find a way to make that kind of earnings.

**Mr. Linton:** I should have said $5,000 a year, and the widow was given all the income up to $4,000, then there would be nothing to prevent the executors paying the other $1,000 to whoever was entitled to it. That is the way we see it.

**The Chairman:** So it is possible to create, even under this bill, a capital fund and to provide for periodic payments of an ascertained amount to the spouse, to the widow, and also in the same settlement document to provide, for instance, for the children to receive income under that same document in relation to the excess income that might be earned?

**Mr. Linton:** The prior right must be the widow's, the spouse's.

**The Chairman:** Yes, the prior right. Then her interest would be valued and that would be the exemption?

**Mr. Linton:** Not actuarially, but as a capital sum to yield that.

**The Chairman:** That is right; that is why I used the word "valued". Then as to the other interests, I assume there would have to be a valuation there.

**Mr. Linton :** Of what was left over.

**The Chairman:** Yes, of what was left over, and that would be included in the father's estate?

**Mr. Linton:** Yes, that is right.

**The Chairman:** Is that clear? I thought it was a little confusing.

**Senator Phillips (Rigaud):** This leaves the question as to whether it is desirable to amend the law by way of clarification or whether the interpretation given is sufficient.

**Senator Leonard:** I think it is clear enough, having had the benefit of Mr. Linton's statement, that it is intended to be that the capital and the income are solely for the benefit of the spouse. It is to prevent the money being used, not for her directly but for somebody else's use and somebody else having a claim on it. It is as long as there is a certain amount, and that is clear.



**The Chairman:** On the question of amending, at some stage the department very often, when it runs into situations of this kind in a succeeding year, if some question is raised, makes clarification and you might then have an amendment, but I think for the present this would not be a basis for making an amendment to the section because I think the witness has made it very clear.

We have several other things raised by the Bar Association—the laws on foreign tax credits and the laws on provincial tax credits. Foreign tax credits is No. 7. Have you some comment on that, Mr. Brown?

**Mr. Brown:** The situation as it is in the bill amounts to a deduction for foreign taxes rather than a credit for foreign taxes. There is no doubt as to the effect of the provisions as they are. This makes a family's tax position identical to that which it would have been if the property had been left outright to the widow, if the property left outright to the widow involves a foreign tax, there would be a foreign tax at the time the husband died but no federal tax. Then when the wife dies, if the property were still foreign there would be foreign tax and foreign tax credit. In the trust situation, when the husband died there would be foreign tax and no credit because there was no federal tax; and when the wife died there would be a federal tax, but because there would not be a foreign tax there would not be a foreign tax credit.

I do not know what the situation will be in the United States. The outgoing administration recommended very similar treatment of trusts with life interests to wives as is in this bill, and they are very silent on what they would do about foreign assets in similar circumstances. But as things stand, we have a deduction rather than a credit, and I think, again, that is part of equating the position of the trust with the outright leaving of a property.

**The Chairman:** Such a trust, for instance, does not attract any tax in Canada on the death of the husband.

**Mr. Brown:** No.

**The Chairman:** But the estate on the foreign assets may pay taxes in whatever that country is, and the net result is the estate is that much less.

**Mr. Brown:** Yes.

**The Chairman:** But it does not necessarily follow that the exempt gift will be that much less unless it is a gift in trust of the whole estate.

**Mr. Brown:** And it is not always so that the tax comes out of the gift.

**The Chairman:** It would be difficult to make an assessment percentagewise of how many cases there are in respect of foreign tax for which you would get no credit or deduction here in the way of reducing the gift as against simply reducing the amount of the estate.

**Mr. Brown:** I am trying to think of circumstances in which the foreign tax on a particular gift would under our structure provide neither a credit or a deduction.

**Mr. Linton:** That would depend on the part of the estate from which the tax was payable. If it were a specific gift which incurred foreign tax, the normal place for the burden of tax to fall would be on the estate proper—the residue of the estate.

**The Chairman:** Yes. Then, to some extent it becomes a question of drafting, because if the trust is drawn in a way as to amount in any event to $100,000 of that estate, then the trust would not be affected by the failure to qualify for the reduction.

**Mr. Brown:** That is right.

**The Chairman:** It would only be affected where it would wipe out the life interest, really, in the whole estate.

**Mr. Linton:** No, in more cases than that.

**Mr. Brown:** But in most of the other cases it would serve to reduce it.

**Senator Beaubien:** If a Canadian died leaving everything to his wife, and if the whole estate was in the United States and was taxed there, what would be the situation in respect of his wife when she died?

**Mr. Brown:** When he died—under our treaty now I suppose it is a flat 15 per cent.

**Mr. Linton:** Yes.

**Mr. Brown:** So, when he died the 15 per cent tax would be paid to the United States, and when she died she would be taxed on the 85 per cent that was left.

**Senator Beaubien:** The United States would tax her?

**Mr. Brown:** The United States would not tax her.

**Senator Beaubien:** That is, on the second time around they would not tax her?

**Mr. Brown:** No.

**The Chairman:** Then there is the provincial tax credit.

**Mr. Brown:** Yes. I think the Bar is worrying about what the Government may do having regard to the definition of the word "appointed".

**The Chairman:** When you say "government" you mean a provincial government?

**Mr. Brown:** No. They made quite a point of the fact that the federal Government has used a different word "appointed" and that they inferred that the intention is for the provinces to lose the "appointed" status when they get out of the death duty field. There was nothing Machiavellian about it. The intention was that should a province such as Ontario or Quebec decide to adopt the same principle with respect to trusts for the benefit of wives as has the federal government, it would then be necessary to "appoint" that province up to the time that they did, and not to appoint it subsequently. The idea, of course, is to carry through a credit for the provincial tax in order to be certain that the wife gets the credit when the property is brought into her estate. So, if the husband died in Ontario, while Ontario was under their existing system, then Ontario would tax the property in the trust, and the mechanism is to make certain that when the widow dies she gets an Ontario abatement on the same proportion of the assets then in the trust.

We felt that we could not use just the word "designated" or "prescribed" because the possibility exists that Ontario will switch its treatment of trusts. While we want to have the carryover abatement so long as the present difference obtains between the federal Government and the provincial government, we would no longer want to give an abatement on the basis of where the property was when the husband dies, in the case where Ontario was also waiting until the wife's death. In that case the situs at the time of the wife's death would be appropriate for the abatement.

So, I think their problem is only in respect of the regulations. They were a little puzzled as to why the Government used the word

"appointed," and they expressed their fears, and their fears are not well-founded.

I am reminded that, under our treaty, apparently we have not got the Americans to agree to a flat limit of 15 per cent. Their act concerning foreign estates contains a sliding scale.

**Mr. Linton:** It is the same sliding scale that is applicable to their domestic estates.

**Mr. Brown:** Yes, so far as the higher amounts are concerned, but it is only paid once.

**The Chairman:** Are there any questions on this? It is well to get frightened in advance sometimes, Mr. Brown, but you have relieved our minds.

**Senator Walker:** If I have my stocks to my son and he gives me a non-interest bearing note or debenture in return, what is the position? I am concerned about this gift tax which gets up to 75 per cent. Is there any chance that interest at a reasonable rate might be charged on the non-interest bearing note so that over the years it would accumulate to a large sum, and be heavily taxable as a gift? Do you understand what I am talking about?

**Mr. Brown:** Yes, and I think I should turn to Mr. Linton, but perhaps I could make two preliminary remarks.

In a freezing, the key thing has always been the valuation struck at the time of the transaction. Therefore, one has to look at what was taken back when the growth assets were turned over. This is really the key thing in any dispute between the taxpayer and the Government over whether they have in fact frozen an estate at the amount they thought they had. So, I would not want to make any careless statement that did not point out that there was that on the other side.

As to what the subsequent effect is one has to look at the possibility of action by the father year by year, and it may be that the annual interest on the note would be construed as an annual gift.

Now that I have stuck my neck out, perhaps I should ask Mr. Linto to cut it off.

**Mr. Linton:** I do not think there is much more to be said. Mr. Brown has given the essence of it, and nothing in the present amendment affects the situation, except that the rates, of course, are higher.

**Senator Walker:** The rates of gift tax?

**Mr. Linton:** Yes, but whether there is a gift or not would depend on various circumstances.

**Senator Walker:** In other words, if it is a bona fide exchange or sale...

**Mr. Linton:** If it is a bona fide sale so that the person selling it takes back something that has fair market value equal to what he has transferred, then there is no gift. If the transaction specified nothing further then that what is taken back is an interest-free obligation, it would certainly not be regarded by the Department as being at its full par value.

**The Chairman:** It could be if what was given was in the form of a security.

**Mr. Linton:** But it was a non-interest bearing note. We would argue that a non-interest bearing note is not worth its par value.

**The Chairman:** That is where you would start?

**Mr. Linton:** Yes.

**Senator Walker:** You would want a more sophisticated security?

**The Chairman:** We are getting down towards the end of these objections. There is the situation, you will recall, of where there is in the grant of a life interest to a spouse what we call a re-marriage clause. Under this bill such a gift is not regarded as being indefeasible, and, therefore, would not qualify for the exemption. The Canadian Bar Association raised this in relation to both estate tax and gift tax. The nub of the complaint would appear to be that in those circumstances the gift might not qualify for exemption, yet the spouse might never remarry. Therefore, it seems to me that it should be drawn in such a way that there is exemption; it is being defeated by the remarriage but if it is not so defeated then it is a proper exemption.

**Senator Beaubien:** In other words, the tax would be delayed.

**Mr. Brown:** This again raises the problem of keeping estates open. In discussing of the first problem raised this morning, we spoke of the two broad avenues that it seemed possible to follow. One was keeping the husband's estate open or recomputing it as time went on to take account of subsequent events; the other was taking this other broad road. It was

the difficulties that were seen down the road of keeping estates open that caused the Government to go down the other road of this legal artifice that the property was the same as hers.

**The Chairman:** Would you necessarily have to do that? There is the capital fund. Let us assume it qualifies for exemption and there is this clause about defeating the trust by remarriage, and at some stage the widow remarries. Therefore, the disposition of the money in a fund on which she is entitled to a life interest would depend on what the husband had provided as to where the money would go in such event, but at least there would be money there on which to levy any tax you thought you were entitled to.

**Mr. Brown:** Yes, there would be. However, we have the problem of rates. Which rates are we to apply? If we are to have finality at the time the husband dies with respect to what is settled at that time, I suspect the only viable approach would be to use the bottom rates in the schedule at that time, otherwise they might never be used. One would be left then in a situation where the very top rates would be used with respect to what was being set aside for the immediate family. This is one of the problems of a general nature that we faced if we tried to keep estates open. Basically we were faced with this situation, although in a trust obviously the property is there and we could put a claim on it.

**The Chairman:** Would there be a problem if the husband drew the will in this form and the widow remarries? The husband in his will would have made some provision for where that capital is to go in such event. Would you not then treat it on the same basis as if the donee had died?

**Mr. Brown:** Quite, but my point was that if the widow remarried within a reasonable period after the husband had died, maybe four or five years later, at that time there would be a sizable estate, perhaps completely at the 50 per cent rate. This is one of the problems of going down that route; either you have to leave the tax with respect to other gifts at the time of death unsettled, or you have to settle them at the bottom rates of the schedule and leave the trust assets to be taxed at the top rates. Further, there will, of course, be instances in which the husband would rather have part of what he leaves on his death taxed then and another part—the trust assets—taxed as his wife's at her death, so that they get two sets of low rates and exemptions.

These things are never black and white, unfortunately, and this was the thinking that lay behind going down the route that is mentioned. Once you start down that route it seems hard to impose on the wife the history of having made a gift at the time she remarried, so that for any subsequent property she is starting part way through the rate bracket. If you like, we have backhanded into the three lump situation that you mentioned earlier. Should she marry a less wealthy man you are imposing higher rates on the assets she has at her death because of the disposition of the property to the children of the first and, let us assume for my purpose, wealthier husband.

**The Chairman:** Could we put it this way, that you have thought of the problem?

**Mr. Brown:** Oh yes.

**The Chairman:** You have told us the pros and cons. You realize the question has been raised by the Canadian Bar Association, and that we have raised it here as well. Therefore, in those circumstances would you have another look at how you might deal more equitably with the situation and not create, as a result, higher tax rates.

**Senator Walker:** Hear, hear. So say we all.

**The Chairman:** I am only giving it to you in a limited area so I am not really robbing you of revenues, because I am dealing with the case where the wife may never remarry but she does not get the exemption because it is not indefeasible, because there is provision against remarriage?

**Senator Molson:** Where she did get the exemption and intended to remarry, she would be smarter to "blow" as much of it as possible, would she not?

**Mr. Brown:** Before she got there?

**Senator Molson:** That is what I mean. On the engagement day, shall we say.

**The Chairman:** Except that if it is a life interest you are dealing with, it is much harder to "blow", is it not?

**Senator Molson:** Yes, if it is a life interest.

**Senator Beaubien:** The children would not like it very much.

**The Chairman:** No, I do not think they would. It seems to me that there may be some way by which having a remarriage provision in the trust document should not prevent that trust from qualifying when in, I would say definitely, the majority of cases you do not have remarriage.

**Senator Beaubien:** Perhaps that is the reason why.

**Mr. Brown:** There may be several reasons.

**Senator Beaubien:** It depends how much he left.

**The Chairman:** Well, no, if there is provision against remarriage in the trust instrument, it does not qualify for exemption. The wife does not get hurt too much if there is any money in the estate at all; I suppose she becomes entitled to some return; even if the gift does not qualify for exemption it is still a gift to her until remarriage. The only thing is that it does not qualify for exemption, so she still gets it and the husband's estate pays tax at that time.

**Mr. Brown:** Yes, and not when she does remarry.

**The Chairman:** Maybe it is not as bad as it sounds, but would you have a look at it?

**Mr. Brown:** Yes. I take the point you have raised and we will look at it again.

**The Chairman:** We are getting close to the end of our consideration of these two items.

**Senator Phillips (Rigaud):** We should deal with the question of extending the period for revising wills. The Bar raised this in paragraph 1 of the first item in their brief.

**The Chairman:** That is where they raised the question and they suggested probably half the wills are totally or partly defective. You have quite a massive program of revision of all of those. As part of it you have to get the people in and educate them, and there may be many of them you cannot do that with because they may have reached a stage where they do not have the capacity of making a will. In any event, you cannot encompass that in a period of, say, up to August 1. The only benefit you get, up to August 1, is that you can take your choice of exemptions. Short of a question of policy, which the minister will have to deal with, I take it you have mentioned it to him. This is a serious matter and there must be thousands of wills when this will becomes law that will be totally or partly defective and penalties will result therefrom.

**Mr. Brown:** It was for that reason the Government announced the August 1 option as to exemptions.

**Senator Aseltine:** That is not long enough.

**Mr. Brown:** That time, I was going to say, was six months from the day on which the details of the bill were made public. I did notice that the witness for the Bar suggested it would take until the end of the century to revise all the wills.

**Senator Aseltine:** I have a thousand wills to redraw in that time. How can I do it?

**The Chairman:** You are not a good example, because I know you will get them done in time. What the Bar has suggested is that maybe you would deal fairly with these people by giving executors of those who die within a year of the proclamation of the bill an option to file under the old act or the amended act.

**Mr. Brown:** I think that is something I should bring to the attention of the minister. He will be here this afternoon.

**The Chairman:** Yes, at 3 o'clock. I understand he will have a chat with you beforehand.

**Mr. Brown:** Yes.

**The Chairman:** There is the question that was raised in the item 11 of the Canadian Bar Association's brief. It had to do with the matter of where there are variations in the will after the death of the testator. You may have variations of trust. I am familiar with them to some extent and I have done it a few times myself. What they have suggested is there should be an amendment to section 13, subsection (4) of the bill in order to recognize that situation. In other words, you should deal with the will as the final effective instrument rather than the will which the man drew and which the courts varied.

**Mr. Brown:** I think if the courts vary in accordance with the Dependents Relief Act or something of that nature where it is a redrawing of the will under compulsion, if that is the right word, there is no doubt that such changes are and will be recognized *ad infinitum*.

**Mr. Linton:** With perhaps some reservation for an action that might be taken as an

harassment and never pursued. If taken and pursued with reasonable diligence I think they come under the reasonable vesting period provided in section 7(1).

**Mr. Brown:** The other general class would be redrawing of the wills under the Variation of Trusts Acts or based on agreement amongst the beneficiaries. The law as presently drafted provides the same time interval for this as with respect to the option on exemptions, which relates to redrawing wills. This is something I could also draw to the minister's attention.

**The Chairman:** What section are you referring to when you say the law now permits this?

**Mr. Brown:** I think this is under the same section that deals with the option.

**The Chairman:** You mean that is under subsection (4) of section 13 of the bill?

**Mr. Linton:** Yes.

**Mr. Brown:** As of now they have this opportunity to agree amongst themselves to overcome defects in the will, for the same period of time as has been given for the redrawing of the will. After that time one would revert to the old law—if the will did not make the best possible distribution, nevertheless it was the man's will and this is how the tax would be levied.

**The Chairman:** This provision in subparagraph 4 on page 44 would last for a limited period. The deceased would be one who died after October 22, 1968, and before August 1, 1969.

**Mr. Brown:** It conforms to the time given to redraw wills. It deals with the case where a man died before his will could be redrawn, and it has the same terminal date.

**The Chairman:** Any questions? There are two other questions. One was the question that was raised by Senator Phillips and I think there was some considerable discussion between Senator Phillips and you when you appeared before. What I was going to ask you was, if you have not brought this to the attention of the minister, if you would be ready to deal with it this afternoon. I am going to ask Senator Phillips if he has anything further to add.

**Senator Phillips (Rigaud):** I would like to add the following. I do not think Mr. Brown was here when I referred to it. That is where there was some indication that the department thought that the Quebec Government would be repealing the provision of article 1265 of our Civil Code in the Province of Quebec which prohibits gifts between spouses. I stated that there was no such indication that the repeal was impending. I checked further and I find that there was introduced a bill known as Bill No. 10 which did not deal specifically with article 1265 only of our Code. The bill is defined as being an act respecting matrimonial regimes. My understanding is after checking with the representatives of the Quebec Bar that as of the present date it is not the intention of the provincial Government of Quebec to proceed with this bill because of serious objections that have been raised. This is not specifically in relationship to article 1265, but because the bill envisages a somewhat revolutionary revision of all the provisions in our Code which deals with the subject matter of matrimonial status and indeed with the existing statutes. The act proposes the introduction of a new type of marital status, all of which of course is creating a very serious reaction in our province, so that for all practical purposes I should like to draw Mr. Brown's attention to the fact that speaking as a Quebec lawyer, and I am sure all of those from Quebec are familiar with the subject matter will support me on this matter, that it is not realistic to assume that relief will be granted in respect of the allowance of gifts between spouses in the Province of Quebec, other than those covered by marriage contract. In other words, I am in a position to be a little more definitive than I was before and therefore I feel it my duty, on behalf of the residents of the Province of Quebec, to press for a revision of the law in so far as residents of the Province of Quebec are concerned—notwithstanding my disinclination to ask for a differentiation of rates between residents of different provinces, but because of the important increase in this escalation of rates in gift taxes and its relationship by way of a new philosophy to the estate tax rates. Although it is not so stated specifically in the statute, it would appear to me that there is this extraordinary situation resulting from an incease in gift tax rates from the previous figure of 28 per cent to a figure of 75 per cent and that this high rate would apply at $200,000 instead of at $1 million.

In view of this fantastic situation and the fact that we are dealing in this province with a very substantial proportion of the popula-

tion of our country, it would appear to me that relief is required.

I would like to suggest, if I may, Mr. Chairman and honourable senators, that in the consideration of this matter—which I imagine Mr. Brown should draw to the attention of the minister prior to his arrival here this afternoon, it if were at all possible—and with the greatest respect I think it would be helpful to the minister and to the administrators if the summary were made of those revisions in the proposed act which appeared to be desirable because reference is being made to at least two that are considered desirable—

**The Chairman:** I have them noted here, as we went along.

**Senator Phillips (Rigaud):** —and those that involve matters of policy—which are for the minister, of course, to deal with.

I, for one, speaking for all the Quebec senators who supported me on this question, because they are familiar with the Quebec law, those who are lawyers—and those who are not lawyers have been informed by the Quebec senators who are lawyers—that we considered this a matter of high national interest, that this subject matter of restrictions of C.C. 1265 receive serious consideration and, if it were not possible to introduce amendments at this stage of the bill—for a variety of reasons—we would be very much disturbed if we did not receive what would be tantamount—I am not saying this by way of criticism of the minister—we would regard it as a very serious matter if we did not receive an assurance that, at the first opportunity, the matter would receive consideration by way of amendment to the bill, meaning by that at the very latest at the next session of Parliament.

May I, with your approval, honourable senators ad honourable colleagues, ask that very careful and serious consideration be given to the subject matter, that this bill be in force only for a period of three years.

This is not an ordinary bill by way of statutory amendments to the statute: it forms part of the warp and woof of the tax structure of our country. It is a revolutionary bill in the sense of ideological concepts, that is, the correlation of gift taxes to estate taxes. Incidentally, it does away with the normal decency of the human being to give gifts to others, which we have not dealt with at all. If one wants to give to third persons, we are subject to a tremendously high escalation of rates.

Our chairman, in the Senate, raised that question and he is strongly supported on this issue.

So far as honourable members of this committee are concerned, unless some are ready to dissent, and although I am a younger senator in terms of serving in the Senate, I would be tremendously happier if we received assurances that this revolutionary bill—and I do not use the word "revolutionary" by way of criticism of the Government—

**The Chairman:** I think the word is that it is "radically" different.

**Senator Phillips (Rigaud):** Radically yes, that is come to a time limitation and so that we all have a breather, and those who will be here in, say, three years time will be able to take this up and deal with it. Also, may I say that, if the Lord spares me, it may be that I could turn up here and deal with some of the points.

**Senator Walker:** As counsel without fee?

**The Chairman:** Shall we—

**Senator Walker:** May I interrupt for a moment? I think every senator here agrees with all the remarks made.

**The Chairman:** I mentioned that when I was speaking in the Senate. I have one other, Mr. Brown. If you would look at page 26 of the bill, you will see that there is a new subsection, subsection (4) being proposed to section 7 of the act. This deals with the computation of value of certain property and gifts. Could I have your explanation, Mr. Brown, as to what this means, and what it does?

**Mr. Brown:** The purpose of this section is to be certain that, if someone is receiving a tax exempt inheritance, tax exempt under the federal law, that this inheritance is not reduced in practice by the estate or succession duties on somebody else's inheritance. Or, to put it the other way, if it is reduced by the death duty on someone else's inheritance, to see that the exemption is reduced.

Also, it is drafted in such a way—to take one example that gave us some trouble, if someone dies in British Columbia, leaving assets to the wife, it is drafted in such a way as to be certain that the British Columbia succession duties on that inheritance do not reduce the exemption—so that we do not tax the British Columbia succession duties.

It is an involved process of trying to extend to the new exempt inheritance something akin to the same principle we have followed heretofore with respect to charitable bequests.

**The Chairman:** Would you not avoid the problem if, in connection with what you call a tax exempt inheritance, like $10,000 to a child, or whatever amount of exemption it is you give to a widow—if you stipulated that these were net amounts. Then you would throw the burden on the rest of the estate.

**Mr. Brown:** I think that, in a way, this is what this is intended to do.

**The Chairman:** This is the statutory way of doing it?

**Mr. Linton:** Yes. I should perhaps add that it is somewhat like the treatment heretofore given to charities but it is a more generous treatment, and the charitable one has been amended accordingly to agree. The treatment of charities prior to this amendment would have involved, had there been any taxes imposed on that fund anywhere else, a reduction of the deduction for those taxes. As Mr. Brown explained, if taxes are imposed on an exempt fund, by another jurisdiction, the present provision will not reduce the deduction by that amount.

**The Chairman:** In other words, the exemption will be the full amount that is given, no matter what the treatment has been in any other jurisdiction that might have the effect of reducing the dollars?

**Mr. Linton:** Yes, as to the other jurisdiction's tax on the fund subject to deduction.

**The Chairman:** I have one other question. In section 113, in regard to the gift, I talked to Mr. Smith about this unofficially some time ago. I do not think we ever reached common ground on it.

I was concerned about the reference to section 8 and also to section 16 of the Income Tax Act on what is presumed to be income. That is in section 113 (e) on page 5 of the bill. That is the new section in the Income Tax Act, and both section 16 and section 8 of the Income Tax Act are referred to there.

As you know, section 8 proposes to tax a benefit or an advantage conferred on a shareholder or corporation in a certain fashion. Section 16 makes indirect payments income. In other words, if a taxpayer directs a payment somewhere else for purposes of section 16 it is included in his income.

What is the purpose of using both references there?

**Mr. Brown:** The gift tax provisions do not deal with gifts made by corporations at all. There is not tax on a gift by a corporation. It is only by individuals. Therefore, this is intended to deal with the situation where a man with a completely controlled corporation might chose to have that corporation make gifts to those to whom he might otherwise himself make gifts.

This gets a little complicated, but, if he had drawn the money out himself and had made the gifts, there would have been an income tax on the withdrawal of those profits and the gift tax on the giving of what was left.

If, on the other hand, he makes it direct, then the framework here says that by virtue of section 16 he would be taxed on any payment made to someone else, if he would have been taxed on it had he received it himself.

If that has happened for income tax purposes, we take it one step further and say it is also a gift that he has made. So that this is a tax on a shareholder to be certain that we have not left completely open a way of gift by controlled corporations.

**The Chairman:** So what you are saying is, if any person is required under section 16 of the Income Tax Act to include a payment that he has received, or if any person is required by virtue of section 8 to include in his income a benefit which has been conferred upon a shareholder, in both those cases these are gifts *inter vivos* and are subject to gift tax.

**Mr. Brown:** If I am right, the way it is worded is that they both have to apply at once, sir. Only if it is a transfer made by the corporation at the direction of the shareholder would this apply.

**The Chairman:** Oh, I see.

**Mr. Brown:** Section 8 is referred to for greater certainty that we would in fact be taxing the shareholder.

**The Chairman:** Secton 16, within its wording, would be broad enough to cover the individual, whether he himself directed another individual to pay money to that individual instead of to himself, if he was entitled to it, or whether he did that in respect of a corporation. Would section 16 not cover all those situations?

**Mr. Brown:** Yes, sir, but it would cover more situations as well. It would also cover the situations as well. It would also cover the situation in which a man might direct someone to pay to the grocer the amount that he owes out of his wages or from any claim. So this was limited just to the shareholder situation.

**Senator Molson:** There is nothing here to do with charitable donations in that respect.

**Mr. Linton:** It might, I suppose, mean that there was a gift, but it would be a gift free of tax so that in effect no tax would result.

**The Chairman:** What you are thinking of is the situation where you cause a corporation, assuming you can give such directions and they will be honoured, to make a charitable contribution. That would be a gift under this wording, but the charity, if it is an exempt charity, would bear no tax.

**Mr. Brown:** Only if you would be taxed on the amount as income if you had drawn it from the company, would there be the problem of gift tax. So it does not add anything new to your income tax worries.

**The Chairman:** It appears to me that I have gone through all the points which were raised by the Canadian Bar Association and the Trust Association relating to various portions of this bill, other than any reference to rates and integration of rates. I deliberately have not dealt with those aspects, because those are questions of policy and the person to rise those with is the Minister. That is why I have left them out.

**Senator Aseltine:** There is one small matter I would like to have clarified. In arriving at the estate tax sum, you deduct $10,000 exemption for each child over 26, who has been left that sum or more by the will of the deceased; you then also deduct the sum left to the spouse by the will; and then you deduct the basic exemption of $20,000. The estate tax is then computed on the balance at the estate tax rates. Is that correct?

**Mr. Linton:** Not quite. The $20,000 is deducted by reason of having a $20,000 tax-free bracket. It is not deducted before you apply the rates, but when the rates are applied there is a $20,000 bracket free at the bottom. So, in effect, you get that as a deduction, but it is not made as a deduction in the calculation.

**The Chairman:** In other words, you do not deduct the $20,000 now. The other items are deductible but the $20,000 is left in the total but that is the first $20,000 which is free of tax.

**Senator Aseltine:** The reason I ask the question is that when you were speaking on this, Mr. Chairman, you used the example of two adult children and you deducted $10,000 for each.

**The Chairman:** Yes.

**Senator Aseltine:** Then you said that you arrived at the tax by following the table, but you did not deduct the $20,000.

**The Chairman:** Because it comes into the table of rates. The first $20,000 there is not taxable.

**Senator Aseltine:** I am wrong, then, in what I state here.

**The Chairman:** You achieve the same result.

**Mr. Brown:** In technique, you are wrong, but not in result.

**Senator Aseltine:** I do not see that.

**The Chairman:** The result is the same.

**Mr. Brown:** If there were an estate, sir, with $60,000 left equally among four children, the mechanics would be to deduct $10,000 with respect to each child, leaving an estate sum of $20,000. As on page 28 of the bill, the tax on the estate sum up to $20,000 is zero.

**Senator Aseltine:** Let us take the example of a person with five adult children and at his death he leaves 50 per cent of his estate to the widow and 50 per cent to the children over that age. Do you first deduct the $10,000 for each such child and then deduct the basic exemption of $20,000 and then compute the estate tax on the balance?

**The Chairman:** No, you first deduct the $10,000 for each child and then you deduct the spouse's exemption and then you get a figure which may be your taxable value, and then you go to your rate structure on page 28 and you find on the first $20,000 in that you mark down nil, and then when you go on to the next $20,000 you calculate it at 15 per cent.

**Senator Aseltine:** Is that not what I have done?

**The Chairman:** It works out exactly the same, but that is not the technique for doing it.

**Senator Aseltine:** But when you answered Senator's White's question why did you not take off the $20,000?

**The Chairman:** Because it came into the rate. The result was the same.

**Senator Aseltine:** Well, I carried your computation through and you had $16,000 and some hundred dollars and it should have been $13,000.

**The Chairman:** Do you mean my arithmetic was bad?

**Senator Aseltine:** You did not take off the $20,000.

**The Chairman:** Well, if it is wrong, do not act on it.

We are meeting at 3 o'clock this afternoon to meet the minister. He is operating on a tight schedule because he has to go to Europe to attend a funeral. I trust all honourable senators will be here at that time.

Whereupon the committee recessed.

Upon resuming at 3 p.m.

**The Chairman:** The committee will resume its hearing. We are meeting this afternoon for the purpose of hearing the minister.

We had a good session this morning, Mr. Minister, and we sort of allocated under different headings, on which we had submissions, various items that have been raised, particularly in the Canadian Bar Association brief, and I am sure that Mr. Brown and the others have given you some indication of that.

I made some notes on the headings myself. There was one heading concerning the point raised by the committee and also by the Canadian Bar Association, and that was on the question of the loss of charitable deductions under 7(1)(d), where the husband leaves a life interest to the wife and the remainder to charity.

My interpretation of what your representatives said this morning was that they agreed this was something they were not aware of at the time the bill was drafted, and that is a reasonable thing.

**The Honourable Edgar John Benson, M.P., Minister of Finance and Receiver General:** I think that is correct Mr. Chairman. Of course, it is a possibility that will not arise until two people die after the legislation is in force who have chosen this way to proceed. I think the situation can be avoided, if one wanted to technically take care of the situation, by making the bequest to the wife or to charities to be designated by the wife. However, I think that in the long run this is not the kind of solution we should seek for this particular problem, and I am quite willing to undertake to change the legislation the next time it is opened in this regard and, indeed, I think this legislation will have to be looked at again next year, when we see how things are proceeding.

In the interim, through the provisions of section 22 of the Financial Administration Act, if a case should arise, which is very unlikely, I would undertake that the Government would hold the people blameless in this regard and protect their interests fully so that no one will get caught by this technicality. I think we will be open to the Act for several reasons, probably, after we see how things are working, and I would certainly correct this situation. In the interim, I will undertake, on behalf of the Government, to protect people who might get caught. It involves two deaths, and they are unlikely to occur, but it could happen.

**The Chairman:** There was another group which, for want of a better description, are called items which the departmental officials think are also covered by Bill C-165, but in respect of which objections have been made by the Canadian Bar Association and also by the members of the committee. The view of the department was that either they were adequately covered, in their opinion, or they agreed that as a matter of interpretation they would cover them in the way in which the submissions were made to us. I assume you have a list of the items. They include the separate assessement with allocation as between the assets of the husband and wife to whom property is deemed to pass, deductions for infirm children, loss of provincial tax credits, and clarification of the language in section 7(1)(b) as to the meaning of "value of gift" as it applies to a life interest.

If I might add this, I take it then, because your departmental officials said this morning, "This is the way we will interpret it," for the short run, as it is so late in this session, that would appear to me to be an adequate assurance, especially if it were coupled with the undertaking which you gave, that all doubt

would be removed from the language so the interpretation proposed is the interpretation that can be taken out of the particular sections.

**Hon. Mr. Benson:** On the points raised by my officials and those of the Department of National Revenue I would say that the Government will back their interpretation of the situation as it presently exists. If they have made an undertaking with regard to an interpretation then we will see that it is upheld, even if one should get into a situation where the Appeal Board or some other body said it was not the case.

This legislation is different legislation. It provides quite a change in estate taxes. It is going to take a little bit of time before we end up with something that everybody thinks is good law. We intend to move in that direction, but in the interim the answers that were given by the officials of my department and the Department of National Revenue will be supported by the Government.

**The Chairman:** Now, we had a particular group of items that were raised in the briefs submitted, and also in committee, and which your departmental officers said they would consider further. There appear to have been one or two points of view, and they rationalized these and came up with certain answers. Other points have been raised in committee, and we had an assurance from the departmental officers this morning that they would have another good look at these items, which means reviewing them in the department and giving them full consideration.

I am referring to such items as joining together unrelated estates where a surviving spouse remarries, and the proviso that defeats a gift to a spouse where there may be a clause that it is subject to remarriage or divorce. In the latter event it is not regarded as being an indefeasible gift and, therefore, the exemption does not apply. It may well be that in many of those cases that if there is a divorce there is never a remarriage. So, the question was: Surely, there must be some way of rationalizing that. They said that as a practical matter they had not found it yet, and they mentioned all the considerations, and they said they would have a look at it again.

Then, there was the variation of wills and trusts after the death of the settlor or the testator. The Bar Association was referring here to where you have variations under the Variations of Trusts Act in Ontario, and where the courts sometimes, after the death of the testator, will make variations in the will. The question is whether the will as varied is the will which is dealt with by the department, or whether it is the will as originally made by the testator.

The Bar has suggested that these areas of variation being recognized should be a permanent thing rather than as it is presently in the bill where such variations will only be recognized in cases of persons dying before August 1, 1969. The feeling of some of the members of the committee, and also of the Bar Association, was that this should be a permanent feature.

**Hon. Mr. Benson:** You have covered quite a few points there, senator, including the quick turnover of wives where you get divided estates. This, of course, involves three deaths from the time the legislation is enacted. It is something that we will certainly look at.

With respect to the remarriage clause I personally think that a trust which is revocable on remarriage of the wife or the widow should not be recognized under the Estate Tax Act. I think that we as individuals and as legislators should not encourage people to live in sin, which is really what you are doing if you are putting the cancellation of benefit in the case of the remarriage of a widow into a will. I would like to say that I personally do not believe in this, and I think that wills should ultimately be changed so that wives or husbands are not penalized in this regard.

**Senator Aseltine:** Hear, hear.

**Hon. Mr. Benson:** You know, my wife might die and leave me some money, and I would hate her to say that if I remarried somebody else I would lose it.

**The Chairman:** There is nothing like a personal example.

**Hon. Mr. Benson:** The other items with regard to the two estates ending up in the same hands, and the problems arising there—I certainly promise we shall have to look at this. They are not problems that will happen very quickly, because this would require three deaths for it to happen. We shall have ample time to look at this, and it certainly will be looked at.

**Senator Connolly (Ottawa West):** That is keeping the Government out of the dining rooms, really, is it not?

**The Chairman:** There was one item in respect to which the departmental officials said they did not agree with the proposals. I am referring to the proposals by the Canadian Bar Association in connection with the protection of dependent children in the circumstances where a life interest goes to the wife, and where there is a loss of exemption if the trustee is empowered under the will to pay income or capital to the dependant children. I would say that the position of your officials was that they were not prepared to agree that there should be any change in that.

**Hon. Mr. Benson:** This would be a method of dissipating the estate.

**The Chairman:** It could come to that, yes.

**Hon. Mr. Benson:** Yes, and really it could defeat the purposes of the changes in the act, whereby the widow or widower escapes duty free, and the additional taxes are paid when it passes on to the next generation.

**The Chairman:** There would be nothing to prevent the widow from using the proceeds of the life interest, for instance, to maintain the children.

**Hon. Mr. Benson:** No.

**The Chairman:** If the amount she paid in a year exceeded the exemption there might be a question as to whether this would be held to be a gift or not.

**Hon. Mr. Benson:** I do not believe we have ever deemed funds for the maintenance of children to be gifts to the children. In fact, when we were drafting the legislation I was worried about situations where somebody had children who are attending university, the expenses of which might well exceed the $2,000. I received an assurance from the Department of National Revenue that such cases of maintenance of children were never deemed to be gifts to the children. So, I have these assurances, and this is what the law is based on.

**Senator Connolly (Ottawa West):** May I ask the minister a question based on that point? I gather that the Income Tax Act pretty well restricts it to university fees, does it not?

**Hon. Mr. Benson:** With respect to the Income Tax Act, the deduction is on the part of the person on whose behalf the fees are paid. He is the only person who can deduct the fees. But, in cases where people send their sons or daughters abroad to expensive schools—perhaps to Switzerland for graduate studies, or to France—then I am informed that this kind of maintenance has never been deemed to be a gift to the child. Therefore, I did not think we had to complicate the law by writing anything like this into it, because we have assurance of that interpretation from the Department of National Revenue.

**The Chairman:** A point that I asked the departmental officers to consider further, is the question of the loss of foreign tax credit where the husband's estate is deemed to pass on the wife's death. Mr. Brown, in discussing that, said that he really did not know how to deal with it at this time, and the big problem was as to what rate should apply because it might well break either way. But, he said he was going to look into it further. Have you any comment to make on that?

**Hon. Mr. Benson:** No, but we will continue to study this matter and try to work something out. There will have to be a little settling down in this law. We are particularly interested to see what the provinces are going to do in respect of their succession duties. Indeed, the large amount of death duties that is paid by the people of Canada is paid to the provinces, either through our act or directly in the three provinces of Ontario, British Columbia and Quebec through succession duty statutes of those provinces. I hope there will be a shaking down of the law so that we get relatively the same law in the jurisdictions which impose their own succession duties. Indeed, the Treasurer of Ontario indicated in his budget that he was willing to co-operate fully in this regard. In Quebec, in their recent budget, they took steps which were to some extent a movement in the direction of the estate taxes we have at present. I think we shall have to have continuing consultations with them to try to work out a law that is relatively the same across the country. At least, I would like to see this happen.

**The Chairman:** Reverting to the question of the protection of dependent children, one of the situations that has to be envisaged is the possibility—and the reason why you might prefer to make use of a trustee and give him the responsibility of dealing with the money—of running into an irresponsible wife or an irresponsible husband. Therefore, the use of a trustee might be a protective device. I was going to say the department flatly refused, but they did not appear to be ready to entertain any consideration of this. I think

there is an element there that should be looked at.

**Hon. Mr. Benson:** I have checked with Mr. Brown, and he said such a provision in a will could be made separate from the trust entrusting funds for the benefit of the wife, and this would protect the child.

**The Chairman:** Yes, I suppose to some extent that could be. It is separate and apart from the life interest or the outright gift to the wife.

**Hon. Mr. Benson:** Yes.

**The Chairman:** This would be something that a testator could do now, without the aid of this bill.

**Hon. Mr. Benson:** Yes.

**The Chairman:** The question is whether in achieving that there are two ways in which to proceed: leave the income to the widow of a spouse with a direction to pay certain amounts for the dependent children, or simply leave a life interest for less than the full amount of the estate to the spouse and separately provide for the support of the children. In the latter case you do not get any exemption, whereas by using the vehicle of the spouse it would be part of the exemption.

**Hon. Mr. Benson:** Of the total exemptions of the spouse. One of the things I think you will find as a result of the new estate tax—and undoubtedly the members of the committee will have thought of it—it is the splitting of the larger estates. You will find half the estate is left to the wife and half to the children, and the wife's is passed on to the children. I know you can make calculations showing that this is most beneficial, certainly when you get to the larger estates.

**The Chairman:** There are many variations, because the donor spouse can gift and the donee spouse can gift, and there can be a combination of those; you can multiply certain exemptions twice.

**Hon. Mr. Benson:** Sure. If you have $4,000 per child for a 20-year period it means $80,000 for each child.

**The Chairman:** The problem with small estates still today is that there just is not enough money. What they have made might be tied up in physical assets and there is not the ability to make use of the dollar exemption.

**Hon. Mr. Benson:** No, except through the transfer of a debt.

**The Chairman:** Yes, you can do that. These were the items we discussed particularly. There were certain items that fell in the category of policy matters that we thought it proper to be put before you. Senator Phillips (Rigaud) raised one in relation to Quebec and I was going to ask him if he would make a short statement on that.

**Senator Phillips (Rigaud):** Mr. Minister, you may be aware of the fact that I did raise the issue that in the Province of Quebec, under Article 1265 of our Civil Code, as you well know, gifts between spouses are prohibited other than those covered by marriage contract. In the nature of cases, the amounts given under marriage contracts was limited and is limited. I was then told that the federal Government was hoping that the legislation the provincial government was considering with respect to changes in the law covering the marital status in the Province of Quebec would eliminate the objection I had raised. I made inquiries with respect thereto, and I have before me a bill called Bill 10, described as an act respecting matrimonial regimes. Up to my departure from Montreal yesterday I was advised by the Bar Association of our province that at the moment this bill is not being proceeded with because the subject matter covered is in respect of those aspects of matrimonial status reflected in the Civil Code. Therefore, there is no likelihood that there will be relief with respect to the exemptions of gifts between spouses.

Under the circumstances, we in our great province find ourselves—using the word in a very respectful sense—we believe, discriminated against, in that the high rates of gift tax presently provided and their co-relation to the estate tax rates are based, in part at least, upon the views entertained by you and your colleagues that the exemptions of gifts between spouses must be offset by higher rates of tax.

We therefore in the Province of Quebec—and I think I am also speaking on behalf of my honourable colleagues in the Senate with whom I have discussed the matter—feel that in the Province of Quebec we should be entitled the lower rates of taxation—and I am directing myself to gift tax only—in respect of gift tax because of our prohibition on making gifts between spouses. In my observations to my honourable colleagues in the Senate I suggested that the rates of taxation to which

we should be subjected are those that were in force prior to the coming in force of this bill, until such time as the law of the Province of Quebec is able to provide for the exemption between spouses so as to put us in the same position as our fellow citizens in the rest of the country.

**Hon. Mr. Benson:** First of all, as I understand the situation in the Province of Quebec, there is no prohibition on gifts at time of death and transfer of property. There is no particular advantage for people generally to make a gift to a wife during her lifetime when there can be a tax-free transfer to her on death under our legislation.

**Senator Phillips (Rigaud):** If I might be permitted, Mr. Minister, I would say the general conception that gifts must always be related to the problem arising on the eve of death is an assumption that I do not, with great respect, feel is justified. The whole conception of making gifts is not necessarily related to gifts between spouses, nor is it related to the problems that arise in respect of the making of wills at death. Let us assume for the sake of argument that we have a situation now in the Province of Quebec where a father can make a gift to a son of $200,000, in respect of which he is subjected to a maximum rate of 25 per cent. As a result of the new philosophy reflected in this bill, the penalty is introduced of increasing, by way of what I think I described as grim escalation, a rate of taxation for gift taxes, gifts *inter vivos,* of 25 per cent in respect of gifts of $200,000 going to third persons.

**Hon. Mr. Benson:** I agree that the gift tax rates have been raised substantially, but I will not agree they have been raised substantially to offset the fact that gifts can be made to wives without paying gift tax. When we decided on transfers to spouses, whether made during the lifetime or on death, it is unfortunate in Quebec they cannot be made during the lifetime, but can still be made on death—this meant that we, of course, had to raise additional amounts of money. This also meant that we increased the rate of estate tax when it passed on to a second generation.

The matter of the gift tax and the changes in the rate was quite a different matter. The gift taxes were not originally introduced as a method of stopping people from avoiding the estate tax, but rather to stop them from avoiding income tax. What we have done with respect to the gift tax is made it relatively less advantageous to make gifts during lifetime. We have integrated them with the estate tax rates so that we have really gotten rid of a loophole which existed for very large estates, whereby people never transferred things on death, but during the lifetime.

Indeed, I think you will find that what we have done is very similar to proposals in the United States because of a similar loophole, by our introducing the integration of the estate tax and the gift tax rates. This had nothing to do with the fact that we are allowing tax-free gifts to the spouse during her lifetime. It simply was introduced to integrate the estate and gift tax rates so that the loophole which existed, a great loophole for large estates of giving it away, has been closed.

**Senator Phillips (Rigaud):** Do you not think that under the present circumstances in our country, where gifts can now be made tax-free between husbands and wives in the rest of the country, other than Quebec, it has created a situation which is very discriminatory in respect of residents of the Province of Quebec?

**Hon. Mr. Benson:** I think it is unfortunate in Quebec and I hope they will change their law in this regard. I do not think it puts people in a worse condition except that they cannot make the gift to the wife in a lifetime. The only thing that exists is that they cannot make the gift to their wives now rather than on their death. That is an unfortunate quirk of the Quebec law. I do not think it is a particular disability, because the gift being made now during lifetime would mean the income from that gift would still be the income from the individual making the gift. There is no particular advantage to making it at any one time.

The other point I was worried about was the making of gifts to children out of the joint property where these could amount to $4,000 in the rest of Canada. I was concerned it might only mean that in Quebec a gift of $2,000 per person could be made, but I have been assured that gifts made out of a property which is joint—I forget what you call the common property in Quebec—one gift of $4,000 would be deemed to be a gift of $2,000 each from the wife and husband.

I do not think the people in Quebec are in a particularly bad position due to our new law. The quirk that they cannot make gifts during the lifetime to the wife is in the Quebec law. We are hopeful it will be changed,

but it does not create any great disadvantages. There is no great advantage of making the transfer to the wife in the lifetime.

**Senator Phillips (Rigaud):** If there is no great advantage in making transfers during the lifetime why is it regarded as a major policy that gifts between spouses has been regarded as a current great benefit that the Government is bestowing upon Canadian citizens.

**Hon. Mr. Benson:** The transfer of property to the spouse, whether by gift during lifetime or death, I think is of great advantage to spouses in the country. Indeed, this has been recognized by the Government of Quebec in the recent proposed changes in their succession duties whereby they are going to allow pension benefits and trusts to be transferred to the wife entirely free of tax. You know the great difficulties I ran into when I was Minister of National Revenue. I think one has to get this in perspective. Only 5 per cent of she had to pay a large amount of estate tax Among the 5 per cent the difficulties I ran into were when a husband had left a pension. It may be a pretty good pension benefit to the wife. He also left a house and insurance policy. The wife had the house paid for and there was also a small amount of cash from the insurance policy and she had a large amount of pension benefits, particularly if she was younger than her husband. She found that she had to pay a large amount of estate tax and had no cash to pay it. I wanted to correct this situation because I though it was the most difficult situation that existed with regard to estate tax in the country. In order to keep the revenue relatively even we had to adjust other rates and at the same time we did close the gift loophole which I think should have been done and, indeed, t he American Government has proposed exactly the same thing.

**Senator Phillips (Rigaud):** With the greatest respect, I felt that on occasion we followed policies dissimilar from the American Government and I can only emphasize the objections that I make as a resident of the Province of Quebec. With profound disrespect for you as an individual of course, as head of finance, I find an inherent contradiction in the conception of a major benefit being given by way of spouses in the rest of the country and not giving it to us in the Province of Quebec, because of our law and finding ourselves in the position where we are, in the resultant, being discriminated against. I should have hoped, in all sincerity, that the Government would consider our position and our plight in that respect and that the relief should come from the national scene rather than awaiting possible relief in the provincial area. If I can only express my opinion...

**Hon. Mr. Benson:** With great respect, senator, I believe, as I have indicated previously, there is no inherent discrimination against the Province of Quebec, because the bequest on death can be made and written into a will immediately and will not attract any federal estate tax. The only thing that cannot be done is the making of the gift during lifetime to the wife, free of gift tax. This would not make any difference from an income tax point of view because if the gift were made during lifetime, the income would still be the income of the donor.

**Senator Phillips (Rigaud):** No, no. I am not dealing with the subject of the gift being made between husband and wife and the consequent retention for legal purposes of it being deemed to be income on the part of a spouse. I am dealing with the subject matter of escalation of rates resulting from the exemptions that have been given between spouses and the consequence of damage in terms of monetary loss to doners or to others.

We are in the area, I think, where there is a clear difference of opinion and which obviously is apparent. I must confess very frankly that I see no indication of any possibility of relief being granted. I would have hoped that my observations, which have been supported by honourable colleagues in the Senate, would elicit a reply that the subject matter at least would receive careful consideration in the hope that relief would be granted at the first available opportunity.

**Hon. Mr. Benson:** Well, we certainly will watch what is happening in the Province of Quebec. I would hope that what I consider the relatively minor difficulty of not being able to make the gift to the wife until time of death will ultimately be corrected. I would like to again say that the assumption that the gift tax rates were raised because of the "during life gift to the wife" was not really the reason we amended the gift tax rates at all. It was because we wanted to integrate them with the estate taxes.

**The Chairman:** There was another point. I was the person who was guilty of raising this one, Mr. Minister. Seeing that we are side by side we each had better be pretty careful.

This was on the basis that the year in which we would be likely to lose or have the greatest decrease in revenue from estate tax because of the exemptions granted would be the first year. Donees, of course, over the years will have a way of dying, as well as donors, and of course then your income gets built up when the donees start dying and you get more revenue. I thought in these circumstances, with the high rates, there should be a period or a trial run of this, whether it is three or four years or what, to study how this trend goes, because if the money comes in excess of what is needed to replenish the loss because of exemptions and that money comes into general revenues, we would want to know what is proposed to be done with it and maybe have some say at some stage as to whether we think it should be done that way or not. That is why I suggested there should be a time limit after which you would have to come to Parliament.

**Hon. Mr. Benson:** As I have said, I have undertaken to make one change in the Estate Tax Act in the reasonably near future. I would hope to do it in the next session. There will be several things to do, there will be difficulties which will arise in the shape of legislation. At that time, of course, the estate tax will be open for discussion in Parliament, including in the Senate. We will then have some experience as to the amount of revenue that would be involved. The original intention was not to raise any additional revenue in this regard—although this is always a difficult matter, when making changes such as this, under any kind of prediction. When dealing with a matter of $100 million it is easy to be out 1 per cent, which is a million dollars. I believe the estate tax question should be opened and reviewed within a relatively short period of time, especially in view of the tax reform coming, on which we hope to introduce a White Paper relatively soon. When we have have done this for that package, plus the estate tax, we should have a look at it again and I can give an undertaking that we will be looking at it and re-opening the act in the near future, to take care of some of these shaking down conditions.

But, if I might put it further, to put a time limit date on estate tax in legislation would be to bring in a wrong principle, because you know the difficulty of getting legislation in and getting some recognition for dates and so on. In any parliament, that it is very difficult.

**The Chairman:** Be that as it may, you will have a look at it, and may be that the force of the experience and the pressures will be such that you will just have to look at it, from outside pressures.

**Hon. Mr. Benson:** Yes.

**The Chairman:** If you are stimulating revenues, by reason of the higher rates, they may be much larger than you estimate. I notice you used the word "aim" of the higher rates, it was to recover what you were getting. What happens if it should turn out that you are getting considerably more than you could use? I noticed your use of the word "exactly" and it indicated to me that there has been some reasonably well done calculation of what you are likely to use. Otherwise, knowing you as I do, you certainly would not have used the word "exactly".

**Hon. Mr. Benson:** In using the word "exactly", it was to be exact according to the predictions which we could make, which are necessarily subjective. I found that a few changes in some factors can make a great change in revenue, especially at the federal level. I found that 1 per cent change in the gross national product in a year could throw out the estimates with respect to revenue for the year.

**The Chairman:** May I restate one statement that you made, as I understood it, that is, in the area of interpretation? When certain objections were made, or submissions for changes to reflect certain conditions, the answer was that, according to the departmental officials, "the bill does that now". Then it becomes a matter of interpretation in the department. I understood you to say, I think, that in that area there would be no change administratively in the application of the sections and that there would be no application of a principle which was at variance with the statements made by your representatives here?

**Hon. Mr. Benson:** That is right.

**The Chairman:** And that if it should be necessary to make it statutory, in order to make the assurance complete, that would be done.

**Hon. Mr. Benson:** That is right. If my officials, or the officials of National Revenue, gave an interpretation of the statute here, and the way it will be administered, the Government will back those interpretations.

**The Chairman:** There is something else I wanted to ask you. In calculating the purpose of the increase in rates, I noticed in looking at the Federal-Provincial Fiscal Arrangements Act of 1967, that payments to the provinces in relation to succession duties are on a percentage basis, so that, strictly speaking, there is not an obligation on the federal authority to contribute a certain amount in dollars, it is a percentage of the amounts you collect under your particular estate tax, having regard to all the exemptions and abatement payments.

It strikes me that, if you have to replace $45 million which would be the losses in the first year by reason of the exemptions, the share the federal authority will keep will be of the order of $12 million. It is a lot of fluff and feathers to get $12 million and I wondered whether the Government felt there was an inherent obligation not to reduce the dollar amount of the payments, or what it was that made it so important to impose about $33 million extra in taxes solely to be able to hand that amount over to the provinces.

**Hon. Mr. Benson:** I am not sure that there will be $45 million in additional revenue. I do not think this will be the case. I think the exemptions granted the wives and dependent children will offset the increased revenue. At least, this ...

**The Chairman:** Let us assume it balances out.

**Hon. Mr. Benson:** The reason for doing this was, on our part, the principle that we felt the estate tax, as it was presently levied, was very unfair to the unit of husband and wife and also unfair with respect to any areas where there were dependent children or disabled children. It was our aim to correct this situation, the situation where husband and wife had not been regarded as equal partners in the past; and perhaps in some way to recognize rights of women and their contribution towards the family fortunes, by making this transfer.

Again, I would like to stress that when I was Minister of National Revenue, these were the worst cases I ran into—where a wife was left with young children, and the husband had been somewhat older, and all she had was the pension and his insurance policy. We wanted to correct this situation and, in order not to affect substantially the revenue of the provinces we of course adjusted other rates to make up for that. Quite aside from that we did plug the loophole of gifts, which some people disagreed with.

**The Chairman:** That plugging may reduce your revenue from that source.

**Hon. Mr. Benson:** From gift taxes?

**The Chairman:** Yes.

**Hon. Mr. Benson:** But we will get it on the other side.

**Senator Molson:** In view of the trend in the provinces to leave this field of succession duties cases—in their case it means the less to them—was this not an appropriate moment for the federal Government to consider moving in the same direction?

**Hon. Mr. Benson:** These are provinces to which the tax has made a less important contribution; the provinces which did not collect very much in estate taxes or succession duties. I think the major taxes are paid in three provinces, provinces that have their own succession duties. This is where the major amounts are collected. I have not seen any drastic action in those provinces to do any more than we have done in our estate tax.

**Senator Molson:** It may be migration, like that to Nassau now, Mr. Minister?

**Hon. Mr. Benson:** This is always possible. Some people will move estates from place to place to avoid estate tax. This danger we have faced in the past.

**Senator Molson:** I think it is one of the world problems. It is well known that the people with really large estates, really rich people, can do this, and they do it. There are examples every year. They are not the ones we are worrying about. The class of people that seems to have been giving most concern is the successful businessman or farmer who has accumulated what we would call a modest estate. That, I think, is causing a lot of concern in the country, as he must be the one in the middle.

**Hon. Mr. Benson:** I think there is a question there, a philosophical question, with regard to estate taxes *per se*. I made a philosophical speech in this regard once, having to do with when they were first instituted in Rome and the fact that the only reason they were instituted being because there was a threat to increase the property tax and the people in the Senate at that time were the

only people in the country really paying the major property tax so that the estate tax was put in instead.

I think the estate tax has justification in that it exists in all western countries and is one of the two taxes that we have that are progressive. It and the income tax are the only two taxes we have that are based on one's ability to pay. If you look at the excise tax, for instance, you will see that that is based on what one consumes.

**The Chairman:** Such taxes are impersonal.

**Hon. Mr. Benson:** Yes, that is right.

**Senator Beaubien:** Mr. Minister, to go back to the gift tax, suppose a couple had five children and the wife had no money. In a province other than Quebec that husband could give his wife some money and they could both then give $2,000 to each child per year, which would be $10,000 per year each, for a total of $20,000. However, in the province of Quebec the situation would not be the same for the same couple, because, if the wife had no money, the husband could not give his wife any money and they could only give $10,000 between them per year. Is that not right?

**Hon. Mr. Benson:** If it is under joint property in Quebec . . .

**Senator Beaubien:** If they are not common as to property, I mean, and there are a lot of couples in Quebec who are not common as to property.

**Hon. Mr. Benson:** Then, if they are not common as to property, they are limited as to the husband's gifts to the wife. If they are common as to property, the husband may give $4,000 a year to the children and it would be deemed to have come $2,000 from the wife and $2,000 from the husband.

But they are in difficulty and I agree that there is a necessity for changes in the laws in the province of Quebec, although who am I to advise them?

**Senator Beaubien:** The majority of married people in Quebec are not common as to property, because they use the Gift Act before marriage and in order to do that they have to be separate as to property. So the big majority are not. We are talking about the majority of people who could give any money at all, and they would be separate as to property. Therefore, instead of being able to give the children $20,000 a year that same couple could only give them $10,000.

**Hon. Mr. Benson:** That is right. That is, if the wife had nothing.

**Senator Beaubien:** A lot of wives have nothing. It is not an isolated case.

**Hon. Mr. Benson:** I hope this is something that can be cleared up. There was an advantage in Quebec before the changes in the estate tax under the old gift tax exemption, where it used to be 50 per cent of the previous year's income after tax. The only tax deducted in the province of Quebec used to be the federal tax so that the amount that could be given by a person in a particular year was higher in Quebec than in other provinces.

**Senator Phillips (Rigaud):** That is only communal property and, as a Quebecer, I can assure you that the number of cases is extremely limited.

**Senator Croll:** Now that the point has arisen, that was the question I had in mind. How is it that over all these years you discriminated against me in the province of Ontario as against what Senator Phillips (Rigaud) now mentions, without doing anything about it?

**The Chairman:** You were not vocal enough.

**Hon. Mr. Benson:** It was because I thought you did not have enough money to give away.

**Senator Leonard:** If that is what you thought, you were very wrong.

**The Chairman:** Mr. Minister, we heard the Canadian Construction Association; they were very interesting in their presentation, very serious and very emotional, and they have a real problem. The question is whether the right to make instalment payments over a period of six yers, paying the going rate of interest, is adequate to enable them to finance these businesses. I know from personal experience in my own office that three businesses in the last six months, where the owners are getting older, have been faced with this situation and they have sold out. In one case it was an American; the other two cases were other Canadians who purchased. But they could not wait to face the situation with everything in bricks and mortar and what the realization would be in order to meet these payments. Now, that is not necessarily a new problem, but with the increase in rates it becomes a greater problem. That is all.

**Hon. Mr. Benson:** Yes, I think the problem of payment of estate taxes, where the assets

are not liquid, has been and will continue to be a problem. With the changes in rates, when it is passed on to a second generation, the problem perhaps is increased presently with very large estates. With the smaller estates, and for estates where there are several children, the problem is no greater than it was before, but here again it is a question of whether or not, when people have accumulated sums of money or wealth, it should be taxed on their death when it passes on to their heirs who may or may not have contributed towards the accumulation of this wealth. Indeed, in many cases they have contributed towards it.

There are steps that can be taken in a construction firm or any business, as you know, in order to protect one's position. Indeed, making transfers to children through the payment of salaries sufficient to buy interests in the firm and making gifts and this kind of planning has to go on, but it is of course a problem where a firm is passing on from generation to generation in the same family.

**The Chairman:** The problem is that they have everything but money. They have assets; they are making substantial earnings and the machinery and equipment is wearing out so that there is a constant re-investment of funds; in other words, the percentage of retained earnings is very substantial and, yes, they may make a good living out of it, but, when you have to face Mr. Tax Man, it is a real problem.

**Hon. Mr. Benson:** Oh, yes, and this problem is also accentuated by the creation of surpluses within privately-held corporations which have to be distributed, which is a problem we have been studying and has been studied for a good long time by the federal Government. It is a problem that arose during the question of tax reform and has been among a great many other things, the subject of much study.

**The Chairman:** I assume, and rightly so I would think, that there was considerable attention given to this question. Was there any rationalization on any methods, or were any methods proposed by which this burden could be corrected?

**Hon. Mr. Benson:** One can propose methods, yes. If one wanted to protect assets passing within a family one could say that so long as the assets stayed in that family over the generations it would not be subject to estate tax. I do not think you could limit it to a particular type of business. But this type of legislation has been discarded in the western world as allowing large accumulations of wealth to grow larger and larger so long as they remain within the family.

**The Chairman:** You could overcome that by establishing a ceiling.

**Hon. Mr. Benson:** Or a floor, yes. We, in effect, have a floor now in that only 5 per cent of all Canadians who die pay an estate tax, that is, with the exemptions we have.

**The Chairman:** We are thinking of the cases of those who will be subject and are subject in relation to small businesses and how the burden can be lessened, because it is a real burden and is going to lead to all kinds of situations. Selling out of businesses will certainly be one of them and the breaking up of family companies. Maybe that is good; I do not know in the long run.

**Hon. Mr. Benson:** I do not really know either, and the evidence we have had has not been conclusive that this was in very many cases the sole reason for the sale of a business. It has been something that I have been looking at for a long time. I do not think that there has been any conclusive evidence in spite of what the Ontario Economic Council said that this is the major reason for the selling of many businesses.

**The Chairman:** If you had heard the representatives of the Canadian Construction Association, when they cited chapter and verse of their membership, you would realize that for them and for a great number of them and their families it is a major problem. It is a major problem where they have operated for a lifetime or maybe two lifetimes and have faced this situation and where their pride has made them keep going and keep up their equipment and their earnings. Then they have to meet the problem of how they are going to finance the estate tax. It seems to me that the only alternative would be to find some way of prolonging their lives.

**Hon. Mr. Benson:** Or in planning their estates. You, senator, and members of the legal profession here have had more experience of this than I have had, but you know there are ways of planning estates so that one can ease estate tax burdens, and I am sure members of the Construction Association have competent people advising them in this regard.

**The Chairman:** That is quite true, but you know how people approach this question of their estates, and most of them are now approaching it earlier. Most people simply go to a lawyer and say "draw me a will" and he draws it and he signs it and then forgets about it without realizing the problems that are going to be involved.

**Senator Walker:** Mr. Minister, in view of the tremendous objections which have been raised and which you are handling very well, and I compliment you on your handling of them, and further in view of the fact that you are bringing down a White Paper and a composite bill in the fall would you not consider scrapping this at the present time and includ- bill.

**Hon. Mr. Benson:** No.

**The Chairman:** Well, it is not necessary to scrap this in order to include it in the new bill.

**Senator Walker:** No, but there are so many objections and so many things to be varied, and in view of the fact that the Minister has allowed an estate to take either of the alternatives up to August next, would there be any harm in doing what I suggest other than the delay in cleaning up the estates? Why could you not just draw a new bill ironing out the difficulties.

**Hon. Mr. Benson:** Mainly because there was a matter of principle involved. We want to recognize the fact of the equality of women in this country.

**Senator Walker:** We wanted that for a hundred years and six months' delay is hardly likely to do any harm.

**Senator Phillips (Rigaud):** I have a question to ask the Minister. In connection with small businesses and the like I raised the point that it might be desirable in arriving at the rates of taxation to draw a distinction between assets that are liquid and those that are not, on the theory not that a mere delay be given but that there is a clear distinction to be drawn between an estate that has ¼ million dollars in cash and securities and one that has ¼ million dollars in plant, machinery, inventory and accumulated debt. I wonder if you would be responsive, Mr. Minister, to the suggestion that in due course an amendment to this effect, which would be one of a fundamental nature, be brought in because by doing so one would be alleviating the problem which has been experienced and which has been presented to this committee.

**Hon. Mr. Benson:** We did look at this particular problem and indeed this is one of the reasons we introduced the instalment payments. If one were to treat different kinds of estates in a different manner I think a $1 million estate which is principally in bonds would pretty soon become a $1 million estate which is principally in real estate if there were a substantial difference in the estate tax payable on the two. We have recognized that there should be provision for making payments over an extending period of time, and we have written it into the law for the first time. It is something that people have asked for a long time. That kind of distinction can be made without making any material shift in the type of assets that people hold.

**Senator Phillips (Rigaud):** I must say that when you were Minister of National Revenue we did not need any extended periods of time for payment because you were extremely warm-hearted in extending time.

**The Chairman:** I think this brings us back to the situation in Ontario a number of years ago when there was quite an active trade in succession duty-free bonds and real estate, and we might get into that category if there was a lower rate of tax. People in anticipation of death might put their money into real estate and then the family after the death might be rather busy getting back the money. If a number of people died at the same time they would not be able to move the estates around fast enough.

**Senator Willis:** Mr. Minister, I know this is not in your department but are estates in Toronto and Hamliton being held up until this bill has been passed? I have three estates at the present time where I cannot get a word out of the succession duty people in Toronto. Consequently they are hanging fire and are creating problems for lawyers who are all blaming me because I cannot get them through. They think it is because I am a Conservative.

**Hon. Mr. Benson:** It really is not because you are a Conservative. It is true that estates are being held up and that is why I would urge the honourable members of the Senate to deal with this legislation as expeditiously as they possibly can.

**The Chairman:** I have one more question; would you consider extending the time for

election to take the old or the new exemptions whichever would be the more beneficial beyond August 1st?

**Hon. Mr. Benson:** No, I would not like to do that. There was no intention of doing this in the first place, and the reason why we did it was because of the indefiniteness of the law. I think we forced people for the first time to think about their estates. We have had to face a great deal of criticism because a great many people in Canada did not know that estate tax existed until this came up but now this has caused people to look again at the matter of their estates and consider what is involved, but I believe that by August these will be cleared up.

**Senator Leonard:** Mr. Chairman, the Minister has given us some very helpful and very important undertakings today with respect to possible amendments in due course and with respect to the interpretation of some doubtful or difficult parts of the bill. These undertakings are of very great importance not only to us here in our position as legislators but also to the people throughout Canada. Now we have heard these undertakings from the Minister and in the normal course we might very well ask that those undertakings be put into amendments to the bill as soon as possible and that the legislation be held up until that is done. However, I for one am prepared to accept the undertakings and in the light of that fact and of the legislative program and of the uncertainty in the meantime to accept those undertakings instead of amendments to the statute. However, it is all very well for us to have these undertakings here but we must remember there are lawyers throughout the entire country, chartered accountants and testators who are dealing with these problems day in day out. For that reason I think the proceedings of this committee meeting should be printed in large numbers, far more than the normal printing. There might have to be some other means of communicating this type of information as well. This is the point I want to make. Of course this a matter for ourselves to decide, but we ought to make sure that these undertakings receive as wide-spread publicity as possible.

**Hon. Mr. Benson:** I would agree, senator, that this is very important and I certainly would not be adverse to having people in my department summarize the undertakings they have made and which I have backed up this afternoon, without reading them word for word, but I have discussed them with the people who made them.

**The Chairman:** Are there any other questions?

**Senator Macnaughton:** And you will bring them to the attention of the different professional societies, at least?

**Hon. Mr. Benson:** I would not mind issuing a summary and making it available to anyone who wishes it.

**The Chairman:** Any other questions? Are you ready to deal with the bill?

**Senator Croll:** I move that we report the bill without amendment.

**Senator Beaubien:** No. Other people are coming, are they not?

**The Chairman:** No, we have no other witnesses to hear.

**Senator Croll:** I move that the bill be adopted.

**The Chairman:** There is a motion to report the bill without amendment, but this is for the committee to decide.

**Senator Giguère:** I will second it.

**Senator Leonard:** I said I am prepared to accept the minister's undertaking. At the same time, I think probably this is the kind of matter we should discuss among ourselves, and we are here today, tomorrow and next week. I do not think we should leave it any longer than that, but I think perhaps we should make that decision among ourselves.

**The Chairman:** Mr. Minister, thank you very much.

**Senator Flynn:** Just before the minister leaves: How long does the minister think it would take to bring in those amendments?

**Hon. Mr. Benson:** I would hope to have a review of the legislation by next fall, so if there is cleaning up to be done in the legislation we would do it in the coming session.

**Senator Flynn:** Would these amendments be retroactive?

**Hon. Mr. Benson:** I have said that the major amendment, the one question, the charitable donation question, I would hold people protected in the interim through the use of section 22 of the Financial Administration Act.

**The Chairman:** And on the matters of interpretation?

**Hon. Mr. Benson:** And on the matters of interpretation I will back my officials, and they will assess that way, I hope.

**Senator Leonard:** Might I make another remark? I really thought that before going on to another matter we should amend our order of printing of today's proceedings. I have forgotten what the number originally agreed upon was.

**The Chairman:** The number is 800 in English and 300 in French.

**Senator Leonard:** I think every lawyer in Canada and every member would want a copy. I think we ought to think in terms of...

**Senator Walker:** The authoritative statement will be the summary the minister is going to issue at once under his own name from his own office.

**Senator Leonard:** The statement to be issued by the minister is not the same as that statement that comes out of the proceedings of this meeting.

**Senator Walker:** It will be better.

**The Chairman:** I think you need both the minister's statement and the statement of this meeting.

Upon motion, it was *resolved* that 4,000 copies in English and 1,500 copies in French of the proceedings be printed.

**The Chairman:** On the other question, we have not any more evidence, there are not any more submissions. I suppose we are as well informed now as we would be at any stage. We have the minister's undertakings, and also that the review of the legislation will take place in the next session, next fall, so there will be an opportunity to deal with this matter again at that time. It is not as though we are closing the door on ourselves for all time. In those circumstances, is the committee now prepared to approve the reporting of the bill without amendment?

**Senator Beaubien:** Why do we not put it over until next week?

**The Chairman:** We are not sitting next week.

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

**The Chairman:** Is that unanimous?

**Senator Flynn:** No.

**Some Hon. Senators:** No.

**Senator Flynn:** On division.

**The Chairman:** On division?

**Some Hon. Senators:** On division.

**The Chairman:** Without a show of hands?

**Senator Walker:** Whatever you like.

**Senator Beaubien:** Why not have a show of hands?

**The Chairman:** All right. Those in favour of reporting the bill without amendment? Contrary? I declare the motion carried by a vote of nine in favour and seven contrary. I shall report the bill without amendment.

The committee proceeded to the next order of business.

THE QUEEN'S PRINTER, OTTAWA, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 42

WEDNESDAY, MAY 21st, 1969

***First Proceedings on Bill C-102,***

intituled:

"An Act to amend the Patent Act, the Trade Marks Act and the Food and Drugs Act".

### WITNESSES:

*Department of Consumer and Corporate Affairs:* The Honourable Ronald Basford, Minister; J. F. Grandy, Deputy Minister; A. M. Laidlaw, Q.C., Commissioner of Patents and R. M. Davidson, Director, Merger and Monopoly Division, Combines Investigation Branch.

*Department of National Health and Welfare:* Dr. R. A. Chapman, Director General, Food and Drug Directorate.

*University of Toronto:* F. Norman Hughes, Dean, Faculty of Pharmacy; J. K. W. Ferguson, Director, Connaught Medical Research Laboratories; George F. Wright, Professor of Chemistry and G. C. Walker, Professor of Chemistry.

*University of British Columbia:* Professor Marvin Darrach, Head, Faculty of Medicine; Professor M. Pernarowski, Faculty of Pharmaceutical Sciences and Denys K. Ford, M.D., Department of Medicine, Vancouver General Hospital.

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 30th, 1969:

"The Order of the Day being read,

With leave of the Senate,

The Honourable Senator Lang 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-102, intituled: "An Act to amend the Patent Act, the Trade Marks Act and the Food and Drugs 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 Lang moved, seconded by the Honourable Senator Davey, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
*Clerk of the Senate.*



20276—1½

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Resolved in the affirmative."

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Clerk of the Senate.



20276—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, May 21st, 1969.
(46)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider:

**Bill C-102,** "An Act to amend the Patent Act, the Trade Marks Act and the Food and Drugs Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Choquette, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Giguere, Hollett, Isnor, Kinley, Lang, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, White and Willis. (24)

*Present, but not of the Committee:* The Honourable Senators Dessureault, Grosart, Macdonald (*Cape Breton*), McDonald, McLean, Methot, Paterson and Sullivan. (8)

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

The following witnesses were heard:

*Department of Consumer and Corporate Affairs:*

The Honourable Ronald Basford, Minister.

J. F. Grandy, Deputy Minister.

A. M. Laidlaw, Q.C., Commissioner of Patents.

R. M. Davidson, Director, Merger and Monopoly Division, Combines and Investigation Branch.

*Department of National Health and Welfare:*

Dr. R. A. Chapman, Director General, Food and Drug Directorate.

*University of Toronto:*

J. K. W. Ferguson, Director, Connaught Medical Research Laboratories.

F. Norman Hughes, Dean, Faculty of Pharmacy.

George F. Wright, Professor of Chemistry.

G. C. Walker, Professor of Chemistry.

*University of British Columbia:*

Professor Marvin Darrach, Head, Faculty of Medicine.

M. Pernarowski, Professor, Faculty of Pharmaceutical Sciences.

Denys K. Ford, M.D., Department of Medicine, Vancouver General Hospital.

At 12.55 p.m. the Committee deferred further consideration of the said Bill until later this day.

At 4.00 p.m. the Committee *resumed* consideration of Bill C-102.

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Carter, Choquette, Cook, Croll, Desruisseaux, Giguere, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Walker, White and Willis. (19)

*Present, but not of the Committee:* The Honourable Senator Sullivan. (1)

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

Mr. Basford was again heard.

At 4.55 p.m. the Committee deferred further consideration of Bill C-102 and thereupon adjourned.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, May 21, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-102, to amend the Patent Act, the Trade Marks Act and the Food and Drugs Act, met this day at 9.45 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

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

**The Chairman:** Honourable senators, Bill C-102 was dealt with by Senator Lang in the Senate. It is an act to amend the Patent Act, the Trade Marks Act and the Food and Drugs Act. You will recall from the explanation that certain immunities are granted to people who may otherwise be in infringement of trade marks and patent rights.

We have here this morning the Minister and a very excellent panel in support, including Mr. J. F. Grandy, Deputy Minister, Mr. A. M. Laidlaw, Q.C., Commissioner of Patents, Mr. R. M. Davidson, Director, Merger and Monopoly Division, Combines and Investigation Branch, and Mr. F. N. McLeod, Legal Division, Combines Investigation Branch.

Dr. R. A. Chapman, Director General, Food and Drug Directorate, is also here, and in addition we have seven or eight outstanding medical men who wish to be heard in connection with this bill.

The order of procedure that I was going to suggest is that we should have an opening statement from the Minister defining the purposes and the scope of the bill followed by whatever questioning may be desired and then, since transportation is still a problem, I thought we should hear the doctors, after which we could get back to a consideration of the bill, section by section, or in whatever manner the committee wishes to deal with it.

One other matter I want to bring to your attention is that all those bills dealing with amendments to the British and Canadian Insurance Companies Act and the Foreign Insurance Companies Act, the Trust Companies Act and the Loan Companies Act were all referred to committee last night. The representatives of the life companies and trust companies are here today, and I was going to suggest that, since it is expected that we will be sitting all day owing to the amount of work we have to do, when we resume after lunch, no matter at what stage we are, we would then intervene to deal with these bills. Mr. Humphrys will be here. I do not think it will take very long, because this is one occasion where everybody seems to be in support of the bills. If anything is left to be done on Bill C-102 after that, we will then resume. The intention is to go on this afternoon until we finish all the work. Is that program as tentatively suggested all right?

**Hon. Senators:** Agreed.

**The Chairman:** Mr. Basford, the floor is yours.

**Hon. Ronald Basford, Minister of Consumer and Corporate Affairs:** Mr. Chairman, honourable senators, I appreciate the courtesy of honourable senators in permitting me to make an opening statement on Bill C-102. I plan to be brief, particularly in the light of the excellent exposition of the objectives and the mechanics of the proposed legislation already given to the Senate by the sponsor of the bill, Senator Lang. However, I would like again to remind honourable senators that there are five points to the Government program to drug prices.

First was the removal of the sales tax on prescription drugs, the reduction of customs duty on these products from 20 to 15 per cent, and the narrowing of the application of dumping duty to drug imports.

Secondly, there was the introduction of this bill.

Thirdly, there was the development of a drug information service to doctors, which was a recommendation of the Harley Committee and which is now being proceeded with by the Food and Drug Directorate.

The fourth step in the over-all program was the Pharmaceutical Industries Development Assistance program known as PIDA. This is now operating and loans are being made to small Canadian drug firms to strengthen and improve the efficiency of this sector of the pharmaceutical industry which manufactures and sells prescription drugs at lower prices.

The fifth and final step in this program involves discussions with the provinces designed to tackle the problem of the high cost of retail distribution of drugs, which, of course, is primarily a provincial concern.

It is the government's expectation as well as mine that the effect of Bill C-102 will be substantially to increase price competition in the Canadian drug industry. This will occur in three ways. In the first place, we anticipate that some at least of the larger drug companies which operate on an international scale will themselves seek compulsory licences to supply drugs in competition with the present patent owners. We know of at least one large drug company which intends to seek such compulsory licences if Bill C-102 is passed by Parliament.

In the second place, we expect that compulsory licences will be sought by the smaller Canadian-owned companies who are being strengthened by the PIDA program and whose marketing strategy involves a low-price policy. The extent to which these smaller companies will have an impact on the general level of prices depends primarily upon how much confidence physicians have in their products—without confidence they will not prescribe them—and this emphasizes the importance of the information service being developed by the Food and Drug Directorate.

In the third place, where drugs in dosage form are available in other markets at substantially lower prices than they are in Canada, the amendment to the Trade Marks Act will permit the importation from abroad of such drugs properly trade-marked by the parent companies of Canadian subsidiaries.

There are at least three distinguishable segments of the Canadian drug industry and it may be desirable briefly to consider the impact which Bill C-102 is likely to have on each of them. The segments to which I refer are first, the two or three firms in Canada who manufacture the active pharmaceutical ingredients in the form of fine chemicals; second, the much larger group of international companies operating in Canada through subsidiaries, who are engaged in the preparation of dosage forms rather than the manufacture of fine chemicals and who, with the exception of three or four companies, do no substantial research in Canada; and third, the large number of small, exclusively Canadian companies who simiarly are engaged only in the manufacture of dosage forms and who likewise do no substantial research.

Before looking at each of these segments however, I would like to make one general comment about the drug industry. That comment is this. It is important to recognize that not all prescription drugs are patented. I say this is important because it is in the area of prescription drugs particularly where the problem of high prices arises. The reason for this is that it is only in the case of prescription drugs that the person who must pay for the products, that is, the patient, has no discretion in choosing the drug, which is prescribed for him by the doctor, and, therefore, is unable to shop for a cheaper alternative.

At the outset therefore, I have two points to make about the impact of Bill C-102 on the Canadian drug industry. First, a substantial proportion of total production is accounted for by non-prescription drugs which are already in open competition with each other, in the sense that the consumer is himself free to choose among them. This group is unlikely to be significantly affected by Bill C-102. Second, a substantial proportion of prescription drugs are not patented and therefore will not be affected by the patent amendment though, if their prices are out of line, they will be affected by the trade marks amendment.

With regard to the small sector of the industry which manufactures fine chemicals in Canada, it is possible that the patent amendment, by permitting compulsory licensees to import both fine chemicals and finished dosage forms, will reduce to some extent the business which it has hitherto enjoyed. However, this small segment currently supplies only 15 per cent of the fine chemicals used by the Canadian drug industry. In other words, 85 per cent of Canada's consumption of fine pharmaceutical chemicals is imported now. In addition, it should be

noted that this sector of the industry will continue to receive tariff protection of 15 per cent. Tariff protection is of course the only form of protection against imports that most industries enjoy.

With regard to the large companies who are primarily engaged in manufacturing dosage forms and only a small minority of whom do any substantial research, the impact of the proposed amendments on them will depend upon the marketing strategy which they adopt. Those who reduce prices so as to prevent any incursion into their markets by dosage forms imported from affiliated companies abroad, or by dosage forms manufactured by compulsory licensees, will have to reduce their margins of profit and some of their costs but by definition, they will not cut back production. Those who decide not to reduce prices or not to reduce them significantly, can expect to lose business to compulsory licensees who manufacture in Canada, and to imported dosage forms. To the extent that compulsory licensing provisions of Bill C-102 will permit the small Canadian companies to get access to business which was previously denied to them by patent restrictions, the PIDA program will assist some of them in financing expansion, and the information service to doctors provided by the Food and Drug Directorate will assist them in marketing their products.

Before concluding I want to say a word about the importance of drug safety. This is a matter which the Government has been fully conscious of, in the drafting of the proposed legislation. There are in fact four provisions in Bill C-102 which relate to the question of safety. The first provision requires that notices of application for compulsory licences or interim licences must be given by the Commissioner of Patents to the Department of National Health and Welfare. The second provision makes it clear that nothing in a licence or interim licence granted by the Commissioner of Patents shall be construed as conferring upon any person, authority to do anything that is contrary to the requirements of the Food and Drugs Act and regulations. The third provision permits the Minister of National Health and Welfare to control a situation if it should develop, where a trade-marked drug imported into Canada differs from a Canadian drug similarly trade-marked and where the difference in composition between the two is such as to be likely to result in a hazard to health. The fourth provision gives the Governor in Council power to make regulations which will be administered by the Food and Drug Directorate regulating or prohibiting the import of drugs into Canada and the distribution and sale of these drugs in Canada. The intention is to place beyond doubt that the Food and Drug Directorate has complete and flexible control through their regulations over all imported drugs including of course drugs imported by the established companies. The Minister of National Health and Welfare has fully endorsed the Bill and is satisfied that the Food and Drug Directorate can continue effectively to discharge its responsibilities. I understand that Dr. R. A. Champman, Director General of the Food and Drug Directorate is available to answer questions before this Committee.

With those few remarks I conclude this part of my presentation but I would just like to add that I and my officials are here to answer any questions that honourable senators may wish to ask.

**The Chairman:** Sometimes that is a dangerous invitation Mr. Minister.

We are now open for questions arising out of the Minister's statement or indeed in any way in relation to the bill.

While the senators are gathering their thoughts together Mr. Minister, I notice that in this bill there is a provision in relation to any food where there may be a patent outstanding dealing with its processing or preparation. You will find that in clause 1 which adds new subsections to the Act. There is provision for applying to the Commissioner of Patents, insofar as a patent is involved, for a licence to proceed, and really the moment you get the licence you have an immunity so far as any action for infringement under the patent which the patentee might have is concerned. But then I notice a difference between the provision in subsection 3 in relation to the preparation and processing of food and the preparation and processing of a medicine. Now I know that the patentee is served with a notice at some stage, but is he entitled to be heard at any stage by the Commission and if so, at what stage?

**Hon. Mr. Basford:** He is given notice and he is entitled to put forward any objection tht he may have to the granting of a compulsory licence or an interim licence. However, if you would like a detailed explanation I will call upon the Commissioner who will explain the procedure he intends to follow under the act and the regulations.

**The Chairman:** I want to know not only about the extent to which the patentee is informed, because the notice informs him, but also about his right to appeal.

**Hon. Mr. Basford:** I will call upon Mr. Laidlaw to answer that.

**Mr. A. M. Laidlaw, Q.C., Commissioner of Patents:** In answer to your question, Mr. Chairman, the regulations under the proposed bill are now being prepared and set out in detail. Of course the procedure that will be followed in order that we can establish a proper system of dealing with these compulsory licences is as follows. In the first instance the applicant will file with the Commissioner his application for a compulsory licence. The details will be set out in the regulations; there will be a required form, and this will come to the attention of the Commissioner and if the Commissioner is satisfied that the applicant has conducted himself properly in the sense that he has completed all the statements required from him, a copy of this application will be forwarded to the Food and Drug Directorate immediately. At this stage the Food and Drug Directorate is brought into the matter. The application is then sent to the patentee who is affected and the patentee has an opportunity over a period of 8 weeks to reply to the applicant in the form of a counter-statement which will also be in another form. Following the receipt of the counter-statement this information will also be forwarded to the Food and Drug Directorate and the third action will then be a reply to the counter-statement filed by the applicant. Now at this stage all material with reference to the application should be in the hands of the Commissioner and also in the hands of the Food and Drug Directorate.

The Commissioner may, under the terms of the regulations, if he wishes to, inform the Department of Industry, the Department of Trade and Commerce, the Department of Consumer and Corporate Affairs, and, if necessary, inform also the Department of National Health and Welfare, about the activities that are going on, and receive any advice from these particular departments.

At this stage, either the applicant or the patentee can request a hearing before the Commissioner, and if the Commissioner, in his discretion, feels something could be added to the application, either from the applicant's point of view or the patentee's point of view, he will grant the hearing, under these terms, and finally render his decision on this basis.

The decision is then notified to the Food and Drug Directorate and, as the Minister has stated, this is merely a licence to avoid, as you said yourself, Mr. Chairman, the possibility of infringement actions. The Commissioner has nothing whatever to do with the safety aspect of this.

**The Chairman:** Under new subsection 5, which is added by section 1 of the bill, there is provision, at some stage after you receive an application for a licence, to give notice to the patentee.

**Mr. Laidlaw:** Yes.

**The Chairman:** And so your regulation would flow out of that.

**Mr. Laidlaw:** Yes.

**The Chairman:** I was wondering why subsection 5, which provides for this procedure, deals only with things which may occur under subsection 4, and subsection 4 is a licence in relation to the preparation of a medicine. I do not see what procedures, if any, there are where a licence is in relation to the preparation or processing of a food.

**Mr. Laidlaw:** That is correct, Mr. Chairman. This bill, Bill C-102, in fact deals only with applications for compulsory licences for medicines, and not for foods. Section 41, in its present state, covers both foods and medicines. In fact, there have been no compulsory applications, to my knowledge, ever made for foods, and I believe it was felt, when this bill was first introduced, it would only complicate matters if we dealt with foods and medicines. Medicines are the only concern of this bill.

**The Chairman:** If you received an application under subsection (3), which is added by section 1 of the bill to section 41 of the act, what would your procedure be?

**Mr. Laidlaw:** It would be exactly as it is at the present time with respect to foods.

**The Chairman:** Would you tell us what that is?

**Mr. Laidlaw:** At the moment it is a very flexible procedure. It has never been used, to my knowledge, and it would merely be an application field for a compulsory licence to produce a certain food or food process, and the patentee, if there was a patent, would be immediately informed, and the same procedure would flow. The patentee, in every instance, has the right of reply.

**Hon. Mr. Basford:** The history here, Mr. Chairman, is that section 41 was put into the act in 1923 as a matter of public policy, that compulsory licensing should be allowed for patent processes on foods and medicines. They have been in the act since 1923.

Following the three inquiries that were held—the Restrictive Trade Practices Commission inquiry, the Hall Royal Commission, and the Harley Committee—all of which made recommendations that the compulsory lincensing provisions relating to medicines should be amended to make the grant of compulsory licences easier, we accepted those recommendations and they are embodied in this bill. But we had received no recommendations related to processes relative to food, so they are being left as they were and have been since 1923.

**The Chairman:** With regard to those procedures you are referring to in relation to food, which originally came in with other things in 1923, the licences there would be granted on the basis the patentee was not providing adequate production under the patent for the Canadian market. Is that not the basis?

**Hon. Mr. Basford:** No, they would be based on what subsection (3) now provides:

> ...the Commissioner shall have regard to the desirability of making the food available to the public at the lowest possible price consistent with giving to the inventor due reward for the research leading to the invention.

**The Chairman:** My question earlier was as to the law before.

**Hon. Mr. Basford:** Subsection (3) is simply a reproduction of the law as it has been since 1923 relative to food, patent processes on food.

**The Chairman:** Yes. But, Mr. Laidlaw, my understanding of the original section 41 is that:

> ...the Commissioner shall, unless he sees good reason to the contrary, grant to any person applying for the same, a licence limited to the use of the invention for the purposes of the preparation or production of food or medicine but not otherwise;

Forget this bill. I am talking now of the time before this bill came in. In the application of that, was it not based on whether there was proper and efficient exercise of the patent rights and serving the public?

**Mr. Laidlaw:** I think the situation, sir, is that any patent, as the law now stands, in dealing with foods or medicines, differs from patents as they affect other things, and for that reason this licensing provision was put in, as the Minister said, in 1923, and has never been exercised. The only reason it has been put in is the desire to introduce competition into this particular aspect.

**The Chairman:** It seems to me that under the original section 41, and the part of subsection (3) which I have read to you, and which deals with licensing, notwithstanding patent rights in relation to the processing of food and the preparation of medicines, there was authority to you to do the things that are now spelled out in this bill.

**Mr. Laidlaw:** That is correct.

**Senator Walker:** Mr. Minister, in all fairness to the drug industry, we feel that the patent holder should have at least some other built-in protection, and perhaps he has—and I will ask about that later—which would allow him to recover some fo his research investment and expense incurred in declaring the compound to the Food and Drug Directorate and introducing it to the medical profession. You have repeatedly stated that the inventor will have the market to himself during the time the compound is considered a new drug, and this is normally five years. Unfortunately—and I may be wrong, but I cannot find it—this is not spelled out in any legislation, and we feel that if the pharmaceutical industry is to risk large sums of money, such as it has in the past, to develop new drugs, it should have something more tangible than a verbal opinion from you to protect this risk, as much as we appreciate, I am sure, the verbal opinion. Would it not be an excellent idea that compulsory licences be not granted for imports—I am speaking of imports only—for a period of five years from the date the patent issues. One would not object, I am sure, to a compulsory licence for anyone wanting to manufacture the compound in Canada during that period.

**Hon. Mr. Basford:** The question of royalties is a difficult one, and what should be included in the royalty and what the royalty should compensate the patentee for. In subsection (4) we provide that the Commissioner in granting the compulsory licence shall make an award with regard to royalties, giving to the patentee due reward for the research leading to the

invention and for such other factors as may be prescribed. The last phrase there, "such other factors as may be prescribed", was inserted in this legislation by me. As you realize, this legislation was before the previous Parliament and that wording is a new addition, which makes Bill C-102 different from the previous legislation. A number of representations were made to us about what should be included in the royalty and what the royalty should cover. None of the recommendations were unanimous and we had different proposals from different groups.

Also, the whole question of patents is, as you know, a subject now being studied by the Economic Council of Canada. Therefore, rather than trying at this point to work out another formula including some of the other factors that it has been urged upon us should be included, we put in those words of general application. We have asked the Economic Council of Canada to direct its attention to this specific question. That is why we would be free under that wording, when we receive advice from the Economic Council, to prescribe such other factors as the Council may recommend. There are different formulae for this in different countries. Britain has a different system from the one we have and includes different items from those we include. It therefore seems to me that at this point and in this legislation we should, as I say, leave it free to be prescribed on the advice of the Economic Council.

**Senator Walker:** You feel this qualification in that subsection is sufficient to enable you to do what I have respectfully suggested?

**Hon. Mr. Basford:** Yes.

**Senator Walker:** As and when the Economic Council makes such recommendations, if they do, you would then do this by amendment to the act or by regulations?

**Hon. Mr. Basford:** By regulation. It says, "as may be prescribed".

**Senator Walker:** As you are empowered to do under section 5?

**Hon. Mr. Basford:** Yes. I do not want to be too long in my answers, but if I may I should like to mention the new drug protection. This is slightly different protection. While a drug that has been developed and invented by one patent holder is under new drug status pursuant to food and drug regulations, it is our feeling that it would be totally uneconomic in 99 per cent of the cases for anyone else to apply for a compulsory licence, so that the length of time of a drug being in new drug status—Dr. Chapman may want to explain this further—has generally been five years. Therefore, not because of any patent provisions but because of the economic impact of the new drug regulations, it would be uneconomic for anyone else to apply for a compulsory licence during that period, which thereby in effect—not by the patent law but in effect—gives the patent holder that five-year protection period.

**Senator Phillips (Rigaud):** Am I right in reading the legislation to say that the appeal to the Exchequer Court granted under the old law is now being taken away? If I am right in so reading it, may we have an explanation why that right of appeal to the Exchequer Court is being taken away? At the moment there is an appeal to the Exchequer Court. I do not seem to see it in the proposed amendment.

**The Chairman:** On page 4 at the top of the page.

**Hon. Mr. Basford:** I will ask the Commissioner to deal with that. It is his decisions that will be appealed from.

**Mr. Laidlaw:** There is really no change whatsoever with respect to the ordinary compulsory licence that will be granted. Any compulsory licence that I may award as Commissioner is appealable; it is my decision that is appealable to the Exchequer Court. There is one exception only with respect to this, and that is dealing with the interim licence provisions. Apparently those who drafted the bill felt that the Commissioner might be slightly slack in his operation and not deal properly with the applications as they were received. Therefore, this interim licence procedure was evolved. In an interim licence provision, which is only good for six months, renewable only for another six months, the decision of the Commissioner in that respect is not appealable to the Exchequer Court.

**Senator Phillips (Rigaud):** Therefore there is a slight variation.

**Mr. Laidlaw:** A very slight variation.

**The Chairman:** The variation is that there is no appeal from the interim licence. Otherwise it remains as it is in subsection (4) of section 41 of the original act.

**Senator Phillips (Rigaud):** May I put a further question? I was not sure whether I had the answer. Can there be a series of interim licences carried on *ad infinitum*?

**Mr. Laidlaw:** No, sir, there can be only one renewal of an interim licence.

**Senator Molson:** Is there any implication present in this legislation affecting patents of all sorts of other items? Is this creating a precedent that may have far-reaching future effects?

**Hon. Mr. Basford:** I do not think so. I say that because section 41 and the concept of compulsory licences for food and drug processes has been in the Patent Act since 1923. In my view, all we are doing here as a result of the recommendations of the three inquiries I mentioned, is to make the compulsory licensing provisions more effective; that is, make them more easily obtainable. There is no difference in principle from the principles that have been in the Patent Act since 1923. I therefore think it is quite wrong to say, as some have said—and I do not deny they have said it—that we are breaching the walls of patent protection around the world. I think that is a gross exaggeration of what this bill purports to do. All it is doing is simplifying and improving provisions and principles that have been in the law since 1923.

**The Chairman:** Mr. Minister, if a new drug is being developed, quite apart from an application for patent, qualification under the food and drug regulations would have to be sought by the procedures in the regulations, really the registration of this drug as a new drug, whatever the procedures may be. In that connection I understand the person applying must satisfy the Food and Drug Directorate of the efficacy of the drug and, shall we say, the stability of the drug, and that it will do the things urged on its behalf. If I proceeded under those regulations and therefore secured recognition of the drug, is the information about its composition and all those features of it a matter that is public or is it confidential?

**Hon. Mr. Basford:** I will ask Dr. Chapman to answer part of this question, because I think it raises very important differences that we have all been trying to make clear; that there are two processes in getting a drug on the market. One is the patent process, which comes within my department and is dealt with by the Commissioner, by which a patent for a process is applied for and granted. And then there are the procedures under the Food and Drugs Act which are different procedures and relate to how to get the drug on the market legally and make it saleable.

The application for the patent does, of course, become public property in the patent office. Any person is entitled to go in and pay a search fee and search out that patent application.

With regard to the procedures under the Food and Drugs Act, because I try to keep these two distinctions separate, I would ask Dr. Chapman if he would explain to you his procedures and what he is looking for in the enforcement of those regulations.

**Dr. R. A. Chapman, Director General, Food and Drug Directorate:** Mr. Chairman, honourable senators, the intent of the section in the regulations under the Food and Drugs Act which defines a new drug, and the intent of the specific section applicable here, is as follows:

> A drug which contains or consists of substances not sold as a drug in Canada for sufficient time and in sufficient quantity to establish in Canada the safety and effectiveness of that substance for use as a drug...

We have found through experience that a minimum of five years is required before a company can establish the requirements under that section. This means that a second company that wishes to put that same drug on the market must meet all requirements of the Food and Drugs Act regulation pertaining to a new drug.

**Senator Walker:** That part referring to five years is not in the act.

**Dr. Chapman:** No, sir. There is nothing in the act about that.

**Senator Kinley:** It is mentioned in the speeches that we have to have five years, however.

**Dr. Chapman:** But there is nothing in the Food and Drugs Act or regulations that says that a new drug shall be in the new drug status for a minimum of five years. There is no period of time mentioned.

**Senator Kinley:** But your experience is that that is right, that five years?

**The Chairman:** The experience is that it takes five years.

**Dr. Chapman:** Yes, it takes a minimum of five years.

**Senator Walker:** The Minister told us just a moment ago that, if and when the further recommendations come down he feels it is necessary to make further regulations to ensure this, he will do so.

**The Chairman:** Dr. Chapman, pursuing the idea I had in mind when I asked these questions originally, without applying for a patent I could go to your Food and Drug Directorate and seek to qualify a new drug for sale and I would have to pass through the machinery that is provided in your food and drug regulation under the Food and Drugs Act. My question then was at what stage, if at all, is there any disclosure to the public of the formulation of this new drug? Forget any question of a patent application.

**Dr. Chapman:** After the issuance of a notice of compliance the drug can then be placed on the market. At that stage it must carry on its label a quantitative list of the medicinal ingredients.

**Senator Sullivan:** Who is going to do that?

**Dr. Chapman:** The manufacturer must do that before he markets the drug.

**The Chairman:** The label must be approved by you as part of the procedure.

**Dr. Chapman:** That is correct.

**The Chairman:** Would the disclosure, as you read it, the quantitative analysis, would that be sufficient to enable some person knowledgeable in the business to formulate the drug himself?

**Dr. Chapman:** Well, I am sure that this would be sufficient for someone knowledgeable in the business to formulate a similar product. It would certainly not be an identical product on the basis of the information that would be supplied on the label.

**The Chairman:** So the patent end of the business is desirable, if you want to protect the invention.

**Dr. Chapman:** Well, certainly, this is necessary.

**The Chairman:** It is not necessary, no, but it is desirable.

**Hon. Mr. Basford:** Dr. Chapman in his work is not concerned with whether the compound is patented or not, Mr. Chairman, but the inventor, of course, would be and would have a right to apply for a patent. And he could apply for that patent long before coming to see Dr. Chapman.

**Dr. Chapman:** If he wishes to sell the product.

**The Chairman:** I cannot imagine any person, just for the academic interest or the intellectual satisfaction that he gets from doing so, analysing, working out something and applying for a patent but giving no concern to the marketability or the privilege of being able to market the product. He would have to go to you before he would be able to sell it. He would have to get clearance from you. So the two really fit together and...

**Dr. Chapman:** That is correct.

**The Chairman:** ... one acts as a check rein on the other. I mean, the patent is of no use unless the drug is cleared with you.

**Dr. Chapman:** That is correct, yes.

**Senator Leonard:** Will he already have received his patent before he comes to you or is the patent still pending?

**Dr. Chapman:** The two procedures, Mr. Chairman, are entirely separate. So it is up to the manufacturer to decide which way he wishes to go.

**Hon. Mr. Basford:** I think, in the overwhelming bulk of the cases, it would have long since been patented.

**The Chairman:** That would certainly be the option of the applicant.

**Hon. Mr. Basford:** That is right. The manufacturer's or inventor's first interest would be to get the patent done. Then he would concern himself with getting it cleared by the Food and Drug Directorate. That is what I would want to do, anyway.

**Senator Walker:** That is why that five years is so important a consideration.

**The Chairman:** That is why the regulations under the Food and Drugs Act and the requirement that you clear with them on these points, which takes considerable time to do, seemed to me a sort of check rein even on the person who holds the patent. He cannot go into the market with it at that stage, and even under these amendments, if a compulsory licence were granted under a patent and

the drug itself were a new drug and had not been qualified under your procedures in the Food and Drug Directorate, they could not market it. Therefore, a compulsory licence would be nothing more than a gesture at that stage.

**Dr. Chapman:** That is correct.

**Senator Phillips (Rigaud):** Mr. Chairman, I would like to put a question purely for purposes of construction. In connection with the broad approach of granting an inventor proper compensation, having regard to the desirability of the licensee putting on the market a product at as low a price as possible, my question is the following: let us assume that the licensee is abusing the privileges granted to him and is not submitting the article to the public at a fair and equitable price. Is there any provision in the old statute or in the proposed amendments to the effect that either (a) the licence could be revoked or (b) that the compensation to the inventor could be increased?

**Hon. Mr. Basford:** No.

**Senator Phillips (Rigaud):** Are we not then facing a situation where in effect we are invading the property rights of the inventor on a fixed basis and we are transferring such rights to the licencee on a flexible basis.

**Hon. Mr. Basford:** No, I don't think so.

**Senator Phillips (Rigaud):** Having received the answer for which I thank the Minister, I simply would like to make the observation that perhaps it would be desirable to consider a more equitable approach to the problem. Would you agree?

**Hon. Mr. Basford:** No, because the property holder of the patent is, pursuant to the granting of the compulsory licence by the Commissioner, paid a royalty by the copier, and that is the payment for his property in the invention. Now as was explained earlier, there is a good deal of discussion as to what the royalty should be based on and what factors should be taken into account in determining the royalty. Nevertheless, he is going to get a royalty from the person who has obtained the compulsory licence. Now, senator, you proceeded to cite the hypothetical case of the holder of the compulsory licence charging a very, very high price for this. Well, I would think that we would allow market forces to operate and I don't think that someone holding a compulsory licence is going to be able, as a result of market forces, to charge more than the original inventor.

**Senator Phillips (Rigaud):** May I then be permitted to observe that you have included in the statute a guideline for the royalties because you say "the Commissioner shall have regard to the desirability of making the food available to the public at the lowest possible price...". So there you have a licencee who is expected to comply with the intentions of the Commissioner to provide for the lowest possible price but nothing dealing with compensation to the inventor. Now I can understand the broad principle involved in objections to price-fixing and things like that. But once you incorporate this principle in a statute that the compensation to the inventor should be related to the lowest possible price to the public there should be some relationship between that and compensation to the inventor.

**The Chairman:** I would expect that the royalty, if it is fixed on a basis of getting the article to the public at the lowest possible price consistent with safety, would have to be prescribed on some scale basis. If the price goes up the royalty would go up if it were on a percentage basis.

**Senator Phillips (Rigaud):** But as I understand the answer there is no relationship between the price fixed by the Commissioner by way of compensation to the inventor and the current pricing of the product to the public.

**Hon. Mr. Basford:** Well, I can ask the Commissioner to deal with this.

**Senator Phillips (Rigaud):** I am putting the question not by way of criticism but simply for the purpose of being instructed.

**Hon. Mr. Basford:** Well, I will ask the Commissioner to add to what I want to say here and that is that the whole purpose of this bill is to allow greater competitive forces to operate, and so these forces will be operating against the holder of the compulsory licence. This is the whole principle behind this bill, that by opening this up and by allowing competitive forces to operate better, we will achieve the object of the bill which is to get medicines to the public at the lowest possible price. However, I will ask the Commissioner to add to that and to explain his decision because he exercises it as a quasi-judicial official.

**Mr. Laidlaw:** To add to what the Minister has said, senator, the only problem the Commissioner has when he grants a licence is to fix the royalty based on the guide-lines now written into the section, namely lowest possible price versus research relating to the invention. This of course involves a very arbitrary decision. The terms of the licence would not include for example saying "you must sell this drug at this price." The royalty would be fixed and then it is up to the applicant on the open market to charge what he wishes to charge. But the object and purpose of this legislation is to open up the field to quite a number of applicants so that they between themselves will be fighting to keep the price down. But in the meantime the patentee is in every instance at least protected.

**Senator Phillips (Rigaud):** I would like to quote one instance where I would like to see greater powers given to the Minister rather than lesser power. I think if there was a power to increase the royalty if the Commissioner was not satisfied that the licencee was making it available at a suitable price, this would be the best way to arrive at a suitable price.

**Hon. Mr. Basford:** We willingly accept the power, senator, but we are having enough trouble with this as it is.

**Senator Leonard:** Is there a power to issue more than one compulsory licence in connection with any one patent?

**Mr. Laidlaw:** Depending on the number of applications that come before me relating to one particular drug, if I am satisfied, I can issue a dozen licences.

**Senator Leonard:** So then you have competition and the play of the market.

**The Chairman:** But as against that you would have to look at the size and the capability of the people applying. You would not want to develop trade in licences.

**Mr. Laidlaw:** If somebody can convince me that there is a good reason for not granting a licence, then a licence will not be granted.

**The Chairman:** Following the granting of a licence and completion of whatever appeal procedures are involved, you are then through with it except in your capacity as Commissioner of Patents where there is any attack on the patent for reasons other than the reasons for which you granted it.

**Mr. Laidlaw:** That is right.

**The Chairman:** Mr. Minister, is there any proposal to police—and I use that word for want of a better one—the operations of the people who obtain compulsory licences to manufacture?

**Hon. Mr. Basford:** Well, the policing provided for by the Food and Drug Directorate, yes, but not by us.

**The Chairman:** But at what stage would this be? I am assuming that the drug is cleared with the Food and Drug Directorate and can be marketed. Now in those circumstances once a person has a compulsory licence, how do you do any policing, and if you do, what authority do you have, if any? If you find he isn't carrying out the intent behind the legislation and you are not getting the results you intended, namely lower prices, what can you do?

**Hon. Mr. Basford:** The policing as to marketability is carried on by the Food and Drug Directorate and Dr. Chapman may want to add to what I say on this matter. But so far as pricing is concerned, we intend, in conjunction with the Food and Drug Directorate and through the publication of the information bulletin which I mentioned a little while ago, to keep and maintain a constant surveillance over prices, and what is happening in the market. We will be exercising that sort of—I do not like using the word "policing"—but we will be exercising that sort of surveillance. As to whether, in fact, the holder of a compulsory licence is manufacturing or not, we have no authority under the legislation to go in and order him, if he has a licence, to manufacture.

**The Chairman:** Nor have you any authority to rescind his compulsory licence.

**Hon. Mr. Basford:** No.

**Senator Walker:** To hear the Commissioner talk, it sounds like issuing taxi licences—he can issue a dozen if he wants to. This legislation is so far-reaching in this whole industry, what check have you, other than your own good judgment, Mr. Commissioner, as to as to the number of licences, keeping in mind what the Chairman has just said, that once having issued it you have no power to rescind it?

**Mr. Laidlaw:** The legislation, in effect, really authorizes the Commissioner to grant licences as of right. There are only two features which come in to prevent these so-

called licences of right. The first is that there must be good reason to the contrary shown in order to allow the Commissioner to dismiss an application. This probably will be initially, at least, in the hands of the patentee. The patentee, in his counter-statement, will undoubtedly, and possibly at a hearing later, put forward every single reason to the contrary that he can think of, and it will be my determination as to whether the patentee is able to convince me that the licence should not be granted. The second feature is the royalty assessment which, as I mentioned earlier, is a straight, arbitrary judgment. It is not likely to be interfered with by the Exchequer Court in that sense, provided I have acted according to the normal principles of administering the law. But you are quite right, Senator Walker, in effect these are licences of right; and, following what Senator Leonard said, the more licences that are issued involving one single patent or drug, the more competition is going to be introduced into the market place, and the licensees will actually be quarreling among themselves to produce it at the lowest price.

**The Chairman:** I would like to ask Dr. Chapman a question.

Dr. Chapman, let us assume you have approved of a new drug for sale. Thereafter, what steps do you take, what supervision do you exercise over the quality of the product that, for instance, the compulsory licensee may be making and selling, and whether he is adhering to the formula? Is this a constant supervision? How is it dealt with?

**Dr. Chapman:** Mr. Chairman, any drug on the market, including a new drug for which a notice of compliance has been issued, must meet all the requirements of the Food and Drugs Act and regulations. These include the requirement relating to the manufacuring facilities and controls, labelling requirements —it must, of course, meet the labelled potency, and it cannot be misleading in any respect in regard to its merit or safety.

**The Chairman:** This is starting out, but what day-to-day or regular, systematic supervision do you have?

**Dr. Chapman:** We carry out a regular surveillance of not only the manufacturing plants but also a regular surveillance of the drug products on the market, and this is a continuing program.



**The Chairman:** Are there any other questions?

We have been concentrating on the question of the patent rights. We have not been dealing at all, Mr. Minister, with the compulsory licences to import, as against an existing patent in Canada, to import a product made abroad. Nor have we dealt with the question of importing into Canada a product made abroad bearing the same brand name as a product produced and sold in Canada. Do you have any comment to make on that, by way of what I might call an opening statement?

**Hon. Mr. Basford:** No, Mr. Chairman, I mentioned these features in my opening statement.

**The Chairman:** Then I have a question or two, if I may.

The proposal in the legislation, so far as it deals with a trade mark, is that there will be an immunity granted in certain circumstances against any action for infringement against a person who imports into Canada a product bearing a brand name in respect of which there is a Canadian who has the trade mark right. This can only be done, I take it, by some person who obtains a compulsory licence to do so—is that right—or a licence? Which?

**Hon. Mr. Basford:** Under section 3 of the act, Mr. Chairman, dealing with amendments to the Trade Marks Act. I might make it a little clearer if I use a fictitious name, but if you have an American company which holds a registered trade mark on a drug in dosage form in the United States, and its subsidiary in Canada holds the same trade mark and carries the same drug in Canada, the amendment to the Trade Marks Act would allow someone to import from the United States, from the parent company, the trade marked product and sell it in Canada without being in breach of the Trade Marks Act.

There is a provision in subsection (2), a safety measure by which, if the trade marks are confusing, the Minister of National Health and Welfare may, by notice in the Canada Gazette, ban its sale. This section would only come into play if the subsidiary operating in Canada were charging a very inflated and protected price for the trade mark dosage form. This would then make it economic for someone to go to the United States, or some other country, and buy the trade mark dosage form and bring it into Canada.

I think this section is hardly likely to be used, because I think the reaction of the subsidiary in Canada would be to reduce its price to make it uneconomic for someone to go abroad seeking the dosage form.

**The Chairman:** This is not a blanket right to import a brand name product under the brand name of the product in Canada to anybody who may want to do so; it is only where the relationship exists of what you describe in the statute as a related company? Is that right?

**Hon. Mr. Basford:** Yes.

**The Chairman:** So there is some limitation.

What check, if any, is made on the adequacy of the article that is being brought in from outside, as to its potency, its safety, and all these things?

**Hon. Mr. Basford:** The Food and Drug Directorate has already obtained some regulations, last spring, dealing with this situation, and so I would ask Dr. Chapman to deal with this again, because it comes within this area.

**Dr. Chapman:** We have requirements, as the minister has indicated, that a person wishing to import a drug into Canada must have information and evidence satisfactory to the directorate, available in Canada, to the effect that the conditions—that is the manufacturing facilities and controls—under which the drug was produced in the country of origin meet the requirements of the Canadian regulations. Furthermore, the person wishing to import the drug must etiher have the drug analyzed in Canada to determine its potency and to indicate that it is satisfactory in that respect, or he must have information available that is satisfactory to the directorate to indicate that it has been adequately tested in the country of origin. I believe these requirements are adequate to monitor the quality of drugs coming into Canada.

**The Chairman:** I have one question I should like to ask on this subject, Mr. Minister. You use the expression "related company" in section 3 in your new subsection (1) of section 49A, but where do we look for any definition of "related company"? Are we just thrown back on the general state of the law?

**Hon. Mr. Basford:** It is defined in paragraph (r) of section 2 of the Trade Marks Act:

> "related companies" means companies that are members of a group of two or more companies one of which, directly or indirectly, owns or controls a majority of the issued voting stock of the others.

**The Chairman:** Yes, that is correct. Are there any other questions on this aspect, on trade marks?

**Senator Carter:** I have one that is related to the previous question. How do you define a new drug? Is every variation in a formula counted as a new drug? When does a modification of a drug already existing become a new drug?

**Hon. Mr. Basford:** I will ask Dr. Chapman to answer that.

**Dr. Chapman:** There are actually three sections to the definition of a new drug in the regulations under the Food and Drug Act. The first is a drug that has been sold for sufficient time and in sufficient quantity in Canada to establish its safety and effecveness. The second is where it is a new combination of drugs which may have been sold on the Canadian market, but the combination has not been sold for sufficient time and in sufficient quantity. The third concerns a drug that has been on the market but is now being recommended for a new use, or there are new claims being made for that drug. Any of these three conditions may throw a particular drug into new drug status.

**Senator Willis:** Are there any inspectors who go round from time to time visiting manufacturing plants?

**Dr. Chapman:** Yes, we have inspectors.

**Senator Willis:** What are their qualifications? Are they pharmacists or medical doctors?

**Dr. Chapman:** No, sir. They are all university graduates.

**Senator Willis:** I did not ask that. I asked were they pharmacists?

**Dr. Chapman:** A number are pharmacists.

**Senator Willis:** Have you anybody who is a medical doctor?

**Dr. Chapman:** No, sir, not as inspectors.

**Senator Willis:** Are you a medical doctor?

**Dr. Chapman:** No, sir. I have a Ph.D. in chemistry.

**The Chairman:** Are there any other questions on this aspect?

**Hon. Mr. Basford:** May I just supplement what Dr. Chapman has just said? There was evidence before the house committee relating to the staff of the Food and Drug Directorate, and Dr. Chapman put on the record the people he has employed in the directorate, all of whom are qualified.

**Senator Kinley:** This bill had a rather restricted discussion on second reading, with good reason. It is a rather technical bill and the average man would not know enough about it. I have some knowledge and some experience of the drug business in this country, although I am not connected with it now and have not been for some years. I supported the bill because I believe in the principles of it, and I did not want to get into trouble over details. However, I have since been looking over it and have read the speech of the minister on October 17, 1968, a very able speech and full of knowledge. In it he quoted from the Harley Report and said they were giving nine countries of the world where drugs were sold and were invented, as it were, and that showed that Canada was above the average in cost of the drugs. I immediately thought of insulin, which was a great achievement of a Canadian, Dr. Banting; it was of world-wide benefit. I was surprised to see to that that drug was included. It is drug; it is a pharmaceutical. Why was it not included in this record for the purpose of showing the public how much drugs could cost?

I suppose I will be told that insulin is not a prescription drug. I cannot conceive of anybody using it unless it was prescribed, although I think they can buy it afterwards ad lib. I am told insulin is cheaper in Canada than in any other country in the world. I am also told that in Nova Scotia the government supplies insulin and gives the druggist 15 per cent profit. People with low income, of $2,800 a year, get insulin on the government. I can tell you, it is a big business, just that alone. The American tourists have been buying so much insulin that the American customs authorities are turning them down when they say it is a medicine; they were taking so much of it home with them. That is one thing that is not here, and I think it is unfair.

What about penicillin? Penicillin is not in here. It is one of the most widely used drugs in the country, indeed in the world. I was interested in the doctors' description of this. I know there was a breakthrough in England on penicillin that was considered to be of world-wide importance. I have been corresponding with the department for two years on this subject, and although I got fairly good answers I got nothing conclusive. However, that is by the way.

The point is that this report shows what drugs cost in Canada, yet it omits the two most important drugs, and those having the largest sales. I do not think it is fair. I do not know who is responsible for the Harley Report, but I think they are withholding information from the people of Canada. We are told that 85 per cent of the drugs represented and used are imported drugs.

Somebody questioned whether the high price of labour in Canada would affect the price of drugs. This report says no. I suppose that is so because 85 per cent are imported and also because, I suppose, the income tax has an interest in research and tends to benefit the manufacturers of drugs. I have always envied those manufacturers in research because they were fairly well treated. However, I don't think their investments in research are all that much because the country is very generous in that regard.

Now it has been said that there was 10 per cent profit in manufacturing but 20 per cent profit in the drug business. I don't know about the drug business so much, because it was only the retail stores that I was interested in, but I would not mind being a manufacturer, if I could get 20 per cent net profit. In fact, if I got 5 per cent I would feel good.

No, it seems to me that that is an expression that should go out, because there is no manufacturer, unless he is a special case, who can make that much.

Now, we talk about the men who do the research. Well, they make money out of this thing, and it is right that they should be paid for merit. I have always admired the man who waves his flag, and by that I mean the fellow with the patent or trademark, because the trademark shows he has faith in what he is doing and wants to show to the company what kind of a business he has. That is all to the good.

Just as an example, Bayer is supposed to be the biggest seller of drugs in the western world. I don't know whether Bayer still has a patent. I know they were before the Exchequer Court once or twice. I believe they still have a trademark. But the point is that any manufacturer can combine acetylsalicylic acid

to make the preparation that is sold as Aspirin, so long as they do not use the trademark name. It is the same drug. And by doing that you can improve on the price by at least three times. Nevertheless, Bayer Aspirin is still demanded by the public, because the public wants a product that is backed by a trademark.

And yet I can foresee this business of patenting drugs getting us into some difficulty because of the fact that patent law is complicated and is part of what you might call special law that only very eminent lawyers in this country make a specialty of, and perhaps that in itself contributes to costs.

In any event, it seems to me a little below the belt to interfere with private or free enterprise to the extent contemplated in this bill. After all, a prize fighter may earn $100,000; a golf player may get that much; the man who can play a professional sport can earn that much; and nobody will question any of these people. And then there are the "dealers" who should properly be called agents. I refer to liquor dealers and automobile dealers and so on. You talk about the 10 per cent or 5 per cent, but in the automobile industry it is 17 per cent. And I know that in our business in Newfoundland we pay 30 per cent for distributors. Nobody will sell or develop anything for 5 per cent anymore.

Now, I don't know what these men in the drug business are making. I know that some of these companies are reliable and some are American-controlled. I find in this list here that the best country is England so far as low prices are concerned. It is perhaps the lowest country in the world. France is another country with low prices and so is Italy. So while you talk of lower prices, perhaps all you need to do is free the road from England, France and Italy and you will give drugs to the people in Canada at reasonable prices, providing too much is not spent in this country on brokers.

Now, it seems to me that while we want drugs as cheaply as we can get them, we must realize that the drug business has the same privileges as other businesses in this country. You talk about manufacturers working on a 10 per cent basis. There is nothing in that now. That was the margin of profit before. Dr. Chapman said that we want to have active control of these drugs, and he referred to a man in England distributing in this country. I have distributed some of these things. So I know what I am talking about. He gets a distributor—we won't call him an agent—and he pays him a certain amount that is established. Everybody in the world gets that, and if you want to go behind that you are going to destroy the freedom between the inventor and the distributor and, if you do that, you may stop the supply because a good company won't go back on its distributor unless he is a poor subject or unless he does not do a good job or if he is charging more than the price that the man demands—and some of them do. I know we shipped to foreign countries and they raised the price over our catalogue price. I know they raised the price on many things, but you can't go behind distributors' backs and try to buy from a manufacturer who is doing an honest business, and, if he is an inventor he is entitled to merit.

I remember when I first came to Parliament, there was a case for printing machinery. The company was stopped from producing that machinery during the war and then their patent ran out. The chairman of the company came to Parliament for an extension of that privilege and got it because everybody thought it was only fair that a company that was denied the privilege of selling something during the war should have their privilege extended. Now, while patent rights can be abused, we should not make one industry pay the price because a power resolution of Government is a little bit out of the way. It should not stop it.

I don't like it. I may be wrong. I am in favour of the legislation, but I do think that we should buy through international things that are for the benefit of the health, and I do think that we should have certain things of business that the Government even should do it, if they have the power, because after all that is only fair.

I would think that we should have certain ethics in business that the government should keep in mind. After all we have in this country a system of free enterprise where people get paid on merit. Admittedly some people do make a lot of money but the government takes most of it away from them. I do not like this in relation to the trade mark. I do not mind so much about the patent, but a man who flies his flag can be trusted.

**Hon. Mr. Basford:** Mr. Chairman, may I just make a few remarks. With regard to the table that the honourable senator cited from my speech of October 17th which the Opposition and some of the industry had some fun

with, may I explain that that table was simply an updated version of the schedule or Appendix F on page 80 of the Harley Report which was a table of comparative drug prices prepared by that committee, and which I had nothing to do with insofar as the selecting of the drugs was concerned. As I understand it they were selected on two bases, namely that they were the highest selling of all drugs in Canada and that comparative dosage forms were available for these various countries where comparisons were being made. This Appendix F formed part of the evidence before the Harley Committee which brought the committee to the conclusion that prescription drug prices in Canada were higher than need be, and I think those were the words used. So that both my predecessor, when he introduced the bill in the previous parliament, and myself, when I introduced the bill, felt we should use the same table and have it brought up to date to show current conditions. Now it showed in October the same conditions generally which prevailed at the time that the Harley Report was prepared, namely that prescription drug prices in Canada were unduly high. I did not prepare the table or select the drugs. Now why insulin was not in there or penicillin I cannot say. I might add that the patent on insulin had run out and, of course, there never was an original patent on penicillin because it was developed by a university and they did not patent it.

**Senator Kinley:** I did not say it was.

**Hon. Mr. Basford:** No. That is why the table was used in the speech you referred to, and as I say, it was simply an updated version of the Appendix F to the Harley Committee report which used the same drugs and the same dosage forms in the same countries and obtained from the same sources. Now the honourable senator pointed to England as being the lowest and said "free the road" and that is really the purpose of this legislation. We want to bring into play the forces of international free enterprise so far as the drug industry in Canada is concerned and to allow competitive forces to operate. I do not see this as an interference with free enterprise and if I may quote the Supreme Court of Canada, I have here a report in which the Court said:

> In my view the purpose of s. 41(3) is clear. Shortly stated it is this. No absolute monopoly can be obtained in a process for the production of food or medicine. On the contrary Parliament intended that, in the public interest, there should be competition in the production and marketing of such products produced by a patented process, in order that as the section states, they may be 'available to the public at the lowest possible price consistent with giving to the inventor due reward for the research leading to the invention'.

That was the purpose of parliament in 1923 as confirmed by the Supreme Court of Canada, and the sole purpose of this legislation is to improve that process.

**Senator Kinley:** Mr. Chairman, this report I have here refers to the most used drugs in Canada.

**Mr. Chairman:** You have made your point, senator.

**Senator Sullivan:** I have a question concerning the bottom of that table where there is an asterisk which refers to prices of quantities other than 100. Can you enlarge on that for me, please?

**Mr. R. M. Davidson, Director, Merger and Monopoly Division, Combines and investigation Branch, Department of Consumer and Corporate Affairs:** Senator, the price given where an asterisk is shown is the price for quantities of 50 or 25.

**Senator Sullivan:** That was not stated, but the dosages of the various drugs are stated.

**Mr. Davidson:** But the calculation is made in such a way that if the price for 25 were $1 in the table, then the price for 100 is shown as $4.

**Senator Kinley:** But that is in fine print in this. It says here "the table referred to above is as follows" and then it shows the comparative prices to the retailer of some of the most commonly used drugs in different countries.

**The Chairman:** Yes.

**Senator Kinley:** And some of the drugs that are not commonly used now have gone up in price because of the lower trade. Some of the pills mentioned here are not used so much now. They have got the contraceptive pill in here and they have chloromycetin. But the contraceptive drug is one of the most discussed drugs in this country at the present time. It is the most expensive drug in Canada.

**Hon. Mr. Basford:** Well, Senator Kinley, it is a great credit to you that you are so concerned about birth-control pills. As I have said, this list was selected by the committee and I am not in a position to speak for that committee. It is the committee's view that these were widely prescribed drugs and they selected them to give a comparative picture of international conditions.

**Senator Kinley:** But I am interested in this question because of the report that has come to us recently. I have forgotten the name of it, but it is the one that recommends that the government take care of social services to the public. Now the prices of these drugs are going to be very high. Now we are to have this system in Canada where the government is going to pay and the provinces will have to pay. They want several things that are not in the hospitals, and this is going to cost a lot of money. These things are important, and they are particularly important to us if they are going to cost us a lot of money.

**The Chairman:** Honourable senators, the minister has made his statement. We have questioned him on the various parts of the bill, and I think I have already announced that at that stage we would defer section-by-section consideration and hear the doctors who are here for the purpose of presenting their views. If it is in order, shall we proceed on that basis?

**Senator Sullivan:** Mr. Chairman, I am sorry that the Minister cannot stay. We have three distinguished colleagues from the University of British Columbia who want to give evidence here today: Professor Darrach, Professor Pernarowski and Professor Ford. I am sure that the Minister is interested in the University of British Columbia, he just having appointed Dean Young as Chairman of the Prices and Incomes Commission.

**Hon. Mr. Basford:** I am going to stay as long as I can, Mr. Chairman.

**The Chairman:** Senator Sullivan, I have a list of the witnesses and a suggested order. Would you support this order? I was proposing to call Dr. Ferguson first. Whom would you suggest?

**Senator Sullivan:** Dr. Ferguson.

**The Chairman:** Gentlemen, this is Dr. Kenneth Ferguson, who is the Director of the Connaught Medical Research Laboratories, the University of Toronto. He is a former Professor of Pharmacology and Head of the department of the University of Toronto, a Fellow of the Royal Society of Canada, and a former Research Fellow in Physiology at Cambridge University, England. I know Dr. Ferguson personally, and I need hardly say that he is one of the outstanding and leading medical scientific research men in Canada.

**Dr. J. K. W. Ferguson, Director of The Connaught Medical Research Laboratories:** Mr. Chairman, honourable senators, may I start by raising a question which you may, if you see fit, ask Dr. Chapman? I was very interested in the discussion about the five-year period of protection as a new drug, and I was not sure whether Dr. Chapman meant this five years was from the start of the application to have a new drug permitted for sale, or whether it was five years after the sale was permitted in Canada—and by "sale" I mean sale on the market on a general basis.

**The Chairman:** Dr. Chapman is still here, and we will clarify that right away.

**Dr. Chapman:** Since the regulation reads "sold for a sufficient time in Canada" it actually starts from the point at which the drug is marketed in Canada.

**The Chairman:** And if there is clinical research of five years or more before you licence or qualify the drug for marketing, is that looked at?

**Dr. Chapman:** No, sir. That is the accumulation of information and data which is required in order that a notice of compliance may be issued.

**The Chairman:** I note what you say, Dr. Chapman, but I am not sure I go along with that interpretation. However, that does not matter for our purposes here.

**Dr. Ferguson:** I think I understand correctly that Dr. Chapman had in mind from the time the drug could be marketed broadly.

**The Chairman:** That is right.

**Dr. Ferguson:** There are, I think, two aspects of this bill which are of great public interest. The first is: What will the bill do to the price of drugs at the retail level? And the second is: What will it do to the quality of drugs sold in Canada? There are some other questions too, but these are probably the most important for the public interest.

As to the first one, I am quite ready to accept the statement of the Honourable Mr. Basford which he gave us, that the prices which will be affected by this legislation refer only to a small proportion of the drugs on the market, namely, a certain number of prescription drugs which are protected by patents. I believe, if I read the press correctly, that he has also warned us not to expect too much. I am quite prepared to take this as a statement of qualified opinion. In fact, I think it is an understatement. Personally, I do not really expect it will have very much effect at all on the price of even this limited group of drugs, for the reason the Minister gave, that you have to persuade the doctors that the cheaper competitor is really as good. I really do not think the new drug bulletin which the Government is going to produce—and we do not know yet exactly what is going to be in it—is going to persuade the doctors really these drugs are as good as those they have been used to, because doctors form their opinions in their own particular way: firstly, by their own personal experience; secondly, by exchange of opinion with other doctors in the hospitals; thirdly, by going to medical meetings; and, fourthly, by what they read, whether in the medical journals or a Government bulletin. So, I foresee really little effect on the price of drugs, but I do expect a substantial increase in the price of government, because Dr. Chapman is going to have to spend quite a lot of money to do the much larger job this bill will give him to do. I think that he will do his best to do it, but I think that he is optimistic in thinking that he can do it as perfectly as he seems to think. It is going to cost the taxpayer money, and, as a taxpayer, I do not like increases in Government expenditure for a benefit which is very uncertain.

On the subject of what this legislation is going to do to the quality of the products in Canada, I am prepared to say very little because there are other experts here who have a lot of personal experience with this problem of the quality of drugs.

In answer to a question, Dr. Chapman said, "Oh yes, we can test all these drugs and say whether they are all right." When you are dealing with an industry which is as varied as the drug industry in size, in competence and integrity—and there are many hundreds of distributors and importers who have very little scientific knowledge and sometimes perhaps not too much integrity—I know they can fool Dr. Chapman from my own personal experience because we have done some importing too and we know that the samples sent to Dr. Chapman passed with flying colours, but the hundred leaders that came to us we would not sell because we were able to test them; but the importer who received it was not able to do that. That is one instance.

**The Chairman:** Do you mean there was a difference in the quality as between the samples sent for Government clearance and the commercial quantities delivered to you?

**Dr. Ferguson:** Absolutely. There is another example concerning the Government of Ontario—with which I have had something to do—and they found that, in order to be sure that a sample which as submitted for testing was the same as the product that was going to be delivered, they had to say, "Deliver the whole lot to us. We can put it in a warehouse and test it, and if the whole lot does not meet our specifications, back it goes to you." I do not think Dr. Chapman can do that for the country as a whole.

**Senator Walker:** That is fraud of the worst kind. Is that widespread?

**Dr. Ferguson:** It is fraud by a small proportion of very active importers.

**The Chairman:** It is fraud in a very dangerous field.

**Dr. Ferguson:** Yes. It is a kind of fraud that is very difficult to control. Dr. Chapman is very efficient in controlling the parts of the industry which want to obey the law, but he has great difficulty exerting much pressure on the parts of the industry which cut corners or deliberately defy the law. I do not think I need to amplify on that a great deal. You have heard of the black market in LSD and in barbiturates, to say nothing of narcotics. It is just too hard to control these people who either deliberately defy the law or just try to cut corners.

**The Chairman:** That does not mean, of course, we should give up trying.

**Dr. Ferguson:** No, not a bit, but also there are all the other safeguards built into trade mark and patent legislation.

**Senator Macnaughton:** May I just interrupt to point out that the minister is sitting away at the back of the room, and I do not think it is right. We want to make sure that he hears.

Could the minister be invited to join you at the table, Mr. Chairman?

**The Chairman:** He was here and I thought he was going to stay. Mr. Minister, do you want to sit up here?

**Hon. Mr. Basford:** I am fine here. I can hear.

**Dr. Ferguson:** I said I would not say any more about the effects on the the quality of drugs that this legislation can have. I should perhaps say something about the trade mark aspect of this proposed legislation. The minister has said he really does not think it is going to be too effective. I hope he is right, because about the only way it can be effective is when it is really legalized misrepresentation. I cannot believe, as he said, that the owner and controller, the main company, the parent company, is going to allow a subsidiary to be undercut substantially by imports from the United States. I know the government department has asked the United States company to sell them something that has been sold at half price in the U.S.A. compared with Canada, and they merely say, "That is what we have a subsidiary in Canada for. Go buy from them." The only circumstance in which this legislation might work would be where the control of the major company is very slight; it may own a partial share of a trade mark by agreement, and it may be for sale by a subsidiary in Turkey which is not very tightly controlled, which might send in something about the trade mark before Dr. Chapman can catch up with them and find that it is not quite the same drug and put it off the market.

**The Chairman:** Or the definition of "related company" might be enlarged?

**Dr. Ferguson:** Yes, the definition of "related company" might have to be tightened up quite a bit, and the importer would have to prove what the financial relationships were and how stringent the control of the related company in Iran, or wherever it might be.

There are two other aspects of the legislation that I am sure will interest you. One might be called the political intelligence or political wisdom of it; the other is the political ethics. As far as political ethics are concerned, this is a case of expropriation. We all know there has to be expropriation when there is a definite public interest to be served. In my opinion the public interest that would be served by extending compulsory licensing to importation is very indefinite, but the interest to a less competent competitor is very definite. In other words, this is expropriation for an indefinitie public benefit—although we hope there might be one in terms of price it will be very small—but the real beneficiary is a less competent rival or business competitor. Now, is it right to expropriate private property for the benefit of less competent competitors, not to say less scrupulous? I think I would like to leave it at that.

**The Chairman:** Are there any questions?

**Senator Walker:** Would you just give us the other side, doctor, how the present situation that we have avoids the fraud about which you spoke?

**Dr. Ferguson:** The thing is that under the present situation, where the patent holder has an interest and a right to investigate and to prosecute, you have double protection. You have many people working in the interests of protecting the quality of the drug besides the Food and Drug Directorate.

**Senator Walker:** Including the industry itself?

**Dr. Ferguson:** The industry itself, or the holder of the patent.

**The Chairman:** Thank you, Dr. Ferguson. Who would you suggest should be next on the list?

**Senator Sullivan:** Dean Hughes.

**The Chairman:** Gentlemen, Dr. F. Norman Hughes is Dean of the Faculty of Pharmacy, the University of Toronto, and Chairman of the Deans of Pharmacy of Canada.

**Dr. F. Norman Hughes, Dean of the Faculty of Pharmacy, University of Toronto:** Mr. Chairman, honourable senators, first let me thank you for the privilege of being here today and saying a few words about this proposed legislation. I should emphasize at first that the views I express are personal ones; they do not necessarily always represent the views of the association mentioned by the chairman. They are views based upon 31 years in pharmaceutical education and some 40 years in pharmacy.

I think I should say at the very first that, like all of you, I support any reasonable measure to reduce the cost of any goods or services to the public, be it food, legal fees, medical fees, drugs or pharmaceutical services—and yes, Mr. Chairman, even taxes.

**Senator Phillips (Rigaud):** Might I suggest, Mr. Chairman, that if the witness wants a sympathetic audience he might eliminate legal fees!

**Dr. Hughes:** I rather thought so.

**Senator Walker:** But not taxes.

**Dr. Hughes:** Not taxes, no. However, I suggest, with Dr. Ferguson, that such measures should be viewed very carefully and evaluated very carefully on the basis of several criteria: first, their effectiveness to lower the cost to the consumer; secondly, the consequent government expenditure, which should not be so substantial as to wipe out any savings; thirdly, the damage to the Canadian economy and to the development of research programs in Canada; fourthly, the effect of any action on Canada's integrity in international relations.

In connection with the last-named criterion, I am not an authority by any means on patents or international agreements on patents, so I will only say respecting this aspect that it seems to me contrary to the basic principle involved in international agreeements on patents. If this is so, as a Canadian citizen I would fear for the effect on Canada's image abroad.

Similarly, I am not an economist, and I cannot therefore place a dollar value on the probable or possible damage to the Canadian economy resulting from the operation of Bill C-102 as it stands. As a layman, however, in this respect I find it very difficult to understand how it can but help to reduce the total manufacture of drugs in Canada, and without any doubt whatever—and I say this with all respect to what the minister has said—there must inevitably be a stultification of research in the Canadian pharmaceutical industry, research which has just started to expand, and in fact, I suggest, a stultification of any desire by industry to support research in the universities. It has been amply demonstrated that this is a natural consequence of removing drug protection.

The United States Department of Health, Education and Welfare has had a task force on prescription drugs studying all aspects of drug production and distribution. In a report on August 30, 1968, the following statement appears:

> Virtually all the important new drugs of recent years have come from countries providing patent protection. Few, if any, have come from Eastern European nations, which offer little or no patent protection.

I suggest that we do not wish to create a situation in Canada that will for ever prevent this country from taking a leading role in the development of new drugs or new anything else.

Mr. Chairman, as a pharmaceutical educator, this effect gives me genuine cause for concern. As President of the Association of Deans of Pharmacy of Canada, I was signatory to a letter addressed, on behalf of my colleagues, to the Minister of Consumer and Corporate Affairs and to the Minister of National Health and Welfare. This was sent in respect to both the former Bill C-190 and the current Bill C-102. It reads in part as follows:

> The Deans of the Canadian Schools of Pharmacy are greatly concerned at the effect which Bill C-190 will have on our graduate study and research programmes. Our faculties have developed these programmes in anticipation of a continuing expansion of research and development in the pharmaceutical industry in Canada. In the decade ending in 1965 there had been 84 students graduated with the master's degree and 9 with the PhD. degree. Since then the number of graduate students and the demand for them has been increasing. For example, in the Session of 1965-66 there were 74 master's candidates and 13 Ph.D. students enrolled in our faculties. With the curtailment of research and development in the industry and possibly even of the manufacturing of drugs in Canada which would inevitably follow the passing of this legislation in its present form a serious setback to Canadian graduate programmes in pharmacy must occur.

I repeat, Mr. Chairman, we are greatly concerned at the effect of this legislation on our graduate programs, hence on pharmacist research in the universities and the retention of well-educated, capable and ambitious young men in Canada.

The first criterion by which we would evaluate any measure to reduce costs to the consumer is effectiveness. As yet, I have seen no estimate by Government of the quantitative effect of this measure on prescription prices.

Like Dr. Ferguson, I agree implicity that this, as I see it, is bound to be very slight.

In all of the discussions—and at times they have ranged from hysteria to exaggeration—respecting drug prices, I have been struck by the almost complete absence of any apparent recognition of the fact that the supplying of prescription medication is more than the sale of a commodity. The pharmacist, who interprets, carefully assesses all aspects of the prescriber's order, and fills the prescription with appropriate comments and cautions to the patient, performs a professional service for which he is compensated by means of a fee embodied in the price paid by the patient. Most Canadian pharmacists now simply add the actual cost of the drug to the fee to arrive at the charge made to the patient. In 1967 the average prescription charge was approximately $3.58 in Canada. Approximately 56 per cent of this charge consisted of fee, and the balance was the cost of the medication. This would not be altered by any change in the cost of the medication.

Also, having regard to the variety of and kinds and costs of medication prescribed to the probably limited number of drugs where imported costs would be substantial, and also to the natural reluctance of physicians to prescribe cheap medication with which neither they nor their pharmacists have had experience, it would not be unreasonable to anticipate a rather small effect on prices paid by the patient. Having regard to all these factors and continuing inflationary pressure, one is inclined to suggest any savings would be very few cents on the average prescription.

Mr. Chairman, our final concern is with clause 5 of the bill which provides enabling legislation under which regulations may be passed as deemed necessary to protect against unsafe and inefficacious drugs. I also note two recent new sections of the regulations under the Food and Drugs Act C.01.055 and C.01.056 designed to do likewise. The Minister of National Health and Welfare has also pointed out in a letter to me that, and I quote:

> The Food and Drug Directorate has been provided with the necessary financial resources and staff to implement the recommendation of the Harley Committee...

namely that...

> ...the Food and Drug Directorate publish not less than once a month an informative bulletin to the medical profession giving complete details on drugs and their actions and reviewing major drug uses in Canada.

He also informed me that, and I quote:

> Eleven new positions were made available in April, 1968, for the specific purpose of improving the Food and Drug Directorate's ability to maintain adequate surveillance over imported drugs. Action has been taken to increase substantially the personnel and financial resources available to the Food and Drug Directorate in 1969-70.

This reads very well, Mr. Chairman, and I can assure you I have the utmost respect for Dr. Chapman and his excellent staff. However, I do seriously raise the following questions. The first one, which is the same as that raised by Dr. Ferguson, is, is it going to be possible for the Food and Drug Directorate really to assure the potency, let alone efficacy, of imported drugs? Second, is it going to be the responsibility of the Food and Drug Directorate to serve in any sense as quality control laboratory for foreign companies, or is the surveillance merely to be a review of documents? Third, what is to be the ultimate cost to the Canadian taxpayer of the greatly expanded function? It seems to me quite possible that this ultimate cost may well exceed any total dollar savings in drug costs to the consumer. Fourth, has any cognizance been taken of the inadequacy of physical and chemical tests alone to assure therapeutic potency and efficacy of drugs? I know this will be more fully dealt with by other witnesses today.

I submit, Mr. Chairman, that the committee should obtain satisfactory answers to all of these questions before approving this legislation.

May I just in closing, Mr. Chairman, make one statement in connection with the proposal for a drug information service? I understand that there has been something in the order of $400,000 devoted to beging studying and planning for this in the current session, and this likely will be increased, perhaps doubled, in another year. I wonder if the committee are aware that there is available in Canada now a publication which could very well serve as a nucleus for such a drug information service, a publication which has been available now for some years by the Canadian Pharmaceutical Association. It has been my privilege to be editor of it. It presents in unbiased form the prescription drugs which are on the Canadian

market today. We have a good strong advisory panel with competent medical advisers as well as pharmaceutical advisers. This publication could serve as a nucleus. It could be expanded with very much less money expended per year by the Government than even the $400,000. I suggest, Mr. Chairman, that this is something the committee might give consideration to as a means of doing two things: first, meeting the objectives of the drug information service, and, secondly, saving the taxpayer perhaps considerable money.

**Senator Walker:** What is the name of this publication?

**Dr. Hughes:** It is called the *Compendium of Pharmaceuticals and Specialties.*

**Senator Walker:** Thank you.

**Dr. Hughes:** It is published annually.

**The Chairman:** Are there any questions?

**Senator Walker:** You mentioned the United States; have they taken any such action as contemplated in this bill today?

**Dr. Hughes:** With respect to what?

**Senator Walker:** With respect to patented drugs.

**Dr. Hughes:** Not to my knowledge.

**Senator Walker:** Nothing like that has been undertaken. Would you say they have a modern up-to-date system of surveillance?

**Dr. Hughes:** That is my impression from across the border.

**Senator Walker:** And the fact is that the research that is now under way in pharmaceutical post-graduate work will be stultified because there will be no incentive.

**Dr. Hughes:** That is our feeling.

**Senator Walker:** Would you just say why?

**Dr. Hughes:** If there are no outlets for the graduates, the number of applicants will dry up and finally they will go elsewhere to be employed.

**The Chairman:** There is a question I want to ask, Dr. Hughes. In view of the fears expressed by Dr. Ferguson and by yourself as to what may be the results or the lack of results in this situation, would you support, for instance, a time limit in the bill when the whole subject matter of the operation of this bill might be reviewed? Would you support, for example, a period of three years or whatever it might be?

**Dr. Hughes:** Yes, that would certainly be much preferable to not having a time limit at all.

**The Chairman:** Any other questions?

Thank you very much, Dr. Hughes.

Now we have Dr. Marvin Darrach, Professor and Head of the Department of Biochemistry, University of British Columbia, Member of the Medical Research Advisory Committee, National Medical Council of Canada.

**Dr. Marvin Darrach, Professor of Biochemistry, University of British Columbia:** Thank you, Mr. Chairman and honourable senators. Dr. Pernarowski, Dr. Ford and myself are from Vancouver and we are very grateful for the opportunity of being here to express a scientific point of view which we hope may be of some assistance to you in your deliberations. My friend, the Honourable Mr. Basford, is from my home town and he knows I cannot speak on the economic aspects of this bill, nor, indeed, do I intend to.

It seems to us that the main purpose of this bill is to increase the number of suppliers of drugs in Canada. It raises a question whether the Food and Drug control is adequate to protect the physician and his patient against the large number of new drugs to be expected on the market when this bill comes into force. Now there has been no question at all about the concern that the Canadian Government and its members and agencies have had in these matters. We have had the Harley Report, Dr. Chapman, the Honourable John Turner and the Honourable Mr. Basford who have all expressed views that we must guard very carefully the welfare of the Canadian so far as the safety and efficacy of new drugs are concerned. The new drug development program worked out by the Food and Drug Directorate is, in my opinion, an excellent program in that it assures the physician and his patient that new drugs appearing on the market are well studied before they are sold. Now included among those studies are the chemical assays that Dr. Chapman has referred to, and we must remember that Food and Drug assays are primarily chemical assays; they do not very often get involved with biological testing and not at all with clinical testing, and when the new drug has appeared it is well controlled. But it is at the stage when the new drug is no longer a new drug or

when a licence to manufacture a patent drug is offered that we feel a dangerous element is introduced without adequate precautions. That fact is that a new drug, once it is no longer a new drug, can be made by any manufacturer and he can sell it without informing the Food and Drug Directorate, I understand, for a period of 30 days. At that time he must notify the Food and Drug Directorate that he is in business. But it seems to me that some mischief could be done during that period.

As a medical school teacher it seems strange that it takes us 8 years to graduate a physician before he is enabled to prescribe a drug and it takes 4 years to train a pharmacist before he can see to it that the correct drug arrives at the patient's bedside and yet anyone can manufacture drugs without biological or clinical surveillance from the Food and Drug Directorate. Therefore, while the Food and Drug Directorate has good control over new drugs, we believe there is danger when the new drug status is lost. These dangers have in certain respects been illustrated or can be illustrated by quoting the words of Dr. Chapman when he points out the difficulty his department has in testing all the available batches of drugs on the Canadian market. He points out that there are 500 manufacturers of over 30,000 different drug preparations in a wide variety of dosage forms on the Canadian market. He goes on to say:

> No information is available on the number of lots or batches of each drug produced each year by each of these firms. It is clearly evident, however, that it would require many times the present resources of the Directorate to conduct limited tests on each lot of drugs to confirm compliance with label claims alone. Therefore, under our present legislation which does not limit the number of pharmaceutical products which may be placed on the market, the responsibility for the quality, efficacy and safety of a drug must rest with the manufacturer.

**Senator Walker:** That is the situation at the present time.

**Dr. Darrach:** Yes.

**Senator Walker:** And this will now be greatly multiplied.

**Dr. Darrach:** This is the point that will be enhanced and very much so. As Dr. Chapman has said:

> We have been extremely fortunate in Canada. There have been no catastrophes involving the quality of drugs...

In other words we have not had any drug tragedies in Canada. However, he has also pointed out that there have been situations in Canada which had potential for serious consequences.

At various points in my brief I refer to the very important scientific fact that drug products indicating the same dose on the label may not be clinically equivalent. Products that test for chemical equivalency according to the official assays may not be biologically equivalent i.e. they may not give the same blood levels and may, therefore, not have the same clinical effect. This scientific fact is of great importance. We would like to emphasize the need for regulations to be adjusted or for the act itself to be adjusted to make it mandatory under law for the second manufacturer, the man who obtains the licence or a subsequent manufacturer of old drugs to prove to the Food and Drug Directorate with something similar to a new products application wherein he assures Canadians that the drugs will be as potent and as clinically effective as the original.

It was this concern that prompted Dr. Pernarowski, Dr. Ford and myself to send a telegram to the committee that had this under consideration on another occasion in which we specifically recommended that the bill should be amended to include a section which would make it mandatory that a manufacturer be required to file a new product application which would be a modified new drug application describing the drug being marketed. We went on to say:

> Although this is implied in the current definition of new drug, we feel that it should be clearly stated in law. The objective of this type of application would be to make certain that new formulations by different manufacturers actually produce similar and safe therapeutic effects.

These views are not unique; they have been the recommendations of former government committees. The Hilliard Report in July, 1965, recommended that a compulsory licence only be granted after study of the drug has assured the officials that the drug is to be effective.

The Boyd Report in 1966 went further and suggested that the product of the second and

subsequent manufacturers should each be required to meet the regulations on new drugs.

The Harley Report, which has been quoted in the development of this bill, also suggests that the granting of a licence under the Patent Act be dependent upon the recommendations of the Food and Drug Directorate.

And, finally, the Canadian Drug Advisory Committee, in September, 1968, unanimously approved a motion:

> That the Canadian Drug Advisory Committee express to the Honourable, the Minister of National Health and Welfare its Regret that Bill C-102 has been introduced without, in its opinion, adequate safeguards to ensure the quality of all drug products sold in Canada.

In conclusion, Mr. Chairman, and honourable senators, I would just like to bring two thoughts forward. The first is that there is an error in logic that has occurred in the development of Bill C-102, as reflected in the words of the Honourable John Munro, when he stated:

> I referred previously to the fact that drugs which meet official standards may be expected to show therapeutic equivalency.

This is an incorrect statement. It should read:

> ...drugs which meet official standards may or may not be expected to show therapeutic equivalency.

Secondly, it has been and may again be stated that the precautions we advocate are already afforded the Food and Drug Directorate to enforce under the Food and Drugs Act. However, having the discretionary authority to do something and being required to exercise that authority under law are two different things. We ask only that, under the new circumstances to be created by Bill C-102, the necessary precautions to assure safe and clinically effective drugs be written clearly into Bill C-102, thus assuring under law that the Canadian physician and his patient are protected against the possible tragic consequences of unsafe or clinically ineffective drugs.

**The Chairman:** In what you have said, did I understand this? Let us assume this bill becomes law and a compulsory licence is granted in relation to an existing patent. Is the view you express in your recommendation that at that stage the licensee who holds a compulsory licence should be required, as a matter of law, to clear that drug that is covered by this licence with the Food and Drug Directorate, on the same basis as if it were a new drug?

**Dr. Darrach:** That is correct, sir.

**The Chairman:** And the reason for that?

**Dr. Darrach:** The reason for that is that in many instances one manufacturer's product might be quite different from another, even though they analyze exactly the same in the chemistry laboratory.

There is one excellent illustration of this, if I might speak to this question, in a publication in the Canadian Medical Association Journal of 1960. At that time the Frosst Company of Montreal had changed its die for compressing dicumarol tablets. This is an anti-coagulant, and this change in die resulted in a tablet not nearly as effective as the former preparation. Many medical complaints came in. Then they went back to the old type of product, and people were getting too great an activity—and dicumarol can be a dangerous drug. Some patients were bleeding heavily.

Dr. Lozinski, who was a respected Canadien scientist, at that time pointed out the following facts—and this is the reason I answered your question the way I did:

> From this experience at least two lessons have been learned with respect to dicumarol, and this probably holds true for other drugs of poor solubility and absorbability:
>
> 1. *In vitro* data cannot be used to interpret what may happen *in vivo*.

That is, the chemical tests in the test tube do not indicate what is going to happen in the patient.

> 2. Different brands of products, although similarly labelled with respect to active ingredient content, may not provide similar physiological responses.

These are scientific truths we would like to bring to your consideration.

**The Chairman:** Having made this reference in answering my question, is the conclusion you are suggesting that if the new drug procedure was applied in respect of a compulsory licence, these situations to which you have made reference might be avoided?

**Dr. Darrach:** I believe they would, because the Food and Drug administration would then have information they now do not have—that is, information about the blood levels of a new product. I am not suggesting a second manufacturer should be required to go through all of the necessary clinical trials to develop the efficacy of this drug, because it has already been done, but I think that he should assure all of us his product is going to produce blood levels or excretion levels that are going to make it quite likely the drug is effective.

**Senator Walker:** Is there no provision for that? Can a licensee come along without having the department go through the tests?

**Dr. Darrach:** There are three types of test: the chemical tests in the U.S. Pharmacopoeia and the British Pharmacopoeia—and these are carried out in Dr. Chapman's laboratory. A tablet will contain 100 milligrams if the label says it does, but there is no assurance it is going to control or cure our disease. These tests are not done, and we say they should be done by any second manufacturer who is going to make money out of selling these products.

**Senator Sullivan:** Professor Darrach has prepared a brief. Might we have permission for the brief to be circulated among the members of the committee?

**The Chairman:** Would you be prepared to leave copies with us?

**Dr. Darrach:** Yes, I would be glad to, if I may.

**The Chairman:** Honourable senators, we have several more witnesses. We have Dr. George F. Wright, Professor of Chemistry at the University of Toronto. In 1947 he entered into the practice of Chemical Consultant in diverse chemical fields, including that of pharmaceutical patents.

**Dr. George F. Wright, Professor of Chemistry, University of Toronto:** Mr. Chairman, honourable senators, I feel rather out of place speaking here, in view of my reputation in the past, at least among some people, that I am a patent destroyer or a patent buster and that, therefore, it would seem rather peculiar that I would be here.

**The Chairman:** You might be in the company of some trust busters.

**Dr. Wright:** Actually, my reputation is ill-deserved. I know, from looking at my knowledge of this field, that there are two types of drug patents: there are good drug patents; and there are bad drug patents. My interest has been in busting bad drug patents. But when a patent is written in such a way as to cover the product or the process presenting only new medication, that I respect. When it is written in such a way that the patentee has become too greedy in his claims, then I have no respect for it. When I have respect for it, I know how much effort, how many failures and attempts went into that. Then I consider it is a property that should not be expropriated, unless there is very good reason, for the benefit of the public.

In examining Bill C-102—and I must make the point that I am a chemist, I am not a lawyer, and therefore a cat that can only look at the work of kings—as I look at it I find it like many of the patents to which I object. We call objectionable patents "fishing expeditions". You may know the expression. It is unfortunate that this has to be true in many respects. I do not think it will happen in my lifetime, but eventually it will have to be revised. Our patent law is for mousetraps, and there are many new and more complicated mousetraps today. A pharmaceutical patent covers the discovery of a new therapeutic material. The way it has to be worded according to our Patent Act is in terms of the product, and in many respects in terms of the processes by which it is made. For this reason we have bad patents, not because we have bad people writing patents but because they have to use a method that does not fit our present scheme of existence.

With this problem of having to use the patent law to bring something new and valuable to the public, when we examine Bill C-102, here too we find a fishing expedition surmounted on the ordinary fishing expeditions. Quite frankly, I do not know what this bill will do, except that as I read it it will create great confusion in the industry and that confusion may very well lead—in fact I strongly suspect that it will lead—to higher prices rather than lower prices for drugs. This is a shame, because for all the talk we have heard in the last few years, an inspection of drug prices shows that they have been continually decreasing since 1957, and especially since 1964. Anything that interrupts this orderly process will, in my estimation, do more harm than good.

Now let us see some of the characteristics of this bill as I read it. I may be wrong, because I am not a lawyer. Let us take section 1(4)(b), which says:

> where the invention is other than a process, to import, make, use or sell the invention for medicine or for the preparation or production of medicine.

Does this mean that as an applicant for a compulsory licence I can go into the inventions selling business? That is what the wording says.

Lower down the page, at line 25, the legislation of Bill C-102 and of Bill C-190 and of the Patent Act of 1923, has been changed imperceptibly, perhaps for the better, by saying that the Commissioner will try to insure that the public gets the medication

> at the lowest possible price consistent with giving to the patentee—

not the inventor, as it was before—

> due reward for the research leading to the invention.

Perhaps this is fair, because when it read "giving to the inventor", this was the fellow down on the bench, who was getting a salary and a bonus; maybe he deserved a little more, but not very much more. Now this is to the patentee who has made the entire investment. The patentee will most certainly bring this more strongly than he could ever do before under the former act to represent what his reward should be. I submit that if Mr. Laidlaw, the Commissioner, has to go through all those arguments within six months, during the same time that the Food and Drug Directorate are going through the arguments in the same six months, multiplied by all the people who will apply for these licences, without a very close knowledge of how they will work, this country will be in utter confusion with respect to its pharmaceutical industry.

I cannot comment any further on this, because it has been spoken about before, but as a person who likes to live in a country governed by laws rather than by men, I object to, or at least am somewhat disturbed by, "such other factors as may be prescribed".

I would refer next to the question of interim licences, dealt with in subsection (5). I do not know how carefully this has been noticed, although I suspect many firms will have seen this point. It says:

> At any time after the expiration of six months from the day on which a copy of the application to the Commissioner pursuant to subsection (4) is served on the patentee.

Not when it is received but when it is served on the patentee. I think the Commissioner of Patents will be extremely busy if this bill passes. I wonder how long it will take him to get the notice to the patentee? Unless, of course, the Commissioner's department is magnified with a somewhat larger appropriation. I know who will pay for that.

**The Chairman:** They could send the patentee a registered letter, could they not?

**Dr. Wright:** They could, but the act says nothing about that.

**The Chairman:** Any method by which the notice would come to the attention of the patentee would be supported under the bill.

**Dr. Wright:** There is nothing in here that says the Commissioner must do that.

**The Chairman:** Not, not "must", but he has the choice.

**Senator Walker:** I think the witness means there is no time limit, that the man can keep stalling for anytime.

**The Chairman:** It says "in prescribed manner", and I suspect the regulations would prescribe the method.

**Dr. Wright:** That is if he has enough help. He looks it over to see whether it is trivial, so what the six-month period may amount to I am not at all sure.

Another thing the Commissioner is required to do is to notify the Food and Drug Directorate and any other government agencies that he may see fit. We do not know what those other agencies are, but we do know what the Food and Drug Directorate is. So, he now has his power limited by the reference to the Food and Drug Directorate. Perhaps this is good, too, in principle, but in practice, of course, it means that another group operating under another act is controlling the patent law in the country.

Now, there used to be a principle many centuries ago in English law which took a very dim view of this, and, in fact, the Monopolies Act, I think of 1624, pronounced the opinion of civilization as it was then and has been since to the questionable practice of Government in this manner.

**The Chairman:** Dr. Wright, I was interested in the question you raised about another check on the operation of the patent. But under the law as it presently exists, without looking at Bill C-102 at all, if you secure a patent for a process for producing a medicine or for the product, you are still not free to sell it.

**Dr. Wright:** That is true.

**The Chairman:** So that existed under the present law. To that extent Bill C-102 does not import anything more on that point.

**Dr. Wright:** That is quite true, but, as I read this act, the granting of a licence is dependent on the opinion of the Food and Drug Directorate. This is quite aside from the five-year period in which the Food and Drug Directorate will have control of this afterwards.

**The Chairman:** That may be a matter for argument. I am just wondering where it says in this bill that the Food and Drug Directorate must approve before the licence is granted. I would say, certainly, even if a compulsory licence is secured, the more serious question arises as to whether they should then clear with the Food and Drug Directorate, if the product has not already been cleared.

**Dr. Wright:** My point is that this reference to the Food and Drug Directorate prior to the granting of a licence may have very great benefits. It is an informal way of handling this situation in the best possible manner, except for the fact that the Food and Drug Directorate has now two functions.

I have great respect for the Food and Drug Directorate and I am very proud to have come to this country in which we have a Food and Drug Directorate second to none in the world. I want it to stay that way. I consider the Food and Drug Directorate to be, in its proper function, a police force. Also, as modern activities go, it has an educative function and I think this is good because it makes administration easier. That I consider to be a full-time job, and, if one is passing on the possible surveying of plants in all parts of the world, then I question whether it is wise. This is not only a matter of appropriation—and mind you the Food and Drug Directorate in my experience utilizes the funds allocated to it very well—it can also be a matter of personnel. In my position as Professor of Chemistry I am continually getting from the Civil Service requests for applicants, and I know Dr. Chapman is very busy trying to find new people, otherwise they would not be printing these applications.

He is going to run out of competent people pretty soon, if this situation magnifies to too great an extent.

So I say perhaps Bill C-102 does not cut the suit to fit our cloth.

Now, the other feeling on this is a very personal one. Perhaps it does not apply here. Certainly, Mr. Turner, in reply to a letter I wrote, said it was not significant, but it is the idea I have had, during the 35 years I have been in Canada, of building a Canadian pharmaceutical industry.

Somehow I guess I believed Laurier when he said this was the century for Canada.

**The Chairman:** There are still some people left with that view.

**Dr. Wright:** There may be a bit of miscalculation here, but one of the things I would like to see is Canada having its own chemical industry, and one of the best ways to commence a chemical industry, according to past history, is to start with the fine chemicals industry.

Now, I would point out that patent laws can be very important to such an industry. One of the most highly reputed and renowned pharmaceutical houses in this world is that of Hoffman-La Roche. Companies of that sort commenced their activities in countries which had very stringent protective patent laws that enabled them to build up their industry. But what are we trying to do? We are trying to do that sort of process in reverse, and I say we will never have a chemical industry worthy of the name so long as we try to emasculate it with things like this bill. I think that is all I have to say. In other words, I leave the stand angry.

**The Chairman:** Thank you very much. The next witness is Dr. Pernarowski.

**Dr. M. Pernarowski, University of British Columbia:** Mr. Chairman, honourable senators, the stated objective of this bill is to lower the price of a selected category of drug products. There is, of course, an economic component in this legislation but, at the same time, the safety-efficacy implications of Bill C-102 should be carefully considered. Others may wish to assess the economic implications of this legislation; I will comment only on the safety-efficacy aspects, not only because these

are of vital importance to the consumer but because I have been interested and professionally involved in this area of pharmacy since 1952.

Much has been written about the differences between the "branded" and the "generic" drug products. It is possible, by using data accumulated in my laboratory during the past several years, to prove that the branded is better than the generic product or that the generic is better than the branded product. These proofs depend on how one defines the two words and are, therefore, meaningless. The real issue here and in other related legislation is whether one accepts or rejects the tens of thousands of scientific observations on the biopharmaceutical properties of dosage forms.

The word "biopharmaceutics" may be defined in a number of ways but the best definition I know is the one given below, which is not only all-encompassing but also self-explanatory:

> Biopharmaceutics may be defined as the study of the influence of formulation on the therapeutic activity of a drug product. Or, it may be defined as the study of the relationship between some of the physical and chemical properties of the drug and its dosage forms and the biological effects observed following the administration of the drug in its various forms.

It may be defined in a number of ways, but the best definition I know is the one given by Dr. John Wagner of the University of Michigan—and incidentally Dr. Wagner is a Canadian in that he has never given up his Canadian citizenship,—and while the definition is rather a long one the essence of it is as follows:

> ...biopharmaceutics encompasses all possible effects of dosage forms on biological response, and all possible physiological factors which may affect the drug contained in the dosage form and the dosage form of the drug itself.

This definition is, of course, general and does not cover specific problems or products. I will, therefore, quote from papers presented at the November, 1968 and the May, 1969 meetings of the APhA, namely the Academy of Pharmaceutical Sciences and the Drug Information Association Conference which was held in Washington in April of this year. I do this to illustrate what biopharmaceutics is all about. I quote again from a paper read by Dr. Wagner which was entitled "Some Experiences in the Evaluation of Dosage Forms of Drugs in Man". The portion I want to quote is as follows:

> ... The data... (based on twenty-six carefully controlled clinical pharmacology studies) ... emphasize the following, (1) Pharmaceutical adjuvants...

and those are ingredients other than the active ingredient which goes into the dosage form...

> ... present in dosage forms of drugs, may have a marked effect on the drug's absorption; since these adjuvants are not specified in official monographs, the concept of a "generic equivalent," based on a U.S.P. ...

which is the United States Pharmacopoeia...

> ...or N.F. monograph, is rather a foolish one. (2) There may be marked differences in absorption of a drug when it is administered in two or more different dosage forms by the same route of administration. (3) Simple pharmaceutical processes may markedly alter a drug's absorption presumably by altering the rate of release of the drug from the dosage form *in vivo*...

It is obviously impossible to present all the results here but I will quote from two other parts of this paper:

> ...In several studies, small amounts of the synthetic sweetening agents, sodium or calcium cyclamate (Sucaryl) were shown to reduce the absorption of the antibiotic lincomycin hydrochloride to 25 to 30 per cent of control values obtained in the absence of the agents...

In other words the casual addition of sweetening agents lowered the drug absorption to about 25 to 30 per cent.

In another paper presented to the same scientific group, Dr. A. B. Varley—and this was also presented to the same November meeting—said this:

> ... Two lots of tolbutamide tablets were tested. One lot was...Orinase tablets.

This is the brand name of the Upjohn product.

> ... The other lot was identical in all composition and manufacturing respects except for halving of the amount of the disintegrant used.

All tablets contain disintegrants; the only difference between the two is in the amount of disintegrants used.

> ... Both formulation completely met the tolbutamide specifications of the U.S.P. A double-blind, crossover clinical study was arranged in which ten healthy, non-diabetic, volunteer subjects received both formulations of the drug. Blood samples for sugar and assay of drug were drawn at 1½, 3, 5 and 8 hours after drug administration... Each subject, at each sampling time, had a higher serum tolbutamide level after receiving .. Orinase tablets... The area under the average drug serum concentration curves ...was 3.57 times greater following ...Orinase. ...The area under the average serum sugar concentration curves ...was 2.09 times greater (less sugar) for...Orinase.

Dr. Varley's paper ended with the statement that:

> Criteria for establishment of equivalence cannot be made by chemical and physical standards as they are now established in the U.S.P., unless one is not interested in the patient therapeutic response that interests most physicians.

Dr. W. H. Barr, in a paper entitled "Physiologic Availability of Three Commercial Tetracycline Preparations", which, incidentally, has not yet been delivered although it is public knowledge it will be delivered next Friday at the Academy meeting, says:

> The cumulative amounts of free drug excreted in 72 hours following administration of 250 mg of each product in a 9 subject complete crossover study was 159±26 mg. for A, 117 mg±40 mg. for B, and 116±37 mg. for C.

In other words, there were significant differences between products A and B and C. These observations are similar to those reported by Dr. H. MacDonald and his co-workers. This was shown in the paper given in Washington in April of this year. They found that there was a 3 to 4 fold difference (based on in vivo data in 12 subjects) between Achromycin and some of the other brands of tetracycline HCl studied.

Now it would not be too difficult to document many similar observations. In actual fact, every issue of every pharmaceutically important scientific journal contains papers which deal with the types of problems outlined above, that is with the pharmaceutical problems of creating dosage values. The consumer does not read these journals and has been told that the efficacy problem has been studied in depth by various committees, such as, for example, the U.S. Department of Health, Education and Welfare's Task Force on Prescription Drugs and that the reports of these groups have been unanimously accepted by the scientific community. With respect to the Task Force mentioned above, the prestigious Academy of Pharmaceutical Sciences withheld its approval of their interim report. As I have said, the Academy is meeting in Montreal now, and their report on this task force report should be ready to-morrow. Moreover, the equally prestigious and important Drug Efficacy Study Committee of the National Academy of Science-National Research Council—and this is a group appointed to advise the Food and Drug Administration in Washington on the safety and efficacy of drugs—has now prepared a white paper on this subject. Again unfortunately the report is not going to be available until June. But Dr. T. H. Hayes, in his testimony to the Nelson Committee, said that this Committee has concluded that standards of chemical identity for generic drugs may be inadequate.

Dr. Alfred Gilman, chairman of the Drug Efficacy Study Committee and one of the world's outstanding pharmacologists, said, when asked to comment on Dr. Hayes' statement that—"It is essentially correct. As a matter of fact, Dr. Hayes' statement is fairly mild. We're a little more positive in our recommendation."

Biopharmaceutical factors are, therefore, of vital importance and cannot be disregarded by this or any other legislature. This means that it is essential that the government recognize this in its legislation by spelling out a new category of drug products, that is those products which must be reviewed under a modified set of new drug regulations. In other words, we must recognize, in law, the necessity of a careful review of all drug products entering the market place because of this legislation. Drugs will become more potent. Their chemical and physical characteristics will be such that it will be impossible and dangerous to prove efficacy by means of the type of drug testing now described in the compendia. I have seen several instances of this in approximately the last two or three months. I know of three experimental drugs so highly insoluble that I do not think that

anything other than a biological evaluation will prove that they are effective. Therefore we cannot and must not take a negative approach to this problem. This type of approach to safety and efficacy was a characteristic prior to the days of thalidomide. It produced little protection then; it will produce the same amount of protection now.

Claims have been made that part of this safety-efficacy problem can be covered by inspection of foreign plants. Such inspections are feasible. We do not have to admit a drug product to this country unless the manufacturer admits a Canadian inspector to his plant. May I, however, point out to this committee the implications of this type of inspection. We are saying, in effect, to the Government of Switzerland or Italy or any other country which exports drugs that "we do not like your drug control laws or do not trust your drug plant inspections." The Food and Drug Administration in Washington has taken an alternative approach. The following quotation may be of interest to this committee. It is drawn from the Journal and is again very recent:

> In what could be a milestone in regulatory affairs, the FDA...

This is Washington.

> ... and its Swiss counterpart, IKS (The Intercantonal Office for the Control of Medications), have agreed to trust each other's inspections and procedures—thus sidestepping the tacky diplomatic problem of precisely how (or whether) FDA inspectors were to be allowed to inspect Swiss drug plants that ship active ingredients to the U.S.

I would suggest, therefore, that we move with care in this particular area. To insist on a casual inspection at long time intervals will contribute nothing to drug safety and efficacy. To insist on comprehensive inspections at short time intervals may damage our prestige and increase both governmental and industrial costs to the point where this legislation will become meaningless.

Lastly, I would like to say a few words about full disclosure. By law, certain types of information must appear on drug labels. There is, however, one aspect of full disclosure that has been overlooked. The name and address of the manufacturer of some of the drug products sold in this country does not appear on the label of the container. The reason for this is that the word "manufacturer" is so defined in the regulations appended to the Food and Drugs Act that distributors are classed as manufacturers. In other words, a man may buy in bulk from any source, repackage it, put his name on it and claim he is a manufacturer, and this is not the dictionary definition of the word. It is my believe that the place of manufacture and the name of the manufacturer should be part of the label declaration. Those who must prescribe or distribute drug products which are manufactured in other countries have a right to this type of information.

These, then, are some of the thoughts I have on this bill. I know of no officially recognized professional organization which would not agree, in principle, with what I have said. The scientist in the university, in government, and even in industry may not always agree with the pricing, sales, or promotional policies of individual manufacturers, but all will insist on safe and effective drugs. It is now up to this committee to decide if this bill will pass as is or in some modified form.

Thank you very much.

**Senator Sullivan:** Mr. Chairman, might I mention that these outstanding scientists left an important meeting in Montreal to be here with us this morning?

**The Chairman:** Yes, thank you.

Are there any questions?

We have two more witnesses. Shall we continue for a while?

**Hon. Senators:** Agreed.

**The Chairman:** The next witness is Professor Walker, Professor of Pharmacy at the University of Toronto.

**Professor G. C. Walker, Professor of Pharmacy, University of Toronto:** Mr. Chairman, honourable Mr. Basford and honourable Senators: As have others, I think you very much for giving me the real privilege of appearing before you in connection with this bill. You have had many excellent presentations in the past on this subject, and particularly this morning, and I am sure that there is little I can add. However, there are one or two areas of personal and professional interest in connection with this bill which I feel require some comment, and with which I have had some contact, in particular over the last few years—that is, the pharmaceutical preparation and quality control. Dr. Darrach

has referred to it, and I am afraid that my presentation is much as was Dr. Darrach's.

There has been much activity in these directions recently, and particularly with reference to physiological equivalence, drug availability and the quality of pharmaceuticals. A number of meetings have been convened—for example, the Quality Assurance of Pharmaceutical Products by our own Directorate, and the one referred to previously, that of the American Academy of Pharmaceutical Sciences on Physiological Availability, and I had the privilege of attending the meetings. As you know, the Canadian Directorate is sponsoring a Physiological Equivalence of Drug Dosage Forms meeting in June of this year in Ottawa. All of these meetings have, in part or *in toto*, observed the influence of the pharmaceutical preparation on therapeutic performance, and my comments here are concerned with the general tone of these meetings and with some of our own experiences relevant to Bill C-102, as far as importation of drug products is concerned.

If honourable senators will bear with me, a little history may be useful. In the mid-1950's the Food and Drug Directorate of Canada, through a number of researches, made it clear that solid sugar-coated dosage forms of riboflavin and of para-aminosalicylic acid with unsuitable disintegration times—that is, the time it takes to break up into particles so we feel we would get it in our stomachs—did not provide the patient with the drugs concerned. The results shook up the pharmaceutical world and, as you may imagine, there was much controversy. It did, however, spark the release and availability concept which we hear so much about, and led to the stimulating research and thinking or Dr. Nelson on pharmaceutical formulation and drug solubility, and this in turn followed by the equally exciting research of Doctors Levy and Wagner.

The researches brought forward the fact that the design of the pharmaceutical preparation, and the standards associated with it, are critical in providing the response desired, and required, by the physician. Dosage form constituents modify absorption rate and absorption of drugs and thus modifies the onset of activity, intensity of response, peak response, duration of response and total drug absorption, in addition to their very real influence on the overall quality of the product concerned.

Faulty formulation of dosage forms resulting in reduced biological availablity of active constituents—that is, whether a patient does or does not get the medication—is a serious problem because it may cause patients to be unmedicated on a dosage regimen thought to be adequate by the physician who prescribed it.

The pharmaceutical dosage form or preparation, then, is a much more comprehensive entity than its simple physical form would indicate, and involved the chemical nature of the drug, the physical state, particle size, surface area, presence or absence of excipients—and Dr. Pernarowski so aptly puts these under the term "biopharmaceutics", a term coined some years ago by Dr. Levy. Any or all of these may have a marked effect on the therapeutic efficacy of the drug by modifying release, availability and absorption, or, in other words, the clinical and pharmacological efficacy of the preparation with which the patient is challenged. These concepts do not include the actual manufacturing process itself which may markedly influence the physical, chemical and biological results secured with that dosage form.

The foregoing suggests that all dosage forms are not the same. In fact, ladies and gentlemen, they may be far from it, and it may perhaps emphasize the magnitude of the problem concerned in bringing to the consumer—and the health of these consumers, the Canadian people—the best drug product.

The problem may be over-emphasized as far as availability is concerned, since drug products of low water solubility have been the principal offenders; but all are entirely immersed in the matter of quality. The literature contains a large number of cases of proven inefficacy therapeutically with a wide variety of drugs, and this is outside of the large number of instabilities and incompatibilities reported.

Time and space will not permit the presentation of specific cases, but one reviewed at a recent symposium is particularly pertinent. At a recent symposium a patient on tetracycline of one brand was changed to another product. The patient complained about the side effects of the new dosage form. A study showed that little or no drug was being released from the original product, and consequently the side effects of the tetracycline were eliminated. Onee wonder what would result if it were possible to investigate thoroughly the thousands of dosage forms on the

market. We just do not know what is the actual situation.

There is no question overall but that the drug itself and the drug in the dosage form present many problems, aside from the inherent variability in the human as far as absorbtion, metabolism, distribution and excretion are concerned. In addition, the many physical and chemical factors involved in the purity and standards associated with pharmaceutical preparations are of concern and go with the release and availability theme to present the large task of "total quality control".

The matters of efficacy and stability are not only of concern with oral products such as capsules and tablets, of which we hear the most, but apply equally to such pharmaceutical preparations as ointments, lotions, suspensions, solutions, suppositories and others. I am sure honourable senators would be surprised to see some of the products that have appeared on the Canadian market from the microscopic point of view alone, and I am equally sure that my colleagues in the universities, the government and the industry could also conjure up some interesting visions from their experience.

These brief remarks, honourable senators, are made to emphasize the importance of safety and quality, of standards and controls in compulsory licensing for the importation of any drug or drug product. We are quite familiar with the excellent job the Food and Drug Directorate is doing in the task that lies before them, and I feel exactly as Dr. Wright expressed it. However, the directorate must assure the Commissioner of Patents prior to the issuance of these licences, if such were to go through, of a number of matters, and I can do no better than refer to and support the conclusions in *Debates of the Senate* of April 24, as presented by the honourable Senator Joseph A. Sullivan. I will not go through them. They are listed here from one to eight. No. 8, of course, embraces the very important concept that the samples are satisfactory with respect to identity, purity, uniformity, safety and efficacy. To do these things would entail considerable expense, and I fail to see how the cost of drugs will be reduced.

Equally concerned in the matter of importation of drugs is the Canadian pharmaceutical industry. The efforts of this industry are well known. It is this industry that has assumed a major role in bringing drugs to the people of this country. Indeed, without them what would the practising physician do? A healthy pharmaceutical industry is important to the health of the nation as well as, I believe, to its economy. However, I realize I am presumptuous in saying such a thing to this body.

There should be close liaison between the Food and Drug Directorate and this industry. Such, I believe, does exist and has been mutually advantageous to all concerned. However, it must be encouraged and further strengthened in the light of new developments and the increasing emphasis being given to drugs. The pharmaceutical industry has always willingly opened its doors and lent its hand when government has asked. On the other hand, the grave responsibility of government in making sound regulations, which are indeed most binding, cannot be overemphasized. In a somewhat impartial position, I must say that each side is doing a very fine job. The pharmaceutical manufacturers of Canada must communicate and co-operate and achieve a better understanding of the problems peculiar to both large and small companies. Such developments as this can only lead to tolerance and understanding between all concerned.

It should also be stressed that research co-operation with the pharmaceutical industry is important to both universities and government. Stimulation of research development in the industry and the university, both individually and collectively, should be encouraged. Lack of such encouragement in this industry or in the development of the industry could have a deleterious effect on the employment of Canadian graduates, and undoubtedly on research development and support.

I thank you very much, honourable senators and Mr. Chairman, for allowing me to appear and speak to you at this time.

**The Chairman:** Honourable senators, there is one question I want to put to you at this time. I notice that the hour is a quarter to one. It can be understood that at this time the human frame puts out an appeal for some sustenance. We have one witness left, Dr. D. K. Ford, who is the Associate Professor of the Department of Medicine, the University of British Columbia. I was going to suggest that maybe we should adjourn until 2.15 and then hear Dr. Ford, if that is suitable to him. Is that satisfactory, doctor, or have you transportation difficulties?

**Dr. Denys K. Ford, Department of Medicine, University of British Columbia:**

Whichever you prefer, Mr. Chairman. I could deal with it in about three minutes, I think, if you could stand it now.

**Hon. Senators:** Now.

**The Chairman:** Let us deal with it now.

This witness, as I have told you, is Dr. Ford, who is also Chairman of the Pharmacy Committee of the British Columbia Medical Association, the Vancouver General Hospital, the Drug Advisory Committee to the Department of Welfare of the British Columbia Provincial Government. Do not feel we are pushing you, doctor. We gave you the choice.

**Dr. Ford:** Mr. Chairman, honourable senators, I think the main message can be stated quite briefly. I am a rheumatologist, I specialize in rheumatic diseases. One of the drugs we use is phenylbutazone which is an effective drug. At present there are 20 or more manufactured phenylbutazones on the market. As I understand it, only one manufacturer out of the 20 or more has to prove that his product is effective, and that manufacturer is the original producer, who has to produce technical evidence that he has an effective product that is clearly defined, unadulterated, of specified toxicity and effective when given in a particular way.

**Senator Benidickson:** He proves that to the federal department?

**Dr. Ford:** To the Food and Drug Directorate, yes. The other 19 do not have to prove they have a satisfactory product. At the moment this is merely subject to the policing activities of the Food and Drug Directorate. Only one of the producers has to prove that he has an effective product.

**Senator Thorvaldson:** Why is that? What is the reason?

**The Chairman:** Under the food and drug regulations, as a new drug it must be cleared through the food and drug administration in order to be marketed, but the moment it is cleared and marketable, any product that meets that description can be marketed, that is as we understand it.

**Senator Thorvaldson:** Without proof that it meets the description?

**The Chairman:** Without in each case bringing the product from each manufacturer to the Food and Drug Directorate to meet the tests required of a new drug, because at that stage as far as the department is concerned it may be said to be not a new drug.

**Senator Benidickson:** Does number one get the patent and then distribute it to the other 19?

**The Chairman:** Number one may be the one who has the patent.

**Senator Beaubien:** The other 19 just make it.

**The Chairman:** No, they may be licensed. I do not know what the procedures are.

**Senator Beaubien:** Do they have to be licensed?

**Dr. Ford:** Yes. As I say, the other manufacturer does not have to prove he has an effective product. I was not getting involved with licensing but was dealing with the policing of the product by the Food and Drug Directorate. They may inspect samples of the product but he does not have to prove it is an effective product. Perhaps I could go through quickly the last few paragraphs of my brief.

**The Chairman:** Yes, by all means.

**Dr. Ford:** The production of a drug usually requires many chemical and pharmaceutical steps, each of which may be susceptible to variability and, in addition, there may be several alternative starting materials of different origin. When a new drug is developed the innovating manufacturer has to demonstrate that his product is clearly defined, unadulterated, of specified toxicity and effective when given in a particular way. In the present Bill C-102 there is no definite requirement that a secondary manufacturer must provide proof that his product is effective and therapeutically equivalent to the original drug.

I cannot understand why Bill C-102 does not specify the requirement that secondary manufacturers must under the law demonstrate equivalent effectiveness and toxicity of their products. The burden of proof and the costs of proof should be the responsibility of the secondary manufacturer. To leave this to the discretion of the Food and Drug Directorate would seem to put an unfair demand on the Directorate which might have to operate in understaffed and underequipped circumstances and be susceptible to great pressures from outside sources.

There would seem to be no reason why a modification of Bill C-102 could not now be included to overcome the serious deficiency of the bill as it now stands. A brief amendment could specify that a new product of a secondary manufacturer must be presented to the Food and Drug Directorate under a "New Product Application" which would describe the new product and demonstrate its effectiveness and safety in comparison to the original drug.

Thank you.

**The Chairman:** Thank you very much, Dr. Ford.

Honourable senators, as I indicated earlier, we will adjourn until 2.15. However, I do not want to adjourn without thanking all these doctors and professors for coming here and giving us the benefit of their experience, study and research. I also wish to thank the Minister, particularly for staying during the entire period to gather the full import of the evidence which has come before us this morning.

I understand the Minister will be with us again this afternoon some time after three.

The committee adjourned.

Upon resuming at 4 p.m.

**The Chairman:** We now revert to our consideration of Bill C-102, and the Minister has some further comments he would like to make.

**Hon. Mr. Basford:** Mr. Chairman, honourable senators, I have a few informal comments to make.

The first is that I am sure we are all grateful to the doctors and experts who appeared this morning. I would like to point out that the Harley Committee heard as witnesses, in formal presentations, the Canadian Pharmaceutical Association, the Canadian Medical Association; and they heard Dr. Wright, to whom we listened this morning, first of all on behalf of the Canadian Drug Manufacturers' Association and then on behalf of Empire Laboratories Limited. The Harley Committee also heard, as part of the presentation of the Consumers' Association of Canada, Dr. Pernarowski, who was a member of that group when they presented their evidence. In addition, the committee heard Dr. Hilliard, who was mentioned this morning as the author of the Hilliard Report.

The Harley Committee heard the same expert evidence which was presented here this morning, and taking account of that evidence made the recommendations they did—namely, that the compulsory licensing provisions of the Patent Act should be amended to allow greater freedom in the granting of compulsory licences.

The second point I would like to make is that Dr. Ferguson made some remarks to which I take exception, about the political ethics of this bill, in the use of the word "expropriation" which I think is a needlessly inflammatory word. I find it hard to believe that such bodies as the Restrictive Trade Practices Commission, or the Hall Royal Commission, or the members of the House of Commons who were members of the Harley Committee, which was headed by a doctor who is no longer a member of the House and which had medical doctors on the committee, would act from a position of no political ethics, and, if I may, I take some exception to that remark of the doctor.

I would like to quote, in opposition to what Dr. Ferguson said, some of his own evidence. I would remind you that he is the director of the Connaught Medical Research Laboratories. I should like to quote some of his evidence in front of the Select Committee on Drugs of the Ontario Legislature in October, 1960, in which he was reporting on the Connaught Laboratories and the very great work that institution has done for Canada and for medical research over the years. He was quoting the annual report of the first director of the Connaught Laboratory, Dr. J. G. Fitzgerald:

> The fundamental idea underlying the project of the Connaught Laboratories was the production of all sera and vaccines of value in public health work and their distribution at cost. It was expected that the active co-operation of public health authorities in Canada would be obtained and this has in general measure been realized.

Then he went on:

> It was with great reluctance that Dr. Banting...

who, of course, was probably our greatest medical researcher in Canada, who was connected with the Connaught Medical Research Laboratories...

> agreed to apply for a patent. He was one of those doctors—there are still many—who thinks it is immoral to have a patent

> on drugs. But he was finally persuaded to do so because on knowing the situation....

The insulin patents were not initially administered by the Connaught Laboratories, but there was occasion, because of other inventions, to set up or establish a patent policy. I quote further from his evidence:

> During this time, in the Connaught Laboratories a series of less important inventions were being made and a patent policy had to be evolved. The cardinal principles authorized by the Board of Governors of the university for the guidance of the insulin committee were automatically adopted by Connaught. These were stated in a report published in the *Canadian Medical Association Journal* in 1923, as follows:

Dr. Ferguson had the report in front of him and he quoted from it.

> First, that the patent is not to be used for the purpose of restricting the preparation of this or similar extracts elsewhere or by other persons, and second that the University holds the patent for the sole purpose of preventing any other person from taking out a similar patent which might restrict the preparation of such extract.

I quote that to show that Dr. Banting's view and the original policy of the Connaught Laboratories was that if we had to use patents they were to be used as widely as possible, and the preparation of any patented material was to be allowed as widely as possible. That is contrary to what Dr. Ferguson argued this morning.

With regard to the scientific arguments that were raised, I made clear this morning that this is Dr. Chapman's area and not mine, but I would say I am sure we are fortunate as a country that we have the people whom we saw this morning, their knowledge and their concern about the scientific issues. The point I do want to make is twofold: First, the considerations and concerns that have been expressed about quality, about standards, about testing, about counterfeiting, about a "black market" in drugs, apply whether this legislation is passed or not, and they apply whether we have a patent system or do not have a patent system.

They are considerations which are the concern of the Food and Drug Directorate. They are not related to the patent system and they are unrelated to these amendments to the patent system. It is for that reason that we have done two things. First, we have increased the budget and the personnel of the Food and Drug Directorate so that they will be in a better position to deal with the concerns these doctors expressed this morning. Secondly, we have taken the four measures that I outlined this morning in amendments in this legislation to ensure that the Food and Drug Directorate has complete authority, and that the Governor in Council has complete liberty to pass whatever regulations may be required to protect the safety of the public.

So, we have done two things to take account of their concerns. First, we have increased the budget of the Food and Drug Directorate. There were reservations expressed this morning about this expenditure which rather startled me, Mr. Chairman, because I thought the group we had this morning, because of their concern, would not only welcome the increase in expenditure for the Food and Drug Directorate, but would urge us to spend more money. It is not within my jurisdiction, but I would hope that the Treasury Board would allow more money.

**The Chairman:** I think the reservation was to spend it in a different direction.

**Hon. Mr. Basford:** We are giving the Food and Drug Directorate the money it says it requires to do the job it may have to do under this legislation.

The other matter is that we have made it clear in this legislation that the Food and Drug Directorate and the Governor in Council have authority to pass whatever regulations may be required.

Those are all the comments I have to make.

**The Chairman:** Are there any questions?

**Senator Molson:** Perhaps I should address this to Dr. Chapman. Does that include what I think was the tenor of the remarks of the doctors this morning, concerning the second, third or fourth manufacturer complying with the same testing as the initial manufacturer.

**Hon. Mr. Basford:** I think Dr. Chapman would like to make his own statement on the scientific aspects, upon which I did not touch.

**The Chairman:** Are there any questions to the minister on what he has added this afternoon...

Then, Senator Molson, you can proceed to put your question to Dr Chapman.

**Senator Molson:** I wondered whether the ability of the food and drug administration to draw up its own regulations would include the subject of what I felt was a great deal of the objection of the doctors appearing before us this morning, that the second, third or fourth, or subsequent manufacturer or a drug under a compulsory licence would be called upon to prove that their material was as good as the original material submitted by, presumably, the patentee. At the moment I understand we are resting with a chemical analysis. Is that correct?

**Dr. Chapman:** Mr. Chairman and honourable senators, the question of clinical equivalency is an extremely complicated problem, and I would like to outline the situation as we see it. This morning you heard a good deal about clinical equivalency, clinical effectiveness, biological equivalency, and then the chemical and physical testing.

**Senator Molson:** And biopharmaceutics.

**Dr. Chapman:** Yes, indeed biopharmaceutics as well. What we are actually concerned about here is that any drug on the Canadian market when given to a patient is going to be effective. A number of studies have been made in this regard, and I should like to quote from one, which is from the Task Force on Prescription Drugs, the Second Interim Report and Recommendations, of August 30, 1968.

**Senator Sullivan:** There is one of February, 1969, in which page 34 is of interest, which I have here.

**Dr. Chapman:** I have a copy of that too. They say about drug policy—and I believe this applies to the question you have asked, senator:

> During the past several years, the clinical equivalency of generic name products has been the center of particularly heated controversy.
>
> This issue may be presented as follows: . . Given two drug products containing essentially the same amount of the same active ingredient—that is, two chemical equivalents—will they give essentially the same clinical effects?
>
> This question, of increasing interest to both physicians and patients, is now under careful consideration by the scientific community. Objective research has shown that in certain instances the clinical effects may not be the same.
>
> The Task Force has found, however, that lack of clinical equivalency among chemical equivalents meeting all official standards has been grossly exaggerated as a major hazard to the public health. Where low-cost chemical equivalents have been employed—in foreign drug programs, in leading American hospitals, in State welfare programs, in Veterans Administration and Public Health Service hospitals, and in American military operations—instances of clinical nonequivalency have seldom been reported, and few of these have had significant therapeutic consequences.

Now, in order to carry out tests for clinical equivalency of drugs, when they first appear on the market, and I am referring now to an old drug, but when it is first produced by a second or third or tenth or twentieth manufacturer, would put an impossible burden on the clinical investigator and on the companies that were required to carry out these tests. This is completely impractical. When we move back from that, we then come to biological equivalency, and reference was made to this term this morning by Dr. Darrach. This becomes a practical test that could be carried out when required, and is simply a test in which you give the particular drug to the patient and then, if it is feasible with that particular drug, you determine the levels of the drug in the blood or the urine. In this way you can get a good indication whether or not the drug is available to the body. If it is available to the body, it should have a clinical effect.

**Senator Molson:** That does not quite answer my question. I asked if the regulations that were suggested or under contemplation would include the requirement to complete a test such as you have just described. Is that contemplated?

**Dr. Chapman:** I am pleased to answer that portion of your question, senator. The legislation before us does not contemplate that. We could recommend that a regulation be passed by Order in Council requiring that a manufacturer who manufactures a drug for the first time should supply to the Food and Drug Directorate evidence of biological availability. There are a number of problems, however, relating to this. It would not seem to be necessary that this should apply to all drugs. For exemple, you would not want to include acetylsalicylic acid, or aspirin, under such a

requirement. You would have to draw some sort of line.

Possibly it could be done by putting in a requirement whereby the Directorate would have the authority to request evidence of biological availability of a drug when required. This sort of regulation is under consideration by the Food and Drug Directorate at the present time.

**The Chairman:** Dr. Chapman, just following that up, if the requirement by regulation, or whatever way it is, were that any secondary manufacturer operating under a compulsory licence would be required to furnish evidence to the satisfaction of the Food and Drug Directorate as to the biological availability, or whatever provision it is you put in there, that would not be imposing conditions which might refer to aspirin. If they were manufacturing aspirin for the first time, I would take it they would not be so manufacturing it under a compulsory licence.

**Dr. Chapman:** No, Mr. Chairman.

**The Chairman:** So that you do restrict the field, if you limit it to products that are going to be made by a manufacturer under a compulsory licence. That would mean that they are making them for the first time.

**Dr. Chapman:** Yes, this is correct, Mr. Chairman. But, of course, as was pointed out this morning, that would only cover a small proportion of the prescription drugs on the Canadian market, and our responsibility in the Food and Drug Directorate, and in the enforcement of the Food and Drugs Act, is to ensure the quality of all drugs on the Canadian market.

**The Chairman:** That was not the issue here this morning. If I were to define the issue, I would say that the concern was in relation to secondary manufacturers under compulsory licences and also, possibly, to the imported products coming in from abroad. To what extent do you check imported drugs now?

**Dr. Chapman:** Mr. Chairman, we do our best to check imported drugs to the same extent that we check domestically-produced drugs. That is, in terms of the relative volumes of the two groups.

For your interest, I might indicate to you the figures for the imported human drugs. As of March 1969 we had, in our index, recores of 2,208 human drugs imported into this country in final dosage form. The point I wish to make is that, of those, 1,584 came from the United States; 234 came from France; 173 came from England and 133 came from West Germany, while 39 came from Switzerland and the rest were all less than ten. So this amounts to over 2,100 of the 2,208 drugs being imported from those countries.

These countries do have well organized drug industries and, as one of the speakers this morning indicated, the United States has been working with the Swiss authorities in order to work out an agreement whereby there might be an exchange of inspection. That is, the United States food and drug administration would accept the inspection of the Swiss authorities so far as drugs produced in Switzerland are concerned.

This is where the difference lies so far as the imported drugs are concerned. We will not be able to provide the same type of inspection as we can for a drug produced in Canada. We have appointed a scientist who will be the European drug representative for the Food and Drug Directorate, and it will be this officer's responsibility to maintain contacts with Ministries of Health and with drug control agencies in European countries. I also indicated this morning that as far as the importation of drugs is concerned we now have authority to require information and evidence available in Canada that they are produced under conditions which meet our requirements, and furthermore that the drugs must be analyzed in Canada by an acceptable method.

**Senator Sullivan:** How many inspectors will you have?

**Dr. Chapman:** We will not have any inspectors in Europe. We will have one officer who will maintain contacts, as I have indicated, with appropriate European officials and we would hope that with the authority we have under these new regulations that we would be able to check out with the European authorities whenever there was any question about the drug coming into Canada.

**Senator Molson:** What about the labelling that requires the analysis of these drugs—will that also require the country of origin to be stated?

**Dr. Chapman:** No, sir, it will not.

**Senator Molson:** Why not?

**Dr. Chapman:** There is a difficulty here. First of all, if you put the name of the foreign

manufacturer on the product only, that is to say if you only put the foreign manufacturer without a Canadian representative then we do not have jurisdiction in Canada to take action against the foreign manufacturer. We have already had this situation in the case of a number of imported drugs. The other difficulty arises from the question as to when do you consider a drug as being manufactured outside Canada. When it is imported in bulk? When it is imported in the finished dosage form? When it is imported in bulk as the raw material? Or at some intermediate stage along its production? Now this would be an extremely difficult requirement for us to enforce. So what we do want is that the person who is responsible for that drug should have his name on the label.

**Senator Molson:** I quite agree with that and I think from your point of view that is absolutely right. But I am not looking at it from your point of view; I am looking at it from my own point of view and having listened to what was said this morning I am getting rather scared of taking pills. They do not have the same appeal for me that they had before. I think if I am taking something that is coming from Morocco or Iran, I would like to know. If we are protecting the public, I cannot see why we should not put all names on these. In this case I did not ask for the name of the manufacturer to be put on but the country of origin because it would be interesting to know if the drug came from the United States or the United Kingdom or France or Italy or one of those other countries which we the public would feel happier about such as Holland or Poland.

**Dr. Chapman:** I notice, Senator, that one product comes from Morocco out of 25,000 on the list, and none come from Iran.

**The Chairman:** That one coming from Morocco might be enough to upset the applecart.

**Senator Lang:** I still have to rely on my medical practitioner in these matters.

**The Chairman:** I was wondering about a statement which was made this morning and I would like to hear your comment on it, Doctor. It was said that a drug may be imported in bulk form from some place outside Canada and then packaged here, and the person who disposes of it or distributes it in Canada describes himself as a manufacturer. That does not give any chance of knowing who put the formulation together.

**Dr. Chapman:** Mr. Chairman, it does not give the public any opportunity to know that, but as soon as it comes into a manufacturing plant in Canada we have access to the records in that plant and so we can check their records and determine where it came from and then apply the requirements under the authority we now have to ensure it was produced under conditions which meet our requirements. Furthermore the moment it goes into a Canadian pharmaceutical manufacturing plant, that manufacturer has responsibility for checking not only each lot or batch of raw or bulk material used in the processing of the drug, but he also has responsibility to see that each lot or batch in dosage form shall be tested for potency and purity having regard to its recommended use. When a chemical comes into Canada in either raw or bulk form to be processed into a drug, and when it enters a Canadian processing plant, we then have authority over that drug and we can require that it be properly tested.

**Senator Leonard:** Can you require that they put on a label saying "produce of such and such a country"?

**Dr. Chapman:** As you are aware, Mr. Chairman, the Food and Drug Act comes under Criminal Law and this would have to be checked out to see whether or not we would have authority to insist that the country of origin be declared on the label.

**The Chairman:** Well, if your legislation is criminal law and required a provision that was incidental to the main purpose, then, of course, you would have the authority to do it.

**Dr. Chapman:** There is another problem, Mr. Chairman. This lies in the fact that in some instances drugs imported from abroad may move from one country to another. For example we have found drugs produced in Italy that have gone to West Germany, Denmark and then Canada. Under these circumstances we would be very much at a loss to indicate the actual original source of that material.

**Senator Molson:** We require it in all sorts of manufactured goods. I think if you buy a tin of aspirin, and the label on the tin is printed in the United States it has to have stated on it "container lithographed in the United States." Is that not so? I think it is. I do not think this is such a rare principle in relation to manufactured goods. I realize that bulk supplies may present a problem, but I think there must be a great many actually

brought in here in dosage form which are merely packaged here but which were manufactured elsewhere. Even though we have a so-called Canadian manufacturer who probably in that case is just an importer and whose name is required for local responsibility, the fact remains that the consumer getting a pill or capsule or liquid is getting something straight from that other country. I cannot see why in this case one should not be made aware of this fact.

**Hon. Mr. Basford:** Mr. Chairman, if I may draw Senator Molson's attention to clause 5 of the bill and to my earlier remarks in which I said that in so far as this legislation was concerned we were giving the Food and Drug Directorate every possible authority it needed, I would like to read the amendment which we are making to the Food and Drugs Act. I will read it to show that there can be no doubt whatever that the Food and Drug Directorate is in charge.

> (1a) Without limiting or restricting the authority conferred by any other provisions of this Act or any Part thereof carrying into effect the purposes and provisions of this Act or any Part thereof, the Governor in Council may make such regulations governing, regulating or prohibiting
>
> (a) the importation into Canada of any drug or class of drugs manufactured outside Canada, or
>
> (b) the distribution or sale in Canada, or the offering, exposing or having in possession for sale in Canada, of any drug or class of drugs manufactured outside Canada,
>
> as the Governor in Council deems necessary for the protection of the public in relation to the safety and quality of any such drug or class of drugs.

I make these remarks to show that this bill in front of us, C-102, has this specific amendment in it to the Food and Drugs Act to give authority to Dr. Chapman and the Department of National Health and Welfare to come to the Governor in Council and request whatever regulations they require to protect the public in relation to the safety and quality of any such drug.

We are discussing—it is a useful discussion, and we had this sort of discussion in the house committee—also the kind of regulations that should be passed. But my point—because people have made the allegation that we have not been concerned about safety—is that in this legislation we have made every possible amendment to ensure that the people who are in charge of safety—namely, the Food and Drug Directorate, about whom we heard so many expressions of confidence this morning—are fully in charge and have the legislative authority to act when action is needed.

**The Chairman:** Section 5, to which you referred, Mr. Minister, deals with the importation of drugs or classes of drugs manufactured outside of Canada, and it deals with the distribution or sale in Canada, et cetera, of drugs or classes of drugs manufactured outside of Canada, so that the power to make regulations governing regulating or prohibiting is limited to importation, distribution or sale of drugs manufactured outside of Canada. So this would only be a partial answer to the question raised about requiring a secondary manufacturer in Canada who is manufacturing the compulsory licence drug which is granted from the patentee. This does not deal with the situation.

**Hon. Mr. Basford:** The manufacturer in Canada is already covered under the Food and Drugs Act, and that authority has been clear for years.

**The Chairman:** I do not think it was clear here today.

**Hon. Mr. Basford:** Section 24.

**The Chairman:** I know, but the point was that once a drug has been qualified for marketing—there is a patent and it is qualified for marketing under the provisions of the regulations in the Food and Drugs Act, therefore it can be sold in Canada. But then when a compulsory licence is issued under that patent and a secondary manufacturer comes into the picture, does he arrive and get the benefit of your original clearance, or does he have to establish his qualification for manufacturing a safe and healthy drug?

**Hon. Mr. Basford:** Dr. Chapman will undoubtedly want to add to what I say, but the secondary manufacturer will have to meet the requirements and the regulations of the Food and Drugs Act—this is what Dr. Chapman said a moment ago—no matter how he manufactures it. When you refer to the secondary manufacturer, under a compulsory licence, surely the same regulations should apply and the same safety requirements should apply, whether he is manufacturing and selling it as an original patentee—or,

first, whether there is a patent on it at all, whether he is manufacturing it as a patentee, whether he is manufacturing it under a compulsory licence, or under a voluntary licence?

**The Chairman:** I agree that it should, but does it?

**Hon. Mr. Basford:** It does.

**The Chairman:** I am not sure it does.

**Hon. Mr. Basford:** It does, and Dr. Chapman will explain how it does.

**Dr. Chapman:** Mr. Chairman, as the Minister has pointed out, the question as to whether or not it is patented or sold under a compulsory licence does not alter the fact it must meet all the requirements of the Food and Drugs Act and regulations. As we discussed this morning, you could have a situation where a manufacturer might get a compulsory licence, but that drug, if it was still in new drug status, could not be sold until such time as the manufacturer had supplied all the required data.

**The Chairman:** But you have put a qualification or limitation in there I did not put in there. You say if it has not got beyond a new drug qualification. I am taking the situation where there is a patent on a drug in Canada. They then come over to you and present all you need in order to qualify that drug so that it can be marketed and sold in Canada. That is the stage you are at. It is not a new drug any longer, is that right?

**Dr. Chapman:** Yes.

**The Chairman:** You imported the words "new drug" in your answer to my question. At that stage there is a compulsory licence. As far as that secondary manufacturer who is operating under that compulsory licence is concerned, what are the checks you have on him? Just your inspection?

**Dr. Chapman:** No, all the requirements of the Food and Drugs Act and regulations apply.

**The Chairman:** Not the requirements that deal with new drugs.

**Senator Leonard:** Does it take him another five years then?

**Dr. Chapman:** I am sorry, Mr. Chairman. The drug may well be still in new drug status. If it is, it must meet the new drug requirements as well as all other requirements of the Food and Drugs Act and regulations.

**The Chairman:** I am not talking about that; it is beyond that status.

**Dr. Chapman:** Then it must meet all the requirements, other than the new drug requirements.

**The Chairman:** How do you determine that?

**Senator Lang:** I think Dr. Chapman is saying the licensee under the patent is another Canadian citizen under the law, just as is the original patentee, and that he is dealt with equally under the law. I think it is as simple as that.

**The Chairman:** I do not think it is that simple.

**Senator Lang:** It is a difference of opinion. My submission is that there is an argument that the licensee will not be manufacturing the clinical equivalent that the patentee is doing, and that the Food and Drug Directorate are not able to make the distinction between those clinical imbalances.

It is a matter of opinion as between a person who may have a vested interest in protecing a patent and a person wishing to become a licensee of a patent. We are in an area of pure opinion, and I do not see how you could change legislation to overcome that difficulty.

**The Chairman:** What I am trying to establish is that there are procedures under which the inventor or the patentee of a new drug can get a clearance from the Food and Drug Directorate, so becoming qualified to sell. Therefore, it no longer has the status of a new drug. I say that in those circumstances, when there is a compulsory licence granted some third person to manufacture that drug, what is the new check? It is not the new drug status check at that stage.

**Senator Lang:** The same check as the original patentee is now under, exactly the same system of checks as the original patentee is still living with—am I not correct? The licensee is going to be subject to the same rules and regulations as the original patentee is at that time living with.

**Dr. Chapman:** That is correct, senator.

I would like to make one comment, Mr. Chairman. You refer to the fact that when the original manufacturer receives the notice of compliance he then can market that new drug. That means that that product, that exact formulation, can be sold in Canada. But a

second manufacturer of the same drug product may well find his product is still under new drug status, and a third manufacturer will find that. Sometimes we find a number, four or five, may come to us and inquire as to the new drug status of a drug that has been on the market, say, for three or four years, and they are informed this drug is still in new drug status. Then they have the choice of either meeting all the requirements of the new drug regulations—and if they do so they are issued a notice of compliance, and then they can market the drug—or not selling the drug.

**Senator Lang:** On this question of chemical equivalency, which seems to me to be at the heart of some of the concern, you quoted a report indicating that this problem had been magnified out of proportion to the realities of the situation under certain circumstances. Bearing that in mind, I would assume there is also a clinical difference in each patient who receives the drug, which I conceive as being infinitely more variable than any variation that might occur in a regulated drug of some description. I speak from some personal experience as having been in a clinical experimental unit as a guineapig for a drug.

**Senator Sullivan:** They vary do they not?

**Senator Lang:** The drugs vary, but the patients vary as much or more. This is my layman's reaction to the experiments conducted on me.

**Dr. Chapman:** Certainly the patients vary; there is no doubt about that. However, we have encountered some instances in which the drugs also vary. This is the reason we have been giving consideration to some sort of regulation that would permit us to require evidence of biological availability with certain drugs.

**Senator Sullivan:** Dr. Chapman, have you seen the Final Report of the Task Force on Prescription Drugs of February 1969, by the United States Department of Health, Education and Welfare, on page 34 of which there is a section headed "Drug Cost and Clinical Equivalency"? Have you seen this report? I should like to read a paragraph:

> As recommended by the Food and Drug Administration, any generic-name counterpart thereafter proposed for introduction should be required either (a) to match the reference product, through conformity with all pertinent USP, NF, or other compendium standards, and, when required by the Secretary, presentation of appropriate test data to demonstrate essentially equivalent biological availability, or (b) to present acceptable clinical evidence of safety and efficacy through the New Drug Application procedure.

**Dr. Chapman:** Yes, senator. That was in the interim report and has been included in the final report.

**Senator Sullivan:** That was referred to this morning by Dr. Pernarowski of Vancouver.

**Dr. Chapman:** Of the University of British Columbia, yes. This, of course, is exactly what I have been talking about. We are considering in certain circumstances a requirement of the company to provide us with data that would indicate the biological availability of a particular drug.

**Senator Sullivan:** You insist on that, do you?

**Dr. Chapman:** No, sir. This is not law yet. We have been studying this matter.

**Senator Leonard:** But you have the power under the act to prescribe that.

**The Chairman:** Not under this bill.

**Senator Leonard:** They have the power.

**The Chairman:** Under the general act.

**Dr. Chapman:** We would have the power under section 24(1) of the Food and Drug Act to recommend to the Governor in Council that such a regulation be passed.

**Senator Lang:** The Governor in Council has power, then, to provide you with regulatory powers to do such a thing?

**Dr. Chapman:** Yes, that is correct.

**The Chairman:** On this whole problem, would biological availability come within the description of prescribing standards, composition, strength, potency, purity, quality or other property of any article of food or drug, cosmetic or device?

**Dr. Chapman:** Yes, sir.

**The Chairman:** Would it? Which are the words there?

**Dr. Chapman:** Certainly covered by "other property".

**The Chairman:** The *ejusdem generis* rule would apply there; it would be things of the

nature of the one cited; you could not import anything else.

**Dr. Chapman:** This would certainly be a quality; it would relate to the strength and potency, and possibly to the composition.

**Senator Molson:** If instead of saying they were considering this they said that they expected to put this into regulations, I think at least a half-hour's discussion might have been eliminated. I think many of the committee would like to hear Dr. Chapman say he believes this will be done.

**Dr. Chapman:** I was just going to point out that we do have to determine what this would involve. If we covered all drugs coming on the market for the first time it would be a tremendous task, not only for the drug manufacturer, but also for the Food and Drug Directorate to evaluate the data that would be supplied. We have to weigh the possible consequences of not having such a regulation with the resources that we have and determine where we should put those resources.

**The Chairman:** There is no use telling us you have the power to do something if you do not say to us "I am going to do it".

**Senator Molson:** You were talking about certain specified cases. Surely that does not mean you would have an immediate flood of such dimensions that you could not handle it because you would not specify the drug product or it was beyond your capability to handle?

**Dr. Chapman:** We would certainly have to consider whether or not we had the resources to do this at this time, and whether or not the resources we do have should be put into monitoring imported drugs as they enter the country, or divert some of those resources to evaluating data submitted. I think the way it could be done is to give the directorate authority to request information when it is required, and this is the stage we have reached in our consideration at the moment.

**The Chairman:** Are there any other questions?...

I want to thank you, Mr. Minister, for devoting a day to this committee, and Dr. Chapman, whom I have seen many times, Mr. Grandy, and the others who have been here. We will have to weigh this and find out what the committee wants to do. I doubt whether the committee would do anything without giving some indication in advance, Mr. Minister; we are not just going to throw something at you.

**Hon. Mr. Basford:** I am not sure what the committee has in mind.

**The Chairman:** I do not know yet, so I cannot tell you.

**Senator Croll:** What do you propose, Mr. Chairman?

**The Chairman:** I think we should have a conference, whether we have it now or later, certainly on our own. The committee should have its own deliberations. It may be that some members will want to read the report to see how far it goes. It will be available for our next meeting.

**Senator Croll:** At some other time?

**The Chairman:** Yes.

**Senator Croll:** When we have more members present?

**The Chairman:** Yes. Perhaps we would want the transcript before we reach a formal decision as to what we will do. Therefore, I suggest, that we take the matter under consideration.

**Hon. Senators:** Agreed.

The meeting adjourned.

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 43

WEDNESDAY, MAY 21st, 1969

***Complete Proceedings on Bills S-35, S-36, S-37 and S-38,***

intituled respectively:

"An Act to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject matter of certain of those amendments";
"An Act to amend the Foreign Insurance Companies Act";
"An Act to amend the Trust Companies Act"; and
"An Act to amend the Loan Companies Act".

WITNESSES:

*Department of Insurance:* R. Humphrys, Superintendent. *The Canadian Life Insurance Association:* K. R. MacGregor, President. *The Trust Companies Association of Canada (and Loan Companies Assoc.)*: W. R. Bean, Past President. (Deputy Chairman Vice-President, Canada Trust Company and Huron and Erie Mortgage Corporation.)

REPORTS OF THE COMMITTEE

20278—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Lang |
| Aseltine | Desruisseaux | Leonard |
| Beaubien | Gélinas | Macnaughton |
| Benidickson | Giguère | Molson |
| Blois | Haig | Phillips (*Rigaud*) |
| Burchill | Hayden | Savoie |
| Carter | Hollett | Thorvaldson |
| Choquette | Isnor | Walker |
| Connolly (*Ottawa West*) | Kinley | Welch |
| Cook | | White |
| | | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, May 30th, 1969:

"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 S-35, intituled: "An Act to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject matter of certain of those amendments".

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 Lang moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

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

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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 a second reading of the Bill S-36, intituled: "An Act to amend the Foreign Insurance Companies 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 Lang moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

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

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Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator Roebuck, for the second reading of the Bill S-37, intituled: "An Act to amend the Trust Companies 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.



20278—1½

The Honourable Senator McDonald moved, seconded by the Honourable Senator Roebuck, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

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

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Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Denis, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of the Bill S-38, intituled: "An Act to amend the Loan Companies 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 Denis, P.C., moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

WEDNESDAY, May 21st, 1969.
(47)

At 2.15 p.m. the Standing Senate Committee on Banking, Trade and Commerce *resumed* and proceeded to the consideration of the following:

**Bill S-35,** "An Act to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject of certain of those amendments".

**Bill S-36,** "An Act to amend the Foreign Insurance Companies Act".

**Bill S-37,** "An Act to amend the Trust Companies Act".

**Bill S-38,** "An Act to amend the Loan Companies Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Choquette, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Giguère, Hollett, Isnor, Kinley, Lang, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, White and Willis.—(24)

*Present, but not of the Committee:* The Honourable Senators Dessureault, Grosart, Macdonald (*Cape Breton*), McDonald, McLean, Méthot, Paterson and Sullivan.—(8)

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

*Resolved*—That 800 copies in English and 300 copies in French be printed of the Committee proceedings on the said Bills.

The following witnesses were heard:

*Department of Insurance:*

R. Humphrys, Superintendent.

*The Canadian Life Insurance Association:*

K. R. MacGregor, President.

*The Trust Companies Association of Canada:*

Walter A. Bean, Deputy Chairman and Vice-President, Canada Trust Company and Huron and Erie Mortgage Corporation. (Past President of Association).

Mr. Bean also represented the Loan Companies Association.

Upon motions duly put, it was *Resolved* to report Bills S-35, S-37 and S-38, *as amended.*

(The full text of the amendments appears by reference to the Reports of the Committee immediately following these Minutes.)

Upon motion it was Resolved to Report Bill S-36 without amendment.

At 4.00 p.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORTS OF THE COMMITTEE

WEDNESDAY, May 21st, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-35, intituled: "An Act to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject matter of certain of those amendments", has in obedience to the order of reference of May 20th, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 17:* Strike out lines 1 to 17, both inclusive, and substitute therefor the following:

"(4) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or pursuant to this subsection is deemed to own beneficially, equity shares of a corporation, that person or group of persons shall be deemed to own beneficially a proportion of the equity shares of any other corporation that are owned beneficially, directly or indirectly, by the first mentioned corporation, which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are owned beneficially, directly or indirectly, or that pursuant to this subsection are deemed to be owned beneficially, by that person or group of persons."

2. *Page 17:* Strike out lines 18 to 27, both inclusive, and substitute therefor the following:

"(5) Notwithstanding subsection (4), a company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the company is by reason thereof deemed to own beneficially equity shares of the corporation."

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

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WEDNESDAY, May 21st, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-36, intituled: "An Act to amend the Foreign Insurance Companies Act", has in obedience to the order of reference of May 20th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

WEDNESDAY, May 21st, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-37, intituled: "An Act to amend the Trust Companies Act", has in obedience to the order of reference of May 20th, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 33:* Strike out lines 12 to 27, both inclusive, and substitute therefor the following:

"by

(A) the government, or an agency of the government, of the country in which the real estate or leasehold is situated or of a province, state or municipality of that country, or

(B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by paragraph (*h*) or (*j*), or by those paragraphs as modified by section 68A,"

2. *Page 44:* Strike out lines 8 to 24, both inclusive, and substitute therefor the following:

"(4) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or pursuant to this subsection is deemed to own beneficially, equity shares of a corporation, that person or group of persons shall be deemed to own beneficially a proportion of the equity shares of any other corporation that are owned beneficially, directly or indirectly, by the first mentioned corporation, which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are owned beneficially, directly or indirectly, or that pursuant to this subsection are deemed to be owned beneficially by that person or group of persons."

3. *Page 44:* Strike out lines 25 to 34, both inclusive, and substitute therefor the following:

"(5) Notwithstanding subsection (4), a trust company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the trust company is by reason thereof deemed to own beneficially equity shares of the corporation."

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

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WEDNESDAY, May 21, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-38, intituled: "An Act to amend the Loan Companies Act", has in obedience to the order of reference of May 20th,

1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 28:* Strike out lines 3 to 18, both inclusive, and substitute therefor the following:

"by

(A) the government, or an agency of the government, of the country in which the real estate or leasehold is situated or of a province, state or municipality of that country, or

(B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by paragraph (d) or (e), or by those paragraphs as modified by section 60A,"

2. *Page 37:* Strike out lines 8 to 25, both inclusive, and substitute therefor the following:

"(4) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or pursuant to this subsection is deemed to own beneficially, equity shares of a corporation, that person or group of persons shall be deemed to own beneficially a proportion of the equity shares of any other corporation that are owned beneficially, directly or indirectly, by the first mentioned corporation, which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are owned beneficially, directly or indirectly, or that pursuant to this subsection are deemed to be owned beneficially by that person or group of persons."

3. *Page 37:* Strike out lines 26 to 35, both inclusive, and substitute therefor the following:

"(5) Notwithstanding subsection (4), a loan company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the loan company is by reason thereof deemed to own beneficially equity shares of the corporation."

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Wednesday, May 21, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-35, to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject matter of certain of those amendments, met at 2.30 p.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** May we have the usual motion for printing.

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

**The Chairman:** Bill S-35 is an Act to Amend the Canadian and British Insurance Companies Act, etc. We have representatives here on behalf of the Insurance Companies. For the Canadian Life Insurance Association, we have the President, Mr. K. R. MacGregor, the First Vice-President, Mr. E. G. Schafer, Mr. A. M. Campbell, Mr. A. T. Seedhouse, Mr. J. A. Tuck, Mr. A. F. Williams, and Mr. G. Roussin. Mr. Humphreys, is here and as is the usual practice in bills of this kind we open by getting an explanation from him.

**Mr. R. Humphrys (Superintendent of Insurance):** Mr. Chairman and honourable senators, the purpose of Bill S-35 is to amend the Canadian and British Insurance Companies Act. I think I should say at the outset that the four bills before you form a package in that many of the amendments in this first bill run through the others.

The principal purpose of the amendments to the Canadian and British Insurance Companies Act can be touched upon very quickly. First of all and not necessarily the most important matter I might mention is a change in the system of incorporating companies and amending existing charters. This bill proposes the adoption of a letters patent system for incorporating insurance companies and a letters patent system for amending charters including existing charters instead of the previous practice of doing so by special act of parliament. As you know from experience over many years, the method of incorporation of insurance companies federally has been by the introduction of private bills and many of those have been dealt with in the past. These amendments would also permit the incorporation of provincially incorporated companies as federal companies by the issuance of letters patent subject, of course, to the concurrence of the province of incorporation and the establishment of an appropriate legislative authority by the province as well as by parliament. This letters patent system, however, would not be exclusive. Companies and persons would still have the right to approach Parliament with a private bill if they so wished, but they could avail themselves of a system of incorporation that is parallel to that used for other companies.

The second purpose is concerned with the revision of the system of supervision and control of companies, particularly of companies that get into financial difficulties. At the present time there are provisions in the act permitting the supervisory authority to exercise this control but there is a lack of intermediate tools. There is the power to issue a certificate of registry and there is the power to withdraw such a certificate but there is no intermediate power. If conditions arise where it is important and necessary to have action taken in order to rehabilitate a company or to conserve its assets and restore its ability to meet its obligations, there is a lack of power to get these things done. This bill proposes greater flexibility. In essence, it requires the superintendent to report to the Minister whenever he thinks a company's ability to meet its obligations may be impaired or if its assets in Canada are less than its liabilities in Canada.

Then if the Minister, having heard the company, concurs he may take one or more of three different courses of action. He may insert conditions in the certificate; he may grant the time to remedy the defect or he may direct the superintendent to take control of the company's assets. This, as is described in the bill, does not mean that the company must discontinue business. It provides the machinery whereby the assets may be conserved and the supervisory authority may satisfy itself that the assets are not being improperly dealt with while time is taken to remedy the defects and rehabilitate the company. The company will be able to operate as such and continue its business, but all rights to deal with its assets would be subject to concurrence by the supervisory authority.

The next step would be that in any case where the superintendent has control of the assets of a company the Minister would be empowered to seek a court order directing the superintendent either to take control of the company for rehabilitation or perhaps for winding up. If it is a matter of rehabilitation he could appoint an advisory committee from other companies to advise him in carrying out his duties.

If the company is rehabilitated, it could be returned to its owners. It provides that the expenses involved in the supervision by the superintendent for the rehabilitation or winding-up of the company would be assessed against other like companies.

The third main category is a strengthening provision to provide for prohibition of investments and loans that are not at arm's length. These provisions will attempt to ensure that the investment decisions by an insurance company will be made free from a conflict of interests on the part of those who may be in a position to exercise influence or control over those decisions.

Now those are the three main categories of amendments and probably the three that constitute the most important provisions of the bill. There are a number of others that are worth mentioning briefly.

It is proposed to deal with the power of insurance companies to operate segregated funds, that is, funds that are established in connection with contracts where the obligations vary with the market value of the assets in the fund. Companies now have this power in rather a limited way. Therefore it is proposed to expand this power to some extent. The essence of these funds is that the investment risk is transferred to the policy holder. The company may or may not assume the mortality risk, but the effect of these operations is that the investment risk, both the losses and the gains, goes to the policy holder.

The power of insurance companies to operate subsidiaries is proposed to be expanded. They now have the power to own life insurance subsidiaries abroad, fire and casualty insurance subsidiaries in Canada and real estate subsidiaries. It is also proposed to expand those powers to enable them to establish subsidiary companies for the operation of investment funds and subsidiaries for the purpose of distributing investment contracts, mutual fund contracts or other types of variable investment plans.

It is also proposed that in connection with major transfers of stock of an insurance company prior notice will have to be given to the supervisory authorities. It is not proposed that the Government be empowered to exercise a veto power on the transfer, but any transfer that is more than 10 per cent of the stock of a company, or any transfer that changes control of a company, would have to be notified to the Superintendent at least 30 days in advance of the date the transfer is to take place; and that notice would have to include full information as to the beneficial owner of the shares after they are transferred.

There are some changes in the investment powers, but they are quite minor. One of some interest might be that the power to make mortgage loans is expanded to enable companies to make loans in excess of 75 per cent of the value of the real estate where the excess is covered by a policy of mortgage insurance issued by a registered insurance company. The companies now have that power where they are insured through C.M.H.C. and mortgage insurance is issued by that corporation.

Power is sought to enable the Governor in Council to pass regulations dealing with the custody and safe keeping of securities. It is proposed in that regard to consult with committees of the industry in order to establish good patterns and practices for the care and custody of securities, the bonding of officers, all with a view to increasing the safety and security of the assets of companies.

There is an amendment in relation to the restriction of transfer of shares to non-residents, and their voting rights. This is to correct

a point that was raised at the time a bill was before Parliament a few weeks ago to incorporate the Transcoastal Life Assurance Company. You may recall that company indicated its Canadian subsidiary would be operated under the control of Transcoastal in the initial stages, but that they proposed to make shares available to Canadians; but they pointed out that if they sold their interest below 50 per cent, they would lose all their voting rights. Their interpretation of the act was correct, and we have proposed an amendment which would enable them to preserve their voting rights as they sold their shares down, so that if they wanted to reduce their ownership below 50 per cent it would not damage their voting rights. Once they go below 50 per cent they have to remain stable or keep going down. If they try to buy back up again they would lose all their votes.

It is proposed to transfer a number of discretionary decisions running through the existing act from Treasury Board to the Minister. This is consequent on the reorganization whereby Treasury Board fulfils different functions from those it fulfilled some years ago when these authorities were placed with Treasury Board. In most cases the discretionary decisions will lie with the Minister; in a few cases they will go to the Governor in Council; and in even fewer cases, those of a purely administrative nature, they will rest with the superintendent.

It is proposed to insert audit provisions. There have not been any provisions heretofore specifying the qualifications of the auditor or requiring an audit, though there has been the power for the Superintendent to require an audit where he thinks it necessary. So, there are audit provisions proposed in this bill, and the qualifications of the auditor will be the same as those in the Bank Act.

One change is proposed concerning values of assets for fire and casualty companies. At present they are required to keep all their assets on a current market value basis. It is proposed they will be able to use, in the future, a modified market value basis, which is the same basis as life insurance companies have for stocks and corporate bonds. This means that, instead of writing the securities down to the market value, they may take the impact of a drop in market value in three stages rather than all at once.

Mr. Chairman, I think that covers the main points of significance in the bill before you. I think those are all the remarks I have to make.

**The Chairman:** Do you mean it has taken you just this short period of time to deal with 67 or 68 pages of the bill?

**Senator Walker:** Could I ask the Superintendent a question? You have gone over this carefully and have given us an outline of it. Is there anything in the bill to which you have an objection which should come to our notice?

**Mr. Humphrys:** No, senator.

There is one further point I should mention, however, that I think is important enough to draw to your attention, concerning British companies that do business in Canada. This act requires them to maintain assets in Canada to cover their liabilities; and these assets must be in Canadian securities so far as corporate securities are concerned. They may deposit for that purpose corporate bonds and stocks of Canadian corporations only. There is some elbow room in that they have a so-called basket provision equal to 7 per cent of their liabilities, and within that 7 per cent they have discretion as to what investments they will propose, and that extends to cover not only Canadian but also non-Canadian securities. In connection with segregated funds where contracts are issued and the investment risk is taken by the policyholder, the British companies have put forth the view that they are at a disadvantage as compared to Canadian companies since Canadian companies are not restricted so tightly to using only Canadian securities in those segregated funds. In some cases contracts are issued under this provision, say, with group pension arrangements where the employer may be prepared to take the investment risk but may wish to have some of the funds invested in U.S. as well as Canadian equities.

In order to put British companies on the same plane as Canadian companies in this respect, there is an amendment proposed to the effect that, so far as segregated funds are concerned, British companies will not be confined to Canadian corporate securites. It is not proposed as an invitation to non-resident companies to come to Canada and invest all their proceeds abroad; it is intended to equalize the competitive position.

**Senator Isnor:** Mr. Humphrys, you mentioned about mortgages and the advance being greater than 75 per cent. Is there any limit to that advance?

**Mr. Humphrys:** There is no limit as long as the excess is insured.

**Senator Macnaughton:** Mr. Humphrys referred, if I understood him correctly, to the liability of other insurance companies in the case of the default of one of the companies. Have you the reference to that in the bill?

**Mr. Humphrys:** That liability is to absorb the expenses, but not to cover a shortage in the assets of the company.

**Senator Macnaughton:** That was my misunderstanding, I am sorry.

**Mr. Humphrys:** The important feature is that if there is a liquidation, it would enable the liquidation expenses to be met without drawing on the assets of the company.

**Senator Macnaughton:** Then you referred also to the power to invest in and the control of subsidiary companies. Where is the reference to that?

**Mr. Humphrys:** That is on page 26 of the bill, section 64A. The new material has the side lines in paragraph (b), and over the page in paragraphs (e) (f) and (g). Paragraph (b) is really an advisory, management or sales distribution service in connection with life insurance or annuities. Paragraph (e) is any corporation incorporated to offer public participation in an investment portfolio, which would include mutual funds. Paragraph (f) is again an advisory, management or sales distribution service in connection with the mutual fund, which is a common way that mutual fund shares are distributed. Paragraph (g) is a general provision to allow, subject to the approval of the minister, any corporation incorporated to carry on any other business reasonably ancillary to the business of insurance.

**Senator Macnaughton:** Would you be in a position to interpret that paragraph at the moment, or is that too big a question?

**Mr. Humphrys:** I do not think it could be positively defined at this stage.

**Senator Walker:** It is a catch-all.

**Mr. Humphrys:** Yes, activities that are incidental or supplementary to that of the main company. It would not by its terms be broad enough to launch an enterprise that is completely different from and unconnected with the activities of the insurance company.

**Senator Macnaughton:** What about the publishing field? That would be ancillary, printing your own contracts.

**Mr. Humphrys:** We may have some discussion, debate and argument over the meaning of this before it is through, but I would say publishing material for the company, that is, its policy forms, rate books and advertising, would probably be ancillary to the company. Publishing generally—that is, going out and taking job printing or publishing for somebody else—probably would not be.

**The Chairman:** It would not include the larger conglomerate activities?

**Mr. Humphrys:** I think not, Mr. Chairman.

**Senator Beaubien:** What about the segregated fund and the seven per cent basket fund?

**Mr. Humphrys:** The basket fund is a modification of the investment powers relating to the regular insurance operations, and it gives the company an area of discretion in which it may invest in its own choice. The segregated fund is something different. It refers to the segregation and definition of a certain body of assets that stand behind defined contracts, these contracts being such that the investment gain or loss arising from the market performance of this fund flows through to the policyholder. Those funds are relieved from certain of the investment restrictions that otherwise apply, because the insurance company is no longer guaranteeing a fixed dollar liability. It is the type of control you might need on an investment portfolio where the fixed dollars are not so necessary, where the policyholder says, "I will take my chance on the investment gains or losses".

**Senator Leonard:** With respect to the new section 10A dealing with the notice of an application of transfer of 10 per cent or more of the total outstanding shares, what kind of action would the Superintendent contemplate taking on receiving that notice? I assume it would not just be filed away but would be a matter of publicity, or what?

**Mr. Humphrys:** The thought behind that section is that it is most important in carrying out supervisory responsibilities to know who controls the company, who operates the company. I think it must be recognized that however good the supervisory legislation is, or however vigilant the supervisors are, the real protection for the creditors of a company, for the policyholders, for the depositors,

lies in the skill, integrity and trustworthiness of the management. Consequently, it is very important that supervisors know who owns the company, who operates it, and to know when ownership is changed, because a change in ownership leads to a change in policy.

Much of the supervisory procedure depends upon knowing a company and the consistency of the way in which the company operates, its management, policies and practices from period to period. When control changes policies may change. This gives prior notice so that the supervising authorities can, if they think fit, meet with the new owners, the new shareholders, to establish communication, to make sure that the legislative requirements are known, to learn for themselves what policies the new owner may have in mind before they are implemented, and if need be to step up the degree of supervision. In summary, the provision would ensure prior notice of an event that may make a significant change in management policies.

**Senator Lang:** Could you explain this ten or more per cent change in the shareholding requiring proper notice?

**Mr. Humphrys:** Any transfer of a block of stock that exceeds ten per cent of the total issued stock, or any transfer that in the opinion of the company will effect a change in control.

**Senator Lang:** I am just assuming a transfer of that percentage of stock made without the company having any knowledge of it.

**Mr. Humphrys:** No, because the act provides that the transfer is not valid for the purpose of the company until it is registered on the books of the company. A transfer might be made and might establish rights between the vendor and purchaser, but it would not be recognized by the company so that the purchaser would not have any voting rights, or receive any dividends until the transfer is made on the books of the company.

**Senator Lang:** My point is that you could conceivably transfer, say, 15 per cent of the shares of the company; they could be transferred on the books of the company. How would the company give ten days' prior notice, having had no knowledge of the transfer until it appeared on the register?

**Mr. Humphrys:** The company is in control of its own register and it would be prohibited from entering that transfer until it had made sure the Superintendent had 30 days' notice.

**Senator Lang:** Prior notice?

**Mr. Humphrys:** They just have to hold up the transfer until the 30 days have expired.

**The Chairman:** Are there any other questions...

Now Mr. Humphrys, I understand you were proposing an amendment.

**Mr. Humphrys:** Yes, Mr. Chairman. In connection with the new section 33, on page 17. This section deals with prohibited investments and loans that are not at arm's length.

Subsection (4) has for its purpose the tracing of ownership of shares through intervening corporations. We use the word "shares" there. This amendment proposes to replace that word by "equity shares", which are defined as shares carrying voting rights. That is the effect of that amendment.

**The Chairman:** Yes.

**Mr. Humphrys:** The other amendment is in the following subsection (5), and the amendment proposes a revision in wording of that subsection which will have the same effect, but it is an improved wording. After this was printed we discovered a defect in the wording and this amendment changes the wording without changing the principle.

**Senator Croll:** What is the definition of equity shares?

**Mr. Humphrys:** That is defined on page 16 of the bill, Senator Croll, as follows:

> (c) 'equity share' means a share of any class of shares of a corporation to which are attached voting rights exercisable under all circumstances and a share of any class of shares to which are attached voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

**The Chairman:** Now, you have given me, Mr. Humphrys, a draft of the proposed amendments. They fall into four numbers. They all deal with page 17 of the bill. For purposes of the record, I take it when the committee hears them it will be accepted that clause 8 of Bill S-35 be amended as follows:

> (a) by striking out line 5 on page 17 thereof and substituting therefor the following:

'to own beneficially, equity shares of a corpora-';

(b) by striking out line 8 on page 17 thereof and substituting therefor the following:

'proportion of the equity shares of any other';

(c) by striking out line 12 on page 17 thereof and substituting therefor the following:

'shall equal the proportion of the equity shares'

(d) by striking out lines 18 to 27 on page 17 thereof and substituting therefor the following:

Exception

'(5) Notwithstanding subsection (4), a company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the company is by reason thereof deemed to own beneficially equity shares of the corporation.'

Now, are there any questions on that?

**Senator Lang:** I am not quite sure what it means, Mr. Chairman.

**The Chairman:** I am not sure myself what the last "deemed" means. What does that mean, Mr. Humphrys?

**Mr. Humphrys:** Subsection (4) indicates that, if a person owns shares in a corporation, he is deemed to own a proportion of any shares that that corporation owns, and the purpose of this is to prevent the requirements of this section being circumvented by the insertion of a corporate screen between a shareholder and the company that he is concerned with. Thus, if a person owns shares in a holding company and the holding company has a subsidiary, this section will trace his ownership through the holding company and measure it in the subsidiary. But, if we let this stand alone, it would mean that an insurance company could not make a loan to its own subsidiary because its own shareholders would be deemed to have a significant interest in the subsidiary. So the purpose of subsection (5) is to say that a company is not prohibited from making a loan to a corporation only because one of its own shareholders is deemed to own shares in that corporation. So, subsection (5) will enable an insurance company to lend to its own subsidiary; it sets aside the effect that would otherwise be produced by subsection (4) in deeming that the shareholders of the insurance company have a significant interest in the subsidiary.

**Senator Lang:** I will take your word for it that that is what that means.

**Senator Benidickson:** Mr. Chairman, on this point, Senator Lang, a distinguished lawyer, says that he does not understand all of that. I note that clause 8 of this bill involves five pages before we get to clause 9 of the bill, and I want to ask Mr. Humphrys, who is a friend of mine, if he thinks he gives parliamentarians adequate information in the drafting of bills in the explanatory notes, for here we have before us a copy of what is in the old act, which is just a few sentences so far as section 33 is concerned. My complaint is that I do not think parliamentarians are given adequate explanatory notes for matters involving five pages of changes in a statute.

**The Chairman:** Well, this is the section that deals with prohibited investments, and you have quite an enumeration of them. The last subsection we were talking about is by way of exception from this prohibition, as I understand it.

**Senator Benidickson:** Yes, but we are given as laymen an explanatory note in the right-hand part of the bill which simply reintroduces what is in the old act; but it requires four or five pages of new words to tell us what we are going to do now. I don't think the explanatory notes are in keeping with the changes.

**The Chairman:** What you are saying, senator, is that the explanatory note should tell you what the amendment does instead of just telling you what they have removed.

**Senator Benidickson:** Yes.

**The Chairman:** Yes.

**Senator Benidickson:** I think they used to.

**Senator Walker:** I thought the Superintendent explained this earlier.

**The Chairman:** Not in any detail. But Mr. Humphrys will explain it now, because it is an important section.

**Mr. Humphrys:** The explanatory note is brief, Senator Benidickson. There is no question about it. It merely says that the purpose is to prohibit making loans or investments that are not at arm's length. That is, in fact,

the purpose of this section. There is always the question, however, of how far one should go in the explanatory notes in paraphrasing the legislation itself. This gives the object of the section and almost any explanation that you give, clause by clause, would have to, perhaps, be a paraphrase of the legislation itself. But it is an important section and I think that it is well that I give some explanation of it.

**Senator Benidickson:** Just before you do that, may I say that, in respect of the future, Mr. Humphrys has many bills coming before the Senate. Sometimes we don't get bills until we arrive in committee. Therefore, I think there should be, in laymen's language on the right-hand page, as there used to be, adequate explanatory notes.

**The Chairman:** We will now do the next best thing. We will hear Mr. Humphrys' explanation.

**Senator Walker:** My understanding is that the senator understands that, but in the future he thinks we ought to have better explanatory notes.

**The Chairman:** Yes, but since the point has been raised, I think Mr. Humphrys should give an explanation.

**Mr. Humphrys:** The present act prohibits the company from making loans to an officer or a director or any member of the immediate family of an officer or director. These amendments propose to expand that prohibition to prohibit loans to a substantial shareholder whether that substantial shareholder is a corporation, an individual or a group of persons made up of an individual and his immediate family. So there we have the categories of an officer, director and major shareholder, and for the purpose of deciding if an individual is a major shareholder we group together the individual, his wife and minor children.

A major shareholder or a substantial shareholder, as the phrase is used in this act, is defined as a person who owns more than 10 per cent of the stock. So therefore we have a group of persons, consisting of officers, directors, their immediate families and substantial shareholders, who have or who can reasonably be considered to have a significant influence on the decisions of the company, or to be in a position to exercise an influence on them. This amendment provides that the company cannot make a loan to those persons, or, if the shareholder is a corporation, to make an investment in the corporation.

I should, of course, point out that it is stated that the company shall not knowingly make an investment. There may be cases that are hard to discover, and it is not proposed to impose a penalty if the company making an investment or loan that is contrary to this provision did not know that it contravened the requirements. It goes on to provide that if the company does find out that the investment or loan was one that is prohibited, then it should not continue to hold it.

The second category that is prohibited is an investment or loan to another corporation if any of the group mentioned previously has a significant interest in the other corporation, that is if an officer, director or major shareholder has a significant interest in the corporation, significant interest being a holding of more than 10 per cent of the capital.

The basic structure of the section then, is to define a group of persons who are in a position to exercise influence on the investment decisions of the company, to provide first of all that the company may not make loans to or investments in a member of that group, and secondly that it may not make loans to or investments in any corporation where any member of that group has a significant interest. The purpose is to try to ensure, in so far as it can be done by legislation of any reasonable length and complexity, that the investment decisions of a company are made free from a conflict of interests.

Subsection (3) defines what is a significant interest and what is a substantial shareholder, as I have just mentioned. A substantial shareholder is defined as one who owns more than 10 per cent of the equity shares, that is, the voting shares, and that in turn leads to the requirement to define "equity shares" in paragraph (c) on page 16. Then in paragraph (d) "investment" is defined in order to bring a loan to a company within the ambit of an investment. Paragraph (d) also provides that an investment in this sense does not include any normal working balances between insurance companies or any loan or debt that may arise that is purely ancillary to the main operation of the company.

Paragraph (e) defines an officer.

Subsection (4) is the one I explained previously and I might add a further word on that. Where a director, for example, has a major interest in a holding company and that hold-

ing company has a wholly owned subsidiary, the effect of subsection (4) is to indicate that that director is deemed for this purpose to have a significant interest in the subsidiary; the effect is that the purpose of the provision cannot be defeated by interposing a corporate screen between the persons we are dealing with and the corporation in which an investment is under consideration.

Subclause (5) is the exception which I have explained that enables an insurance company to make a loan to or an investment in its own subsidiary which would otherwise be prohibited by reason of an officer, director or major shareholder being deemed to have a significant interest in that subsidiary through the insurance company itself.

Subclause (6) permits the Minister to grant an exemption in places where he is satisfied that the persons in respect of whom the prohibition would otherwise arise do not and have not exercised any influence in the investment decisions and where the investment did not significantly affect their interests. This clause may appear complex, by the attempt here is to go far enough in legislation to establish the principle and make it clear that loans and investments where there may be a conflict of interests are prohibited. It is recognized that once you have this type of legislation, if one were attempt to pursue every possible twist and turn, the complexity of division and subdivision that would arise in the ingenuity of man, you would have pages and pages of legislation. The effort here is to enable these matters to be kept within some reasonable bound of complexity.

**The Chairman:** I have put the amendments. Are they carried?

**Senator Benedickson:** Mr. Chairman, I have a feeling that this legislation comes forward because of some unhappy experience in the past because we didn't have these provisions in the act. Is that right?

**The Chairman:** Well, you can ask Mr. Humphrys.

**Senator Benedickson:** Would Mr. Humphrys indicate that we have been burned by some troubles in the past because we did not have these provisions in the legislation.

**Mr. Humphrys:** Yes, senator, that is in fact the case. There have been cases where investments and loans were made where there was a conflict of interests and in some cases they gave rise to very serious situations and in other cases they gave rise to problems that were really very grave and which led to situations where company failure was averted only very narrowly indeed. With the growth of corporate groups and the tendency to move more into the field of subsidiaries, and where you see financial groupings being formed, I think it becomes more and more important to see to it that companies of the nature of insurance companies and other companies that raise large amounts of funds from the public make the investment decisions respecting those funds free from any conflict of interest and free from interests that may arise on the part of major shareolders in associated companies. Only in this way can we hope to see or arrive at the position where the investment of funds that are raised from the public through insurance premiums, through acceptance of deposits or the sale of trust certificates or debentures are invested with the best interests of the company in mind, and to achieve the maximum of security for the public.

**Senator Benidickson:** But we have had some unfortunate experiences due to the lack of this type of legislation, is that correct?

**Mr. Humphrys:** Yes, senator.

**The Chairman:** Is the amendment carried?

**Hon. Senators:** Carried.

**The Chairman:** Mr. Humphrys, there is a question I want to ask you on segregated funds. You are making a change and are permitting a company to operate segregated funds without any liability for the loss or any right to assume any of the gains. Does this put them in the position of being managers or trustees of various segregated funds? Is that about the position it puts them in?

**Mr. Humphrys:** The right of a life insurance company to operate this type of fund stems from their corporate powers to issue contracts generally, so the contracts they issue, and against which they have assets in segregated funds, must be ones they issued in carrying out their corporate powers. So there must be involved some degree of insurance, some element of insurance, some justification or connection with the corporate powers of the company itself. We have taken the view that companies cannot, through these segregaed funds, issue a straight investment contract where they do nothing but manage the fund and no risk falls back on the company.

**The Chairman:** There must be an element of insurance?

**Mr. Humphrys:** Yes. The point you raised is the point that led to the proposal here to enable companies to form subsidiaries for the purpose of offering investment opportunities to the public; and, if they wish, they will, through a subsidiary company, do a straight investment business where they act as managers of the fund, either directly or through a subsidiary management company.

**The Chairman:** But you made reference to a mutual fund. Where would the element of insurance come in there?

**Mr. Humphrys:** There would not be any element of insurance there. This bill proposes a new right to form a subsidiary company as a mutual fund, and this is not the same as the segregated fund.

**The Chairman:** Are there any other questions?

**Senator Lang:** I am not sure whether counsel for the Insurance Companies Association may be in this room today.

**The Chairman:** I am going to call on them. I indicated that the insurance company representatives are here, and if they have amongst themselves agreed on a voice, then he will be heard. If not, we will hear them all and ask them for their comments on this bill—what, if anything, they have to say against the bill, or whether they support the bill.

Mr. MacGregor, are you going to speak, in the first instance?

**Mr. K. R. MacGregor, President, Canadian Life Insurance Association:** Yes, Mr. Chairman.

**The Chairman:** May I welcome you to this committee in your new capacity?

**Senator Benidickson:** Mr. Chairman, I would just like to put on record that we have seen Mr. MacGregor for many years with another cap, as Superintendent of Insurance and an adviser we appreciated over the years. Today he is before us in another role—I think he is President of this Association. We always felt fairly safe with his advice in the past, and I am sure that the same sentiment prevails now.



**The Chairman:** May I add these words: Do not stay away so long, Mr. MacGregor. We used to like your coming here.

**Mr. MacGregor:** Mr. Chairman and honourable senators, may I say what a pleasure it is to have the privilege of appearing before this committee again after a lapse of five years or more.

When I look at the thickness of this bill, it takes me back about 20 years, to 1948, I think, when a very thin bill was before this committee to amend the Insurance Acts. There had been amendments to the acts nearly every year or two for some period before that, and I recall one honourable senator asking whether it would not be possible to come forward with a wholesale revision and be done with it for perhaps 10 years, as in the case of the Bank Act.

Two years later, in 1950, quite a thick bill was before this committee, designed to end all revisions of the Insurance Acts for 10 years, or thereabouts, but, as I recall it, it was less than a year before I was back before this committee again, in 1951, and there were further amendments—and in 1956, 1957, 1958, I think, a fairly substantial revision in 1960, and another bulky bill in 1965.

This, of course, is the bulkiest of all. I think, if it indicates anything, it surely indicates that the business of insurance is a very vital one and is certainly anything but a dead or a moribund business.

Notwithstanding the bulk of the bill, the member companies of the Canadian Life Insurance Association—which companies transact about 99 per cent of the life insurance business in Canada—have no objection to the provisions of this bill. In many cases they are heartily in favour of them, and that is understandable, perhaps—more particularly the provisions that expand the powers of companies to some extent. With these expanded powers we think the companies can better serve the Canadian public.

On the restrictive side, we quite understand the reasons that have prompted stronger provisions respecting supervision, and we are quite prepared to accept them.

As far as incorporation of companies by a different route, by the Letters Patent route, is concerned, I think it is fair to say that most companies likewise welcome that proposal, especially having in mind the difficulties that have been encountered in recent years in getting special acts through. Personally, I rather

regret this change in procedure. I see no objection to it whatever as far as making amendments to existing acts are concerned for certain specific purposes—increasing the capital of a company, changing the name, adding a French or English version and so on—but I was early wedded, I am afraid, to the rather special status of a company incorporated by special act. I saw advantages in it, but I quite realize that present-day conditions seemingly make the continuation of that route alone an inconvenient if not an impracticable one.

I think there is very little I can say on the provisions of the bill: we have been through it; we have no objection to any of the provisions in it.

**The Chairman:** Nor to the amendments?

**Mr. MacGregor:** Nor to the amendments.

**Senator Walker:** I move we report the bill.

**The Chairman:** Are you speaking on behalf of the association?

**Mr. MacGregor:** Yes, Mr. Chairman, I am.

**Mr. Humphrys:** Mr. Chairman, I want to mention one further point, and that is in connection with the new procedure for incorporation.

Hitherto, there has not been in the legislation any requirement for minimum capital for a new company. Since each bill has come before Parliament, each case has been considered on its merits. It was thought that if an administrative procedure is to be used for incorporating companies, there should be a statutory limitation for capital. It is $2 million of capital and surplus for life insurance companies, to start with; and $1½ million of capital and surplus in the case of a fire and casualty insurance company.

**Senator Leonard:** Paid up?

**Mr. Humphrys:** Yes.

**The Chairman:** Is there a motion to report the bill with the amendments?

**Hon. Senators:** Agreed.

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## EVIDENCE

**The Chairman:** Honourable senators, we now have for consideration Bill S-36.

**Mr. R. Humphrys, Superintendent of Insurance:** The bill with which the committee has just dealt, Bill S-35, an act to amend the Canadian and British Insurance Companies Act, deals mostly with Canadian companies, but has one part dealing with British companies. Bill S-36, the Foreign Insurance Companies Act, does for foreign companies exactly what the British part of the Canadian and British Insurance Companies Act does for British companies. This peculiar split in the two bills stems from constitutional problems in years gone by and has no other significance.

**The Chairman:** To what extent Bill S-36 is a duplicate of Bill S-35? Certainly in paging it is not.

**Mr. Humphrys:** It is a duplicate to the extent that the amendments it effects applicable to foreign companies are the same in effect as the amendments in Bill S-35 applicable to British companies. The last few sections in Bill S-35, for section 43 through to section 48, deal with British companies.

**The Chairman:** The same subject-matter.

**Mr. Humphrys:** It is a little thinner because in Bill S-35 some of the legislation applicable to British companies is accomplished by cross reference to sections that apply to Canadian companies. In the foreign act the provisions had to be spelled out in full.

**The Chairman:** There are of course, some provisions in bill S-35 relating to Canadian companies that are not relevant. Is that right?

**Mr. Humphrys:** That is correct.

**Senator Beaubien:** Do you have an amendment to Bill S-36?

**Mr. Humphrys:** No, there is no amendment, because the provision we discussed about prohibiting loans and investments does not apply to foreign companies.

**The Chairman:** Are there any questions?

Again, is there any person present who wishes to speak? Mr. MacGregor?

**Mr. K. R. MacGregor: President, Canadian Life Insurance Association:** No, Mr. Chairman, we have no further comments.

**The Chairman:** You are in favour and you have no objections?

**Mr. MacGregor:** We are in favour and we have no objection whatsoever.

**Senator Desruisseaux:** I move that we report the bill.

**Hon. Senators:** Agreed.

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## EVIDENCE

**The Chairman:** We now come to Bill S-37 dealing with trust companies.

We have here, Mr. Walter A. Bean, the Deputy Chairman and Vice-President of the Canada Trust Company and Huron and Erie Mortgage Corporation and Past President of the Trust Companies Association of Canada; Mr. E. D. L. Miller, Assistant General Manager, Finance, Canada Trust Company and Huron and Erie Mortgage Corporation, and Mr. E. F. K. Nelson, Executive Director of the Trust Companies Association of Canada. First we will hear Mr. Humphrys.

**Mr. R. Humphrys, Superintendent of Insurance:** Mr. Chairman and honourable senators, this bill proposes to effect amendments in the Trust Companies Act. Many of the provisions are parallel to those that I described for the Canadian and British Insurance Companies Act, namely, a change in the system of incorporating companies and amending existing charters. It is proposed to require a minimum of $1 million capital and surplus for the formation of a trust company. The provision concerning investments and loans where there may be a conflict of interests is included here following the provision in the insurance act. The change in the flexibility of control by the supervisors is, as nearly as possible, parallel in this bill to what was proposed in the insurance act. The explanation of the granting of power to trust companies to own subsidiaries is brought closely into line with the powers proposed for insurance companies. This amendment is not only to parallel amendments that are proposed in the present insurance act, but also amendments made in relation to insurance companies in 1965.

There are, however, a number of features in this bill that I think merit some special comment, since they apply to trust companies and not to insurance companies.

In connection with the investment powers, trust companies are now substantially confined to investing in Canadian securities. They have the power to invest in the securities of some foreign governments, the United Kingdom and the United States, but other than that they are confined to Canadian securities. This has the consequential effect of pretty well confining them to business in Canada. If they wanted to do business outside the country they could not invest in any securities in that jurisdiction and it would be hampering and perhaps impossible for them to carry on, or to conduct, trust company business. Amendments are proposed here to enable them to invest in investments of the same quality as are defined in the bill in any country in which they are doing business.

**Senator Benidickson:** Could they at the present time form a subsidiary in a foreign country?

**Mr. Humphrys:** Not at the present time. This bill proposes that they be able to do so. At the present time trust companies have a basket provision. It is related to the company's own funds and is 15 per cent of the company's capital and surplus. In that connection, perhaps I should mention that in a trust company its assets are really divided into three categories. First, there are the company's own funds, which are made up of capital and surplus and retained earnings. There are the guaranteed trust funds, which are the funds that arise from an acceptance of deposits from the public and from the sale of guaranteed investment certificates. All of these funds are trust funds of a special type; they are trust funds where the company guarantees the repayment of the principal, and usually guarantees payment of a specified rate of interest. They must keep the assets separately segregated and earmarked in relation to the guaranteed trust obligations. The third category are the estate, trust and agency funds, where the company act as trustee or manager but without any guarantee on the part of the trust company as to the repayment of the principal in any fixed dollar amount or the payment of interest.

To go back, the existing basket is a percentage of the company's own funds. It is proposed here to give them a broader basket power, for the company to invest guaranteed trust funds to the extent of 7 per cent of the fund within the company's own discretion. This is a basket provision parallel to the basket given to life insurance companies some years ago. Certain other investment powers of trust companies would be changed by this amendment, in the direction of bringing them into line with the investment powers that have been granted to insurance companies by this or previous amendments.

There are two other important points. One is in relation to the borrowing limits. Trust companies are now limited to a maximum of

funds accepted from the public by way of deposits or proceeds from the sale of guarantee investment certificates equal to 15 times their capital and surplus. This means that they have to have a margin of capital and surplus of 6¼ per cent of their liabilities. This proposes to raise that borrowing power limit to 20 times, subject to approval by the Minister on application by the company.

It is proposed to insert a liquidity provision in the act whereby companies would be required to maintain at least 20 per cent of their demand liabilities and liabilities falling due within 100 days in the form of readily realizable assets; specifically, cash, federal Government bonds and provincial government bonds. The liquidity test is quite parallel to that in other trust company legislation in the provinces.

**Senator Benidickson:** How does that compare with existing legislation?

**Mr. Humphrys:** There is no specific legislative requirement for liquidity in the Trust Companies Act at the present time, senator. There is such a provision in the Loan Companies Act, but as a matter of practice, trust companies have followed careful management practices in that regard and their liquidity position has been adequate to meet their obligations.

It is proposed, however, to write such a provision into the statute to make the legislative requirements parallel to those that are now in the trust company legislation of some of the provinces and, really, to recognize in legislation the desirability of this management practice.

**Senator Benidickson:** This is an authoritative statement as to liquidity.

**Mr. Humphrys:** It is a minimum statutory requirement.

**Senator Benidickson:** This is new?

**Mr. Humphrys:** Yes, this is new legislation.

**The Chairman:** Yes.

**Mr. Humphrys:** There are requirements for the filing of quarterly statements with the Superintendent to enable a close check to be kept on liquidity and on requirements for semi-annual statements of purchases and sales of investments so that the movement in the investment account can be followed in a closer fashion than has hitherto been the case.

There are a number of other amendments dealing with administrative matters and correction or improvement of wording.

I think, Mr. Chairman, that together with the explanations of the matching provisions of the Canadian and British Insurance Companies Act, that is all I have to say.

**The Chairman:** What you are referring to is the valuation of securities, a provision which will follow what you have provided in the Life Companies Act.

**Mr. Humphrys:** No, senator. The amendment that I referred to in the insurance Act had to do with the valuation of the assets of a fire and casualty insurance company. There was no such provision in respect of life companies.

**The Chairman:** Is there any case here in relation to the percentage or ratio of the investments in different types of securities, mortgages?

**Mr. Humphrys:** The change that I mentioned in connection with the insurance companies, that is, the power to invest in mortgages that exceed 75 per cent of the value of the real estate where the excess is insured, is proposed here for the trust companies as for the life companies. It is proposed here that trust companies be given power to invest in real estate for the production of income where the real estate is leased to a corporation whose shares are eligible investments, without being subject to the present maximum limit. At the present time, companies are limited to 10 per cent of their assets. In that type of investment, this limitation would be taken off and this would put them in the same position as life insurance companies.

**Senator Benidickson:** Mr. Chairman, from the rather frequent attendance before this committee of Mr. Humphrys, I get the impression that his responsibility and authority are being constantly enlarged. How is that reflected in personnel and bodies in the Department of Insurance?

**The Chairman:** Do you mean staff?

**Senator Benidickson:** Yes.

**Mr. Humphrys:** It is not adequately reflected. We have been able to carry out our duties with minimum increases in staff. We recognize, however, that additional duties are coming on us as a consequence of these amendments and other problems that arise in the supervisory fields. If an adequate and successful pattern of supervision is to be maintained, our staff will have to expand to keep pace with the expansion in the financial

institutions and, indeed, in the complexity of the problems that are arising in these fields.

It is not easy, of course, to accomplish this because there are never enough good people to go around and it is hard to get staff of the quality that you need to do the kind of job that we would like to do in connection with our supervisory responsibilities.

**Senator Benidickson:** How large in numbers or bodies would your branch be at the present time?

**Mr. Humphrys:** We have about 125 employees, senator.

**Senator Leonard:** How many actuaries have you?

**Mr. Humphrys:** About 14 qualified actuaries, senator.

**Senator Willis:** I for one have complete confidence in Mr. Humphrys' ability to reorganize his department.

**The Chairman:** Even Mr. Humphrys will tell you that you have to give him the tools in the way of appropriate legislation and in the way of satisfactory bodies.

**Senator Willis:** Yes.

**The Chairman:** I understand that there are several amendments, Mr. Humphrys. Would you care to discuss those?

**Mr. Humphrys:** One amendment, senator, is in connection with investment powers. I was just saying that one of the amendments proposed is to expand the power of the company to invest in real estate for the production of income where the real estate is leased to a corporation and the lessee meets certain specified tests. At present, companies can invest in this type of real estate, if the real estate is leased to a corporation that has a five-year dividend record. Now, it is proposed, or was proposed in the amendments, that that power be extended to enable this real estate to be purchased, if it is leased to any corporation whose shares qualify as an investment. But in the bill before you, the old wording was picked up rather than the change that we proposed, and the amendment is for the purpose of correcting that.

**The Chairman:** Which one is this?

**Mr. Humphrys:** This is Bill S-37, page 33.

**The Chairman:** And the proposal is to strike out lines 12 to 27 on page 33 and substitute the following:

> by—
> (A) the government, or an agency of the government, of the country in which the real estate or leasehold is situated or of a province, state or municipality of that country, or
> (B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by paragraphs (h) or (j), or by those paragraphs as modified by section 68A,

**The Chairman:** So this amendment carried?

**Hon. Senators:** Carried.

**Senator Molson:** Before we go on I would like to ask one more question which follows on that asked by Senator Benidickson a moment ago. Mr. Humphrys has been a very welcome witness here and he is one in whom we always have confidence. Now we have just been asking about the size of this department and a number of staff involved. In addition to the Insurance Companies and Trust Companies and Loan Companies Acts, for what other acts do you have the responsibility of supervision?

**Mr. Humphrys:** We have the Canadian and British Insurance Companies Act, the Foreign Insurance Companies Act, the Trust Companies Act, the Loan Companies Act, the Small Loans Act, the Co-operative Credit Association Act, and the Pension Benefits Standards Act. Then we also have the Civil Service Insurance Act.

**Senator Benidickson:** I notice that the Co-operative Credit Insurance Act is there. Does not a great deal of this come under provincial jurisdiction?

**Mr. Humphrys:** Ours is the Co-operative Credit Association Act. What you are speaking of deals with co-operative associations generally. Those are all the acts we are directly responsible for. We do administer part of the Excise Tax Act having to do with the taxation on insurance premiums at the federal level. We report to the Minister of Finance. Our actuarial branch performs actuarial services for the government and for other government departments who may need actuarial advice in connection with government service programs.

**Senator Molson:** That is you advise any government department requiring actuarial advice?

**Mr. Humphrys:** Yes.

**Senator Lang:** What about the Deposit Insurance Act.

**Mr. Humphrys:** The superintendent of insurance is ex officio a director of the Canadian Deposit Insurance Corporation and the department has provided a staff of supervisory advisors for the corporation so that they too are shown on the staff of the department.

**The Chairman:** You will soon need another room you have so many places to hang your hat.

Now there is another amendment which is similar to the one made to the Life Insurance Companies Act. This is on page 44 of the bill.

**Mr. Humphrys:** This amendment is the same as was proposed for the Insurance Companies Act and it has to do with the clause prohibiting investments or loans that are not at arm's length.

**The Chairman:** The proposed amendment is as follows:

That clause 25 of Bill S-37 be amended as follows:

(a) by striking out line 12 on page 44 thereof and substituting therefor the following:

"to own beneficially, equity shares of a corpora-";

(b) by striking out line 15 on page 44 thereof and substituting therefor the following:

"tion of the equity shares of any other corpora-";

(c) by striking out line 19 on page 44 thereof and substituting therefor the following:

"The proportion of the equity shares of the first"

(d) by striking out lines 25 to 34 on page 44 thereof and substituting therefor the following:

(5) Notwithstanding subsection (4), a trust company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the trust company is by reason thereof deemed to own beneficially equity shares of the corporation.

Shall this amendment carry?

**Hon. Senators:** Carried.

**The Chairman:** These are the amendments. Are there any other questions you want to ask Mr. Humphrys?

Shall I report the bill with the amendments?

**Hon. Senators:** Agreed.

**Senator Leonard:** Is there anybody to speak on behalf of the companies?

**The Chairman:** Yes, we have representatives here from the Trust Companies. Has some person been delegated to be the speaker?

**Mr. Walter A. Bean (Deputy Chairman and Vice-President, Canada Trust Company & Huron And Erie Mortgage Corporation):** Mr. Chairman and honourable senators, this bill embodies many of the things we wanted for a long time, some of which we have wanted since before the Royal Commission on Finance. Therefore we welcome this bill and support it and we have no amendments to offer.

**The Chairman:** Are the amendments that have been proposed today acceptable to you?

**Mr. Bean:** Yes, they are.

**The Chairman:** Are there any questions you want to ask Mr. Bean?

**Senator Lang:** I do not have a question to ask of Mr. Bean, but he may be interested in the questions I want to ask of Mr. Humphrys. Is it proposed shortly to incorporate all these amendments in a new printed form of the act? It is getting very difficult to follow all these amendments for a lawyer or an officer in one of these companies.

**Mr. Humphrys:** I understand it is proposed by the Department of Justice to embark upon the revision of the Statutes. They expect to have this completed by the fall and subsequently these acts among others will be produced in consolidated form in the Revised Statutes when they are printed which probably will be early in the new year. We cannot do it ourselves. We have to go through the Department of Justice for this. When they are busy trying to consolidate all the statutes they would not welcome our appearing at their

door and saying "Take us first." We tried it but our reception was not very favourable. I think by the end of this year or early next year we should have them revised and consolidated.

**The Chairman:** The motion has been made and carried that we report the bill without amendment.

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## EVIDENCE

**The Chairman:** This is Bill S-38, to amend the Loan Companies Act. Mr. Humphrys is here and will explain the bill.

**Mr. R. Humphrys, Superintendent of Insurance:** Mr. Chairman and honourable senators, the amendments proposed for this act parallel those which we have already discussed in connection with the two previous acts.

**The Chairman:** Are there any differences?

**Mr. Humphrys:** There is the change in the system of incorporation as I have already described. The proposed minimum capital for mortgage loan companies is $500,000 instead of $1 million for trust companies and the larger amounts for insurance companies. The smaller amount is proposed because we have had experience with the formation of some quite small companies that want to do a relatively local business, and it was felt that we should leave the way open for the formation of smaller companies where that can be done to serve a special area.

**The Chairman:** Actually I meant was there any difference in this Bill S-38 from the amendments proposed for Bill S-37?

**Mr. Humphrys:** I am just surveying it in my mind. There are a few points where the wording is different. That point of the minimum capital is different. I thought for that reason it was worth mentioning. There are more changes in the investment provisions in this bill than in the Trust Companies Act and the Insurance Companies Act, but the effect is only to bring the powers of these companies into line with those for insurance companies and trust companies. Now this was not done in previous amendments and the opportunity was taken here to try to bring the three groups into line. So while that there are more amendments here, they do not establish any new principles.

The point about excess mortgages is included here as in the other cases.

The power to operate their own subsidiaries is expanded somewhat as compared with the present act, but is again parallel to the powers that would be given to trust companies and insurance companies. There is one small point here; at present mortgage loan companies are specifically prohibited from making loans on the security of promissory notes, but there is no such prohibition in the case of trust companies. Now one of the purposes of granting a basket provision to the trust companies and to loan companies was to enable them to exercise their discretion in loans and investments, and some of them will wish to make consumer loans to their customers, at least to serve their deposit customers. In order to make that effective as respects mortgage loan companies the prohibition against lending on the security of promissory notes had to be removed. Consequently, one of the amendments here proposes to repeal that prohibition.

**Senator Giguère:** Is there a limit on the amount?

**Mr. Humphrys:** It would be a maximum of 7 per cent of their assets; that is the basket provision.

I think, Mr. Chairman, that there are not any other points of sufficient importance to draw to your attention. The Loan Companies Act now calls for a requirement for a liquidity reserve, and that is proposed to be changed to parallel the one that was inserted in the bill for the Trust Companies Act, so they would be parallel. Other than that, Mr. Chairman, I think that the amendments proposed for the loan companies are very parallel to those proposed for the trust companies.

**The Chairman:** I see that there are two amendments which are proposed similar to the amendments proposed to the Trust Companies Act.

**Mr. Humphrys:** Yes, to deal with exactly the same matters.

**The Chairman:** If you look at page 28 of the bill you will see the same point is dealt with as is dealt with in the Trust Companies Act.

**Senator Leonard:** That is the leasehold investment?

**Mr. Humphrys:** That is correct.

**The Chairman:** And the same amendment is proposed, and the amendment is that lines

3 to 18 on page 28 be struck out and that there be substituted therefor the following—and this fits into your (A) and your (B), on page 28 and following—and those are as we read them in the Trust Companies bill:

> (A) the government, or an agency of the government, of the country in which the real estate or leasehold is situation or of a province, state or municipality of that country, or
> (B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by paragraph (d) or (e), or by those paragraphs as modified by section 60A.

Is the amendment so moved?

**Hon. Senators:** Agreed.

**The Chairman:** Carried?

**Hon. Senators:** Carried.

**The Chairman:** The other amendment is similar to the one we made in the Trust Companies Act and in the Life Companies Act. This is on page 37 of the bill, and the proposal is that we strike out a number of lines and substitute—this is in the prohibited transactions—the series (a), (b), (c) and (d) to read as follows—and you strike out line 12 on page 37 and you substitute:

> to own beneficially, equity shares of a corpo-

Then you strike out line 15 on page 37 and substitute:

> proportion of the equity shares of any other

If you follow these and read them into the context, it will make sense. My reading is not enough to give you the meaning. Then in (c), by striking out line 19 on page 37 and substituting:

> shall equal the proportion of the equity shares

In addition to all that you strike out lines 26 to 35 on page 37 and substitute the following—and that is the same exception we put into the Life Companies Act and also the Trust Companies Act. Shall these amendments carry?

**Hon. Senators:** Carried.

**The Chairman:** Now we have the representatives of the loan companies here.

**Mr. Walter A. Bean:** Mr. Chairman, may I speak, again, on behalf of the loan companies and say that the same remarks I made on behalf of the trust companies apply?

**The Chairman:** I suppose you wish to say that you have struggled for some years to get the amendments and you are happy to get them?

**Mr. Bean:** Yes, and we support them all.

**The Chairman:** You support the bill and the amendments?

**Mr. Bean:** Yes.

**Senator Molson:** In all these bills one hears about the appointment of auditors. I think it is just tying it up. It is just a little more specific, is it not Mr. Humphrys?

**Mr. Humphrys:** It is to define more precisely the qualifications of the auditor.

**Senator Molson:** And those who are eligible?

**Mr. Humphrys:** Yes.

**Senator Molson:** There is no real fundamental change in this, is there?

**Mr. Humphrys:** No, sir.

**The Chairman:** Shall I report the bill with the amendments?

**Hon. Senators:** Agreed.

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 44

WEDNESDAY, JUNE 18th, 1969

***First Proceedings on Bill C-191,***
intituled:
"An Act to amend the Income Tax Act".

WITNESSES:

*The Canadian Life Assurance Association:* J. A. Tuck, Managing Director; F. C. Dimock, Secretary; E. G. Schafer, President, Dominion Life Assurance Company; A. H. Lemmon, President, Canada Life Assurance Company; G. C. Campbell, Vice-President, Metropolitan Life Insurance Company; D. E. Kilgour, President, Great West Life Assurance Company; K. R. MacGregor, President, Canada Life Assurance Company; H. E. Harland, Chairman, and Actuary, Great-West Life Assurance Company; A. M. Campbell, President, Sun Life Assurance Company of Canada; G. R. Berry, Vice-President and General Manager, Metropolitan Life Insurance Company; H. Belzile, President, Alliance Mutual Life Insurance Company.

20280–1

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Lang |
| Aseltine | Desruisseaux | Leonard |
| Beaubien | Gelinas | Macnaughton |
| Benidickson | Giguère | Molson |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Inman | Welch |
| Connolly (*Ottawa West*) | Isnor | White |
| Cook | Kinley | Willis–(30) |

*Ex officio members: Flynn and Martin*

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 17, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-191, intituled: "An Act to amend the Income Tax Act".

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

The Bill was then read the second time, on division.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was–

Resolved in the affirmative".

ROBERT FORTIER,
*Clerk of the Senate.*



20280–1½

# MINUTES OF PROCEEDINGS

Wednesday, June 18th, 1969.
(48)

At 9:00 p.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

**Bill C-191 "An Act to amend the Income Tax Act".**

*Present*: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Gelinas, Hollett, Isnor, Kinley, Phillips (*Rigaud*), Walker, Welch and Willis–(16).

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

*Resolved*: That 800 copies in English and 300 copies in French be printed of the Committee proceedings on the said Bill.

The following witnesses were heard:

*The Canadian Life Assurance Association*:

J. A. Tuck, Managing Director, F. C. Dimock, Secretary, E. G. Schafer, President, Dominion Life Assurance Company, A. H. Lemmon, President, Canada Life Assurance Company, G. C. Campbell, Vice-President, Metropolitan Life Insurance Company, D. E. Kilgour, President, Great West Life Assurance Company, K. R. MacGregor, President, Canada Life Assurance Company, H. E. Harland, Chairman and Actuary, Great-West Life Assurance Company, A. M. Campbell, President, Sun Life Assurance Company of Canada, G. R. Berry, Vice-President, and General Manager, Metropolitan Life Insurance Company, H. Belzile, President, Alliance Mutual Life Insurance Company.

At 10:30 p.m. the Committee adjourned.

ATTEST.

Frank A. Jackson,
*Clerk of the Committee.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, June 18, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-191, to amend the Income Tax Act, met this day at 9.00 p.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** We have for consideration now Bill C-191, and we have the representatives of the various life insurance companies here: Mr. E. G. Schafer, President of Dominion Life, and President of the Canadian Life Insurance Association; Mr. A. H. Lemmon, Chairman, Special Committee on Federal Income Tax, and President, Canada Life; Mr. K. R. MacGregor, whom we all know so well, the immediate past president of the association and President, Mutual Life; Mr. J. A. Tuck, the Managing Director; Mr. F. C. Dimock, Secretary; Mr. H. E. Harland, Chairman, Technical Committee on Federal Income Tax who is with the Great-West Life; Mr. H. Belzile, President of Alliance Mutual; Mr. A. F. Williams, President of Crown Life; Mr. D. E. Kilgour, President of Great-West Life; Mr. G. R. Berry, Vice-President and General Manager of Metropolitan Life; Mr. A. M. Campbell, President of Sun Life; and Mr. G. C. Campbell, Vice-President, Staff Services–Taxation, Metropolitan Life Insurance Company.

I understand the procedure to be followed is that Mr. Schafer, who is President of the Association, will make an opening statement. At various stages in the course of that opening statement there may be segments of what he has to say that will be picked up and developed by other representatives who are here. Is that agreeable?

**Hon. senators:** Agreed.

**Mr. E. G. Schafer, President, Canadian Life Insurance Association:** Mr. Chairman and honourable senators, we certainly appreciate this opportunity to appear before your committee to discuss with you Bill C-191. The size and strength of our delegation should be some indication of the importance we attach to this bill. This is the first opportunity we have had to present our views before a committee of Parliament, and for that reason we are gathering our main points together in the form of an opening statement, of which we have copies for honourable senators.

**The Chairman:** Yes, they have been distributed.

**Mr. Schafer:** We will proceed with the statement, which indicates that we represent 109 life insurance companies which transact more than 98 per cent of the life insurance and annuity business in this country.

We are here to help you examine the specific provisions of the tax bill and to make some observations.

Bill C-191 is more than just another taxation measure on an industry. The nature of the life insurance process is such that any major taxation, newly imposed, will affect patterns of saving, provisions for individual security and the form and substance of capital formation in our country. These problems make up the context and background against which those points of Bill C-191 respecting life insurance should be studied by honourable senators.

The basic and important issue is whether or not the introduction of new taxes on a major source of saving and capital formation makes sense at a time when Canada, along with most other countries in the western world, is facing a drastic shortage of capital, especially severe in the bond and mortgage markets.

This issue must be assessed in the light of pressing national problems such as controlling inflation and providing adequate housing. In our opinion, the decision to impose taxation on the life insurance process at this time runs counter to these national priorities.

Nowhere is this more evident than in the necessity to encourage savings as a means of counteracting inflation. There are some 11 million policyholders in this country who defer immediate consumption and spending to protect themselves and their dependents against future loss of income.

Life insurance is the primary savings instrument of the common man. Of the total amount of individual life insurance purchased in Canada in 1967, 60 per

cent was bought by people earning less than $7,500 a year. About nine out of ten individual life insurance policies purchased contained a savings element; and, of course, annuity contracts are savings instruments. The new taxes will not, therefore, have the effect of reducing the stream of consumption expenditures. On the contrary, they are an incentive to avoid saving at a time when the Government and indeed all responsible economists are urging people to do precisely the reverse.

Then there is the housing problem.

As you know, life insurance companies have been the main institutional source of mortgage funds of all kinds in Canada. Their $7 billion of mortgage loans outstanding represents two-thirds of institutional loans and more than one-quarter of mortgage loans of all kinds. In the post-war period, taking mortgage repayments into account, the life companies have loaned nearly $12 billion for housing and an additional $150 million or more has been invested directly in residential real estate. Since 1945, these mortgages and real estate investments have financed more than 1¼ million homes for Canadians.

To us, it seems to be inconsistent to remove at this time a sum of the order of $100 million annually from the largest institutional source of mortgage funds.

Along with the need to encourage long-term, stable sources of capital in this country, these questions of inflation and housing have important national priority. The life insurance companies' operations do not run counter to these national objectives, but on the contrary, have been helping governments and the public to achieve these priorities and overcome some of Canada's pressing financial problems. It does seem strange that this particular time should be chosen to impose heavy new taxes on such a key source of savings and capital.

Mr. Chairman, I felt that these far-reaching considerations should be drawn to the attention of honourable senators, because we wonder if they have received the study they deserve.

**Senator Walker:** Before you go any further I should like to ask if you have ever had the opportunity of presenting this to a committee of the House of Commons?

**The Chairman:** I do not think there was a committee there. The bill was dealt with in the Committee of the Whole.

**Senator Benidickson:** What was the answer to that question?

**Senator Walker:** They have had no opportunity at any time to put forward their point of view. The bill was considered in the House of Commons by the Committee of the Whole, and without any representation from the insurance companies.

**The Chairman:** I would expect that between the time the budget was announced and the time that the legislation was brought down there was an opportunity to make representations to the Government, and it may be that the association availed itself of that opportunity.

**Mr. Schafer:** To the Minister of Finance.

**Mr. Walker:** You made written representations?

**Mr. Schafer:** Yes, and verbally to the Minister of Finance.

**Senator Walker:** And only that?

**Mr. Schafer:** That is right. We come now to the new tax system.

By way of helping you with your examination and clarification of Bill C-191, perhaps we can now turn to some of the points in the new tax system that concern us. Our companies have some knowledge of life insurance tax systems abroad, and can say that the system proposed in the bill is unique–unique in design, unique in its complexity, and we believe unique in its weight. In this latter regard, we cannot help observing that in the United Kingdom and some Commonwealth countries the life insurance process is encouraged through the allowance of premiums as a deduction from policyholders' taxable income.

As you know, the first proposals for new taxes on life insurance in Canada were in the Carter Commission Report.

**The Chairman:** Are you expecting questions as you go along, or is somebody else going to step in at some stage?

**Mr. Schafer:** From our side?

**The Chairman:** Yes.

**Mr. Schafer:** I think that they will interrupt whenever they feel . . .

**The Chairman:** Well, I should like to ask a question at this point. At the top of page 4 you refer to the life insurance process in the United Kingdom and some Commonwealth countries, and say that it is encouraged through the allowance of premiums as a deduction from policyholders' taxable income. But, what is the tax structure itself in those countries, and how does it compare with what is proposed here?

**Mr. A. H. Lemmon, Chairman, Special Committee on Federal Income Tax, Canadian Life Insurance Association:** Perhaps I might comment on that, Mr. Chairman. There is a tax on the investment income of life insurance companies in Great Britain, less all the expenses of management of those companies. It is a bit like one of the sections of the Canadian tax, but with the deduction of total expenses rather than just a fraction of those expenses. I will come to that point later.

**The Chairman:** But is there an average rate of 15 per cent, or is it a graduated rate?

**Mr. Lemmon:** No, there is a special rate applying to life insurance companies of 37½ per cent, and that rate has been in existence for some years.

**Senator Beaubien:** That is very high, is it not?

**Mr. Lemmon:** Yes, but, on the other hand, as this memorandum points out, the individual policyholder is allowed to deduct from his income before personal income tax the premiums that he pays on life insurance subject to certain limitations. Certain calculations have been made by the Life Offices' Association in Great Britain, and it is estimated there that the two just about offset each other. In other words, the revenues that the Department of Inland Revenue gets from the life insurance companies just about offsets the tax relief that individuals get by deducting their premiums.

**The Chairman:** The is no corporate rate other than that of 37½ per cent?

**Mr. Lemmon:** There is no corporate rate other than the 37½ per cent. There was for a period during the war, and there was for a period a few years ago, but not at the moment.

**The Chairman:** Will you proceed?

**Mr. Schafer:** As you know, the first proposals for new taxes on life insurance in Canada were in the Carter Commission Report. The tax provisions in this bill now before you are considerably different from those proposed in the Carter Report.

The Carter proposals would have been unnecessarily severe on policyholders by taxing policy dividends and so-called "mortality gains." These proposals are not reflected in the bill. The bill also avoids an administrative nightmare for policyholders by taxing investment income at the company level instead of allocating it to individual policyholders and taxing it annually in their hands. We are therefore not unmindful of the fact that some of the points we have made to the Government have been met.

We come now to the weight of the tax. We estimate that under the formulae in the bill and draft regulations, the 1969 investment income and business income taxes on life insurance will amount to $80-$85 million based on a projection of 1967 figures. Because of the nature of the formulae, as dividends to policyholders are reduced, taxes are increased. If policyholder dividends are reduced to offset the investment tax alone, the above estimate is increased to $105 million. To indicate the top of the range, if policyholder dividends are reduced to offset both taxes, the tax estimate would be increased to $135 million.

Would you like any further explanation of that?

**The Chairman:** Yes, I think I would like some explanation of just how that works.

**Mr. Schafer:** Well, under the tax formulae the dividends to policyholders are deducted from your company's taxable income. Therefore, if you pay more dividends you pay less tax. But, conversely, if in order to pay tax you have to reduce your dividends, your taxable income is thereby increased, and your tax is increased. You have to almost cut off $2 million of dividends in order to pay $1 million of tax.

**The Chairman:** If the rate of taxation is 50 or 52 per cent, you can reduce that by paying more in dividends?

**Mr. Schafer:** That is right, if you have the money to pay. But, if you need the money to pay the tax then you have to cut the dividends, and, consequently, your tax goes up. So, it is rather a vicious circle once you get into it.

**The Chairman:** But in those circumstances your investment income and the 15 per cent rate might come down?

**Mr. Schafer:** Yes, sir. The burden of these taxes will fall on our millions of policyholders and will substantially increase the cost of life insurance to them.

Obviously, the sudden impact of taxes of this magnitude on our policyholders could dislocate our field organization and cause other serious marketing problems, which, as we have stated, would significantly reduce the formation of new capital from life insurance savings for financing governments, municipalities, corporations and housing. We believe that this reduction will be much greater than the amount of the taxes.

Canadian life insurance companies doing business in the United States estimate that the burden of the new taxes will be greater than the burden of corresponding life insurance taxation there.

**Mr. Lemmon:** Perhaps I might make a comment here. There has been considerable discussion of this statement in the press, and indeed in discussions between ourselves and officials of the Department of Finance. Our own company, Canada Life Assurance Company, estimates that the tax that will accrue to our Canadian operations on the basis of the bill as passed in the house, plus the draft regulations which have been tabled would be roughly two and a half times the tax that our United States branch will pay this year, and our Canadian business is something under twice the size of the American branch. To put that another way, relating our United States branch to our Canadian branch, the size is in the ratio of one to two. The tax will be in the ratio of one to two-and-a-half. That is, on the basis of the actual operations of our United States branch and our Canadian branch the tax as proposed is a heavier burden related to income, related to assets, or related to other measures of the relative size of the two operations.

**The Chairman:** What would be the percentage, if you can express it, of premium income to the total income of life insurance business? Take any mature company.

**Mr. Lemmon:** I do not know whether anybody can quote it for the industry as a whole. I can quote the figure for our own company. Our total investment income would be roughly six per cent on $1,200 million, something of the order of $70 million. Our total income from all sources is something of the order of $250 million.

**The Chairman:** How much would be the premium income?

**Mr. Lemmon:** The premium income would be the balance of that, $180 million.

**The Chairman:** Because you include rentals and everything in the investments.

**Mr. Lemmon:** Investment income includes returns from all sorts of investments.

**Senator Beaubien:** Before this bill is passed the tax in the United States is higher than here?

**Mr. Lemmon:** The only tax we paid in Canada prior to this bill was a premium tax, two per cent of the premiums collected in this country.

**Senator Beaubien:** In England it is higher also.

**Mr. Lemmon:** In England there was no premium tax. The tax on the companies is heavier premiums but also policyholders themselves are getting tax relief.

**Senator Isnor:** You say you are using your branch. Does the same thing apply to an American insurance company?

**Mr. Lemmon:** Perhaps Metropolitan would answer that.

**Mr. G. R. Berry, Vice-President and General Manager, Metropolitan Life Insurance Company:** I am not sure that I understood the question.

**Senator Isnor:** Mr. Lemmon used the term "our branch" in the United States, and he used it on two or three occasions. I wanted to know if the same argument could be applied in connection with an American company here.

**Senator Connolly (Ottawa West):** As a branch in Canada.

**Senator Isnor:** First of all in the United States, comparing our tax with United States tax.

**Mr. G. C. Campbell, Vice-President, Staff Services – Taxation, Metropolitan Life Insurance Company:** In our business we find that the tax would probably be a little less under the Canadian formula in Canada than under the U.S. formula, but that should not be regarded as typical for Canadian companies, for two reasons. First, we have a substantial volume of debit business, where we collect premiums in the homes of the policyholders, which increases our expense deductions. The other reason is that Canadian companies have considerable non-par business, and we have no non-par business. The U.S. tax bears a little harder proportionately on participating business, while the Canadian tax is without bias, and for that reason I think the tax on Canadian companies would be a little higher. In our association calculations we tried to estimate the U.S. tax for the ten leading Canadian companies and the Canadian tax on the new basis. On the Canadian tax basis, with dividends reduced enough to maintain the surplus additions that had been made, for nine out of ten companies the Canadian tax was heavier than the U.S. tax. The one Canadian company that was not heavier also had a lot of debit business of the same kind that our company has.

**The Chairman:** Are there any other questions on this point?

**Senator Isnor:** I have not a question but a comment that I should like to make.

**The Chairman:** Go ahead.

**Senator Isnor:** Am I correct in saying you fear to make a comparison of a purely Canadian company with a purely Canadian company's branch in the United States?

**Mr. D. E. Kilgour, President, Great West Life Assurance Company, Winnipeg:** I wrote the minister in January that our operations are very close to fifty-fifty; they are slightly larger in Canada than the United States–52 per cent to 48 per cent or thereabouts. Our 1967 tax calculated on our then understanding of the Canadian bill would be proportionately 60 per cent higher than our tax on our United States business. The bill has since been made more severe, so my guess is that our taxes on our Canadian business will be closer to 100 per cent more than the tax that falls on our United States business. We are operating in the two markets with the same product and this is the net effect. There is no question, it depends on the composition of the company's business. We probably do more non-par, more health than many companies and the tax on our company will be close to double as high in Canada as in the United States.

**The Chairman:** You mean the weight, or depending on your mix.

**Mr. Kilgour:** Depending on the mix, and also on the maturity of the business. There are a number of companies just in the development stage down in the United States that do not pay any tax at all because they are not in a profit position yet. We are relatively mature down there and our tax bill will be clearly much higher in Canada than in the United States.

**Senator Isnor:** You are still speaking of branch business in the United States?

**Mr. Kilgour:** Possibly they are not "branches" in the usual corporate sense. We sell identical products from Winnipeg in Chicago or Toronto. The only difference is that the former involves investments in United States funds and the other involves investments in Canadian funds. But, they are much in one pot as a manufacturer who turns out all of his goods in one plant and sells them in one market or the other. A different label may be used, but it is one product and one service that is sold.

**Senator Benidickson:** The rates are the same.

**Mr. Kilgour:** No, our rates are not the same. They have always been higher than in the United States and presumably will have to go higher in Canada.

**The Chairman:** Mr. Kilgour, when you talk about branch operations there seems to be a little confusion. Your company operates under the name of The Great West Life in Canada and the United States.

**Mr. Kilgour:** I think branch is a colloquialism. It is part of the industry jargon. Some of the Government statements require you to report on your "U.S. branch". It is a colloquial expression. We have to keep our accounts segregated for both countries, but I do not think the word "branch" has any particular significance.

**The Chairman:** The expenses of all of your branches are allocated as though it were one operation?

**Mr. Kilgour:** Right, including our costs allocated over the whole system just exactly as one business.

**The Chairman:** Go ahead, Mr. Schafer.

**Mr. Schafer:** Contingency reserves and surpluses. A unique characteristic of life insurance is its long-term nature. Contracts often span half a century, through wars, recession, inflation and other contingencies. We have been disturbed at an apparent lack of recognition of the need for certain safety factors essential to such a business.

In the proposed tax measures there are no deductions–except in respect of group insurance–in the business income tax formula for contributions to surplus and contingency reserves. These are absolutely essential for the protection of policyholders. A life insurance company simply has no option but to hold adequate surplus and contingency reserves. Contributions made each year to build and retain these are just as much expenses inherent in the provision of guaranteed benefits as any other costs of doing business. It is therefore our contention that the regulations should provide for a deduction of not less than 5 per cent of the increase in policy reserves.

**Senator Phillips (Rigaud):** Mr. Chairman, I can follow the reasoning in respect to contingency reserves in the last sentence which is a sequitur to the providing of a 5 per cent increase in policy reserves, but I do not follow the reasoning with respect to contributions to surpluses being a reduction from income. Maybe there is a particular feature of life insurance companies with which I am not familiar.

**Mr. K. R. MacGreagor, Immediate Past President, Canadian Life Insurance Association and President, Mutual Life Assurance Company of Canada, Waterloo:** I should like to comment in regard to this point, because frankly I feel the strongest about it. We have not come here to whimper over paying taxes. The life insurance companies are quite prepared to pay their fair share of taxes. At the same time, we must say that we have been appalled by the burden of the proposed taxes and the suddeness with which they have been imposed. Somehow it seems to be assumed that the business will make some technical, mathematical adjustments and go on much as before except that we shall pay taxes of the order of $100 million a year. The shock of this burden is really unpredictable at this point. We do not know what effect or what effects these taxes are going to have on our business. We do know that they are going to gave a very broad effect in many ways on our investment policy and on the

mixture of our business. Inevitably I feel there will be more term insurance sold and less permanent insurance with cash values and so on.

I think that perhaps one can bring the whole thing into a little better perspective by pausing to consider one's personal situation or the situation of another business in which he might be interested, regardless of the nature of the business. Think of a person, whether corporate or individual, not heretofore having been subjected to taxes of any significant amount suddenly being taxed at the full level presently prevailing. It is very easy to say, just readjust your way of life and go on substantially as before. There are very serious adjustments to be made and with quite inadequate time to make them.

I do feel that perhaps my background explains my concern, but life companies, like other financial institutions, can get into trouble and it is rather remarkable how adverse influences very frequently combine and happen at the same time, whether they are investment losses or a change in the incidence of mortality or unduly heavy expenses, et cetera. I can say from experience that in the past, when a life company has got into a thin position, it has been a very long and difficult course nursing it back to health.

Now, with this double-barreled tax formula it is going to be extremely difficult to nurse–I hate to use the word–a sick life company back to health, because a company that gets into that position inevitably has very meagre earnings and if all it will have available is what is left after paying the 52 per cent corporation tax it is going to be a very long and painful process to get it back to health. It will certainly be much longer and more painful than heretofore.

I am well aware of the reluctance of the tax authorities to recognize appropriations, Senator Phillips,–deductions, to use your word–from taxable income toward contingency reserves lest corporations tuck it away simply to avoid taxes. However, I do think there is a good case for some deduction of this kind or some appropriation for this purpose under the business income tax. I am not speaking of the investment income tax. It is justified by reason of the nature of our business and also by reason of the nature of the double-barreled formula that our companies are being subjected to. In most businesses one pays tax on the combined corporate earnings as a result of their operations. In the proposed system of taxation for life companies in Canada–we have two tax formulae, one on the business income of the corporation and one on the investment income. And in our case, the investment income will be taxed regardless of the overall results of the companies' business.

**Senator Beaubien:** It is not lumped together.

**Mr. MacGregor:** It is not lumped together. The two are interrelated but a company is subjected to the investment tax regardless of the profit ability of its operations as a whole.

Perhaps one can see the picture a little more clearly if you consider the fire and casualty business–the general insurance business–and think of their investment income separately from their so-called underwriting results, which of course is simply the result of deducting from the premium income their claims and expenses.

But Canadian general insurance companies of course pay tax on their net income, the net of their underwriting account and their investment account, like all other corporations.

I shudder to think of the position that our Canadian general insurance companies would be in, had they been subject over the years to the double barrelled formula of this kind, paying on their investment income–regardless of the fact that for a period of years they may have run heavily in the red on their underwriting account.

It is all very well to say that net losses may be carried forward for five years, but that is of no help if the company is not in business at the end of the five years. If it is not, there is no use in having unused tax losses at the end of the five years.

I must say that we have requested from the outset that a reasonable provision–or "deduction" perhaps sounds better to Senator Phillips–might be made from the business income tax proposed under this bill by way of an appropriation to general reserves or surplus.

We originally requested that 6 per cent of the increase in policy reserves might be permitted for this purpose. We have got down to 5 per cent.

**The Chairman:** I do not want to interrupt you, Mr. MacGregor, but I would like to understand very clearly this last sentence, which is right on the point you are talking about, that:

> It is therefore our contention that the Regulations should provide for a deduction of not less than 5 per cent of the increase in policy reserves.

There must be some significance there in the use of the word "regulations".

**Mr. MacGregor:** Whether the provision is in the bill or in the regulations is immaterial to us. We hoped it would be in the bill. It might still be put in the regulations.

**The Chairman:** It is more flexible in the regulations.

**Senator Connolly (Ottawa West):** It is important from the point of view of the Senate, because if we

come to a bill that involves taxes we are always faced, as you know, Mr. MacGregor, that if we start disturbing the tax table we are interfering with Ways and Means–Government is always telling us of this–but if this can be done by regulation, if we are convinced of that–I would like to hear as much as I can on that very point.

**Mr. MacGregor:** We have been hoping from the outset that the provision would be somewhere, whether in the bill or in the regulations is immaterial to us. It is not in the bill.

**The Chairman:** How do you know what it will be at this moment?

**Mr. MacGregor:** It is nothing at this moment, sir.

**The Chairman:** You are fearful?

**Mr. MacGregor:** The draft regulations were tabled on May 9.

**The Chairman:** What is contained there?

**Senator Connolly (Ottawa West):** Is there authority in the bill to make a regulation to deal with this?

**Senator Walker:** Would you be satisfied that that would be helpful to you–if it is not in the act, but in the regulations?

**Mr. MacGregor:** Yes. We think there is authority in the bill. I prefer to leave it to the tax officials. Mr. J. R. Brown nods, I think, in the affirmative, and I think there is concurrence on that score.

I feel strongly about this point. I feel that, down the line, companies are going to get into difficulty and I know that those who will be responsible for them will regret it if this problem is aggravated. As I mentioned earlier, I am well aware of the reluctance to recognize any deduction or appropriation of this kind towards anything that looks like a contingency reserve. I do feel our situation is defferent, and I feel it is different because of the double barrelled formula. In particular if the deduction is permitted under the business income tax and thus is not taxed at 52 per cent, it automatically falls under the investment income tax and is taxed at 15 per cent, which we feel is the more appropriate tax, since it is the assumed average policyholder rate of tax.

**The Chairman:** Mr. MacGregor, again for the purpose of understanding, I still have difficulty in understanding what this sentence means when it uses the word "deduction", that is, that the regulations shall provide for a deduction of not less than 5 per cent of the increase in policy reserves.

**Mr. Schafer:** Deduction from taxable income.

**Mr. MacGregor:** The increase in policy reserves from the beginning up to the end of the year. The normal increase itself is allowed in essence as a business expense, but we are asking really for an extra 5 per cent.

**The Chairman:** For larger policy reserves?

**Mr. MacGregor:** For a provision whereby we may not only deduct the full increase in the policy reserve, but 5 per cent over and above the increase–that is, 105 per cent of the increase in policy reserves during the year.

**The Chairman:** How would you justify that?

**Mr. MacGregor:** As a means of enabling companies to maintain a reasonable surplus position, particularly in the times that we face, because of the severity of this tax.

**The Chairman:** You will be seeking the difference between 15 per cent and 52 per cent?

**Mr. MacGregor:** Yes, that is right.

**Senator Connolly (Ottawa West):** There are some other words there.

**Senator Molson:** This is in the nature of a contingency reserve–one figure, the actuarial figure, policy reserve. You are suggesting that, the times being unpredictable and uncertain, there should be some contingency on this figure. Is that correct?

**Mr. MacGregor:** That is correct.

**Senator Burchill:** Did you base that 6 per cent on anything?

**Mr. MacGregor:** The 6 per cent is the minimum surplus position that companies like to maintain in order to hold their heads up in the life insurance business. It is also the minimum surplus–and when I use the term "surplus" I mean surplus or general reserves or contingency reserves that are not earmarked for special purposes and therefore are essentially surplus–in the insurance act–in the legislation passed in 1957 to permit companies to mutualize. Six per cent is the minimum surplus that companies have to maintain before they embark on buying their own shares. I must say that I think in general it is unsafe for companies to maintain surplus at a lower level.

Any deduction of this kind would simply defer the incidence of the business income tax, but in the meantime it would be subject to a levy of 15 per cent under the investment tax. It would come back into

income, if business was not continually on the increase.

**The Chairman:** And at that point you would then be claiming a credit for it at 15 per cent.

**Mr. Schafer:** It would be automatic.

**Mr. MacGregor:** I am sorry, sir, I did not follow you.

**The Chairman:** I know there is provision in the bill under which you may deduct the investment tax of 15 per cent; but I was wondering if you did increase your policy reserves in this fashion and they are built up to a surplus of a larger amount. But then you were paying 15 per cent on the investment income by reason of that, if that situation persisted for a couple of years and then reversed itself, is there any provision by which, in the year of reversal, you can get back by way of refund the 15 per cent, or get a credit for it?

**Mr. Schafer:** I do not think so.

**Mr. MacGregor:** As far as actuarial reserves are concerned, they will be controlled for tax purposes. They are controlled by the regulations which are now all set up. We might increase reserves for statement purposes, but not for tax purposes. No, that would be controlled by the regulations.

**Senator Connolly (Ottawa West):** There are some words in this paragraph that may be significant and perhaps Mr. MacGregor would like to say a word or two about them. I wish he would, for my enlightenment. It says:

> . . . these are just as much expenses inherent in the provision of guaranteed benefits as any other costs of doing business.

**Mr. MacGregor:** We believe that the increase in policy reserves, the amount that we appropriate each year, to build up our policy reserves, is a legitimate cost of doing business.

We believe that is a legitimate cost of doing business. We collect the premiums; we pay our claims and we pay our expenses and we must, in order to meet future claims, put, broadly speaking, most of the rest into policy reserves and surplus to build them up. We feel that a company could not safely continue to conduct its business without surplus and adequate reserves. One cannot just maintain its policy reserves and have no surplus or contingency reserves. A person would be unwise to insure with such a company.

**Senator Connolly (Ottawa West):** In other words, the more you do this kind of thing the more security you provide for the policyholder.

**Mr. MacGregor:** Yes and we have a heavy responsibility to our policyholders. I have nothing more to say, Mr. Chairman, but I feel so strongly about this point that, regardless of what the outcome may be, I should like to record my concern at the absence of any provision for this purpose. I feel it is an unfortunate omission and I am convinced that down the road ahead problems will be aggrevated as a result of the omission and it will be regretted.

**Senator Connolly (Ottawa West):** If a regulation were made in the manner you suggest, would it affect what you describe as the weight of the tax?

**Mr. MacGregor:** It would lighten the weight some, yes. If 6 per cent, as we originally requested, were granted, it would reduce the tax burden. This is before any adjustment of dividends to meet the tax. It would do so by perhaps 10 or 12 per cent, if the deduction were 6 per cent. Every 1 per cent of the 6 per cent would probably amount to about $2 million.

**Senator Isnor:** Every 1 per cent?

**Mr. MacGregor:** Every 1 per cent allowed for this purpose would probably reduce the over-all tax by approximately $2 million out of the $85 million. These figures are before any adjustment for dividends is made to help meat the taxes.

**Senator Beaubien:** The tax now would be $100 million. Therefore, if 6 per cent was now set aside that would make a difference of $12 million.

**Mr. MacGregor:** If I might just add this, Mr. Chairman, when I say I think we have a strong case, notwithstanding the known reluctance to recognize appropriations to contingency reserves, I don't know of any other business that is subjected to a double-barrelled tax of this kind whereby we must pay tax on our investment income regardless of the over-all results of our operations. I don't know any other business subject to such a tax. I think that differential alone provides some justification for an appropriation for this purpose.

**Senator Burchill:** There is nothing like it in the United States, I suppose?

**Mr. Kilgour:** In the United States, under the income tax laws, you do not pay tax on the amount that goes into contingency reserves and surplus, so long as you keep it there. If you ever draw upon it, then you do pay tax. Is that substantially correct, Mr. Harland?

**Mr. H. E. Harland, Actuary, Great West Life Assurance Company:** There are two specific provisions in the United States tax laws for pre-tax contingency reserves. One is the provision for build-up of reserve in respect of group insurance business and health in-

surance business equal to 2 per cent of premiums with a maximum of 50 per cent of premiums in that year and the total amount accumulated in all past years. That is similar to a provision that is in draft regulations for us in our law here.

Another provision in the United States law for which we see no counterpart here is in respect of the build-up of contingency reserves amounting to 10 per cent of the increase in non-participating insurance reserves.

**Senator Carter:** Mr. Chairman, I want to be clear on one point. We have heard the term "mix" used here several times. Are we talking only of different types of life insurance or is there any reference here to other types of insurance?

**Mr. Schafer:** We are talking about different types of life insurance only, senator. We are not referring to automobile insurance or anything like that.

**Senator Carter:** Thank you.

**Mr. A. M. Campbell, President, Sun Life Assurance Company of Canada:** Mr. Chairman, Mr. MacGregor has referred to the necessity for surplus and contingency reserves. We need this for protection against investment and mortality losses, just as Mr. MacGregor suggested, but there is another important aspect of the need for surplus and contingency reserves. By and large we are obliged to produce our annual statements on a market value basis with the exception of Government bonds which are amortizable. I need not point out to the honourable senators that the bond market has seriously declined over the last number of years. If the companies had not had the surplus funds, I think Mr. MacGregor's predictions would have come to pass already. So, if we don't have the right in the future to build up a contingency reserve base of some nature at a reduced tax rate, as we recommend, I think we are heading for a lot of trouble.

**Mr. Harland:** Mr. Chairman, if I may add to what I said previously, there is one other specific way in which the United States law makes provision for pre-tax build-up. Any surplus earnings under the U.S. law come under what is popularly called the phase two tax; the tax there is only half of the regular corporate rate, and the legislative record in the United States clearly shows that the reason for this half rate of tax—which is all that applies until such time as this surplus is actually distributed—is clearly because of the uncertainty of the emergence of profits in the life insurance business and the long-term contingency and uncertainties in that business. That half rate on the emergence of surplus is of course a very important concession.

Another point I should like to make is that the experience under the United States law provides a very demonstrative argument in favour of the statement at the top of page 6 in this brief that the build-up of surplus and contingency reserves is an inherent expense in the guaranteed benefits. I say that because the United States tax law that was introduced in 1958 brought in a much heavier base of taxation in the United States and one that depended very largely on the interest earned on surpluses held by insurance companies. The U.S. tax law is very sensitive to the levels held by the various companies and, therefore, the companies obviously could reduce their tax by reducing their surpluses.

Beginning January 1, 1958, companies operating in the United States had a new and strong incentive to reduce their surpluses, and their taxes, if they felt that that would make operating sense to them. In fact, the experience of the industry shows that surplus levels have increased since that time and we think that is a strong demonstration that the industry really and truly believes those surplus amounts are a required part of doing the business. That is why we say they are an inherent expense of the business.

**Senator Beaubien:** Can anyone here give us an idea of the book loss of the 109 life insurance companies represented here, in respect of Dominion of Canada bonds alone?

**Mr. A. M. Campbell:** I understand that there are no over-all figures, but, speaking for our company, I can give you rough figures for all bonds. In my own company the drop has been in the region of $200 million. That is just in one company. That is the sort of figure we are talking about.

**Mr. Kilgour:** If we had not built up a substantial surplus for contingencies in the past few years there would not be half a dozen companies in Canada presenting solvent balance sheets.

**Mr. Schafer:** Mr. Chairman, may I correct an impression which I may have left which was slightly incorrect. You asked me if this was the first chance we have had to discuss the bill, and I said not in a parliamentary committee but we had discussed it with the Minister of Finance on several occasions. I did not tell you that this afternoon at 4.30 we had an opportunity to speak with the Prime Minister. I wish to make that clear now. Of course this was actually after the bill had passed the house.

**The Chairman:** Was this the first opportunity you had?

**Mr. Schafer:** We had asked for the opportunity earlier, but he was unable to see us until this afternoon. However, this afternoon we had fifty minutes with the P.M.

**The Chairman:** That was the post-mortem.

**Mr. Schafer:** The next item then deals with certain inequities as we see them. The Minister of Finance has stated his objective is to treat life insurance companies equitably in comparison with other financial institutions or amongst themselves. Some of the tax rules applied to our business fall considerably short of this objective. Here are some examples of situations in which equity is not attained. Some of these get slightly technical, but we thought they should be put in the record so that you would have them in front of you.

(a) The first one is that in the investment income tax there is a 50 per cent deduction of administrative expenses. The 50 per cent figure is supposed to reflect the proportion of expenses relating to the savings element in life insurance contracts. It was admittedly "pulled out of the air". We believe it is significantly low. Also, a flat figure does not reflect the differing mix of savings and insurance elements in the business of individual companies and favours those companies where the savings element is relatively less important. I might say that on this we did some investigations which indicated a figure of 85 per cent might be close to the true figure, but the figure appearing in the bill is 50 per cent.

(b) There is a form of group life insurance business with a savings element in it. It therefore generates investment income which is taxable under the investment income tax. However, none of the expense of this form of business is deductible. This is obviously inconsistent. We call this business "group permanent" and some companies are now writing some of this type of business.

(c) The existing tax of 2 per cent, imposed by the provinces, on life insurance premiums does not apply to services provided by other financial intermediaries. A premium tax credit against the investment income tax has been allowed but only on a 50 per cent basis. This relief is insufficient to achieve equity with other financial institutions, and it is our contention that a larger tax credit is justified. This is actually the same type of situation as you have with regard to expenses under the investment income tax. The 50 per cent figure is two low.

(d) Under Section 28 of the Income Tax Act, dividends received by a taxable corporation from other Canadian taxable corporations are free of tax. Bill C-191 excludes life insurance companies from this treatment. No other intermediaries have to pro-rate corporate dividends between capital and customers' accounts as Bill C-191 requires for life companies' guaranteed business. This makes it impossible for life companies to derive the same return on a given Canadian stock investment as a trust company or a bank, for example. It seems to us unfair to put the life companies and their policyholders at this disadvantage.

**The Chairman:** It has been said that the formula provided in the bill is intended or designed to give to you the equivalent of this 20 per cent deduction. Have you any comment on that?

**Mr. Schafer:** Well, our point is that the deduction for corporate dividends we are allowed is not as high as the deduction allowed to banks and trust companies.

**Mr. Kilgour:** Every other corporation gets dividends tax free.

**The Chairman:** But according to what I have read there is that 20 per cent deduction on dividends to individuals.

**Senator Walker:** That does not help the company.

**The Chairman:** Are life companies not specifically excluded from any free tax receipt of Canadian dividends they might get from Canadian companies?

**Mr. Kilgour:** Which we think is rather embarrassing and discriminatory.

**The Chairman:** I am not disputing that, but the formula in the bill is designed to provide an equivalent amount by separating what goes into profits and what goes to customers accounts.

**Senator Walker:** Where does it indicate that? You have read it, but we have not heard anything to-night to indicate it.

**Mr. Lemmon:** I think the reference to the formula is substantially true, but the chartered banks do not have to separate their common stock dividends between the portion that goes to depositors and the portion going to capital, and trust companies do not have to split theirs. What you say about the treatment is substantially true, but it is different from the treatment accorded to other financial institutions.

**Mr. A. M. Campbell:** This came as a very great shock to us when we learned the fact for the first time in the tax act. In the budget this was not referred to at all, and it was clearly stated that the general provisions of the Income Tax Act would apply to life insurance companies as it did to other corporations. This was an additional tax that was added after our main discussions with the Minister of Finance and the officials of that department.

**The Chairman:** It was additional tax in the sense that it was exposing more income to tax.

**Mr. A. M. Campbell:** We feel it is most discriminatory to have the insurance industry the only one singled out in this particular way.

**The Chairman:** Have you raised that point in any of your discussions and have you received any answer?

**Mr. A. M. Campbell:** We have raised it in discussions and the only answer we received was "well, possibly other people are getting away with something." But now the June budget has been brought down and apparently people are still getting away with it.

**Senator Connolly (Ottawa West):** I take it this anomaly or inconsistency you talk about cannot be cured by regulation since it is a provision of the act.

**Mr. Schafer:** (e) The new taxes apply only to the Canadian business of the companies. However, a small part of investments relating to Canadian business–one or two per cent–is made abroad. Foreign taxes are withheld on these investments but no credit is being accorded the Canadian life companies for such foreign taxes. This seems very unfair.

(f) Now, I would like to refer to an inequity that could have an unfair and severe impact on some of the medium and smaller life companies particularly. For the purpose of a starting value for capital cost allowance on real estate a capital improvement is defined as an improvement or addition in excess of $100,000 (page 64, line 8). This is a very high threshold for an improvement or addition in relation to the actual cost of some head offices as shown in company annuel statements. Then we list there a representative sample of some medium and smaller companies and, obviously, an improvement to one of these buildings might well cost less than $100,000 and, therefore, would not receive any allowance.

**The Chairman:** Did you get any explanation as to where this figure came from?

**Mr. Belzile:** I represent one of the companies listed. Our home building was built in 1937, and the biggest improvement we have put on the building since that time has not been more than $50,000, and it seems to us that for a smaller company this $100,000 is really too high, because we certainly have made capital improvements of significance on the building.

**The Chairman:** If you do not have at least $100,000, it means the building, with the addition, is treated as all having the same life, for depreciation purposes, so you come up to the starting point of January 1, 1969 with a lower depreciable capital cost.

**Mr. Belzile:** Yes, with a lower capital value on the books at January 1, 1969.



**The Chairman:** Do you suggest that the $100,000 should be taken out and that you should have to estestablish . . .

**Mr. Belzile:** I would recommend $50,000.

**Mr. Schafer:** We have a suggestion here.

We believe the threshold should be expressed as the lesser of $100,000 and, say, 10 per cent of a building's actual cost as reported in the 1968 statement to the relevant authority. That would still wash out small amounts but give a great deal of relief to a smaller company.

**The Chairman:** If you had a building that was put up 20 years ago and you had a $100,000 addition put up four years ago, you would have to depreciate the addition over the whole period of 20 years. You would have to take depreciation on the building at 20 times 2½, and that would be deducted from your total cost, so your starting point of capital cost allowances under the new bill, in January, 1969, would be that lower amount. In other words, the addition four years ago of $100,000 would be deemed to have had the life of the original building. That is pretty tough.

**Mr. Schafer:** (g) For the policy dividend limitation under the business income tax, so-called "experience rated non-participating" group term life insurance is treated differently than so-called "participating" group term business (page 27, line 29). In practice, so far as the group policyholder and group consultant are concerned, there is no difference. Group contracts called "participating" by some life insurers are little different in effect from those called "experience rated non-participating" by others. The inconsistent treatment apparently arose from a view on the part of some government officials that an experience refund reflects the experience solely of a particular group and that the experience of other groups insured by a given company is taken into account in determining policy dividends but not experience refunds. There is no distinction on this ground between an experience refund or policy dividend. Failure to treat all group term insurance alike will result in inconsistent bases among the companies for calculating the limitation on policy dividends.

That is rather a technical situation, and I do not think we want to go too far into it here.

(h) There is a restriction on the losses on the sale of bonds held at the end of 1968 which the life companies can offset against taxable income (page 65, line 18). The 10-year duration of this provision is arbitrary and restrictive. We feel it is inappropriately long and that five years would serve the purpose of this provision.

**Mr. Kilgour:** There is no such restriction in the United States, if you take a loss on the sale of bonds.

**Mr. Schafer:** Our final paragraph: All the intricacies of the new life insurance tax system are not yet apparent. Your proceedings will be most helpful in this regard. We hope we are not being unreasonable in suggesting that some adjustments be made at this time in the new taxes to fulfill the promise of fair treatment among financial institutions. We are also hopeful that the authorities will recognize the vital need for adequate provision for contingency reserves and surplus to carry out the long-term commitments unique to life insurance.

**Mr. MacGregor:** Mr. Chairman, regarding that last sentence, might I correct a figure I gave when speaking earlier about weight of tax and the desirability of an appropriation or deduction for contingency reserves?

I guessed the 6 per cent provision we had originally requested might have the effect of reducing the total tax taken by about $12 million, or $2 million for every 1 per cent. I think the figure would much more likely be $1½ million for each 1 per cent, or $9 million for 6 per cent, $7½ million for 5 per cent, and so on.

**The Chairman:** Do you gentlemen have anything to add? We have had your formal statement and a corss-fire of questions. Is there anything more you want to add?

Are there any more questions the senators would like to ask?

**Senator Phillips (Rigaud):** In addition to the possibility of dealing with the contingency reserves, have the companies received any legal advice or do they themselves know whether any further relief can be granted by regulation, other than the subject of contingency reserves, at this stage?

**Mr. MacGregor:** One of the provisions we have been looking at, Senator Phillips, is on page 17 of the bill as passed by the House of Commons. Perhaps I might read the whole of subsection (3):

> In computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, there may be deducted
>
> (a) such of the following amounts as are applicable:
>
> (i) such amount in respect of a policy reserve for the year for life insurance policies of a particular class as is allowed by regulation,

**The Chairman:** And the next, (ii)?

**Mr. MacGregor:** That has been implemented in the regulations, contingency reserves in respect of group life insurance policies.

**Senator Connolly (Ottawa West):** In other words, the item you discussed earlier, Mr. MacGregor, you say can be cured by regulation pursuant to subsection (3) (a) (i), specifically?

**Mr. MacGregor:** Yes. We think it would have been more satisfactory had it been provided right in the bill, as the contingency reserve for group life is provided in (ii), but we still think it could be provided by regulation.

**Mr. Tuck:** I take it Senator Phillips is wondering whether any of these others we have mentioned–(a), (b), (c), (d), and so on–can be dealt with by regulation. I am afraid the answer in respect of some of them is no.

**The Chairman:** Would you care to check off the ones where the answer might be other than "No" from your point of view?

**Mr. Tuck:** I think under (a)–that is, the 50 per cent deduction for administrative expenses–it seemed to us that a change in this would have to be in the bill. I think that is true of (b) and (c) and (d). I am afraid it is true of (e). It is true of (f) and (g).

**The Chairman:** It looks as though we have not drawn out any except the one.

**Mr. Schafer:** Yes, the contingency reserve.

**Mr. Kilgour:** If you have a minute, Mr. Chairman, I would like to make a comment that has not really been made, and one which I think is highly pertinent. In many ways this bill is tragic consequence of our political system.

**Senator Isnor:** What is that, again?

**Mr. Kilgour:** This bill is a tragic consequence of our political system. The Carter Report a couple of years ago came out with recommendations in respect to the taxing of life insurance companies and many of them were extremely devious, complicated, and complex, and almost hopeless of application. At that time our industry presented a brief to the then minister of finance in which we did not dispute that changes in taxation were inevitably going to occur, and we underlined to him the great complexity of the Carter proposals and the necessity for very prudent and wise decisions affecting an industry that was the backbone of the permanent financial structure of the country, because we do supply the majority of long term capital in Canada.

Therefore, we asked that the development of a bill to tax life insurance companies be a thoughtful process, and one in which our industry, committees of the House of Commons and committees of the Senate,

would have full opportunity of debating the economic wisdom, the equity, and the prudence of the mode of taxation to be adopted. We were assured that this would be the case.

In the United States, when their tax bill was adopted some years ago, it took them 2½ years to develop a bill that they felt was reasonably satisfactory. This does have such an enormous impact on the total economy, let alone the eleven million policyholders who have money in this business.

We again saw the new minister immediately after the election last year and made the same plea, offering that we would cheerfully work at full speed with any group under any direction that he set up to develop this.

Unfortunately, life insurance taxation got included in the budget, and that means under the new rules that there was no house committee. It came to us as a bombshell without any preamble of discussion, and it had a very much greater impact than those who were concerned with it felt was really necessary in the circumstances in which we live. They were talking of $95 million in the budget, when the total dividend disbursements of all the companies in Canada is about $200 million. So, you are imposing a tax which if applied directly would cut the policyholders' dividends by roughly 40 or 50 per cent. You do not just cut anybody's dividends by 40 or 50 per cent and expect cheers.

In this economic climate, in our view, one has to weigh very carefully the impact of things like this on the solid people of this country, and their faith in life insurance, and their willingness to keep on saving through this vehicle.

We immediately had an assurance from the minister that we would have sessions with him, and we have had most courteous hearings. The members of the department have listened long and arduously to our representations, and have worked under the greatest of difficulty in trying to produce a bill. But, the fact is that the bill has had to be produced in a period of some six months, and it is worse than when we started our representations–which shows the quality of them. It was either that, or the financial needs of the country were so great that they outweighed entirely every other economic consideration.

So, we have a bill here that is virtually law, in respect of which there have been no public hearings at which any group of people have had a chance of expressing their views.

**The Chairman:** Mr. Kilgour, may I interrupt you? What would be the effect if you reduced your dividends to policyholders, and you reduced your premiums?

**Mr. Kilgour:** Well, reducing our dividends is one thing, but reducing our premiums would thin us even more . . .

**The Chairman:** It would thin you, but it would certainly thin the tax too, would it not?

**Mr. Kilgour:** It may result in a movement to non-par business. I am not an actuary. But, I think that cutting the premiums when we have got to pay higher taxation–well, we have been cutting premiums in the last ten years.

**The Chairman:** It is part of the income on which you pay the tax under this bill.

**Mr. Kilgour:** I promised to be brief. In our judgment–and I speak with great conviction–this bill is too heavy and too grim in its impact. We are being subjected to some very serious surgery. All we can hope for, to offset the fact that this industry is being taxed very heavily, is some liberality in the regulations. Hopefully, the Senate would, somehow or other, urge the Government to re-examine this thing awfully quickly, because it may have a very serious impact on the stability and the pattern of investment in this country if some highly intelligent things are not done. We have tried to say nothing that would alarm the public, but I think we all share a deep concern that this bill in its present form is a very great financial hazard. I used the word "tragedy" a few moments ago, and it is my own word. I think it is a tragedy of our political system that we can do something this important without there being public discussion and public appraisal of whether it is the right course.

**The Chairman:** If there are no other questions at this time, I think we can adjourn until . . .

**Senator Carter:** The representative of the Sun Life mentioned a $200 million loss in their bond holdings.

**The Chairman:** Yes, a loss of value.

**Senator Carter:** I was wondering if we could get a similar figure from some of the other larger companies.

**Mr. A. M. Campbell:** I do not think there would be much difference in percentage between all of the companies on that.

**Mr. Lemmon:** Speaking for our company, the shortfall in values would be in the order of $50 million.

**Mr. Kilgour:** We would be of the same order. If it were not for the fact that we have a substantial contingency reserve and surplus, we would be in deep trouble.

**Mr. A. M. Campbell:** If we had not in the past built a surplus in the contingency reserve, as we are now more or less prohibited from doing except at great cost to the company in tax, we would have been in deep water.

**Senator Phillips (Rigaud):** Maybe the thing to do is to try by regulation to have a provision for a federal Government bond that can be applied at par in payment of taxes.

**Senator Beaubien:** For everybody!

**The Chairman:** Gentlemen, we will adjourn now. We are sitting tomorrow morning at 9.30.

**Senator Benidickson:** What are we doing on this bill in the future? If we are to have the minister here I wondered whether he would have any comments on the evidence we have had tonight.

**The Chairman:** We will not have his comments tonight. The committee resumes at 9.30 in the morning. The first order of business is still the Investment Companies Act, which will take an hour or an hour and a half. Then we have three other bills as well as this one. We may decide to clean the others out and do some thinking on what we have heard, and deal with the Income Tax bill when we sit next, which will be the following Wednesday.

**Senator Walker:** With great respect, the insurance companies have been treated in a shocking way. Is there nothing more we can get from them by way of suggestions on how we can amend the regulations to help them? Are you satisfied everything has been said?

**The Chairman:** Senator Walker, I am only another senator, although I am the chairman. I have listened very carefully to what has been said tonight and I may have gathered certain ideas.

**Senator Walker:** Can we come up with something tomorrow?

**The Chairman:** I think we should do some solid thinking on it. First of all we should hear the departmental officers and find out what they have to say about these matters.

**Senator Walker:** They are certainly not going to help us relieve the insurance companies, that is for sure. They are all working for Mr. Benson at the moment. I know; I was a Cabinet minister long enough, and vice-chairman of the Treasury Board, to know how they go about things.

**The Chairman:** Maybe when we are conferring you will be able to help deal with them.

**Senator Walker:** I wish I could. That is why I would like to see if there is any more advice we can get from the insurance companies.

**The Chairman:** I can assure you that any information we think we need we shall not hesitate to ask for, and Mr. Tuck knows that. As a matter of fact, I have already asked him for something.

**Mr. Schafer:** Thank you, sir.

The committee adjourned.

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament
1968-69

# THE SENATE OF CANADA

## PROCEEDINGS
## OF THE
## STANDING SENATE COMMITTEE
## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 45

WEDNESDAY, JUNE 18th, 1969
THURSDAY, JUNE 19th, 1969

***Seventh and Final Proceedings on Bill S-17,***
intituled:
"An Act respecting Investment Companies".

WITNESSES:
*Department of Insurance:* R. Humphrys, Superintendent; P. Treuil, Planning and Research Officer.

REPORT OF THE COMMITTEE

20282—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gelinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: "An Act respecting Investment Companies".

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 Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*



20282—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, June 18, 1969.
(49)

At 10:30 a.m. the Standing Committee on Banking, Trade and Commerce *resumed further* consideration of:

Bill S-17, "An Act respecting Investment Companies".

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Hollett, Isnor, Kinley, Leonard, Macnaughton, Martin, Molson, Phillips (*Rigaud*), Thorvaldson, Walker and Welch.—(22)

*Present, but not of the Committee:* The Honourable Senators Everett, Hastings, McLean and Sparrow.—(4)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel; James K. Hugessen, Special Counsel.

The following witnesses were heard:

*Department of Insurance:*

R. Humphrys, Superintendent.

P. Treuil, Planning and Research Officer.

At 1:00 p.m. the Committee adjourned.

THURSDAY, June 19, 1969.
(50)

At 9:30 a.m. the Committee *resumed* consideration of Bill S-17.

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Flynn, Gelinas, Hollett, Isnor, Kinley, Leonard, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch, White and Willis—(19).

*Present, but not of the Committee:* The Honourable Senators Irvine and Methot—(2).

*In Attendance:* James K. Hugessen, Special Counsel. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

*Department of Insurance:*

R. Humphrys, Superintendent.

P. Treuil, Planning and Research Officer.

*RESOLVED:* The said bill be reported as amended.

Note: (The full text of the amendments appears by reference to the Report of the Committee immediately following these Minutes).

At 11:15 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

THURSDAY, June 19, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-17 intituled: "An Act respecting Investment Companies", has in obedience to the order of reference of January 22nd, 1969, examined the said Bill and now reports the same with the following amendments:

Strike out clauses 2 to 30, both inclusive, and substitute the following therefor:

"2. (1) In this Act,

(*a*) "annual statement" means the statement required by section 5 to be filed in the Department of Insurance by an investment company;

(*b*) "business of investment" with respect to a corporation means the borrowing of money by the corporation on the security of its bonds, debentures, notes or other evidences of indebtedness and the use of some or all of the proceeds of such borrowing for

(i) the making of loans whether secured or unsecured, or

(ii) the purchase of

(A) bonds, debentures, notes or other evidences of indebtedness of individuals or corporations,

(B) shares of corporations,

(C) bonds, debentures, notes or other evidences of indebtedness of or guaranteed by a government or a municipality,

(D) real property other than real property that is necessary or convenient for the transaction of the business of the company, or

(E) instalment sales contracts;

or for the purpose of replacing or retiring earlier borrowings some or all of the proceeds of which have been so used.

(*c*) "certificate of registry" means a certificate issued by the Minister pursuant to section 10;

(*d*) "company" means a corporation incorporated by or pursuant to an Act of the Parliament of Canada;

(*e*) "equity share" means a share of any class of shares of a corporation to which are attached voting rights exercisable under all circumstances and a share of any class of shares to which are attached voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

(*f*) "inspector" means an inspector appointed or designated in accordance with section 22;

(*g*) "investment company" means a company

(i) incorporated after the coming into force of this Act primarily for the purpose of carrying on the business of investment, or

(ii) that carries on the business of investment,

but does not include a company to which the *Bank Act*, the *Quebec Savings Banks Act*, the *Canadian and British Insurance Companies Act*, the *Trust Companies Act*, the *Loan Companies Act* or the *Co-operative Credit Associations Act* applies;

(*h*) "Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council to act as the Minister for the purposes of this Act;

(*i*) "registered company" means a company that holds a valid and subsisting certificate of registry; and

(*j*) "Superintendent" means the Superintendent of Insurance.

(2) Where a company has borowed money on the security of its bonds, debentures, notes or other evidences of indebtedness and has subsequently made loans or purchases as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1) it shall be presumed, unless the Minister is satisfied to the contrary, to have used the proceeds of such borrowing for such purposes.

(3) Notwithstanding the provisions of subparagraph (ii) of paragraph (g) of subsection (1) of this section the following companies shall be deemed not to be investment companies for the purposes of this Act:

(*a*) A company not more than forty percent of whose assets, valued in accordance with the regulations, are at any time during its current or last completed fiscal year used as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1);

(*b*) a company, the outstanding debt of which, including debts of any person the payment of which is guaranteed by the company, does not at any time during its current or last completed fiscal year exceed twenty-five percent of the aggregate of such outstanding debt and the paid-up capital and the surplus of the company determined in accordance with the regulations;

(*c*) A company that is engaged solely in the business of underwriter or of broker or dealer in securities and is licensed as such by a public authority of any province;

(*d*) A company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to a person or persons other than persons who were at that time:

(i) companies to which the Bank Act applies; or

(ii) substantial shareholders of the company within the meaning of paragraph (b) of subsection 3 of section 8 hereof;

(*e*) A company to which Part II of the Canada Corporations Act applies or that is referred to in section 147A of that Act.

(4) For the purposes of this Act, a corporation is a subsidiary of another corporation only if,

(*a*) it is controlled by

(i) that other, or

(ii) that other and one or more corporations each of which is controlled by that other; or

(iii) two or more corporations each of which is controlled by that other; or

(b) it is a subsidiary of a subsidiary or that other corporation.

(5) For the purposes of paragraph (a) of subsection (3) any assets of a company which consist of loans to or shares, bonds, debentures, notes or other evidences of indebtedness of any subsidiary of such company shall be deemed not to be assets used as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1) provided that

(a) at least seventy-five percent of the equity shares of such subsidiary are owned by the company, and

(b) not more than forty percent of the assets of such subsidiary, valued in accordance with the regulations, are used as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1).

## GENERAL

3. (1) Subject to subsection (2), this Act applies to all investment companies.

(2) The Minister may grant exemption from the application of this Act to any investment company if he is satisfied that

(a) the business of investment carried on by it is incidental to the principal business carried on by it, or

(b) the company is and intends to remain a company described in subsection (3) of section 2

but an exemption granted under this subsection may at any time be revoked by the Minister if he ceases to be so satisfied.

(3) Where exemption from the application of this Act is granted under subsection (2) to a company incorporated after the coming into force of this Act primarily for the purpose of carrying on the business of investment, such exemption shall not be revoked unless, in the opinion of the Minister, the company carries on the business of investment and is not a company described in subsection (3) of section 2; and where any exemption in respect of such a company is revoked, the company shall be deemed thereafter to be an investment company to which subsection (1) of section 11 does not apply.

(4) Where any conflict exists between any provision of this Act and any provision of the letters patent or any supplementary letters patent of an investment company, the provision of this Act prevails.

(5) Where any conflict exists between any provision of this Act and any provision of an Act incorporating an investment company or any amendment to such Act, unless that Act or amending Act by specific reference to this Act provides to the contrary, the provision of this Act prevails.

4. Letters patent issued under any Act of the Parliament of Canada to incorporate a company primarily for the purpose of carrying on the business of investment shall include the following words: "This company is incorporated as an investment company and is subject to the provisions of the Investment Companies Act unless exempted from the application of that Act in accordance with subsection (2) of section 3 thereof."

5. (1) Every investment company shall, within one hundred and twenty days after the end of each fiscal year of the company, file in the Department of Insurance

(*a*) a statement of the condition and affairs of the company at the end of its last completed fiscal year, in such form and containing such information as is prescribed by the Superintendent, or

(*b*) with the consent of the Superintendent, a copy of the financial statement, report of the auditor and any further information respecting the financial position of the company placed or to be placed before the annual meeting of shareholders following its last completed fiscal year.

(2) An annual statement filed in accordance with subsection (1) shall be verified by oath of two persons being, respectively, a director and officer of the company, both of whom are authorized by resolution of the board of directors of the company to verify the statement.

(3) The Superintendent may, by notice to an investment company, require it to submit to him forthwith statements of the condition and affairs of all its subsidiaries or of any of its subsidiaries named in the notice.

(4) The Superintendent may, by notice to an investment company, require it to include in the annual statement of its condition and affairs filed in accordance with subsection (1), the assets, liabilities, income and expenditure of all its subsidiaries or of any of its subsidiaries named in the notice and any such consolidated statement shall make due provision for any minority interest in the subsidiaries.

(5) The Superintendent may, by notice to an investment company, require it to submit to him forthwith a certified copy of its by-laws; and a company to which such notice has been given shall, within one month after any repeal or amendment of its by-laws or any of them or any addition thereto provide the Superintendent with a certified copy of such repeal, amendment or addition.

(6) The Superintendent may, by notice to an investment company, at any time require it to submit to him forthwith an interim statement of the condition and affairs of the company or of any of its subsidiaries as at the date mentioned in such notice, which statement shall be in such form and contain such information as is required by the Superintendent in such notice.

(7) The Superintendent may, by notice to any investment company or the president, manager or secretary of any such company require the company or person to whom the notice is given to provide him with such statements and information relating to the condition and affairs of the company, in addition to the information contained in the statement of the company filed in accordance with subsections (1) or (6), as may be specified in the notice and as he considers necessary to enable him to ascertain the financial condition of the company and its ability to meet its financial obligations; and any company or person to whom such a notice is sent shall, forthwith after receipt thereof, forward to the Superintendent a reply in writing setting forth such of the information and enclosing such of the statements, if any, specified in the notice as are available to or as may be reasonably obtained by it or him.

(8) The auditor of an investment company shall, at the time of his appointment, be:

(*a*) an accountant who

(i) is a member in good standing of an institute or association of accountants incorporated by or under the authority of the legislature of a province;

(ii) is ordinarily resident in Canada; and

(iii) has practised his profession in Canada continuously during the six consecutive years immediately preceding his appointment; or

(*b*) a firm of accountants of which one or more members is qualified in accordance with paragraph (*a*).

(9) The Minister, on the recommendation of the Superintendent may require that the auditor of an investment company shall report to him on the adequacy of the procedure adopted by the investment company for the safety of its creditors, and as to the sufficiency of his procedure in auditing the affairs of the investment company.

(10) The Minister, on the recommendation of the Superintendent may enlarge or extend the scope of an audit of the affairs of an investment company or direct any other or particular examination to be made or procedure to be established in any particular case as, in his opinion, the public interest may require and the investment company shall, in respect thereof, pay to the auditor such remuneration, in addition to any remuneration fixed in any other manner as the Minister allows.

(11) The Minister, on the recommendation of the Superintendent, may direct that a special audit of an investment company be made if in his opinion it is so required and may appoint for such purposes an auditor qualified pursuant to subsection (8) to conduct such audit and the expenses entailed therein are payable by the company on being approved by the Minister.

(12) It is the duty of the auditor of an investment company to report in writing to the chief executive officer and the directors of the company any transactions or conditions affecting the well-being of the company that in his opinion are not satisfactory and require rectification; and the auditor shall, at the time any report under this subsection is transmitted to the chief executive officer and the directors of the company, furnish a copy thereof to the Minister.

(13) Every investment company shall, prior to borrowing any money on the security of its bonds, debentures, notes or other evidences of indebtedness, file with the Superintendent in relation to such borrowing:

(*a*) a prospectus which complies with the requirement of section 77 of the *Canada Corporations Act;* or

(*b*) a copy of any prospectus or document of a similar nature required to be filed with any public authority under the law of any province.

6. (1) An inspector appointed or designated in accordance with section 22 may, at any reasonable time, enter any office of an investment company or of a company which is a subsidiary of an investment company and require the person appearing to be in charge thereof to produce for inspection, or for the purpose of obtaining copies thereof or extracts therefrom, any books, records or documents relating to the business, finances or other affairs of the investment company or any company that is a subsidiary thereof that are maintained or that could reasonably be expected to be maintained at that office.

(2) An inspector shall be furnished by the Superintendent with a certificate of appointment or designation and, on entering any office pursuant to subsection (1), he shall, if so required, produce the certificate to the person appearing to be in charge thereof.

(3) The person appearing to be in charge of any office described in subsection (1) and every person found therein shall give an inspector such assistance and furnish him with such information in support of the books, records and documents described in subsection (1) as the inspector may, for the purpose of carrying out his duties and functions under this Act, reasonably require him to give or furnish.

7. No person shall

(*a*) obstruct or hinder an inspector in the carrying out of his duties or functions under this Act; or

(*b*) knowingly make a false or misleading statement either orally or in writing to an inspector who is engaged in carrying out his duties or functions under this Act.

8. (1) No investment company shall knowingly make an investment

(*a*) by way of a loan to

(i) a director or officer of the company, or a spouse or child of such a director or officer, or

(ii) an individual, his spouse or any of his children under the age of twenty-one years if either the individual or a group consisting of the individual, his spouse and such children is a substantial shareholder of the company;

(*b*) in a corporation that is a substantial shareholder of the company; or

(*c*) in a corporation in which

(i) an individual mentioned in subparagraph (i) of paragraph (*a*),

(ii) an individual who is a substantial shareholder of the company,

(iii) any corporation that is a substantial shareholder of the company, or

(iv) a group consisting exclusively of individuals mentioned in subparagraph (i) of paragraph (*a*)

has a significant interest

(2) No investment company shall knowingly hold an investment made after the coming into force of this Act that, at the time it was made, was an investment described in subsection (1).

(3) For the purposes of this section,

(*a*) a person has a significant interest in a corporation, or a group of persons has a significant interest in a corporation if,

(i) in the case of a person, he owns beneficially, either directly or indirectly more than ten percent, or

(ii) in the case of a group of persons, they own beneficially, either individually or together and either directly or indirectly more than fifty percent,

of the capital stock of the corporation for the time being outstanding;

(*b*) a person is a substantial shareholder of a corporation, or a group of persons is a substantial shareholder of a corporation if that person or

group of persons owns beneficially, either individually or together and either directly or indirectly, equity shares to which are attached more than ten percent of the voting rights attached to all of the equity shares of the corporation for the time being outstanding; and in computing the percentage of voting rights attached to equity shares owned by an underwriter, there shall be excluded the voting rights attached to equity shares acquired by him as an underwriter during the course of distribution to the public by him of such shares;

(c) "investment" means

(i) an investment in a corporation by way of purchase of bonds, debentures, notes or other evidences of indebtedness thereof or shares thereof, or

(ii) a loan to a person or persons

but does not include an advance or loan, whether secured or unsecured, that is made by an investment company to a corporation and that is merely ancillary to the main business of the investment company; and

(*d*) "officer" means the president, vice-president, secretary, assistant secretary, comptroller, treasurer and assistant treasurer of a corporation and any other person designated as an officer of the corporation by by-law or by resolution of the directors thereof.

(4) Where any person or group of persons is a substantial shareholder of an investment company, and as a consequence thereof and of the application of this section, certain investments are prohibited for the investment company, the Minister may, by order, on application by the investment company, exempt from such prohibition any particular investment or investments of any particular class if he is satisfied that the decision of the investment company to make or hold any investment so exempted has not been and is not likely to be influenced in any significant way by that person or group and does not involve in any significant way the interests of that person or group, apart from their interests as a shareholder of the investment company.

(5) Any order of exemption made by the Minister under subsection (4) may contain any conditions or limitations considered by the Minister to be appropriate and may be revoked by the Minister at any time, but subsection (2) does not apply to any investment made by the investment company to which the order applied, that was made while the order was in effect and that was an investment to which the order applied.

(6) The Minister may, by order, on application by an investment company, exempt it from the application of subsection (2) in relation to an investment or investments described in the order and made by it at a time when it was not an investment company or when it was exempted from the application of this Act.

(7) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or pursuant to this subsection is deemed to own beneficially, equity shares of a corporation, that person or group of persons shall be deemed to own beneficially a proportion of the equity shares of any other corporation that are owned beneficially, directly or indirectly, by the first mentioned corporation, which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are

owned beneficially, directly or indirectly, or that pursuant to this subsection are deemed to be owned beneficially by that person or group of persons.

(8) Notwithstanding subsection (7), an investment company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the investment company is by reason thereof deemed to own beneficially equity shares of the corporation.

(9) Notwithstanding any other provision of this section, an investment company is not prohibited from acquiring and holding equity shares of a corporation that it acquires pursuant to an offer for all or a majority of the outstanding equity shares of such corporation, if at the time the offer was made by the investment company, it was not prohibited from investing in such shares.

(10) Notwithstanding any other provision of this section, an investment company may, unless it is prohibited from doing so by a condition in its certificate of registry, make and hold an investment in any corporation that is a parent corporation of the investment company or in any corporation in which such parent corporation would not, if such parent corporation were an investment company, be by this section, prohibited from making provided that:

(*a*) the repayment of all money borrowed by the investment company, other than money borrowed by it from persons who are substantial shareholders of the investment company or from companies to which the *Bank Act* applies, is guaranteed by such parent corporation; and

(*b*) such parent corporation is an investment company or complies with the requirements of sections 5 and 6 as if it were an investment company.

(11) For the purposes of subsection (10), a corporation is a parent corporation of an investment company if the corporation owns or is deemed to own beneficially, either directly or indirectly, at least fifty percent of the outstanding equity shares of the investment company.

9. Letters patent shall not be issued under any Act of the Parliament of Canada to incorporate a company primarily for the purpose of carrying on the business of investment without the consent of the Minister; and no supplementary letters patent shall be issued in respect of a registered company without the consent of the Minister.

10. (1) The Minister may, upon application made to him by an investment company, issue a certificate of registry to the company for such term not exceeding one year as he considers appropriate, and the Minister may renew any such certificate from time to time whether or not application for renewal thereof is made to him.

(2) The Minister may, at any time and in respect of any certificate of registry,

(*a*) reduce the term for which it was issued,

(*b*) impose any conditions or limitations relating to the carrying on of the business of investment that he considers appropriate, or

(*c*) vary, amend or revoke any condition or limitation to which it is then subject,

but no power of the Minister under this subsection shall be exercised without the consent of the company to which the certificate in question relates unless that company has been given notice of the Minister's intention to exercise his powers under this subsection in respect of the certificate and a reasonable opportunity has been afforded to the company to make representations with respect thereto.

(3) No certificate of registry shall be allowed to lapse by the Minister except with the consent of the company to which it was issued unless the company has been given notice of the Minister's intention to allow it to lapse and a reasonable opportunity has been afforded to the company to make representations with respect thereto.

(4) The Minister may, upon application made to him by a company that carries on the business of investment but that is not an investment company, issue a certificate of registry to such company pursuant to subsection (1).

(5) Each registered company, while it continues to be a registered company, shall notwithstanding subsection (3) of section 2 be deemed for the purposes of this Act to be an investment company.

11. (1) An investment company incorporated with the consent of the Minister given pursuant to section 9 or by an Act of the Parliament of Canada that comes into force after the coming into force of this Act, shall make application to the Minister for a certificate of registry within two years after the issue of its letters patent or the coming into force of the Act by which it was incorporated, as the case may be.

(2) Subject to subsection (3), an investment company to which subsection (1) does not apply shall make application to the Minister for a certificate of registry within

(*a*) six months after the coming into force of this *Act*, or

(*b*) one hundred and twenty days after the end of the fiscal year of the company in which it became an investment company,

whichever is later.

(3) Where this Act becomes applicable to an investment company

(*a*) on a day later than the day on which this Act comes into force, and

(*b*) as a result of the revocation of an exemption granted to it under subsection (2) of section 3,

it shall make application to the Minister for a certificate of registry within sixty days after this Act becomes applicable to it.

12. (1) An investment company to which subsection (1) of section 11 applies shall not borrow money on the security of its bonds, debentures, notes or other evidences of indebtedness before the issue of a certificate of registry to it.

(2) Where

(*a*) in the case of an investment company to which subsection (1) of section 11 does not apply, the company fails to make application to the Minister for a certificate of registry within the time provided in subsection (2) or (3) of that section that is applicable to it,

(*b*) notice of a special report made by the Superintendent under subsection (1) of section 13 is given to the company to which the report relates in accordance with subsection (2) of that section, or

(*c*) the certificate of registry

(i) of a company is withdrawn pursuant to section 15, or

(ii) of an investment company has lapsed and has not been renewed by the Minister,

the company shall not thereafter borrow money on the security of its bonds, debentures, notes or other evidences of indebtedness, unless a certificate of registry is issued to it by the Minister or, except where the certificate of registry of a company is withdrawn pursuant to section 15, the company ceases to be an investment company.

(3) The extension or renewal of any indebtedness that was incurred by a company to which subsection (2) applies prior to the expiration of the time provided in subsection (2) or (3) of section 11 that is applicable to it or prior to the giving of notice of the special report of the Superintendent under subsection (2) of section 13 or the withdrawal or expiry of its certificate, as the case may be, shall, if the extension or renewal does not increase the indebtedness of the company that was outstanding immediately before such time, be deemed not to be a violation of subsection (2).

(4) where any money has been borrowed by an investment company in violation of subsection (1) or paragraphs (b) or (c) of subsection (2), the persons who were directors of the company at the time money was so borrowed are jointly and severally liable to the lenders from whom such money was borrowed and their successors in title,

(*a*) in the case of a violation of subsection (1), for the amount so borrowed; and

(*b*) in the case of a violation of paragraphs (*b*) or (*c*) of subsection (2) for the amount by which the indebtedness of the company was increased by borrowing.

13. (1) Where, in the opinion of the Superintendent, the financial condition and affairs of an investment company that applies to the Minister for a certificate of registry are such that the ability of the company to repay all moneys borrowed by it on the security of its bonds, debentures, notes and other evidences of indebtedness that are then outstanding and to pay all interest thereon is inadequately secured, he shall make a special report to the Minister recommending against the issuing of a certificate to the company and setting forth his reasons therefor.

(2) The Superintendent shall give notice to a company to which a special report under subsection (1) relates of the making of the report and a copy of the report shall be sent to the company with the notice.

(3) After receipt of a special report made by the Superintendent under subsection (1), and after affording to the company to which the report relates an opportunity to be heard in connection therewith, the Minister, if he agrees with the opinion of the Superintendent, may,

(*a*) refuse to issue a certificate of registry to the company, or

(*b*) postpone the decision whether or not to issue a certificate of registry to the company and, by order, specify a period of time within which the company may endeavour to improve its financial condition and affairs to a state that is satisfactory to the Minister.

(4) The period of time allowed by an order made under paragraph (*b*) of subsection (3) may be extended by the Minister or the order may at any time be revoked by him upon notice of such extension or revocation being given to the company to which the order relates.

(5) Where a company in respect of which an order has been made under paragraph (*b*) of subsection (3) satisfies the Minister, before the expiration of the time allowed under the order or any extension thereof or before the revocation of the order, that it has so improved its financial condition and affairs that its ability to repay all moneys borrowed by it on the security of its bonds, debentures, notes and other evidences of indebtedness that are then outstanding and to pay all interest thereon is adequately secured, the Minister may issue a certificate of registry to the company in accordance with section 10.

14. Where it comes to the attention of the Superintendent, by any means whatever, that any assets that appear on the books or records of an investment company may not be satisfactorily accounted for and upon investigation the Superintendent believes that any of those assets are not satisfactorily accounted for and that all the circumstances so warrant, he may immediately take control of the assets of the company and may maintain such control on his own initiative for a period of seven days and, with the concurrence of the Minister, for any longer period that the Minister considers necessary in the circumstances.

15. (1) The Superintendent shall whenever

(*a*) in his opinion the financial condition and affairs of an investment company are such that the ability of the company to repay all moneys borrowed by it on the security of its bonds, debentures, notes and other evidences of indebtedness that are then outstanding and to pay all interest thereon is inadequately secured; or

(*b*) he has taken control of the assets of an investment company pursuant to section 14

forthwith make a special report to the Minister with regard to the financial condition and affairs of the company.

(2) The Superintendent shall give notice to a company to which a special report under subsection (1) relates of the making of the report and a copy of the report shall be sent to the company with the notice.

(3) After receipt of a special report made by the Superintendent under subsection (1), and after affording to the company to which the report relates an opportunity to be heard in connection therewith, the Minister, if he agrees with the opinion of the Superintendent, may take one or more of the following actions

(*a*) by order allow the company a period of time within which to improve its financial condition and affairs to a state that is satisfactory to him;

(*b*) impose such conditions upon the company as he considers appropriate;

(*c*) withdraw any certificate of registry issued to the company;

(*d*) direct that the company cease to carry on the business of investment;

(*e*) direct the Superintendent to take or continue in control of the whole or any part of the assets of the company; or

(*f*) direct the Superintendent to relinquish control of the assets of the company.

(4) Where a company

(*a*) fails to improve its financial condition and affairs to a state satisfactory to the Minister within the period of time prescribed pursuant to paragraph (*a*) of subsection (3) or any extension thereof subsequently given by the Minister; or

(*b*) fails to comply with any condition imposed pursuant to paragraph (*b*) of subsection (3)

the Minister may take one or more of the actions described in paragraphs (*c*), (*d*) and (*e*) of subsection (3).

(5) For the purpose of carrying out the provisions of this section, the Minister may appoint such persons as he deems proper, to appraise and report on the condition of the company and its ability, or otherwise, to meet its obligations and guarantees.

(6) An investment company or any other person aggrieved by a decision of the Minister taken under the provisions of this section may apply by summary motion to the Exchequer Court of Canada to revise such decision and such Court shall, after hearing the applicant and the Minister

(*a*) affirm the decision of the Minister; or

(*b*) rescind the decision of the Minister and make the decision which in the opinion of the Court the Minister should have made in the circumstances.

(7) Any decision of the Exchequer Court of Canada rendered under subsection (6) shall be final and without appeal.

16. (1) Where the Superintendent has control of the assets of a company pursuant to section 14 or 15, the company shall not make any loan or any purchase, sale or exchange of securities or any disbursement or transfer of cash of any kind whatever without the prior approval of the Superintendent or a representative designated by him and a director, officer or employee of the company shall not have access to any cash or securities held by or in respect of the company unless he has with him a representative of the Superintendent or unless such access is previously authorized by the Superintendent or his representative.

(2) At any time that the Minister believes that a company, in respect of which the Superintendent has control of assets pursuant to section 14 or 15, meets all the requirements of this Act and it is otherwise proper for the company to resume control of its assets, the Minister may direct the Superintendent to relinquish control of the assets of the company.

(3) No action lies against Her Majesty, the Superintendent or a representative of the Superintendent for anything done or omitted to be done in good faith by the Superintendent or his representative while the Superintendent has control of assets of a company pursuant to sections 14 or 15.

17. (1) Whenever

(*a*) An investment company to which subsection (1) of section 11 applies:

(i) borrows any money on the security of its bonds, debentures, notes or other evidences of indebtedness before the issue of a certificate of registry to it, or

(ii) fails to make application to the Minister for a certificate or registry within the time period in that subsection;

(*b*) An investment company to which subsection (1) of section 11 does not apply fails to make application to the Minister for a certificate of registry within the time provided in subsections (2) or (3) of that section;

(*c*) An investment company applies to the Minister for a certificate of registry in accordance with subsection (1) of section 10 and such certificate is refused in accordance with section 13; or

(*c*) Pursuant to section 15 the Minister

(i) withdraws the certificate of registry of an investment company, or

(ii) directs that an investment company cease carrying on the business of investment;

the Minister may apply to a court of competent jurisdiction and upon such application a receiving order may be made against such company as if such company had committed an act of bankruptcy.

(2) Any application under subsection (1) shall be adjourned pending disposition of any prior appeal under subsection (6) of section 15.

(3) Any proceedings under the Bankruptcy Act that could be taken by a creditor who is owed an amount of one thousand dollars by a company to which subsection (1) applies may be initiated or taken by the Minister as if he were such a creditor, against such company, including the filing of a petition for a receiving order and an intervention may be filed on by the Minister in any proceedings under the *Bankruptcy Act* that are initiated or taken by such company or any other person and the Minister may be made a party to any such proceedings.

18. (1) The Minister shall cause to be published, in the last issue of the Canada Gazette published in the month of April in each year after the year in which this Act comes into force, a list of all companies that held certificates of registry on the first day of April of the year of such publication.

(2) Whenever a certificate of registry is refused pursuant to section 13 or withdrawn pursuant to section 15 the Minister shall cause a notice to this effect to be published as soon as possible in the Canada Gazette.

19. (1) The Superintendent shall, as soon as reasonably possible after the termination of each fiscal year, submit to the Minister a report in such form as the Minister may direct on the administration of this Act during that fiscal year.

(2) Where an investment is made or held by an investment company in violation of section 8, the Superintendent, in any special report to the Minister under subsection (1) of section 13 or subsection (1) of section 15 in respect



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of that company, may reduce the assets of the company as shown in its annual or other statement by the whole or any part of the value of such investment.

20. (1) The Superintendent shall, annually, and as soon as possible after the beginning of each fiscal year, by reference to the public accounts and after such further inquiries and investigations as he deems necessary, ascertain and certify the total amount of the expenditures incurred for or in connection with the administration of this Act during the immediately preceding fiscal year, and the amount of the expenditures so ascertained and certified is final and conclusive for all purposes of this section.

(2) The Superintendent shall, before the thirty-first day of December following each fiscal year for which the expenditures incurred for or in connection with the administration of this Act are ascertained and certified pursuant to subsection (1), from annual statements and any other information that is available to him, ascertain and certify with respect to each investment company that filed an annual statement for its fiscal year that ended within the calendar year that ended within the fiscal year for which expenditures incurred for or in connection with the administration of this Act were so ascertained, the amount that is one-half of the sum of

(*a*) the value of the assets of the investment company as of the last day of its fiscal year preceding its fiscal year to which such annual statement relates, and

(*b*) the value of the assets of the investment company as of the last day of its fiscal year to which such annual statement relates,

(in this section referred to as its "mean assets") and the amount so ascertained and certified pursuant to this subsection are final and conclusive for all purposes of this section.

(3) Upon completing the ascertainment and certification of expenditures incurred and of mean assets of investment companies as required by subsections (1) and (2) for a fiscal year and for fiscal years of investment companies ending within the calendar year that ended within such fiscal year, respectively, the Superintendent shall prepare an assessment against each investment company the mean assets of which were so certified in the amount that bears the same ratio to its mean assets as so certified as the amount of the expenditures incurred and so certified bears to the aggregate of the mean assets of all investment companies the mean assets of which were so certified; and such assessment, when certified by the Superintendent, is binding on the company against which it is made and is final and conclusive for all purposes of this section.

(4) An amount assessed against an investment company pursuant to subsection (3) or (5) constitutes a debt due to Her Majesty payable upon demand of the Superintendent and recoverable as such in the Exchequer Court of Canada or any other court of competent jurisdiction.

(5) Where a company that was an investment company at the time an assessment was prepared by the Superintendent pursuant to subsection (3) was, at that time, in arrears in filing an annual statement under section 5, and no assessment was then prepared against it, the Superintendent may, at any time, prepare and certify an assessment against the company in the amount that

bears the same ratio to its mean assets in its fiscal year in respect of which the assessment is prepared as the amount of the expenditures incurred and certified under subsection (1) in respect of the relevant fiscal year bears to the aggregate of the mean assets of all investment companies the mean assets of which were certified under subsection (2) before the thirty-first day of December following that fiscal year for that fiscal year; and any such assessment shall be payable with interest calculated thereon at the rate of six per cent per annum from the date on which a demand therefor would normally have been made by the Superintendent if the company had not been in arrears in filing its annual statement.

(6) Any amounts paid to or otherwise received by Her Majesty in any fiscal year on account of assessments made pursuant to subsection (5) shall be deducted from the expenditures incurred for or in connection with the administration of this Act for the purpose of ascertaining and certifying the total amount of such expenditures pursuant to subsection (1) for that fiscal year.

21. The Governor in Council may make such regulations not inconsistent with the provisions of this Act as he considers appropriate to insure the proper carrying out of such provisions.

22. The Superintendent may

(*a*) prescribe such forms as he considers appropriate for the purposes of this Act;

(*b*) prescribe the information to be contained in an annual statement; and

(*c*) appoint or designate any person as an inspector for the purposes of this Act.

23. Where by this Act notice is authorized or required to be given to an investment company, the notice may be given by registered letter addressed to the company at the postal address of the head office of the company that is of record in the Department of Insurance or with the member of the Queen's Privy Council for Canada charged with the administration of the *Canada Corporations Act*.

24. The Superintendent shall file with the member of the Queen's Privy Council for Canada charged with the administration of the *Canada Corporations Act* a copy of each certificate of registry issued to a company incorporated by letters patent and of each amendment or renewal of any such certificate and shall give notice to him of any exemption granted to such a company pursuant to subsection (2) of section 3 and of the revocation of any such exemption.

25. Nothing in this Act affects any right or remedy of a person who lends money to a company to which this Act applies on the security of bonds, debentures, notes or other evidences of indebtedness of the company.

26. (1) Every investment company that fails to apply for a certificate of registry within the time prescribed in section 11 that is applicable to it, and every director or officer of the company who knowingly and wilfully authorizes or permits such default, is liable on summary conviction to a fine not exceeding ten thousand dollars.

(2) Every director, officer, servant or auditor of an investment company who wilfully makes any false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the company, or uses any false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the company with intent to deceive or mislead any person, is guilty of an indictable offence punishable, unless a greater punishment is in any case by law prescribed therefor, by imprisonment for a term not exceeding five years.

(3) Every director, officer, servant or auditor of an investment company who

(*a*) refuses or wilfully neglects to make any proper entry in the books of the company, or

(*b*) negligently prepares, signs, approves or concurs in any account, statement, return, report or document respecting the affairs of the company containing any false or deceptive statement,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(4) Every person who does, causes or permits to be done any matter, act or thing contrary to any provision of this Act, the regulations or to any order or requirement of the Minister or the Superintendent made under this Act, or omits to do any matter, act or thing that by this Act, the regulations or any order or requirement of the Minister or the Superintendent made under this Act is required to be done by or on the part of such person is, if no other punishment for such act or omission is provided in this Act, liable on summary conviction to a fine not exceeding five thousand dollars.

27. All fines imposed pursuant to this Act belong to Her Majesty in right of Canada and shall be paid to the Receiver General.

28.(1) Every investment company that makes default in filing an annual statement incurs a penalty of ten dollars for each day during which such default continues.

(2) A penalty incurred under this section is a debt due to Her Majesty and is recoverable as such in the Exchequer Court of Canada or any other court of competent jurisdiction.

(3) The Minister, on the recommendation of the Superintendent, may remit all or any part of a penalty incurred under this section.

29. This Act shall come into force on a day to be fixed by proclamation."

Respectfully submited,

Salter A. Hayden,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, June 18, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 10.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have before us Bill S-17. A great deal of work has been done on this bill, which has now come to fruition. There is now being distributed to you what we call a revised draft of Bill S-17. In due course I will give you the history of the work that was done. You will recall that at one stage after we heard all the evidence we appointed a subcommittee, which on your instructions also retained counsel. We devoted considerable time, as I, Senator Flynn and Senator Desruisseaux can testify, in conferences with our counsel in studying this, and in consultation with Mr. Humphrys at all times, with the object of producing as good and effective a bill as would be possible in the circumstances, considering the weight to be attached to the evidence given by all these responsible organizations.

However, if you will let me have a few moments, there are some preliminary remarks I should like to make. This bill has given rise to some criticism of the chairman of this committee. While I am not unaccustomed to criticism—that is part of the lawyer's life and trade—this is the kind of criticism that has no foundation in fact, and it is very disturbing. I am mentioning it today because it reflects on the chairman of the committee, it also reflects on the committee, which is described as the "Hayden Committee," and indicates that the committee was influenced by the Chairman to take a certain course of action.

On June 7, apparently a question had been asked in the House of Commons and an answer was given to Mr. Knowles. The Toronto *Star* of June 7 reports Mr. Knowles as saying certain things outside the house, as a preliminary that the chairman of the Banking, Trade and Commerce Committee is a director of 25 companies. By arithmetical calculation it is actually 22. Mr. Knowles is reported as saying:

> "No matter how honest a man is, if he sits on the boards of various companies, and legislation comes before him which would adversely affect those companies and he votes to water down the legislation, what else can you conclude except that his connections have influenced him?"
>
> He said the investment companies bill, which is designed to make such companies report publicly on their financial affairs, has been watered down by Hayden's committee.
>
> Knowles said the bill affected some of the companies with which Hayden is connected, "and he should have disqualified himself from dealing with it."

However, the significant things here are these. It was said there were some companies of which I was a director that were adversely affected by this bill. I will comment on "adversely" in a moment. The bald statement of fact is this. I am a director of a bank. It could not be that directorship which should disqualify me because banks, companies subject to the Bank Act, are specifically exempt in Bill S-17, and were so when the bill came before us.

I should then say that the qualifications, if you want to call it that, to make you subject to the bill are these: that a company must borrow money on the security of its bonds, debentures, notes or other evidence of indebtedness, and in the form in which the bill came before us it must use its assets or some part of its assets to make investments. That is

the basic test. Those are the conditions that a company must meet if it is going to be subject to Bill S-17, and the reporting, inspection and registration that are required, and for the very legitimate purpose of protecting the interests of those who advanced money to a company for these investment purposes.

With that background we rule out, right away, a directorship of a bank. That brings the total down to 21 companies, and of those 21 not one would be subject to the reporting and registration procedures under this bill. Of those 21 there are only three having either outstanding bonds or debentures, and when you apply the additional tests that occur in Bill S-17, these companies would not become subject to the reporting and registration, et cetera, that are required. That is something that could easily have been determined.

First of all, if you are a director of a bank you know that once a year the bank must file with the Department of Finance, through the Inspector General, a list of the directorships held by each of its directors. Therefore, the list is there and it is available in many other places. I suspect that one of the companies, called Veme Investment Limited, may have attracted the comment that was made, as the word "investment" may have been the flag that triggered this conclusion that some companies of which I am a director were subject to this bill. All it would have taken was one question to me in order to find out that in Veme Investment, the word "Veme" was made up of a couple of letters in the first names of a husband and wife. It was a personal holding company of the husband and the wife and they needed a third director. Since they are good friends and clients of mine, I agreed to be that director. They borrow no money. They would in no way be subject to this bill.

This word investment may have triggered it. That anything in a name should lead to an allegation that the chairman of the committee acted improperly and influenced his committee to water down a bill, is too careless an approach on which to base such an allegation. The bill is only now being considered by this committee; we had the bill before us and we heard a tremendous amount of evidence. We then set up a subcommittee. The subcommittee has been working in conjunction with Mr. Humphrys in every step we have taken in our studies. Mr. Humphrys has sat in on the conferences of the subcommittee. There were postponements because of the fact that Mr. Humphrys had to get his instructions from the minister who was away part of the time. There has been no delay and I have not been instrumental in delaying the passage of this bill. That is a completely wrong statement.

Anyone studying this bill will realize that the first report we had from Mr. Humphrys on his study of the evidence, was dated April 29th. The last sitting of the Committee was March 19 at which time we were intending to hear from Mr. Humphrys as to his comments regarding all of the evidence. He said that he had not had time to analyse the evidence nor an opportunity to see the minister, who I think was out of the country for a while. Subsequantly all the evidence was reviewed and a redraft was made of the bill and this went to Mr. Humphrys. We again had a half-day conference with him on June 3, out of which we completed the product which is before you and which has been in the possession of Mr. Humphrys. On every step of the way we have used his time as best we could, and there has been no delay. To say that the committee delayed and watered down the bill and that it did so under my influence is completely wrong. Also to say that the committee voted is incorrect, because the committee has not voted yet.

This is all unfortunate. My friends will not be affected by this sort of allegation, but one would have thought that when contemplating an allegation of this kind, which really touches on the integrity of the chairman, there might have been some examination made to ascertain whether any change was made by this committee to help a company that was adversely affected and of which I am a director.

What I am stating is a fact. These companies would not be subject to the reporting procedure, et cetera, of the bill. It is unfortunate, but when the big lie gets on its way the answer very seldom catches up with it. What you must do is to rely on the confidence which your friends have in you. I am prepared to do that and let the lies go where they will.

**Senator Connolly (Ottawa West):** After listening to what Senator Hayden has said, I should like to move, formally, that this committee has every confidence in its chairman and that this confidence has been justified over the years by the work the chairman has

done in this committee to improve the legislation that comes before it.

**Senator Flynn:** I second that. I have been working with the chairman in the subcommittee to this bill which has been referred, and I can testify to his complete objectivity. I am not so sure that the person in the other place who made those allegations has shown objectivity towards the Senate. I remember having read, when the problem of the amendment made to this bill was discussed in the other place, that the gentleman in question was prepared to vote in favour of any amendment moved by the Government, as long as it would contradict what we had done here. He said, "If it comes from the Senate I would be pleased to change and modify it." That is the kind of objectivity that I would not compare to the one of the chairman.

**Hon. Senators:** Hear, hear.

**The Chairman:** Can we get down to the business of the meeting? We have Bill S-17 before us. I am not suggesting to you that this draft bill, in the form in which it is now, is necessarily the form in which it may ultimately go out of this committee, because I understand that Mr. Humphrys has indicated some technical amendments which may have to be discussed.

The basic differences in this bill, as against S-17, which originally came in to us, is that instead of providing the test for the borrowing of money on the security of bonds, debentures, notes and evidence of indebtedness and the use of the assets or part of them for the loaning or investment purposes set out in the bill, the committee took concept that the real object of the bill was to follow, by the reporting and inspection and registratin procedures, the investment of the proceeds of the borrowing. So we did make a change in the definition of business of investment, and you will find it in this bill. We have taken out the words "and using the assets or part of them for this purpose" and we have provided "the use of some or all of the proceeds of the borrowing" for the purposes which are defined in the bill.

This fits in with the minister's view on this. I was reading his speech—and I am sorry I have not got it with me this morning—he made at the Seigniory Club in May. He discussed in some detail the functions and purposes of this bill. In the language that he used in regard to purposes, he said that it was to check on borrowed moneys and the use of those funds for purposes of investment, and that means the use of the proceeds.

So Mr. Humphrys and the subcommittee, while they had that defference in point of view, it was not a difference in principle, because the principle of the bill is to check on the investment practices of companies who borrow money from the public and then use it to do the variety of things that are set out in the section to ensure some measure of protection to the lenders.

Administratively, it may have presented—Mr. Humphrys thought it would—greater problems in administration to follow the proceeds rather than just take the obvious course, namely, to use as a base the assets. We have put into this bill a number of things to make the administration easier. For instances, we have provided that if there is not a disclosure in a prospectus that is filed as to the purposes for which the borrowed money is being used, it is stated very specifically that the presumption which the company will have to meet is that the proceeds were used in such investment purposes. In other words, if the borrowing company which is going to invest does not describe in detail the purposes and show how the money is to be used, then the presumption is that the proceeds were used for investment purposes.

We have also put some limitations into the bill. Mr. Humphrys had a limitation that if not more than 25 per cent of the assets were used for such investment purpose, the company was not subject to the bill. If more than 25 per cent of the assets were used for investment purposes, as described in the original bill, then such a company was subject to the provisions of the bill if it had borrowed the money that was so used.

In the first series of amendments which Mr. Humphrys proposed, one of them was that the 25 per cent be raised to 40 per cent, which is the line of demarcation in the corresponding American legislation on investment companies. First of all, the money is borrowed. If more than 40 per cent of the assets are used for investment of the character described in the bill, then the company is an investment company. But if not in excess of 40 per cent of the assets are so used, the company does not quality for reporting, inspection, et cetera, under this bill.

We also put in another provision, on Mr. Humphrys' suggestion, that if the borrowing

were an amount not more than one-third of the equity that would be the aggregate of the capital and surplus of the company, there would be ample protection to any creditors and it would not be necessary or useful that such a company should clutter up the procedures of this bill by having to report and register. We put such provisions in the bill.

We made another major change, and I think any person who sat in on the committee meetings would have noted that I was the one who more or less took the lead on this point.

If you recall the sanctions in this bill, the registration and the sanctions were not to come into force for two years, but the reporting and the inspection procedures were to come into force within a limited period of time after the bill was proclaimed. I raised the question that if the reporting and inspection procedures disclosed a situation in which there was a deficiency in the assets as against the liabilities and/or where it appeared that the company was in such a position that it was not likely to be able to meet its carrying charges, Mr. Humhrys had no authority under the bill as it was presented to us—although there may have been other ways in which the matter could have been dealt with—to take any steps because the sanctions were not in force.

I suggested at that time—and it is in the record—that I would not want to be the minister in charge of this bill if I had to sit waiting for two years for sanctions to come into play, and knowing that within that period of time there was information of this sort in relation to an operating company in the records.

That was an impossible situation. So we have made provision in the bill for sanctions to come into force when the bill comes into force. I appreciate that, as far as Mr. Humphrys is concerned, this presents problems in administration, because he was looking to this expanded period so as to be able to sort out all the reporting companies and their purposes and functions and establish some kind of a system for administration. However, it was the view of the subcommittee, on balance, that the bill should in its entirety be an effective instrument at the moment it comes into force—whatever may be the difficulties of administration by reason of that.

I think those are the two major changes.

There is one further point. I think it is fair to say, under a direction of the Superintendent of Insurance—I realize the policy was set by the Government—in four bills that came before us—that is, the amendments to the Canadian and British Insurance Companies Act, The Foreign Insurance Companies Act, The Trust Companies Act, and The Loan Companies Act, the sanctions were strengthened beyond the sanctions provided in this bill. We thought that this bill should have the strongest sanctions possible. Therefore, we adopted the sanctions in these later bills.

One of the really strong ones which we incorporated I will refer to particularly. It was the sanction under which the Superintendent, the moment he obtains information as to any weakness or deficiency or inability to meet current obligations, can go in right away and take possession of the assets. This is a very desirable and necessary thing, having regard to the history of some of the failures that have taken place, and when at a later date examination has been made the assets have disappeared.

These are the chief changes. Of course, you might have expected that we would cut down to size the provision with respect to regulations. That is, any regulations that are made shall be made in accordance with and pursuant to the provisions of the bill. In the original bill it looked like a special section conferring legislative powers.

Those are the general principles. Before we go at the bill, I was wondering if Mr. Humphrys would like to comment in a general way. Mr. Humphrys, I know you have points you want to raise in connection with certain sections. However, generally, on the scope and effect of the bill and the manner in which it has gone forward to this stage, perhaps you would like to say something at this point.

**Mr. R. Humphrys, Superintendent of Insurance:** In the original bill, Mr. Chairman, as I explained when I was before the committee on the first or second hearing, it was recognized that the scope of the definition of investment company was very wide. It was uncertain, and still is uncertain, the variety of companies that might be subject to this bill, and, in an effort to deal with that situation, the original bill provided wide powers for the minister to grant exemptions.

In the evidence presented to the committee in the previous hearings there was much criticism of this approach, principally, it seems, on the ground that companies, which

should not reasonably be subject or need not be subject to this type of supervision, should not be put to the obligation of seeking exemptions. There was also some uncertainty, I think, as to the promptness with which exemptions might be granted, and the possibility of change in the philosophy from minister to minister as to the exercise of that discretion.

The changes proposed by the subcommittee, some of which were proposed to the subcommittee by me with the authority of the minister and the Government, attempted to write into the legislation a description of the kind of companies that we contemplated would be entitled more-or-less automatically to an exemption. This gives rise to some difficulties, because any attempt to write rules for that purpose forces you to establish definitions on lines which, to some extent, are arbitrary.

We had one in the original bill, of course, with a 25 per cent test. This test was changed to 40 per cent, but still is a more or less arbitrary figure. The other test on the liability side, to which the Chairman referred, is also an arbitrary figure, but again it was an effort to establish in broad terms what might be considered as a line demarking more or less small borrowing from major borrowing.

So the refinement, if I may say, of the definition of investment company makes the definition clearer but is still within the broad intention of the original bill.

The second major point to which the Chairman referred was bringing into force at an early date the sanctions and powers under the bill. I don't think anyone would quarrel with that concept in principle. I think the purpose of the legislation and the establishment of a system of supervision is to enable action to be taken where it has to be taken to protect the creditors of companies.

The original concept was proposed from a feeling for the practical problems—a feeling that perhaps it would be inappropriate to purport to be in a position to grant certificates of registry or refuse to grant certificates or registry at a very early date after the act came into force. It was thought that it would be necessary to obtain statements in order to gain familiarity with the variety of companies, and their financial operation and problems, before calling on the minister to assume the heavy responsibility of either granting or refusing to grant a certificate.

It was for that reason that the registration technique and the accompanying sanctions were proposed in the original bill to come into force at a later date.

The proposal of the subcommittee to bring the sanctions into force at once certainly has attractions from the point of view of the supervisor. He would be just as uncomfortable as the Chairman described the position of the minister, if he knew of bad situations but could do nothing about them.

I should like to reserve a comment on that, Mr. Chairman, when that portion of the bill is reached in the discussions, in order to propose that, even though the sanctions may come into force, if this be your decision, when the act is proclaimed, there might be some provision concerning the certificates of registry so that there will be no expectation that any company will become registered for a period of time. I shall expand on that, Mr. Chairman, at a later point, or, if you wish, I can make a further comment now. What is your wish on that point?

**The Chairman:** We can deal with that specifically when we come to it.

**Mr. Humphrys:** The other point is the strength of the sanctions. I don't think that I can take the position, either before this committee or in advising the Government, that the sanctions we recommended, as proposed in the other legislation, were inappropriate or unduly strong. We considered they were necessary in the other context. The reason they did not appear here in the original bill was as a consequence of some hesitation in seeking powers of the same strength, at least until the point had been reached where we were as familiar with the kinds of business that these companies do as we are with the kinds of business that companies do that were subject to the other acts.

However, I believe that the kinds of sanctions that were put forth in the other bills are appropriate, and, indeed, necessary, in the general supervision of financial institutions, and, if it is the committee's thought that sanctions of that power should be in this bill, I don't believe that I could raise a serious objection to them, although I think we would have to note that it would impose heavy responsibilities on the administration at an earlier date than would otherwise have been the case.

Mr. Chairman, I think that is all I have to say at the moment.

**Senator Leonard:** Mr. Chairman, I understand from your remarks and Mr. Humphrys'

remarks that in due course he is going to suggest some amendments to some of the sections in the draft that we now have before us.

**The Chairman:** Yes.

**Senator Leonard:** In line with the general remarks he has just made, do I gather from what Mr. Humphrys has said that the redrafted bill now before us is, in general, satisfactory to him?

**Mr. Humphrys:** I think there are no points of important principle on which I am instructed to raise any objection, senator.

**Senator Leonard:** So that, so far as the activities of the Chairman and the subcommittee are concerned, they have, if anything, improved the bill.

**Mr. Humphrys:** Yes, senator, and I believe that it is a stronger piece of legislation than it was with respect to the companies that are subject to it. It may be that as a consequence of the revision, the definition of "investment companies" arrived at by consultation with the sub-committee and on my part acting on the instructions of my Minister will have the result that some companies which were included under the original bill will not be included under this. But I believe that the legislation as proposed in this draft bill is stronger in its control sanctions than the original.

**The Chairman:** You would not say it is a watering down of the original, would you Mr. Humphrys?

**Mr. Humphrys:** No, Mr. Chairman.

**The Chairman:** We can go through this section by section which may be the best way of doing it. On many of the sections it will not be necessary to pause for more than a moment because they represent no changes. For the remainder we can quite easily indicate the changes as we go along. Will that procedure be satisfactory to you, Mr. Humphrys?

**Mr. Humphrys:** Yes, Mr. Chairman. However, I would point out that even the sections that appear in this draft as unchanged from the original may contain some points on which members of the committee may wish to direct questions to me, because some of these matters were the subject of criticism by other witnesses to appear before the committee, and I would be happy to give explanations with regard to any of them.

**The Chairman:** Proceeding then in that way, if you will turn to the first page where you see "Interpretation" and you will see that in section 2 the significant change is that the words "use of some or all of the assets" for investment has been changed in its relation to borrowings to read "the use of some or all of the proceeds of such borrowing". It is a significant change and is in line with the real purpose of the bill, and it is certainly in line with the remarks which the Minister made at the Seigniory Club in the month of May when he was speaking to the Canadian Life Insurance Association. You will also see underlined in section 2, subsection (1) there is a change in language where we have said "subject to the exceptions in subsection (3) hereof," and we will come back to that again in a moment. But otherwise the language on that page is the language of the original bill as it came to us.

**Senator Connolly (Ottawa West):** I take it all changes from the original are marked either by underlining or by marginal lining.

**The Chairman:** Yes, that is generally the case except in paragraph (g) on page 2 dealing with the definition of "investment company". There the language has been changed slightly.

Now, the subsection you should look at is subsection (3) although in subsection (2) which starts "Where a company has borrowed money on the security of its bonds,..." or other securities and has subsequently made loans or purchases as described it shall be presumed, unless the Minister is satisfied to the contrary, to have used the proceeds of such borrowing for such purposes. That is new to tighten up the language by using "proceeds for investment" instead of using "assets for investment". Then subsection (3) is significant because we have provided some exceptions. You will notice the language where it says "notwithstanding the provisions of paragraphs (b) and (g) of subsection (1) o of this section the following companies shall be deemed not to be carrying on the business of investment nor to be investment companies for the purposes of this Act:" and then you have a series of paragraphs (a), (b), (c), and (d).

**Senator Phillips (Rigaud):** Could we stop at (d) and develop that a little more for our benefit. That is the one at the top of page 3.

**The Chairman:** In connection with the exceptions (a), (b) and (c) at the bottom of page 2, do you have any comment Mr. Humphrys?

**Mr. Humphrys:** Yes, I would like to make three or four comments about this. This is the portion of the bill where the change in drafting and approach has been most extensive, and I think perhaps the key to the revision. I would like to make a few comments first of all to the preamble under subsection (3). There it states "Notwithstanding the provisions of paragraphs (b) and (g) of subsection (1) of this section the following companies shall be deemed not to be carrying on the business of investment nor to be investment companies for the purposes of this Act:" and I would suggest that it might be sufficient if subsection (3) exempted the defined companies from being investment companies, but did not specify an exemption from the carrying on of the business of investment. The reason for my suggestion there is that subsequently in the bill it is proposed that a company, even though it is not an investment company within the definition, but is a company that borrows money and uses it for investment might apply for registration, if it so wishes. So to make that work, we would like to have the exemption as an exemption from being classed as an investment company, but not an exemption from the concept of the business of investment.

**The Chairman:** I have talked to our counsel in this matter and it is his view and my own view that striking out that part of the provision does not affect the purpose or intent.

**Senator Connolly (Ottawa West):** Could we have the words again?

**The Chairman:** The words to be taken out follow the word "deemed" and they are "not to be carrying on the business of investment nor". We also take out the reference to paragraph (b).

**Mr. Humphrys:** That means taking out in the fourth and fifth lines of paragraph (b) of subsection (1) of section 2 the words "subject to the exceptions in subsection (3)".

**The Chairman:** Surely it is all right to leave that in. It meets the provisions in paragraps (b) and (g) "nor to be investment companies for the purposes of this Act)". Now would you like to comment on (a), (b) and (c). Is it agreed to strike out those words?

**Mr. Humphrys:** On (at and (b) the draft states that the company shall be deemed not to be an investment company if it is a company of one of these types:

> (a) A company not more than forty per cent of whose assets, valued in accordance with the regulations, are at any time during a year used as described in subparagraphs (i) and (ii)...

The same time concept appears in paragraph (b):

> A company, the outstanding debt of which, including debts of any person the payment of which is guaranteed by the company, does not at any time during a year exceed twenty-five per cent of the aggregate of such outstanding debt and the paid-up capital and earned surplus...

In considering this problem from an administrative point of view, we had some hesitation about having to apply tests of this type at any time during the year, since we felt that this could involve a situation where you might have to have a day-to-day record of the company's assets portfolio and its liabilities. Therefore, we felt it would be appropriate, from an administrative point of view, to apply these tests at the end of the company's fiscal year.

**The Chairman:** We had given thought to that and, as a matter of fact, the draft at one stage contained the single time—that is, to make this determination at the end of the year; and then we felt this would make it easy for a company to adjust over the year and within the percentage limits here, so as not to be faced at the year end, when you apply your test, only with one time for the reporting procedures in this bill. So we put in the words "at any time during the year" not intending the Superintendent would have to keep a day-to-day supervision, but at any time during the year he could go in and if he found this situation he could require them to register.

**Senator Connolly (Ottawa West):** Is the requirement to report an annual one only?

**The Chairman:** There is an annual statement under this bill.

**Senator Connolly (Ottawa West):** They only report annually?

**Mr. Humphrys:** Unless they are required to do otherwise, normally it is an annual requirement.

**Senator Phillips (Rigaud):** May I put a question with respect to (3)(b): "earned surplus"? Is there any significance to the interpretation of the word "earned" as distinct from " 'capital' surplus"? After all, we are considering the relationship of debt to the real worth of the company.

**The Chairman:** I agree that we strike out the word "earned".

**Senator Connolly (Ottawa West):** Where is that?

**The Chairman:** In subclause (b), the second last line, so that when you are relating to the borrowings, if they do not exceed 25 per cent of the aggregate of the outstanding debt...

**Mr. Humphrys:** I think it should be, "the paid-up capital and the surplus".

**The Chairman:** "The paid up capital and the surplus"—agreed?

**Hon. Senators:** Agreed.

**The Chairman:** Is there any further comment on "at any time during the year"? I have told you our purpose in putting it in. We wanted the Superintendent to have such power that if, in his inspection procedures, he goes in at any time during the year and finds a company in a position where it should have registered, instead of leaving the language such that for some of the companies they could, if they are 43 per cent or 44 per cent, slip back to 40 per cent or 39 per cent at the end of the year, they might not be compelled to do any registration.

**Senator Hollett:** Are these amendments of the subcommittee, and when you say "we" you mean the subcommittee?

**The Chairman:** Yes.

**Senator Connolly (Ottawa West):** With regard to clause (3)(a), would it help, after the word "are", to say, "are by the Superintendent discovered at any time during the year..."? Would that help you?

**Mr. Humphrys:** I think, senator, that the law should speak on whether the company is an investment company or not, rather than make it depend on the activity of the Superintendent.

**The Chairman:** There is a further amendment, I understand, Mr. Humphrys, that if we are going to leave in the words "at any time during the year" there is a qualification you would like to add there. I have seen it and I agree it is a sensible thing to add.

**Mr. Humphrys:** If the words "at any time" are retained, if the concept of these tests being applied at any time is retained, I would suggest that they be referred to "at any time during the company's current or last complete fiscal year". The reason I make that suggestion is that if we are left without that qualification, we would be forced really to go back indefinitely in a company's history to see if at any time it failed these tests. If it were confined as I have suggested, it would not be necessary to go back beyond the start of the last completed fiscal year.

**The Chairman:** I do not see any difficulty in that. Is it agreed that we make those changes and retain the words "at any time during a year"?

**Senator Molson:** Why not the current year?

**Mr. Humphrys:** "during the current and last preceding".

**The Chairman:** "at any time during the company's current or last complete fiscal year".

**Mr. Humphrys:** I think so, because we may not know until we get the financial statement at the year end.

**Senator Hollett:** What is the difference?

**The Chairman:** It would be, "at any time during the company's current or last complete fiscal year"—is that agreed?

**Hon. Senators:** Agreed.

**Mr. Humphrys:** It should be recognized, if I may just add, that leaving the test "at any time" means that any company that is close to these limits is really in a position where it must watch very carefully its position, because if it fails the tests, in the sense if at any time during the year it goes over 40 per cent and the 25 per cent, then it is an investment company, and the penalties and sanctions of the act apply to it by the force of law, even though we do not know and they do not know.

The modification we have put in would at least cut the situation off, and you would not have to go back more than one or two years. I just want to make that clear.

**The Chairman:** That same amendment would be made in (b), where we say "at any time during a year".

**Mr. Humphrys:** Yes, and I think a corresponding concept should be written in to paragraph (D), because the way it is drafted now it says:

> (d) A company that borrows exclusively from

banks a mojor shareholders is not an investment company.

If a company at any time during the course of its history borrows from somebody else, it would lose its exemption. So, I think it would be consistent with the point we have just discussed, it (d) were written to say:

> A company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to persons other than persons who were at that time:
>
> (i) companies to which the Bank Act applies;
>
> (ii) substantial shareholders of the company within the meaning of paragraph (b)...

**Senator Carter:** When you use this term "or" are you imposing two conditions, or is that an alternative?

**The Chairman:** They are alternative.

**Senator Carter:** They do not look alternative, the way this reads.

**The Chairman:** Well, they are alternative.

**Senator Phillips (Rigaud):** I have not had time to study this carefully. Have we dealt anywhere with the subject-matter of the balance of sale in respect of an acquisition of an asset, whether that is deemed to be a debt? We have a definition of "borrowing", but we have only excluded Nos. 1, 2 and 3. What about a company that acquires an asset and, in effect, through a balance of sale is really borrowing money?

**Mr. Humphrys:** For example, buying a piece of real estate with a mortgage on it?

**Senator Phillips (Rigaud):** Yes. In effect, legally it is a debt.

**Mr. Humphrys:** It is a debt. I had not thought that encumbrances on the property would be considered as money borrowed by the purchaser. It is an encumbrance on the property and a debt.

**Senator Phillips (Rigaud):** I would like to leave that for further consideration.

**The Chairman:** Can we now settle the language you were proposing, Mr. Humphrys in (d)? Would you read it?

**Mr. Humphrys:** The wording is:

> A company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to persons other than persons who were at that time...

Then come (i) and (ii).

**The Chairman:** And the words "borrows exclusively"?

**Mr. Humphrys:** Would be struck out.

**The Chairman:** They are struck out?

**Mr. Humphrys:** Yes.

**The Chairman:** The suggestion is that in (d) we say in the first line:

> A company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to persons other than persons who were at that time...

Then (i) and (ii) come in—"companies to which the Bank Act applies" etcetera.

**Mr. Humphrys:** I think that would be consistent with the (a) and (b) tests.

**Senator Hollett:** Where does the word "borrows" come in?

**Mr. Humphrys:**"...indebted in respect of money borrowed by it".

**Senator Leonard:** Is there any difference between "last fiscal year" and "last completed fiscal year"?

**The Chairman:** I would not have thought so, and I was wondering about the significance of "completed" there.

**Mr. Humphrys:** It is just for more precision.

**The Chairman:** It is making what is obvious more obvious. I do not think it adds anything, does it?

**Mr. Humphrys:** No. When we are being very precise I suppose we could say, "most recently completed fiscal year".

**Senator Connolly (Ottawa West):** Does it now read:

> A company that was not at any time during its current or last fiscal year indebted

in respect of any money borrowed by it to persons other than persons who were at that time...

Then you strike out the "borrows exclusively" and it goes on:

(i) companies to which the Bank Act applies; etcetera.

**Mr. Humphrys:** Yes.

**Senator Hollett:** The word "borrows" has to come in somewhere.

**Mr. Humphrys:** It is if the company was not indebted in respect of money "borrowed by it". You see, this is an exclusion. If the company was not at any time indebted in respect of money borrowed by it other than to banks and to major shareholders in a defined period, it is exempt.

**Senator Hollett:** Where do subparagraphs (i) and (ii) come in?

**The Chairman:** They follow.

**Senator Hollett:** I thought the company was to borrow from these companies.

**Mr. Humphrys:** If a company was not indebted to anyone other than these companies, then it is exempt.

**Senator Hollett:** I have not got it yet.

**Mr. Humphrys:** If a company was indebted in respect of money borrowed only to banks and to major shareholders it would be exempt from the act.

**Senator Hollett:** Could you read the whole thing once more and continue on with subparagraphs (i) and (ii).

**The Chairman:** It reads:

a company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to persons other than persons who were at that time...

Then it drops down to subparagraph (i):

companies to which the Bank Act applies; or

(ii) substantial shareholders of the Company.

**Senator Hollett:** Then you do not have to borrow at all according to that.

**Senator Connolly (Ottawa West):** These are the exclusions. That type of company is excluded.

**The Chairman:** One of the essentials to be subject to this bill is that you must borrow money. If you do not borrow money the bill does not affect you at all. Even if you borrow, it does not necessarily mean you are subject to the bill if you come within these exclusions; that is, if your borrowing is from a bank or from substantial shareholders of the company.

**Senator Hollett:** We will see it again.

**The Chairman:** Yes. All I want to know is whether we are going to fuss about the use of the word "completed".

**Senator Leonard:** It was just a suggestion.

**The Chairman:** Are you wedded to it, Mr. Humphrys?

**Mr. Humphrys:** I have no strong feeling. I do not know what Mr. Hugessen thinks of it.

**Mr. James K. Hugessen, Special Counsel to the Committee:** I do not think it makes much difference.

**Mr. E. Russell Hopkins, Q.C., Law Clerk and Parliamentary Counsel:** Is the expression "fiscal year" used elsewhere, which might lead to confusion?

**The Chairman:** No.

**Mr. Hopkins:** I think it is all right.

**The Chairman:** Looking at:

during its current or last fiscal year.

I am wondering whether you are not moving the test back. Is not the borrowing intended only to relate to the current year? This wording takes you back to the previous year.

**Senator Leonard:** The existing wording takes you back indefinitely, does it not?

**The Chairman:** I agree, yes.

**Mr. Humphrys:** The reason I suggested this wording is that normally we would get information on these matters from companies' annual statements. If you get the statements filed showing the situation for a particular year you might wish to take action on that.

**Senator Connolly (Ottawa West):** I take it that the information about what had happened in the last completed fiscal year or in the current year would not be disclosed in the annual statement?

**Mr. Humphrys:** Not necessarily.

**Senator Connolly (Ottawa West):** You would have to find out as a result of inquiry.

**The Chairman:** Do we settle on this wording, omitting the word "completed"? Is that agreeable, Mr. Humphrys?

**Mr. Humphrys:** As far as I am concerned, Mr. Chairman, yes.

**The Chairman:** Mr. Hugessen?

**Mr. Hugessen:** Yes.

**Mr. Humphrys:** I have not the benefit of my legal advisers here today. There is one more point I should like to raise in this connection, if I may. Paragraph (g) on page 2 states:

> "investment company" means a company (i) incorporated after the coming into force of this Act primarily for the purpose of carrying on the business of investment.

The structure of the act was that such a company that is formed primarily for that purpose would have to have the consent of the Minister of Finance before a charter was granted to it and the fact that it is an investment company would be indicated in its charter.

For that reason, we thought that such a company should be and remain an investment company until specifically excluded, even though at the start of its operations it may not have more than 40 per cent of its assets invested or it may not have started to borrow.

So we would like to have the bill provide that if the company was specifically incorporated as an investment company, then it should so remain and should not be within the specific exclusions described in subsection (3).

I would like to add to the preamble to subsection (3) the words: "unless described as an investment company by subparagraph (i) of paragraph (g)".

The other point then, would be subsection (5) of section 10. You will see that dealt with on page 9.

The bill provides that once a company is registered it remains an investment company until its certificate of registration is withdrawn or lapses. Once a company became registered, we would want it to remain an investment company, even though it might drop below these tests, because once it becomes registered the public may rely on that, in buying securities or whatnot. And it should so remain, I think until the administration withdraws its certificate.

So, I would suggest, Mr. Chairman and honourable senators, that those two cases might be set aside from the list of exemptions otherwise prescribed by the subsection.

**The Chairman:** We are on page 2, paragraph (g), at the top of the page.

First of all, I think it difficult, if a company is incorporated after the passage of this bill, and it sets out in its objects, its main object to be for investing purposes, then it is an investment company. I took it that it was an investment company for all time. That is the concept Mr. Humphrys wants?

**Mr. Humphrys:** Yes, unless it changes its course and seeks special exemption under subsection (3). That is a different situation.

That was my concept, Mr. Chairman, and I thought that the words "notwithstanding paragraph (g) of subsection (1), these companies shall not be deemed...". I thought that defeated the concept.

So I would like to propose that the type of company stated to be incorporated for the purposes of carrying on the business of investment remain an investment company until specifically exempted.

**Senator Leonard:** If a company is primarily incorporated for that purpose but intends to borrow only, for example, from a bank, do you still think it ought to be treated as being registered under the act and continue to do that? Why should not, in some way, a company that does not intend to borrow under the provisions of the act be able to do that right from the time of incorporation?

**The Chairman:** I think you may have a point there, senator. That is, if you carry on the business of investment, then you have to look and see whether you meet the test under act, no matter when you were incorporated.

**Mr. Humphrys:** I think Senator Leonard has a point. My concern is about the (a) and (b) tests, because a new company that intends to launch itself as an investment company, initially may take some months or a year or so before it borrowed money; it may continue on the basis of capital first, but still would want to get to that position.

**Senator Leonard:** You have that situation.

**Senator Molson:** Do not those words "primarlly for the purpose of" in subparagraph (i)—"primarily for the purpose of carrying on the business of investment"—it could incorporate "primarily for the purpose". Surely to goodness, that would carry you some distance along this line, would it not?

**Senator Leonard:** Yes, but it still might not be the kind of investment company for which this act was designed. It might intend to operate by borrowing from substantial shareholders, or borrowing from banks only or exclusively.

**Senator Molson:** That is not the business of investment, is it?

**Mr. Humphrys:** It is, as defined, in the term "investment company".

**Senator Molson:** I am sorry.

**The Chairman:** Is not the test, under your definition of business investment, a test that any company must meet to determine whether it is subject to the bill or not. Therefore, even a company that is incorporated for investment purposes, after the passage of this bill, the fact that we say that it is an investment company still does not rule out, surely, the test. You want it to rule out the test, is that right, Mr. Humphrys?

**Senator Leonard:** If this company is really going to be an investment company, under this act, then from the time it starts it should be subject to the terms of the act, even though it has then no borrowing at all—even though it has no borrowing except from a bank. Is that right, Mr. Humphrys?

**Mr. Humphrys:** The bill later provides that the company is subject to penalty if it borrows at all, prior to being registered. So a company being formed to carry on business on investment must become registered before it borrows at all. You have a good point, that if a company tends to borrow only from banks and major shareholders, it should not be under the act.

I think that point could perhaps be met if the kind of company described in subparagraph (i) of paragraph (g) were excluded from (a) and (b), so that it would read "a company other than a company described in (i) of (g), not more than 40 per cent of which...".

**Senator Leonard:** If we are agreed on what we should do, I think if we could leave it to Mr. Hugessen. Is that the idea?

**Mr. Hugessen:** Yes, senator, it could easily be done. I understood the problem of the chairman and the subcommittee to be that they felt the companies can change the purposes so easily, and what is a button manufacturer today may be an investment company tomorrow, and vice versa. Really, the concept of the object stated in the letters patent of the company is not terribly important, in terms of whether a company is or is not an investment company. The test is the test as to whether it is carrying on the business of investment. Certainly, it is easy to use the words Mr. Humphrys suggests, if the committee feels that that is the way it should be done.

**The Chairman:** If we put those words in, we are saying that any company whose primary object, as stated in its incorporation, is for investment purposes, is for it under the bill. Such a company must register; it cannot escape under the tests. Whether it borrows money or not, it must keep on reporting. Now, such a company may raise all its money by sale of shares and this bill does not cover money derived from the sale of shares which subsequently is invested in this fashion.

This bill was designed for the protection of people who lend money to an investment company.

**Senator Connolly (Ottawa West):** Subsection (5) of section 10 says that each registered company, while it continues to be registered, shall be deemed for the purpose of this act to be an investment company. Suppose it is incorporated as an investment company but does not in fact carry on the business of investment. This section here is not the section requiring it to register.

**Mr. Humphrys:** But, once it is registered, it is deemed to be an investment company regardless of the composition of its assets subsequently.

**Senator Hollett:** How many kinds of investment companies are there? Is there one under every act that is passed? I'm thinking of all these acts mentioned in paragraph (g).

**Mr. Humphrys:** All those defined cases, senator, are specifically stated not to be investment companies. In other words, banks, insurance companies, trust companies and so forth are not investment companies and investment companies do not include any one of those.

**Senator Molson:** How does the minister let one of these companies out of the bag once he gets it in there?

**Mr. Hugessen:** If the company was registered as an investment company but did not intend to carry on the business of investment, it could proceed by way of supplementary Letters Patent in the incorporation branch, to change its incorporation.

**Senator Molson:** In other words, it could be "un-registered" or "de-registered", whatever the term is to undo that particular step.

**Mr. Hugessen:** Yes, that's right.

**The Chairman:** My own feeling is that Senator Leonard has raised a substantial point. I would suggest that we let paragraph (g) on page 2 stand for the moment for some discussion between Mr. Humphrys and Mr. Hugesson and we can come back to it.

**Senator Connolly (Ottawa West):** Mr. Hugessen has suggested that perhaps they might need supplementary Letters Patent because they have not a strict calling to be an investment company. Don't they come under the act, if they are going to do things that the act deals with only if they register?

**The Chairman:** No. If a company is incorporated primarily for carrying on the business of investment, after this act comes into force it is an investment company that must register. That is so whether or not it meets the qualifications by carrying on the business of investment according to the conditions. It is an investment company, and the only way it can shed that is by getting supplementary Letters Patent cancelling out the investment provisions. If it did that but still continued the investment business it would still be subject to the act because it would then come under the aspect of carrying on the business of investment.

**Senator Burchill:** What is Mr. Humphrys trying to do here?

**The Chairman:** Mr. Humphrys is attempting to make a change so that he will make assurance doubly sure that an investment company incorporated after the bill becomes law will be a company that must register.

**Senator Burchill:** Is that not there now?

**The Chairman:** Yes, that is there now, I think. What do you think, Mr. Humphrys?

**Mr. Humphrys:** Subsection (3) on page 2 says:

> (3) Notwithstanding the provisions of paragraphs (b) and (g) of subsection (1) of this section the following companies shall be deemed not to be carrying on the business of investment nor to be investment companies for the purposes of this Act:

I thought, therefore, that, if we have a "(g)(i)"-company formed for the purpose of carrying on the business of investment and it starts into the business—first selling some capital stock and then investing the proceeds—it would not, until it borrows money and meets that test, be an investment company.

**The Chairman:** That is the intention of the exception, isn't it? You have a general statement of what the law and its application are and then you say, notwithstanding that, this is an exception.

**Mr. Humphrys:** Our point was, Mr. Chairman, that, if a company was formed specifically for the purpose of carrying on the business of investment we wanted to have it registered under the act before it started to borrow at all rather than wait until it had met this test. I think, if we wait until it meets this test, we might as well drop the concept of companies being formed primarily for the purpose of carrying on a business of investment and just say that any company, regardless of when it is formed and regardless of its purpose, when it comes under this test, is in. But the reason we proposed this in the original bill is that we thought, looking to the future, that companies would be formed for carrying on the business of investment, and it would be an important feature of supervision to be in at the start. It is important to be able to talk with the proposed incorporators and discuss the capitalization and the plans of the company and have it registered before it launches business. That was the reason for putting that concept in.

**The Chairman:** Isn't that sort of extending it to a kind of grandfatherly care?

**Mr. Humphrys:** It is the pattern followed in all other types of companies we supervise, senator. If they are going into the kinds of fields that are within a supervised area, we want to be in at the start rather than wait until they have built up a certain amount of liability.

**The Chairman:** But, if a company is incorporated after this bill becomes law and raises its money by the sale of shares, why should it in any concept of this bill be subject to the bill?

**Mr. Humphrys:** It should not be, Mr. Chairman, if that is its intention. However, there will be companies that will be formed clearly for the purpose of carrying on the business of investment. There might be, for example, a sales finance company which would obviously fall within the concept here. Our proposal was that, if such a company seeks incorporation, it should be incorporated with initial indication that it is subject to the act, and it should seek registration before it begins to borrow.

**Senator Molson:** Why don't you say that? Why not say that no company shall commence business until it is registered, if it is incorporated primarily for these purposes?

**Mr. Humphrys:** That is what we have done later on, senator. My point was that I was concerned that the exemptions in subsection (3) were raising a doubt about whether it had to be registered or not, and I was trying to clear the doubt. I think the Chairman's suggestion that, if Mr. Hugesson and I can try to work out some wording that meets this point and meets Senator Leonard's point, we can accomplish what I am seeking and meet your point also, senator.

**Senator Leonard:** It is question of bridging the two.

**The Chairman:** Is that agreed?

**Hon. Senators:** Right.

**The Chairman:** Now we move over to the bottom of page 2. We had not dealt with paragraph (c):

> (c) A company that is engaged solely in the business of underwriter of or broker or dealer in securities and is licensed as such by a public authority of any province;

Is that agreed?

**Hon. Senators:** Agreed.

**The Chairman:** We have dealt with (d) on page 3, and now we come to subsection (4) which says...

> For the purposes of this Act, a corporation is a subsidiary of another corporation only if,...

Are there any objections to that?

**Senator Hollett:** I think it should be written because of the way it reads.

> (a) It is controlled by
>
> (i) that other or
>
> (ii) that other and one or more corporations each of which is controlled by that other, or
>
> (iii) two or more corporations each of which is controlled by that other; or
>
> (b) It is a subsidiary of a subsidiary of that other corporation.

Is there no other way to do that?

**The Chairman:** Well, senator, I think you should have made objection to this section at a much earlier time because this is copied out of the Canada Corporations Act word for word.

**Senator Hollett:** I was not around then.

**Hon. Senators:** Carried.

**The Chairman:** Now we come to sub-section (5), and this rule is designed to exclude bona fide industrial holding companies from the operation of the Act. You will remember, for instance, when Massey-Ferguson and other companies appeared that their method of carrying on their industrial operation was that they had a holding company at the top and they had corporate arms or tools in various jurisdictions carrying on the industrial operation. This subsection (5) on page 3 is intended to deal with that type of situation, and it says:

> (5) For the purposes of paragraph (a) of subsection (3) there shall be excluded from the assets of a company any loans to or shares, bonds, debentures, notes or other evidences of indebtedness of any subsidiary of such company if,
>
> (a) at least seventy-five percent of the equity shares of such subsidiary are owned by the company, and
>
> (b) not more than forty percent of the assets of such subsidiary, valued in accordance with the regulations, are used as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1).

Have you any comment to make on that, Mr. Humphrys?

**Mr. Humphrys:** There are two points I would like to draw your attention to. The first is that by excluding assets of this type from the test in paragraph (a) a situation could arise where a company would be an invest-

ment company on the basis of a very small quantity of assets. It is, of course, an extreme case, but I would like to draw the attention of the committee to it. For example, if an industrial holding company had 90 per cent of its assets as shares of an operating subsidiary, then in applying the test in paragraph (a) of subsection (3), we would look at only the remaining 10 per cent of its assets, and if 40 per cent of that 10 per cent were investments, the company would lose its exemption under (a) unless it found an exemption under a different category. I am not raising an objection to it, but I would like to draw that point to the attention of the committee. The second point I would like to make is that the subsidiary would be tested on the basis of its assets without any recognition of an investment in its own subsidiaries, so that it would not get this same kind of a test.

**The Chairman:** Are you suggesting that we should go to the next generation?

**Mr. Humphrys:** I would not like to make any suggestion of that kind. I just wish to point out that it is a one-generation test.

**The Chairman:** As a one-generation test, is that satisfactory to you?

**Mr. Humphrys:** Yes.

**The Chairman:** Or would you want it to be extended to include subsidiaries of subsidiaries?

**Mr. Humphrys:** We are not seeking to expand the exemptions, Mr. Chairman.

**The Chairman:** We are not seeking to expand them unnecessarily. We have considered that if situations like this develop there might be a necessity for amendments. I do not think we are going to design a bill that will never have to be amended.

**Senator Molson:** I am not at all clear on (a). From what Mr. Humphrys has said, according to my understanding of it, a company might have 4 per cent of its assets used as described and therefore might become an investment company. This does not make sense. If 90 per cent is in subsidiaries, it leaves ten per cent, and forty per cent of that 10 per cent represents 4 per cent of the assets of the company. What is the object of this? Is it a contradiction? Perhaps I am not clear on it.

**Mr. Humphrys:** I think this is a situation which could possibly arise, but it is an extreme situation.

**Senator Molson:** But if a company is set up so that the majority of its operations are conducted through subsidiary companies, it could very easily apply. We have companies in the same line of business side by side, some of which are on division and some of which have their own subsidiaries. This would apply to one and not to the other just by virtue of the structure, and I do not think that is the object of the exercise.

**The Chairman:** Well, senator, I think Mr. Humphrys said he was describing an extreme situation. If you take an industrial holding company and it has a chain of subsidiaries carrying on industrial operations and the financing goes from the parent companies to those subsidiaries by way of loans and the taking of bonds, debentures or notes, then you exclude all those from the borrowings of the parent company for purposes of deciding whether this parent company is carrying on the business of investment. Now the parent company may have no other borrowings other than money it has borrowed for the purpose of putting the subsidiaries in funds. I am trying to figure out if you exclude from the assets of the parent company the loans, etc. to shareholders—of course since it owns 75 per cent of the stock it would have an investment in shares as well. They may have nothing left with which to apply the 40 per cent test, except 40 per cent of the paid-up capital of the parent company.

**Senator Molson:** Not the way I see it.

**Mr. Humphrys:** I think probably the desirable thing in applying the test in paragraph (a) of subsection (3) is that the ratio between invested assets other than the assets of the type described in (5) divided by the total assets.

**Senator Molson:** Well, I think it should be looked at.

**The Chairman:** Senator Molson, I have put the word "stands" after subsection (5), because I know what the intent was and we do not want to see the intent thwarted by the 40 per cent asset test so that you cannot benefit by the borrowing test. Remember, you are an exception, if not more than 40 per cent of your assets are in what are called investments; that is an exception. You have an exception under (3) as well, if the outstanding debt is not more than 25 per cent of the aggregate of the debt and the paid-up capital and surplus. So, it may be in the type of

company we were talking about that if you did not get the benefit under the 40 per cent, you might get it under the percentage of the borrowing in relation to the paid-up capital.

**Senator Molson:** To go from 40 to 25 per cent, in that case?

**The Chairman:** Yes.

**Senator Molson:** I am really not objecting; I am very far from clear.

**The Chairman:** I understand the problem, Mr. Humphrys does and Mr. Hugessen does, and I think we can put in a bit of language, as they say. So, we will let it stand.

**Senator Connolly (Ottawa West):** When Mr. Humphrys and Mr. Hugessen are formulating the new language, it would help if it were related to one of the investment holding companies who appeared before us here, like Massey-Ferguson, so we would see what the position was.

**The Chairman:** My recollection of the Massey-Ferguson evidence was that they financed their subsidiary companies, and I do not think they had borrowings. We have a consolidated statement here—but it does not seem to help.

Now we carry on at the bottom of page 3, with section 3 of the bill. There has been no change there?

**Mr. Humphrys:** This section was changed in recognition of cutting down the scope of ministerial discretion in the granting of exemptions, but subsection (3) of the original bill was deleted. I would like to suggest that it be restored because it gives a bit of protection to a company that was formed as an investment company but subsequently sought and received an exemption from the minister. We wanted to provide that to cover a company, in the future, the same text as for a company that was not of a type originally incorporated as an investment company.

**Senator Connolly (Ottawa West):** That is subsection (3) of the original bill you are now talking about?

**Mr. Humphrys:** Yes, I think it is the point of limiting the power of the minister to revoke an exemption once granted and, as such, it is protection for a company.

**The Chairman:** Subsection (3) should come back in, because in the second-last draft, when we had eliminated the 25 per cent asset test, then we took subsection (3) out, but we have put not only the 25 per cent asset test but also the 40 per cent asset test, so subsection (3) should come back in.

**Mr. Humphrys:** Yes.

**The Chairman:** So, what you would do would be to—

**Senator Connolly (Ottawa West):**—put in subsection (3), and change the numbers of the rest.

**The Chairman:** Whether you make it subsection (5) or put it in its original position, as subsection (3), I do not suppose matters. Is that agreed?

**Hon. Senators:** Agreed.

**The Chairman:** Then you come to the top of page 4. This just carries through from the original bill; that is, that there must be a badge of the Letters Patent in relation to a company that is incorporated after the bill becomes law as an investment company, and we have not made any change there.

**Hon. Senators:** Carried.

**The Chairman:** In section 5 the original bill provided that:

> Every investment company shall, within two months after the end of its fiscal year, file in the Department of Insurance
>
> (a) a statement...

...etcetera. We have made that "one hundred and twenty days". There is no objection to that, Mr. Humphrys?

**Mr. Humphrys:** No.

**Hon. Senators:** Carried.

**The Chairman:** There is no objection to any part of section 5, is there?

**Mr. Humphrys:** There is a new paragraph (b) in section 5. The point there is really to provide an option, at the discretion of the Superintendent, either to prescribe a financial statement or to accept the financial statement the company submits to its annual meeting. My thought was that in practical terms we would probably follow the latter course, until such time as it seemed desirable to do otherwise.

However, I would like to add the words at the end of the fourth line—where it reads, "the financial position of the company placed before the annual meeting":

...placed or to be placed before the annual meeting of the shareholders following its last complete fiscal year.

My reason for that is that the 120-day period prescribed in the preamble might elapse before the company held its annual meeting, and we want the statement to be submitted to the meeting rather than the one submitted to the annual meeting a year ago.

**Senator Connolly (Ottawa West):** You have another element of protection by the fact that the type of auditing done must be done by people who are accredited auditors. That protects you too, I think.

**Mr. Humphrys:** Yes, very much.

**The Chairman:** I think a question was asked about whether the Superintendent only gets one report a year, and the answer was that he could call for other reports. We have provided in subsection (6), at the bottom of page 4, the design of the subsection to make it clear that the Superintendent may require interim statements, if necessary. That is all agreed?

**Hon. Senators:** Agreed.

**Senator Molson:** "Notice" does not need to be defined—"the Superintendent may, by notice..."—24 hours, 21 days, or just "notice"?

**The Chairman:** No—"at any time require it to submit to him forthwith..." I do not think you could interfere with that, because if he is looking for further statements than the regular statements, he must have a reason and, therefore, he wants the answer right away, and that is why we put it in in that form. It is adding more power to his arm to deal with situations.

On page 5, at the top of the page, we have deleted the former power in the original bill to question the auditor. The auditor, being the auditor for the shareholders, should not be subject to that, and we have not really interfered with the powers of the Superintendent in so doing. I understand you approve of that, Mr. Humphrys?

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** Then in subparagraph (h) we have provided for the qualifications of the auditor, and that is a usual thing.

**Mr. Humphrys:** I would like to suggest, in addition, the provision that a firm of accountants may be appointed as auditors, which is not an uncommon practice now. I think this could be done by adding a paragraph to (8).

**Senator Connolly (Ottawa West):** As (d)?

**Mr. Humphrys:** No. I think the easiest way would be to make (a), (b) and (c) into subparagraphs and then add a paragraph (b) saying:

(b) A firm of accountants of which one or more members is qualified in accordance with paragraph (a).

**Senator Connolly (Ottawa West):** I do not get that.

**Mr. Humphrys:** The subsection would read:

The auditor of an investment company shall, at the time of this appointment, be (a) an accountant who...

then (i) and put in the text of the present paragraph (a), (ii) and the text of the present paragraph (b), (iii) and the text of the present paragraph (b), and the word "or" would follow my revised subparagraph (iii). Paragraph (b) would read:

a firm of accountants of which one or more members is qualified in accordance with paragraph (a).

**Senator Connolly (Ottawa West):** It seems to me a long way to do it. Why not say, "shall be an accountant or a member of a firm of accountants"?

**Mr. Humphrys:** It becomes a little complicated, because you really cannot have a firm in good standing with an institute or association. Again you have to fall back on a member who is of good standing.

**The Chairman:** Would you like to go over that wording again?

**Mr. Humphrys:** It would read:

The auditor of an investment company shall, at the time of his appointment, be

(a) an accountant who

(i) is a member in good standing...

(ii) is ordinarily resident in Canada; and

(iii) has practiced his profession in Canada continuously during the six consecutive years immediately preceding his appointment; or

(b) a firm of accountants of which one or more members is qualified in accordance with paragraph (a).

**Senator Burchill:** What does paragraph (a) say?

**Mr. Humphrys:** The accountant must be

> . . . a member in good standing of an institution or association of accountants incorporated by . . . a province,

and must be ordinarily resident in Canada.

**Senator Burchill:** Does that mean a chartered accountant?

**Mr. Humphrys:** A chartered accountant would qualify, but there may be other recognized associations of accountants.

**The Chairman:** Is it agreed to make that change?

**Hon. Senators:** Agreed.

**The Chairman:** We have made changes to subsection (9), but there is no objection to that.

To subsection (10) there is no objection.

**Senator Molson:** I have a question on subsection (11). In view of the fact that an auditor has a duty to shareholders, is it proper to make the report to the chief executive officer and the directors and not to the shareholders? Has this been taken up with the Association of Chartered Accountants at any stage?

**The Chairman:** The directors from time to time ask the auditor for a special report. These are services apart from the services as the shareholders' auditor.

**Mr. Humphrys:** The provisions in the Corporations Act dealing with the audit would continue to apply, and in the normal course the auditor would have to report to the shareholders. This imposes an additional duty on him. These words are copied from the Bank Act.

**The Chairman:** If he is asked for a special report it should go to the shareholders.

**Senator Molson:** I am wondering if something should not go into his report to the shareholders, that is all.

**Mr. Humphrys:** I would see no objection to that.

**Senator Molson:** It seems to me it is the sort of thing the association should be asked about. I may be suggesting something awkward or cumbersome or difficult, but it is a question that naturally arises. When that is their prime duty, should they be making comments about things affecting the well-being of the company that are not satisfactory and require rectification, and not mention to the shareholders that such a condition exists?

**The Chairman:** Subsection (11) says:

> It is the duty of the auditor of an investment company to report in writing to the chief executive officer and the directors of the company any transactions or conditions affecting the well-being of the company that in his opinion are not satisfactory and require rectification; and the auditor shall, at the time any report under this subsection is transmitted to the chief executive officer and the directors of the company, furnish a copy thereof to the Minister.

If this subsection stays in its present form I do not think the provisions of the Canada Corporations Act will apply. Is not the auditor required to communicate with the shareholders in connection with any reports?

**Mr. Hugessen:** Only the annual report.

**Senator Molson:** Is there any objection to asking the association if this provision presents any problems?

**The Chairman:** No. It may well be, since this is providing a code for the administration of this act, that we should require in this subsection that a copy of any such report shall be forwarded to the shareholders.

**Mr. Hugessen:** The auditor has no facilities to forward a report to the shareholders.

**Senator Molson:** In the case of a big company that is a great undertaking, but I was wondering if a certificate at the end of the year should not mention these things.

**The Chairman:** The other side of the coin is that the position of the company at the time may be one that is being examined to see whether it is approaching difficulties, and whether that information should go out right away. I suppose under the disclosure proceedings in the Securities Act, certainly if your stock was listed on the exchange, you might have problems if there were material facts in the report and you did not disclose them.

**Senator Molson:** That is it.

**Mr. Humphrys:** There is a special feature here, of course, in that it requires a copy of the report to be submitted to the minister. Thus the supervising authority has knowledge

of it and is charged with the protection at least of the creditors and the well-being of the company.

**Senator Molson:** The creditors but not the shareholders. I still do not see any reason why there should be any reluctance to ask the Association of Chartered Accountants if this paragraph presents any problems.

**The Chairman:** You could put the onus on the minister by providing—

**Senator Molson:** That he should notify the shareholders?

**The Chairman:** Yes. After all, how can you ask the auditor to do it? You could ask the company.

**Senator Molson:** How can you ask the auditor to report to the minister then?

**The Chairman:** This is a statutory duty, and I expect Parliament could require any person to do any duty that it thinks should be done. Parliament is supreme in these things, you know.

**Senator Molson:** Yes, but I thought the whole object was to protect the public, and here we are saying that we will protect the creditors but that the shareholders do not matter.

**The Chairman:** Because this bill was designed for the protection of the creditors. Mr. Humphrys will tell you that there is nothing in the bill designed to deal with the shareholders as such.

**Senator Molson:** I still cannot accept that.

**Mr. Humphrys:** The auditor provisions of the Corporations Act are not changed, except that the qualifications of the auditor are raised, so whatever duties are imposed on the auditor by the Corporations Act would continue to apply.

**The Chairman:** I think that if a report were made by the auditor at the request of the minister and a copy goes to the directors, if there were some material facts in relation to the operation of the company in that report and nothing was done about that report, such as the directors vis-à-vis the shareholders, quite apart from this act it would create a very difficult situation for the directors. That is not something that comes under this act, but it is something which involves the duty of the directors. This is the problem you are thinking about, and I agree that it is certainly the directors who would have to think about it in their duty as directors, not particularly because of this act. Having got information of a material source or kind then what is their duty? It exists quite apart from this bill.

**Senator Molson:** As long as it does not impose liability on the auditor.

**The Chairman:** No, it does not. He is told to do something and he does it and he gets paid for it.

**Senator Connolly (Ottawa West):** In a sense the report that is made by the auditor, when it is handed to the supervising authority, in this case the Superintendent of Insurance, I suppose is a measure of protection to the shareholder, because if there is something wrong the Superintendent will step in. It is in the interest of the shareholers that he should.

**The Chairman:** Yes, senator, it may be, but the question that Senator Molson was raising is a question that exists quite apart from anything in this bill. If information comes to the attention of the directors which is of some material significance in relation to the company and its operations, quite apart from this bill, what is the duty of the director?

**Senator Molson:** Is the auditor in default by informing the directors and not the shareholders who are really dependent on him for their protection?

**The Chairman:** That is something the auditor would have to determine as to what his responsabilities are under the Canada Corporations Act. I was discussing it from the point of the overriding duty of the directors.

**Senator Benidickson:** I have some sympathy for Senator Molson's point that the first people involved are shareholders. You then get to the public.

**The Chairman:** No, no, senator.

**Mr. Humphrys:** I think the prescription of auditing steps in this bill is something that is intended for the purpose, sought by this bill, to give a protection for the creditors. Now, the duties of the auditor vis a vis the shareholders I think are found in the Canada Corporations Act.

**Senator Benidickson:** I have an impression that the auditors and the directors are pretty chummy in some of these affairs.

**The Chairman:** I am not sure that I could accept that statement in its entirety. I would have the feeling that they are at arm's length.

**Senator Benidickson:** It should be that way.

**The Chairman:** And they are.

**Senator Molson:** Normally.

**The Chairman:** Normally, yes. There are problems at times.

**Senator Molson:** They should not be hostile. They should be at arm's length. They should be at a comfortable arm's length.

**The Chairman:** I was using the legal concept of arm's length.

**Senator Molson:** I am sorry, I was thinking in accountant's terms.

**Mr. Humphrys:** May I ask that it be approved in principle by adding a new subsection that would give the minister power to call for a special audit if he thinks it is required and appoint for that purpose an auditor who is qualified. I think there may be cases which rise in this heterogeneous field when an auditor is not appointed when he should be.

**The Chairman:** I do not see any. We would put it in as 12 and make No. 12, 13.

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** Is that agreed?

**Hon. Senators:** Agreed.

**The Chairman:** On 13 where money is borrowed, the:

> investment company shall, prior to borrowing...file with the Superintendent in relation to such borrowing;

On the top of page 6:

> (a) a prospectus which complies with the requirements of section 77 of the Canada Corporations Act; or
>
> (b) a copy of any prospectus or document of a similar nature required to be filed with any public authority under the law of any province.

This is new. This is because we have substituted the words "use of proceeds" for "use of assets" in the definition of business of investment. Therefore it is important to the Superintendent to know how the proceeds have been applied. This is one way in which he can get the information. As you will recall, earlier in the bill we also gave a presumption where the onus is on the borrower to satisfy the minister that the proceeds were used in such and such a direction. This is quite apart from this requirement of furnishing this information. Therefore, subsection 12 is changed to 13. Does that carry?

**Senator Molson:** We change 12 to 13. Where is section 12?

**The Chairman:** We are putting in a new 12 to cover the matter of special reports.

We come to section 6 on page 6 and there is no change there, Mr. Humphrys.

**Mr. Humphrys:** There is a small point on the question of jurisdiction. We were a little uncertain because in the latter part of the paragraph it provides that an inspector can look at the books, records or documents related to the business, finance and other affairs of the investment company or any subsidiary or subsidiaries that are maintained that could reasonably be expected to be maintained at that office. We thought perhaps that any subsidiary or subsidiaries should be confined to federally incorporated companies. We were a little dubious of our authority to make extracts from or inspect the books of a company that was not under federal jurisdiction. I was suggesting that, in place of any subsidiary or subsidiaries, the words be "of any company that is a subsidiary". It is a fine jurisdictional point, Mr. Chairman.

**Senator Connolly (Ottawa West):** Why do you not put it in the way you said it first, "federally incorporated subsidiary or subsidiaries"?

**Mr. Humphrys:** Company is defined as federally incorporated. I was going to say "of any company that is a subsidiary".

**The Chairman:** You say the affairs of an investment company or of any?

**Mr. Humphrys:** Any company that is a subsidiary thereof.

**The Chairman:** That is a subsidiary thereof. Carried?

**Hon. Senators:** Agreed.

**The Chairman:** Number 2 is all right, Mr. Humphrys?

**Mr. Humphrys:** Yes.

**The Chairman:** Is number 3 all right?

**Mr. Humphrys:** I have no comment.

**The Chairman:** We have added the word "knowingly" in subparagraph (b) of section 7. No person shall "knowingly make a false or misleading statement either orally or in writing . . .", et cetera, to the inspector. Carried?

**Hon. Senators:** Carried.

**The Chairman:** Number 8, subsection 2 of No. 8 is new.

**Senator Molson:** Before we get to that, Mr. Chairman, I wonder if the implication is quite right that it is always the people involved in the business world who do things that they should not be doing. Is it not just as much in the public interest that investment companies should not do these things with people who are public servants and people who are directors? We always seemed to pick on the officers and directors of companies, but surely we do not want loans made to people who are in public life also. There is a situation there that would cause considerable embarrassment in society. Should they be excluded from any of these problems that crop up?

**Mr. Humphrys:** You are referring to the staff of the supervisory department?

**Senator Molson:** I was thinking much more generally, that anyone in the public sector . . .

**Senator Connolly (Ottawa West):** Politicians, civil servants, or otherwise.

**Senator Molson:** Politicians and officials, I was thinking of.

**Mr. Humphrys:** The concept of this section 8 is to debar investments or loans to people who have or can reasonably be presumed to have any influence over the investing policy of the company. That is as far as it goes.

**Senator Molson:** I will not split that from the other group.

**The Chairman:** The other group you are talking about, Senator Molson. If there is an official in a department of Government the scope of whose duties would include investigation or inspecting operations of an investment company and he managed to get a loan from the company, he would certainly be treading very closely on the provisions of the Criminal Code about bribes, or he would be getting very close to it.

**Senator Molson:** I agree.

**The Chairman:** So you have something in the law today.

**Senator Molson:** There are some of these directors and officers getting very close to the law in some of the things they do and some of them have ended up behind bars. I am wondering if the minister, for example, is not as vulnerable as a director or officer. I do not know. I am asking.

All these things that come up in legislation, we seem to prevent the businessman from doing something nasty but we never seem to include any politician or official, and I think there are some occasions when it is more serious from the point of view of society if these things happen with a public person than with a businessman.

**The Chairman:** You are thinking of one offence, and the point you are trying to make is the getting of a loan or the making of a loan to such an official. But there are other ways in which that could occur.

If the official were negligent in the discharge of his duties, that would have to come in a different category.

This is dealing only with the matter of making loans or distributing the money of the investment company in certain directions. If you want a more general provision to write in a Criminal Code provision here with respect to anyone who has anything to do with or any duty to perform with respect to the operation of a company, if you want to make a broad sweep, we would need to look at a separate section.

**Senator Connolly (Ottawa West):** You may also consider the possibility of an auditor, for example, getting a loan.

**Senator Molson:** Or a lawyer, Mr. Chairman.

**The Chairman:** Your point is one we could look at, but it does not belong in section 8. Shall subsection (1) carry?

**Senator Connolly (Ottawa West):** Before you leave (1) it prohibits what are called pretty well the upstream loans. It allows collateral loans, the downstream loans. I wonder whether Mr. Humphrys would consider the addition at the end of the section of a provision that could allow the money of an investment company to be loaned to a parent which would guarantee the loan, provided that the parent had a net worth that was acceptable to the administrative authority.

I have raised this before in the subcommittee but unfortunately I had to be away from subsequent meetings of the subcommittee.

**Mr. Humphrys:** Senator Connolly, I think that kind of test puts the supervisor in a position where he has to form a judgment of whether it is a good loan or not in a financial sense, as well as whether the guarantor is financially able to pay the debt. So far in this legislation, this kind of investment judgment has not been required of the supervisor. I have hesitated to propose any situation where the investment judgment of the supervisor might be substituted for that of people who are in business.

**The Chairman:** No, but your investment judgment does come into play when you are studying the annual statement and the expenses, when you are making determination as to whether there is a deficiency.

**Mr. Humphrys:** In the broad sense, yes.

**The Chairman:** You are not approving the investment but coming up with a valuation of it at a later stage.

**Mr. Humphrys:** So I would hesitate to accept a plan such as Senator Connolly described.

**Senator Connolly (Ottawa West):** It may be invidious to mention names, but in the subcommittee we did talk about the position of Canadian C.P.I. I am not sure whether it was in the case of loans...

**The Chairman:** Senator, you are speaking too soon on that point. There are specific provisions later on, even on this page.

**Senator Connolly (Ottawa West):** Very well, I will wait.

**The Chairman:** If you would like in the meantime to read subsection (9) on page 8 and see whether it deals with what you are thinking about.

**Senator Connolly (Ottawa West):** I have read that.

**The Chairman:** On subsection (2), page 7, Mr. Humphrys, we have altered the provisions in the original bill. Have you any comment?

**Mr. Humphrys:** No, Mr. Chairman. The original bill prescribed the date that the bill was introduced as being the effective date of the prohibitions in this section.

Some time has gone by and I think it is reasonable to drop that date and make it applicable from the coming into force. It must be recognized that it leaves the way open for a company to make investments of this type prior to the coming into force, in anticipation, you might say, of the prohibition; but I am not raising any objection.

**The Chairman:** Is subsection (2) carried? I do not think we have made any changes there.

Subsection (4), there is no change.

Subsection (5), there is a change. If you look at subsection (5) on page 8 of the draft that you have before you and compare it with subsection (5) in the bill, you will see that we have produced a very short version of what is in subsection (5) of the bill. I understand Mr. Humphrys would like to have the full subsection restored.

**Mr. Humphrys:** And subsection (6) as well.

**The Chairman:** Will you tell me the reason why?

**Mr. Humphrys:** In our earlier discussions, Mr. Chairman, it was suggested that all subsection (2) be deleted. If all of subsection (2) were deleted, Mr. Chairman, then the old subsection (6) and the last part of the old subsection (5) could be dropped. But now subsection (2) has been retained with a change in date so that it is important to keep the old subsection (5) and subsection (6) as they were. They give added protection to a company and make it clear that the prohibition against holding investments does not apply, if they made these investments at a time when they had a specific exemption from the minister.

**Mr. Hugesson:** Mr. Chairman, would it meet the requirement, if we were simply to change the wording of subsection (2) very slightly so as not to refer in the last words there to an investment described in subsection (1) but simply to an investment which is prohibited by this section? Then, if the minister had exempted the investment, the company would be off the hook. Would that meet your point, Mr. Humphrys?

**Mr. Humphrys:** Actually, the prohibition in section 8, is against knowingly making investments that are of the type described, and the purpose of my request that subsection (2) be restored was that, if a company had made an investment of a type described in subsection

(1), but had done so unknowingly, then, when we brought it to their knowledge the purpose of subsection (2) would be to require them to dispose of it.

So we cannot define positively investments that are prohibited by the section because of the presence of the word "knowingly".

**The Chairman:** Having regard to the changes we have made, there may be some value in putting subsections (5) and (6) back in.

**Mr. Humphrys:** You would drop the existing subsection (5) and replace it by (5) and (6) in the original bill.

**Senator Connolly (Ottawa West):** Would you then leave in subsection (2) in the draft?

**Mr. Humphrys:** Yes.

**The Chairman:** So we put in the old subsections (5) and (6) of the original bill and renumber the clauses accordingly. Is there any other comment on that?

**Mr. Humphrys:** Yes, Mr. Chairman. In the old subsection (7), which we have just renumbered as (8), this wording is the same as was in the original bill to amend the Canadian British Insurance Companies Act, the Trust Companies Act and the Loan Companies Act. Honourable senators may recall that when the bill was before the committee we proposed an amendment, and I would like to ask for approval of changing this section to make it identical with the wording of the corresponding section as the committee amended it in the other bills.

**The Chairman:** I may say that it has the effect of permitting downstream investments by an investment company provided that its directors, officers and substantial shareholders do not have a significant interest in the subsidiary concerned, other than through the investment company. That is the purpose of it and it is the same as the purpose in the bills dealing with the insurance companies, trust companies and loan companies. As the language did not appear to accomplish what it was intended to do in those bills, we made an amendment in committee. I understand that Mr. Humphrys now suggests that the form of that amendment in other bills be the form that we use here in this paragraph renumbered as No. (8).

**Mr. Humphrys:** Yes.

**The Chairman:** Do you have the wording of that handy?

**Mr. Humphrys:** Yes, the new subsection (8) will read as follows:

> Notwithstanding subsection (7), an investment company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the investment company is by reason thereof deemed to own beneficially equity shares of the corporation.

**The Chairman:** Is that agreed?

**Hon. Senators:** Agreed.

**The Chairman:** Now we come to the new section No. 9 which is formerly 8. This is designed to allow take-over bids which could otherwise be frustrated by the biddee requiring 10 per cent of the shares of the bidder. What we say there is that:

> Notwithstanding any other provision of this section, an investment company is not prohibited from acquiring and holding equity shares of a corporation that it acquires pursuant to an offer for all or a majority of the outstanding equity shares of such corporation, if at the time the offer was made by the investment company, it was not prohibited from investing in such shares.

Shall it carry?

**Hon. Senators:** Carried.

**The Chairman:** Then we come to subsection (9) which becomes (10) and which is designed to provide relief for subsidiaries such as C.P.S. provided that the parent company guarantees the loans and complies with the reporting provisions of the Act. So we are right on the point that you asked about a little while ago, Senator Connolly.

**Senator Connolly (Ottawa West):** Perhaps to speak about a specific company such as you mentioned, Mr. Chairman, is rather invidious.

**The Chairman:** But this is drawn generally to cover all types of cases.

**Senator Connolly (Ottawa West):** Where a parent company has a net worth equal to the borrowings or perhaps 50 per cent of the borrowings, would that not be sufficient assur-

ance to the public as well as to the supervising authority rather than proceeding in the manner described on the new clause (10)?

**The Chairman:** This is what is proposed. We say:

> "Notwithstanding any other provision of this section, an investment company may, unless it is prohibited from doing so by a condition in its certificate of registry, make and hold an investment in any corporation that a parent corporation of the investment company would not, if such parent corporations were an investment company, be by this section, prohibited from making provided that:"—

This is to overcome a prohibition that occurs elsewhere in the bill.

**Mr. Humphrys:** And the parent company need not be an investment company by paragraph (b). If the parent company is not an investment company, it must comply with the procedure as outlined here to enable us to get a financial statement and to inspect it so that we can judge whether its guarantee is worth anything. The reason for this is that we considered that there might be cases where a parent company is a foreign company or is a company in such a state that its guarantee is worth nothing. We would need a way of preventing this exemption from being used in a manner in which it should not be used. But any such prohibition would have to be in terms of the condition of the certificate and not in terms of an *ad hoc* decision by the Minister.

**Senator Connolly (Ottawa West):** Then in the case of an investment company like C.P.I. where it should make a loan to a parent company such as C.P.R., perhaps, what you would do is look at the balance sheet of the parent and see whether the guarantee provided is a proper guarantee.

**Mr. Humphrys:** Yes, we would try to look at it as if it were a case where the parent company had done the borrowing directly.

**Senator Connolly (Ottawa West):** If it does the borrowing directly, it becomes an investment company, whereas if it borrows through a subsidiary the question of the guarantee comes in.

**The Chairman:** As you know, this is a practice that seems to have developed; where you have a series of companies carrying on different operations, you have intruded somewhere along the line a company that is really the financial arm of the operation. This sort of thing would come under the prohibition in the bill if you did not have a provision of this kind in this new subsection (10) where we permit it under the conditions described, requiring of course the guarantee of the parent company to support the borrowing. The reason for that is that the people who would buy the offerings of the financing subsidiary could say "oh, well, that is a subsidiary of such and such a company, and that is a wonderful company" and then they would go ahead and buy, while in fact it may not be such a wonderful company after all. The idea is that if you go ahead and do this you have to have the guarantee of the parent company. Secondly, it puts the superintendent in a position under the law where he can get at the financial statement of the parent company and see whether the guarantee is worth anything or not. That is what the wording is intended to get at.

**Senator Kinley:** There is no guarantee for a trust company in this?

**The Chairman:** This is not intended to guarantee the creditors that their investment will remain at 100 per cent value all the time. It is only intended for the purpose of protecting creditors against practices that may lead to the dissipation of their investment.

**Senator Kinley:** Are they allowed to take deposits?

**The Chairman:** No.

**Senator Kinley:** But what about a trust company?

**The Chairman:** This is not a bill dealing with trust companies. Trust companies have nothing to do with this bill.

**Senator Kinley:** But in a trust company the government guarantees $20,000.

**The Chairman:** Senators, this bill does not concern trust companies.

**Senator Kinley:** But trust companies have subsidiaries who carry on investment, don't they?

**The Chairman:** For the purposes of this bill, I do not know. A trust company is not an investment company under this bill. It has its own scrutiny provisions and protective provisions and everything else under separate legislation and so it does not come under this bill at all.

Now on top of page 9 we have new clause (11) which used to be clause (10). Have you any comment to make on that, Mr. Humphrys?

**Mr. Humphrys:** I would like to insert the words "or is deemed to own" after the word "owns" in the third line. Then it will read "...company if the corporation owns or is deemed to own beneficially ..."

**The Chairman:** All right; it is now approaching 1 o'clock and we have reached this new clause (11) at the top of page 9. We will continue this at another time. We still have two other bills to consider, one dealing with export trade and the other with income tax. I have organized and made available for us a room where we can meet this evening at 8.30 and I suggest that at that time we should proceed with consideration of the income tax bill. The life insurance companies representatives are in town today and would like to be heard, and we should try to accommodate them. I have also arranged for the necessary accommodation for tomorrow morning at 9.30 so that we can continue consideration of this bill, and also the income tax bill, in the hope that we will complete consideration of them by the time we adjourn sometime tomorrow.

**Senator Croll:** That is very nice, but we do not arrange meetings to conflict with meetings of this committee. We give you a free run on Wednesday. But we have other meetings arranged that have already been arranged for a long time. There are three or four senators here who are also members of that other committee and tomorrow morning we have witnesses coming from some distances. It may be rather embarrassing in that you may not have a quorum and we may not have a quorum. I think the meeting should be arranged in such a way that we do not conflict with meetings that have been previously arranged.

**The Chairman:** In making these arrangements the object was not to conflict with anybody else, but the object was that we are pushing against a deadline of June 27, and we should get as much of the work done this week as we can.

**Senator Croll:** But that exports bill went to committee; I do not know why it did, because there is total agreement on it.

**The Chairman:** That will not take long.

**Senator Croll:** You could do that between 1 and 2 p.m. tomorrow, in no time.

**The Chairman:** We still have the income tax bill and we still have to finish this one.

**Senator Croll:** Do you not think you could pass the income tax bill tonight?

**The Chairman:** I do not think we will, but we will make a hole in it; and for the same purpose I am suggesting we sit tonight, as you are suggesting you should have a clear run tomorrow. That is, there are certain people who have requested to be heard and they are available in town today and, rather than send them away and have them come back another time, I said we will hear them this evening.

**Senator Kinley:** They were waiting in the hall this morning and asked me about it.

**The Chairman:** In any event, if we have a quorum this evening we will go ahead. If we do not, we will not, and we will face tomorrow morning when we meet this evening.

**Senator Connolly (Ottawa West):** When do you propose to take the export bill?

**The Chairman:** This evening.

**Senator Connolly (Ottawa West):** Is it first?

**The Chairman:** Yes, and it will take only a few minutes.

**Senator Benidickson:** I did not quite understand. Are we sitting tonight or this afternoon?

**The Chairman:** The Senate is sitting this afternoon, so we cannot sit this afternoon. Therefore, we are sitting tonight.

The committee adjourned until 8.30 p.m.

**Ottawa, Thursday, June 19, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, met this day at 9.30 a.m. to give *further* consideration to Bill S-17.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** I now call the meeting to order. You will recall yesterday that we had proceeded as far as section 9 on page 9 of the bill and we had left behind, in the consideration of the earlier sections, certain questions of drafting in order to reflect the views of the committee. I suggest that we carry on through the bill and come back and pick up all the drafting.

**Hon. Senators:** Agreed.

**The Chairman:** There is nothing here which is against the original bill before us. I just had distributed to you a revised draft for the first part of the bill. Have you got your original one you had yesterday? That is the one you should keep following for the moment.

**Senator Hollett:** Keep the original one?

**The Chairman:** Look at that one and we will come to the revised one afterwards. In section 9 there is no change as against the original bill.

**Senator Molson:** In connection with letters patent:

> shall not be issued under any Act of the Parliament of Canada to incorporate a company. . for the purpose of carrying on the business of investment without the consent of the Minister;

That was there originally?

**The Chairman:** Yes. Does that carry?

**Hon. senators:** Carried.

**Mr. R. Humphrys, Superintendent of Insurance:** This is not exclusively specialized.

**The Chairman:** There is no change in section 10?

**Mr. James H. Hugessen, Special Counsel to the Committee:** There is one small drafting change which we effected from the draft distributed yesterday and the one distributed today. It is consequential to some of the changes made yesterday in subparagraph 5 after the word "shall" in the second line. You will observe in the new draft that it contains the word "notwithstanding subsection (3) of section (2)..." That is to say, a registered company is an investment company while it is registered even though it might be exempt under the provisions of subsection (3) of section 2.

**Mr. Humphrys:** Could you possibly stand section 10 and look at section 11? I would like to make some comments on two of them, because they deal with the issuance of the certificate of registry and the period of time in which a company must apply.

**The Chairman:** Without passing clause 10, we will let it stand and go into clause 11, which starts at the bottom of page 9.

**Mr. Hugessen:** There is a drafting change in this, too, simply as a result of a typographical error, in the version distributed yesterday. By error, a subparagraph became dropped and it appears at the top of page 10 in today's new draft as being paragraph (b) of subclause (2). This is simply a typographical error, it is simply to provide for a time limit during which a company which becomes an investment company after the coming into force of the act must apply for registration. It was in the original draft of S-17 but by this typographical error it was left out.

**The Chairman:** So the (b) which you are putting in would be "one hundred and twenty days after the end of the year in which it became an investment company".

**Mr. Hugessen:** That is correct.

**Mr. Humphrys:** After the...

**The Chairman:** After the end.

**Mr. Humphrys:** "After the end of the fiscal year of the company in which it became an investment company." I think the words "fiscal year of the company" are necessary, otherwise the year might be a calendar year and might not necessarily correspond to the fiscal year of the company.

**Senator Phillips (Rigaud):** You introduce "fiscal" and "of the company".

**The Chairman:** As to the content of clause 11, apart from the question that you wanted to discuss about the certificate of registration, Mr. Humphrys, is there any other point?

**Senator Connolly (Ottawa West):** I take it there has been no other change?

**Mr. Humphrys:** Yes, there is a change. The six month period prescribed is different from that of the original bill. No, Mr. Chairman, the comments I wish to make have to do with the issuance of the certificate and with the time limits.

**The Chairman:** All right. So this is in relation to both clauses 10 and 11. You notice the registration under the original bill was postponed for two years, the same as the sanctions. We felt that everything should come into force at the same time, even the registration, and that is why we made the change. Mr. Humphrys explanation at the time, when we dealt with it in committee, was that he felt he required a considerable gap, to sift all the returns which were required. But the view of the subcommittee was that they had better get down to their business right away. That is why we have provided, as we have,

that the period within which the application for a certificate of registration must be made, that is, within six months after the coming into force of the act, or within 120 days after the end of the fiscal year of the company in which it became an investment company.

There is the point of difference—to be or not to be, within six months you must register, or within a period of two years, as provided in the original bill.

Now, Mr. Humphrys, you have the floor.

**Mr. Humphrys:** Mr. Chairman and honourable senators, as I mentioned briefly yesterday, the concept in the original bill was to bring into force the reporting and inspecting techniques at once, as soon as the bill was proclaimed, but to delay the issuance of certificates of registration and the sanctions for a period of at least two years thereafter.

The basis of that, as the chairman has just explained, was that it was considered that the group of companies that would be covered by this bill would likely be quite heterogenous. It would take some time to obtain statements from them, make a study of them, and have the administrative staff become knowledgeable to the extent that they could advise the minister whether to issue or refuse to issue a certificate; so we could take responsibility of invoking sanctions and forming a judgment as to whether a company was in a position to meet its obligations or not.

It was for that reason that a period of delay was proposed. It was recognized that it created some problems because the situation could arise where the information was in the possession of the supervisory authority but without his having clear authority to do anything about it. This was not or would not be a comfortable situation.

A judgment had to be made between the two possibilities. As the chairman has indicated, the subcommittee thought that the importance of having authority, clear authority to act in a difficult or dangerous situation, was more important than the concept of allowing a period for the supervisory staff to become thoroughly acquainted with the companies.

The proposal before you, therefore, requires a company to apply for a certificate of registration within six months after the coming into force of this act or within 120 days of the end of its fiscal year during which it became an investment company.

**Senator Connolly (Ottawa West):** Where is that provided, Mr. Humphrys?



**The Chairman:** On the top of page 10.

**Mr. Humphrys:** The words "whichever is later", incidentally, should be added after (a) and (b).

**Senator Phillips (Rigaud):** The words "whichever is later" are in there.

**Mr. Humphrys:** The situation in the draft before you is that companies are required to apply for a certificate within the time they are specified and penalties are provided and certain consequences follow if they do not make application.

The act does not specify the time within which a company must be registered. The obligation is on the company to apply, it is sent up to the minister, and the staff advising him, to process the applications and get on with the decision as quickly as they can.

I do not wish this morning to raise any further points in connection with the coming into force of sanctions, to take action where a company is found to be in a weak or dangerous financial position.

In connection with the issuance of certificates of registry, however, I believe there would be some advantage in providing some delay in the issuance of certificates, for this reason. I do not think that it would be possible to make immediate decisions on all the companies that would be subject to the act and may apply. Some period of time is going to be required to process the applications and to deal with the situation company by company. How long it would take I do not know.

I thought there would be something undesirable in having applications in, and having no certificates issued for a long period of time, without a clear indication as to why the certificate is not issued.

For example, a company might apply very promptly after the coming into force of the act. Many might apply. We may be processing several hundred. Two, three, six, eight months might go by. A company might wish to arrange an issue with its underwriters and they might say "have you registered" and the reply might be "no, but we have applied." Then the underwriters might ask "have you got a certificate" and the reply would be "no." The underwriters would inquire "why not" and the company would have to reply "we do not know". The underwriters would then have to surmise: "Is it because the administration have all gone on holidays, or because there is something wrong with you,

that they have not made a decision; this company over here got a certificate, why haven't you?"

Now, the reason why the other company had got its certificate might be because they were on top of the pile and these other people were not. I thought that it would clear doubts in that regard if the bill provided—even letting stand the provisions for application for a certificate and the provisions for sanctions if a company is found to be in a bad position—that no certificate would be issued for a period of time, so that no one need feel, then, that if they have applied and if they have not got a certificate, that the lack of a certificate casts some shade or doubt on them.

We should wish to be in a position, and we sought to be in a position, to be able to process the applications and issue the certificates really all at once or as close to one moment of time as we could so that there would be no advantage or disadvantage as between one company, who had its certificate, and another company, who was still waiting for its certificate.

For that reason, I would like to suggest for your consideration the addition of a subsection to subsection (10) which would provide that the minister would not issue any certificate of registry pursuant to this section prior to the expiration of a specified period of time following the coming into force of the act. I would say we should have at least a year, because that would give us time to have a full year's financial statement of every company that had applied and that was subject to the act.

**The Chairman:** You realize what you are doing, if you put that in? You are creating a vacuum for the period of a year within which the company would not be able to finance, because an underwriter would want to know whether the company was subject to the provisions of this bill and, if it was, it would want to see the certificate.

**Mr. Humphrys:** I think, Mr. Chairman, I accept that point. But the point I was making is that we would not be able to make the decisions on certificates of registry promptly as the applications came in in the initial period and I thought it might be an advantage to all the companies concerned, if they were all in the same position that they could say to their underwriter, "We have applied. The fact that we have not got a certificate is not a reflection on us because nobody has got one and nobody will get one before a certain date."

**Senator Connolly (Ottawa West):** Does it create any hardship to require a company to file an application for a certificate within six months? Could they all do that?

**Mr. Humphrys:** In our original thinking we proposed to give them a longer period.

**Senator Connolly (Ottawa West):** Two years, yes.

**Mr. Humphrys:** This is much tighter. I don't think I could say to you that it is not possible for companies to examine the requirements of the act and decide whether they should or should not apply.

**The Chairman:** Senator Connolly, this thought occurs to me, and perhaps it is an answer. If we put a subsection in providing that, if you produce evidence of having applied for registration, that is evidence of compliance with the act for such and such a period, would that not be the answer?

**Senator Leonard:** He has that power now, has he not?

**The Chairman:** If I apply, the certificate of registry is what I need in order to do borrowing and all that sort of thing, but what I thought was that, if the fact that I have made an application for registration is deemed to be compliance with the requirements of the act for such and such a period, then I could go ahead and do my borrowing.

**Senator Burchill:** But does merely applying mean that you are going to get the certificate?

**The Chairman:** No.

**Senator Burchill:** Well, that is the point.

**Senator Molson:** Would an interim certificate of sorts not be better?

**The Chairman:** What do you think of that, Mr. Humphrys?

**Mr. Humphrys:** I don't think it would be an appropriate procedure to issue interim certificates, because there might be companies that were not in good shape and it would be quite wrong to give them any standing, even an interim standing that a Government certificate or a ministerial certificate would give.

**Senator Molson:** I am just wondering, if they were in really poor shape at that stage,

would it not be sufficiently evident that they would not get the interim certificate?

**Mr. Humphrys:** It would, if we could process it, but, if we get 150 applications the month after this act comes into force, we just cannot deal with them within a matter of weeks. Some of them may be very large, complex companies. We feel very strongly that the issuance of a certificate under this act should mean something. It should be on the basis of an intelligent appraisal. The holding of a certificate must have some significance, otherwise the whole purpose of the act is weakened.

**Senator Connolly (Ottawa West):** From a practical point of view, you say here that they apply within six months. Nobody can say, no matter who has intimate knowledge of the industry, how quickly the applications can be made. Some may come in very quickly. Some others may not come in until the end of the six month period. Now Mr. Humphrys appears to be saying that it may take him a year. So that in fact it may take him a year and a half to get the certificates out after the coming into force of the act.

**Mr. Humphrys:** It is possible. I was asking for at least a year after the coming into force of the act, which would give us six months after the final day for filing an application so that, if the companies all waited until the last day, we would have then at least six months before anybody need expect a certificate.

**The Chairman:** There are two things dealing with that, Mr. Humphrys. One is that the application that is made for registration is in the form that you are going to prescribe under the act and you may specify the material you want in that application. That is one point. In section 10, in the opening paragraph, the minister, on application to him, may issue a certificate of registry to the company for such term, not exceeding one year, as he considers appropriate. Now, he can issue it with conditions. If the pressure of time is presenting the obstacle, he can issue certificates for a short period to meet the special cases.

**Mr. Humphrys:** The problem that concerns me, Mr. Chairman, is that, if we get several hundred applications, we just won't get through them all to make even an interim decision, and I would not want to issue any certificates, interim or otherwise, blindly.

**Senator Leonard:** There might be companies who would not wish to borrow within a period of six months or to increase their borrowings, and for them there might be a certificate issued for a term of six months, and those really under pressure would have to apply to have their applications heard forthwith.

**The Chairman:** That would split them into two piles.

**Mr. Humphrys:** It might do, sir, except that the companies that are in bad shape probably would not be borrowing anyway. There might be some action that should be taken right away, even if they go to the market to try to borrow money within a few months. The way the bill is set up now, applying for a certificate is in compliance with the act. This is the only obligation put upon a company. So long as it has applied, then it is free from the other penalties.

**The Chairman:** Yes, but it still cannot borrow until it has the certificate.

**Senator Beaubien:** Oh, yes, it could.

**The Chairman:** No, it could not.

**Mr. Humphrys:** It is only the companies that are formed after the coming into force of this act primarily for the purpose of carrying on a business of investment that are prohibited from borrowing until they are registered. There is no prohibition on companies now existing, as the act is drawn up, if they apply within the period.

**The Chairman:** In section 12 the prohibition against borrowing is in relation to new companies.

**Senator Phillips (Rigaud):** But there are bodies existing now for the protection of borrowers in so far as existing companies are concerned. You have the exchanges and the securities commissions in Quebec and Ontario and other provinces. I do not think that the existing companies that go to the public would be required by the underwriters to get a clearance on an application for registry as long as they have filed their application.

**The Chairman:** Senator Phillips, part of the answer is this if the company applies for registration and there is a company carrying on the business of investment at the time this act comes into force, they have complied by making an application and can then carry on as it did in the past.

**Senator Phillips (Rigaud):** That is my point. But Superintendent Humphrys is worried because they have to get a clearance, and I do not think that is so because there are organisations already existing through whom you have to get that clearance.

**Senator Leonard:** Mr. Humphrys, you have the same with existing companies, but with respect to new applications would it not be desirable to be able to process them a little faster.

**Mr. Humphrys:** Yes, but the only point I was raising was in connection with the introduction of the act, and for a period of a year after the introduction. Once this has elapsed, then prompt action would be expected and would be the order of the day.

**The Chairman:** I think we have to make a decision and cut right through something or other. If there are problems, well, Parliament seems to be sitting all the time now, pretty well, and appropriate changes can be made. But this thing has to mean something, and if you postpone registration for a year, what is the situation then?

**Senator Leonard:** The Minister is not obligated.

**Mr. Humphrys:** My point is that it would be prescribed that he shall not issue the certificate to anyone until after the expiration of one year.

**Senator Hollett:** Would not six months be a lot better for everybody rather than a year?

**The Chairman:** It seemed to the sub-committee that six months was a reasonable period of time in which to make an application.

**Senator Connolly (Ottawa West):** Would this make any sense? A six-month period, I think, has a lot of advantages but I can see Mr. Humphrys' position. Could you perhaps provide for a letter of acknowledgement that would tide the situation over, say, for another six months?

**The Chairman:** No. We just discussed that point while you were out. A company now carrying on business as an investment company at the time this bill becomes law can apply for registration, and having done that it has complied with the act. Then it can carry on its business whether it has the actual certificate or not. But a new company that is incorporated after the coming into force of this act cannot carry on business in the sense of borrowing money until it has a certificate.

**Senator Leonard:** So, Mr. Humphrys, your suggestion is confined to existing companies?

**Mr. Humphrys:** Yes.

**Senator Leonard:** I think it is perfectly all right to adopt Mr. Humphrys' suggestion. He has a period of one year in respect to issuing certificates as to existing companies and they can carry on in that year in any event. So far as new companies who want to start borrowing are concerned, I am sure they will be processed as quickly as possible.

**Senator Connolly (Ottawa West):** They have to expect a certain amount of delay in any event.

**The Chairman:** I understood you to say that the position was that you wanted the Minister to have the authority that he need not issue a certificate of registration for a period within a year.

**Mr. Humphrys:** For a year after coming into force of this act.

**Senator Leonard:** I understood you modified that to confine it to existing companies.

**Mr. Humphrys:** I will be happy to do that. I see no problem about a new company because you know its financial position when it starts.

**The Chairman:** Under this draft the moment an existing company applies, it does all it is obliged to do no matter when the certificate is issued.

**Senator Leonard:** Mr. Humphrys does not want to be in the position where there is a problem about issuing a certificate for one company and being held up for a year in issuing one for another company. Would this not be the situation? You would know certain companies by reputation to be in a pretty good position and perhaps you could defer their certificates or even issue an interim certificate.

**The Chairman:** But it does not matter in relation to an existing company. It does not interfere with the operation of the company.

**Senator Connolly (Ottawa West):** But if you have not got your certificate, somebody can say "why have you not got your certificate?"

That might be a serious situation for a company to find itself in—where a certificate is issued to one company and not to another.

**Mr. Humphrys:** If that was the only point bothering me, as the bill is drafted and if it is accepted in this way all we can do is to look through the applications as best we can, but we want to deal with them in some orderly way, probably in the order in which they are submitted. The result of this would be that in fact some companies might have a certificate while other companies might not and they might say "why haven't I got a certificate?" One would not know whether it was a company that needed more investigation or simply a company that was late in filing. For this reason our suggestion was that if nobody need expect a certificate until a certain time after, this kind of comparison would not be drawn.

**Senator Leonard:** I think we should adopt Mr. Humphrys' suggestion. It is purely administrative and makes it easier for him.

**The Chairman:** It does not make it any easier for him. He has all the time in the world to issue a certificate.

**Senator Leonard:** Except that he may be flooded with telephone calls and inquiries as to why certificates have been held up.

**The Chairman:** He can put a note on the application forms saying "applications will be dealt with in the order they are received".

**Senator Aseltine:** I have a lot of sympathy for Mr. Humphrys in this although there are some things I do not agree with.

**Mr. Humphrys:** I think the Chairman is correct. While we would go ahead and proceed as quickly as we could the problem could arise among different companies and could cause comparisons as to why company 'A' got a certificate in June and another company did not get a certificate until July.

**Senator Leonard:** Have you something drafted, Mr. Humphrys?

**Mr. Humphrys:** The only suggestion I have would be a subsection to Section 10, that we provide the minister shall not issue a certificate for a period of time after the coming into force of this act; but I have not any wording to distinguish between the existing company and the new one.

**Senator Leonard:** Where the application comes from a company that was in existence as of the date of the coming into force of this act?

**The Chairman:** They cannot do business until they do get a certificate. Mr. Humphrys says that he is not worried about that.

**Senator Leonard:** No, "that was in existence". In other words, his suggestion is that in respect of companies doing business at the time of the coming into force of this act, he wants to be free not to issue any certificate to them for one year, because they can carry on.

**The Chairman:** But there is no obligation. The existing company complies with the act if it makes application; it carries on business the same as it was carrying on business before.

**Senator Leonard:** Except they are going to be bothering him with, "When am I going to get my certificate?"

**The Chairman:** I have not any desire to make Mr. Humphrys' position uncomfortable. I am sure that he has had to deal with situations like this before.

**Senator Connolly (Ottawa West):** But it will be.

**Senator Leonard:** Yes, I think it will be. I do not think that he is going to have 150 a month, but many more.

**The Chairman:** What is the view of the committee?

**Senator Connolly (Ottawa West):** Do not ask us to vote on this; you make the decision!

**The Chairman:** We went through all this in our subcommittee and, on balance, we felt it may be a company problem, but the existing companies can carry on without the certificate; and if there are company jealousies that develop because one has a certificate earlier than another, I think that has to be faced.

**Senator Connolly (Ottawa West):** There are certain companies that are in good shape, and it would not hurt them too much.

**Senator Beaubien:** Mr. Humphrys has perfect leeway to work it out, and if does not issue any for a year, that is up to him. I am sure you use a lot of diplomacy and good sense.

**Senator Phillips (Rigaud):** If a company went to the public, and I were the lawyer for that company, I would go to Mr. Humphrys

and try my blandishments on him and say, "I need a certificate."

**The Chairman:** And with your blandishments, I am sure you would be successful.

Shall that section carry?

**Hon. Senators:** Carried.

**The Chairman:** Section 11, starting at the bottom of page 9, as we amended it this moning, shall that carry?

**Hon. Senators:** Carried.

**The Chairman:** Section 12. Are there any questions there, Mr. Humphrys?

**Mr. Humphrys:** I have one point there that I would like to put before the committee for consideration. Section 12 is the section that indicates that a company shall not increase its indebtedness if it has not applied for a certificate within the specified time.

**Senator Connolly (Ottawa West):** It says more than that.

**Mr. Humphrys:** Amongst other things, but this is the point I wish to make, that in subsection (4) there is a specific liability placed upon the directors. It says:

> Where any money has been borrowed by an investment company in violation of subsection (1) or (2), the persons who were directors of the company at the time money was so borrowed are jointly and severally liable to the creditors of the company, as guarantors.

Referring to subsection (2) of section 12, subsection (2) says that:

> (2) Where
>
> (a) ...in the case of an... company to which subsection (1) of section 11 does no tapply,

—that means an existing company—

> the company fails to make application to the Minister for a certificate of registry within the time provided...
>
> (b) notice of a special report made by the Superintendent under subsection (1) of section 13 is given to the company...,
>
> or
>
> (c) the certificate of registry
>
> (i) of a company is withdrawn pursuant to section 15, or
>
> (ii) ...has lapsed...

—the company shall not borrow.

My suggestion is that the penalty in subsection (4) on the directors or the liability, be confined to borrowing in violation of paragraphs (b) and (c) of subsection (2). I make that suggestion because there may be cases where companies acting in good faith may not know that they have become an investment company and, consequently, were obligated to apply, because the tests that we discussed yesterday, the proportion of assets and the proportion of liabilities, they are fixed really at any time during the current financial year or the preceding financial year, so that if you are close to the margin, one would have to have a day-by-day test to be sure. So that, even acting in good faith, there may be cases where they should have become an investment company and applied, but did not, and subsequently died out of the picture.

**The Chairman:** You are suggesting that in subsection (4), at the bottom of page 10, we strike out the words, "(1) or" so that it is "subsection (2) (b) or (c)".

**Mr. Humphrys:** Subsection (1) or paragraph (b) or (c) of subsection (2).

**Senator Phillips (Rigaud):** Should there not be a clarification as to what creditors we are speaking of? Are we speaking of creditors at the time of the faulty borrowing, and should there not be a statute of limitation related thereto? A company has its ups and downs and then, years later, somebody might uncover a defective borrowing, and the then directors, who may not be directors in the subsequent period, would be facing a lawsuit.

**The Chairman:** Would it not be if you limit it to the loans?

**Mr. Humphrys:** If you look over the page, the directors are jointly and severally liable: (a) in the case of a violation of subsection (1); and, (b) in the case of a violation of busection (2). I would read:

> ...paragraph (b) or (c) of subsection (2), for the amount by which the indebtedness of the company was increased by borrowing.

**Senator Phillips (Rigaud):** But is it the creditors at the time of the borrowing or the creditors at any time? That definition indicates the amount for which they may be liable jointly and severally, but it does not indicate the category in terms of timing.

**The Chairman:** It is the director of the company at the time the money was so borrowed.

**Senator Phillips (Rigaud):** But I am speaking of this, should there not be a statute of limitation in respect of such liability? In other words, are they exposed ten years hence?

**Senator Beaubien:** Say a company had a bond for 20 years and they defaulted, at the time the directors entered into it the company may have been perfectly solvent, but the company might not be later.

**Mr. Humphrys:** If the changes are accepted, the only kind of borrowing which would be in violation would be borrowing after the Superintendent has made a report to the minister concerning the position of the company and notice of that report has been given to the company. This would be a serious matter, and a matter the directors could be expected to and should know about. So, if they nevertheless went ahead and borrowed, in spite of that, then the proposal here is that they should remain liable for the amount that was borrowed, and it would be limited to the directors who were directors of the company at the time that the money was borrowed.

**Senator Phillips (Rigaud):** The point I am making is that they should be called to account within a specified period, and that there should not be a continuing liability *ad infinitum*.

**Mr. Humphrys:** Should it not run for the duration of the instrument of indebtedness?

**Senator Phillips (Rigaud):** No, I do not think so. Take, for instance, an ordinary criminal offence. The Criminal Code provides in many cases for the charge to be laid within a specified period of time.

**The Chairman:** What you are saying, then, Senator Phillips, is that any action for a claim based on this section must be commenced within a period of so many years?

**Senator Phillips (Rigaud):** I am not saying that it should be six months, but...

**The Chairman:** Five years?

**Senator Phillips (Rigaud):** Yes, five years.

**Senator Leonard:** But would not the ordinary rule of limitations apply?

**Senator Phillips (Rigaud):** I do not think so.

**Mr. Hugessen:** I would suggest, Senator Phillips, that you have a problem here, because you might have a borrowing in respect of which the directors might be clearly acting in bad faith. They have notice that the Superintendent has made a special report, but they nonetheless go ahead with the borrowing, and then the company may have managed to keep up with its borrowing and not fall into default until the sixth year, at which time the creditors are left in the cold.

**The Chairman:** Suppose we take out the words "as guarantors"?

**Mr. Hugessen:** It will be the same.

**The Chairman:** You are creating an indemnity when you say "as guarantors", are you not?

**Senator Flynn:** Perhaps the solution in a case like that would be to give the lender or the creditor the right to claim an immediate refund. If it is done, then it is done with the knowledge of the directors, and this default would give the creditors the right to claim reimbursement immediately.

**Mr. Humphrys:** If they knew about it, senator. The person who bought the debenture on the market would not necessarily know what has happened, and would not know that he should ask for his money back. In respect of Senator Phillips' question, if a company has survived five years without going into default, is it safe enough?

**Senator Phillips:** Yes, that is the point, but there is the question of this continuing on *ad infinitum*. These men should know that they are liable, if they are. There are people who get themselves elected to boards of directors and get themselves into trouble.

**Senator Flynn:** If the borrowing is made in contravention of the provisions of the act then the creditor should be able to claim reimbursement immediately. Otherwise, when is a creditor going to exercise this right? If a borrowing is for 20 years, for instance, then nothing can be done about it until the company is in default.

**Mr. Hugessen:** The removal of the words "as guarantors" would take care of that.

**Senator Flynn:** That may be, but I suggest that that should be an immediate penalty, and consequently the liability of the directors would commence right there and then.

**Senator Phillips (Rigaud):** Yes, I agree with that, but I think that is a...

**The Chairman:** If we take out the words "as guarantors" then, of course, we create a situation of direct liability. The director could be sued as guarantor. You have to wait to see if you can realize otherwise, because there is the indemnity. Then, there is the other question, that if this is a 20-year debenture or bond that has been issued, and even if this situation developed and the company continued to make its payments and there is no default under the debenture or bond, what is the situation then?

**Mr. Humphrys:** In putting a time limit on it there is the question of whether you think—it might be a very bad situation, and a question of how long it can be kept afloat in circumstances such as those. There may be a variety of cases. They may not all be bankruptcy cases. It may be a situation in which it is desired to impose conditions on a company, and where we would expect the situation to be resolved within a definite period of time, in which case the company would either close up or would reorganize its affairs to the point where it was in satisfactory condition. However, it is hard to judge. It may take some time to work out difficult situations.

**Senator Connolly (Ottawa West):** If you withdraw the certificate, or a certificate is not issued, is there any provision here for the notification of the directors of this company, or do you just notify the company?

**Mr. Humphrys:** The machinery is found in section 15, which provides:

> (1) The Superintendent shall whenever
> (a) in his opinion the financial condition and affairs of an investment company are such that the ability of the company to repay all moneys borrowed by it on the security of its bonds, debentures, notes and other evidences of indebtedness that are then outstanding and to pay all interest thereon is inadequately secured;
> or
> (b) he has taken control of the assets of an investment company pursuant to section 14
> forthwith make a special report to the Minister with regard to the financial condition and affairs of the company.
>
> (2) The Superintendent shall give notice to a company to which a special report under subsection (1) relates of the making of the report and a copy of the report shall be sent to the company with the notice.

**Senator Connolly (Ottawa West):** That is not to the directors.

**Mr. Humphrys:** No, that is to the company.

**Senator Connolly (Ottawa West):** Suppose we provide in that section that the directors should also be notified?

**Mr. Humphrys:** There would be no objection. It might be a good point.

**Senator Connolly (Ottawa West):** That might solve the problem. It certainly would in the case of the innocent director who goes along with something that is in violation of the act.

**Senator Molson:** What about public notice in any form?

**The Chairman:** Before we go into that I wonder if I could direct your attention to this point. The word "creditor", I think, as it occurs at the bottom of page 10 would have to be construed in the context there of "all creditors". The question is: What is it that we want to cover? If there has been a violation and you are making the directors liable for the amount of the money borrowed, then you are making them liable to whom? This section says they are liable to the creditors, and that means the general creditors. Of course, the bond holder or the debenture holder would be in a preferred position in any event if there were any assets. So, when you use this word "creditors"—and I think this was in the bill as it came before us originally, and we have adopted it—what do you intend to encompass?

**Mr. Humphrys:** It really should be the persons from whom money was borrowed, or their successors in holding whatever instruments were issued.

**The Chairman:** Yes.

**Mr. Humphrys:** What we are attempting to do is protect the persons from whom money is raised at a point of time when...

**The Chairman:** Yes. Can we settle some words for that, Mr. Hugessen?

**Senator Leonard:** I suggest "the lenders from whom such money was borrowed".

**The Chairman:** Yes.

**Mr. Humphrys:** If that includes the specific purchasers of the debentures on the market.

**The Chairman:** It could be the lenders and their successors.

**Mr. Hugessen:** The lenders from whom such money was borrowed and their successors in title, because you might have a negotiable instrument.

**Senator Phillips (Rigaud):** That is the point Senator Leonard was just mentioning.

**Senator Connolly (Ottawa West):** Does this bind the estate ultimately of the directors?

**Mr. Hugessen:** Yes. Personal liability would flow.

**The Chairman:** Is that agreed, as amended? Change the word "creditors" so that it reads:

> ... directors of the company at the time money was so borrowed are jointly and severally liable to the lenders from whom such money was borrowed and their successors in title.

**Hon. Senators:** Agreed.

**Senator Connolly (Ottawa West):** I would like to ask a question on subsection (1) of section 12. I think I am reading it right. It seems to me that that subsection will, in effect, make it impossible for a company that applies for a certificate within the six-month period and does not get it to be enabled to make its borrowings. With some companies I should think the borrowings are going on all the time.

**The Chairman:** This is limited to new companies. Subsection (1) of section 11 is new companies.

**Senator Connolly (Ottawa West):** This is only new companies?

**Mr. Humphrys:** Only new companies.

**Senator Leonard:** Referring to the drafting of subsection (4), I wonder whether the reference to subsection (1) should come out. Is not it only a borrowing in violation of subsection (2) paragraphs (b) and (c)? Those are the terms under which the liability is to be imposed.

**The Chairman:** No, because carrying over on to page 11 we say that if the borrowing is in violation of subsection (1) you are liable for the amount so borrowed.

**Senator Leonard:** That is what I think should come out.

**Mr. Hugessen:** Subsection (1) is new companies, and has been incorporated primarily for the purpose of carrying on the business of investment.

**Senator Molson:** Section 11(1)?

**Mr. Hugessen:** Yes. Subsection (1) refers to section 11(a).

**Mr. Humphrys:** Its charter will be marked so there can be no doubt about the description of the company.

**Mr. Hugessen:** There is no possibility of a director making a mistake.

**The Chairman:** Subsection (1) is in relation to new companies and subsection (2) is in relation to existing companies.

**Senator Connolly (Ottawa West):** All right, does my question not then apply? Subsection (2) of section 12 applies to existing companies. Are we not in effect through paragraph (c) of subsection (2) making it impossible for existing companies, for a period between the time for making application for the certificate—

**The Chairman:** No, because for paragraph (c) to apply the existing company must have had its certificate and then lost it in some form, and if it goes ahead and borrows in those circumstances it has a liability.

**Senator Connolly (Ottawa West):** Let me ask the question in this way. There is an existing company which is in good financial condition; a certificate will certainly be issaed to it; it makes its application, and has six months to do it; it does not get its certificate for a while. It can still continue its normal operations without any question?

**The Chairman:** Yes, that is right.

**Senator Connolly (Ottawa West):** There is no doubt about that?

**The Chairman:** That is right.

**Mr. Humphrys:** That is in subsection (2) (a).

**The Chairman:** Shall section 12 as amended carry?

**Mr. Hugessen:** Before that, Mr. Chairman, I think there are some consequential amendments on Mr. Humphrys' amendment to subsection (4). In paragraph (b) it would be in the case of violation of paragraphs (b) or (c) of subsection (2) rather than just of subsection (2) I think the previous saving clause was

subsection (5), which provided another way for directors to escape from this liability, that is to say by the minister issuing a certificate stating that there would be exemption for the company if they had applied in time. That would no longer be applicable, so I think we should take that out.

**The Chairman:** Which one is that?

**Mr. Hugessen:** Subsection (5) of section 12.

**The Chairman:** We should delete it?

**Mr. Humphrys:** Yes.

**Mr. Hugessen:** Because it no longer has any application with this amendment.

**Senator Phillips (Rigaud):** I should like clarification on subsection (4). Did we delete the phrase "as guarantors" or leave it in?

**The Chairman:** We left it in, although if you wanted it struck out I would favour that.

**Senator Phillips (Rigaud):** I think this is a very serious point. We are delaying the sanctions against dishonest manipulators of borrowings.

**The Chairman:** You are creating a situation where there might be immediate realization. A guarantee is not only an indemnity, you have to collect it.

**Senator Leonard:** I think it is better to omit the word and get liability right away.

**Mr. Humphrys:** I think it is a good point. The company might be tied up in bankruptcy proceedings for years and the creditors would have to wait.

**The Chairman:** Is it agreed to strike out the words "as guarantors" in subsection (4)?

**Hon. Senators:** Agreed.

**The Chairman:** Does the section carry as so amended, striking out subsection (5)?

**Hon. Senators:** Agreed.

**The Chairman:** Are there any questions on section 13?

**Mr. Humphrys:** I have a point I wish to put before you. As drafted this says:

> "Where, in the opinion of the Superintendent, the financial condition and affairs of a company that applies to the Minister for a certificate of registry are such that

its ability to repay is inadequately secured, he shall make a report. Then certain consequences follow. Using the words "a company" makes it broad enough to encompass the case of a company that is not an investment company within our definition but is doing the business of investment and wishes to become registered. If you leave it as it is and such a company voluntarily applied, we could make a report recommending rejection of the application, and then it is thrown into all the machinery of this and is liable to a penalty, would not be able to borrow, and might even be wound up. My question is: should this consequence follow from a voluntary application, or should it be confined to the case of a compulsory application? The difference would be whether you say, "the financial condition and affairs of a company", or "the financial condition and affairs of an investment company that applies". I merely put the question before the committee. A decision might be made either way.

**Senator Flynn:** It is a good question.

**Mr. Humphrys:** One rather hesitates in the case of a company that applies voluntarily to say, "If you apply and don't make it"...

**The Chairman:** If it is turned down that should be the end of the road.

**Senator Beaubien:** If you are stupid enough to make application and are going to be turned down and put out of business, do you not think you should be put out of business?

**Mr. Hugessen:** That is the other argument.

**Mr. Humphrys:** That is the other viewpoint.

**The Chairman:** Shall we insert the word "investment" in the second line of subsection (1) of section 13? It would then read, "an investment company".

**Hon. Senators:** Agreed.

**Mr. Humphrys:** I think it is a good point that there may be companies that are insured whether they are over the line or not.

**Senator Phillips (Rigaud):** I want to be sure what the insertion is.

**The Chairman:** The insertion is in the second line of subsection (1), so that it reads, "affairs of an investment company". Is there anything else on that section?... Shall that section carry?

**Hon. Senators:** Agreed.

**The Chairman:** Section 14 gives the Superintendent similar powers to those he now has under the recent amendments to the act relating to insurance companies, trust companies and loan companies. In other words, we have updated and made the sanctions tougher. This was a firm view of the subcommittee. It was accepted by Mr. Humphrys and he made a statement regarding it yesterday. Is there any change in language that you would suggest?

**Mr. Humphrys:** No sir.

**The Chairman:** Shall section 14 carry?

**Hon. Senators:** Carried.

**The Chairman:** The design of section 15 and the two following sections is to increase the Superintendent's power of control, increase the options available to the minister in any event of default and to increase the sanctions available against the company. We borrowed the language, with some revisions, from the language used in bills we had before us recently dealing with insurance companies, trust companies and loan companies, with the idea of making a tighter and stronger bill and also making more definite the powers of the superintendent and the authority of the minister. Are there any comments on this one, Mr. Humphrys?

**Mr. Humphrys:** There are two drafting points, as a matter of significance, and one point of some consequence. I will speak about the latter one first. In subsection (4) the wording following paragraph (b) reads that:

> the Minister shall withdraw any certificate of registry issued to the company and may direct the Superintendent to take control of the assets of the company.

I should like to suggest that the word "shall" be replaced by the word "may". My reason for the suggestion is that the consequences would stem, amongst other things, from the failure of a company to comply with a condition imposed pursuant to paragraph (b). That condition may not be a condition of such consequence that failure to comply to it should force the minister to withdraw a certificate. I believe he should have the option to do so.

**The Chairman:** There is no objection?

**Mr. Hugessen:** The suggested amendment by Mr. Humphrys has been incorporated. The language is actually to be found in the draft brief submitted this morning. We have also added under the previous draft, that the minister had to withdraw the certificate and could direct the superintendent to take control. The new language gives him a third option. He can take one or more of those and also direct a company to cease carrying on the business of investment.

**Senator Connolly (Ottawa West):** You say that is in the new draft?

**Mr. Hugessen:** Yes, page 12 of the new draft.

**Senator Connolly (Ottawa West):** You are going to strike out 5 and put in what you have?

**The Chairman:** Not No. 5.

**Mr. Humphrys:** It is on page 12 of the new draft, which is No. 4. The minister may take one or more of the actions described in (c), (d) and (e), that is withdrawal of the certificate.

**Senator Connolly (Ottawa West):** Does that meet the question you were raising in No. 5?

**Mr. Humphrys:** I was not raising it in No. 5, but subsection (4).

**Senator Phillips (Rigaud):** My question, and Senator Molson is associated with me in it, is do we have provisions here for public notice: (a) of revocation of registration certificates and (b) of the proceedings that are being taken under these sections.

**Mr. Humphrys:** No, sir, there are no provisions for public notice. I would hesitate to recommend the inclusion of such provisions. I believe that most of the problems that are encountered are problems that one wishes to work out with the company. The moment you publish a report of this serious consequence it could be the end of the company. If it is in a financial state that is so serious that half of its creditors have their investments threatened, one can do two things. The first is you can stop increasing its obligations and then attempt to work it out. If that seems impossible then you must take action to close it up. In the interim period I think it is very desirable that the opportunity be available to work with the company and its officers without really bringing the full impact of publicity on it, which in most cases would probably mean irrevocable ruin of the company.

**Senator Phillips (Rigaud):** We were thinking more of a case where there was a permanent revocation of the certificate of registry.

**Mr. Humphrys:** There would be notice then, sir, because the act requires a list of registered companies be published in the *Canada Gazette* every year. It does not show which ones have been cancelled.

**Senator Phillips (Rigaud):** You do not think the public should be on notice when you infinitively withdraw a certificate of registry?

**The Chairman:** There is a provision at the top of page 13, subparagraph (6):

> An investment company or any other person aggrieved by a decision of the Minister taken under the provisions of this section may apply by summary motion to the Exchequer Court of Canada to revise such decision . .

While we are giving wider divisionary powers to the minister, there is a quick and easy way if the company wants to.

**Senator Phillips (Rigaud):** We are thinking of the reverse situation of alerting the public to the fact the certificate of registry is being revoked. We are not thinking of the aggrieved party but of the public.

**The Chairman:** The objection of the superintendent to notice such events—I do not quite follow that, because revocation is the end of the road unless there is an appeal taken to the Exchequer Court and the appeal succeeds.

**Mr. Humphrys:** Revocation would mean that it would not thereafter be able to increase its indebtedness. It would not put the company into bankruptcy unless the minister took action or somebody else took action. It might continue to operate and might switch its affairs into some other—

**Senator Phillips (Rigaud):** I was sorry to hold up the proceedings in the speech in the Senate when the bill was first dealt with. The problem of closing the company and then dismantling the cloak—here we are up cold against it. You take away the certificate of registry and the public is not advised that it is being done.

**The Chairman:** How do you suggest that notice of revocation shall be given?

**Senator Phillips (Rigaud):** In the official *Gazette.*

**Mr. Hugessen:** I think the place to do that would be in section 18, which provides the annual publication of the list. We could put in a subsection (2).

**Senator Phillips (Rigaud):** You and Mr. Humphrys know where the insertions should be. I am dealing with the substance.

**The Chairman:** Subject to that, you said you had a couple of technical points.

**Mr. Humphrys:** They have been dealt with. I did have a point on subsection (6) but Mr. Hugessen has cleared it up. I would like to draw your attention to it. We should like the decision of the minister to stand during an appeal. Mr. Hugessen believes the drafting does that, so I am satisfied.

**The Chairman:** Clause 15, as amended, is carried. Now we are on clause 16.

**Mr. Humphrys:** There are some drafting points. In subclauses (1), (2) and (3) the reference is to investment company. In some circumstances this section might apply to a company after the withdrawal of its certificate of registry. Then it would no longer be an investment company. So we would like this to read a "company" rather than an "investment company."

**Mr. Hugessen:** This has been corrected.

**The Chairman:** Those three are all corrected in the revision you have this morning.

**Mr. Humphrys:** There is another point under subclause (2), the third line from the bottom "or the conduct of its business" should be deleted, I think. This clause 7 was copied from the Canadian and British Insurance Companies Act and we had provision in that for the Superintendent of Insurance to take control of the operation of the company on a court order. That power is not in this bill, so I think the reference to the conduct of the business should be struck out.

**Mr. Hugessen:** That has been cleaned up in this morning's new draft.

**Mr. Humphrys:** Subclause (4) could be deleted as being no longer applicable.

**Mr. Hugessen:** That, too, has been done.

**The Chairman:** Can I take it that clause 16, as amended, is carried?

**Hon. Senators:** Agreed.

**The Chairman:** We turn now to clause 17. The Winding-up Act has been replaced by the Bankruptcy Act as the ultimate sanction. The reasons for this are that in the great majority of cases a company in default under this act

will in fact be insolvent; Section 169A of the Bankruptcy Act already provides that winding-up proceedings shall abate in the case of bankruptcy and in order to avoid duplication it has seemed practical to start with the latter, that is, with the Bankruptcy Act.

The right to initiate bankruptcy proceedings for default under this act is limited to the minister, subject however to the rights of other creditors to proceed in the event of an "act of bankruptcy" under the Bankruptcy Act.

Have you any comments, Mr. Humphrys?

**Mr. Humphrys:** There is one point, sir. In the wording of the following paragraph (d), it says "the minister may apply to a court of competent jurisdiction".

**The Chairman:** That is on page 14 of yesterday's draft.

**Mr. Humphrys:** And "a receiving order shall be made against such company as if such company had committed an act of bankcuptcy."

**Mr. Hugessen:** The new draft revises this.

**Mr. Humphrys:** The new draft proposes to change the word "shall" to "may" so that the court shall not be compelled to issue. We thought that, on applying to the court, the court should have some jurisdiction, because it should not be confined merely to conditions precedent but should operate in some way to protect the companies against arbitrary action by officials or by ministers.

We would like the application to be linked with the receiving order, so the new draft says "upon such application a receiving order may be made".

**Senator Phillips (Rigaud):** That is reflected in this morning's draft.

**The Chairman:** They are in the revision. That is carried?

**Mr. Hugessen:** Consequential on that, you will notice that in the new draft, today's version, we have added a new subclause (2), to provide, it is suggested, that if the company has launched an appeal, and if the minister subsequently launches bankruptcy proceedings, the bankruptcy proceedings must be adjourned until the appeal is disposed of. That is to tidy it up.

**Hon. Senators:** Agreed.

**The Chairman:** Clause 17, as amended, is carried.

We turn now to clause 18.

**Mr. Humphrys:** You wanted to add something there about the possibility of public notice?

**The Chairman:** Where do we put that in, Mr. Hugessen?

**Mr. Hugessen:** I suggest it go in subclause (2). We should renumber the present clause 18 as 18(1) and we make a new subclause (2) reading:

> Whenever a certificate is refused pursuant to Section 13 or withdrawn pursuant to Section 15, the Minister shall cause a notice to this effect to be published as soon as possible in the *Canada Gazette*.

**The Chairman:** Is that amendment acceptable?

**Hon. Senators:** Yes.

**The Chairman:** Is there any other comment in relation to clause 18, Mr. Humphrys?

**Mr. Humphrys:** No, Mr. Chairman.

**The Chairman:** Then, clause 18 is carried, as amended.

We turn now to clause 19. In clause 19 we have deleted the requirement in the original bill that the Superintendent publish detailed financial particulars with regard to each company.

Also, the Superintendent's power to reduce a company's reported assets is limited to the case of special reports.

If you look in the revision put before you this morning, clause 19, you will see that we have made some changes as against what we gave you yesterday. Have you any comment, Mr. Humphrys?

**Mr. Humphrys:** No, sir. The only point would be whether you wish that the Superintendent's report be tabled in Parliament.

**The Chairman:** How does the committee feel about that?

**Senator Connolly (Ottawa West):** What precedent is there in that? I thought there was, in certain cases, a requirement. Whether it really fulfils the purpose is another matter. What do you think, Mr. Humphrys?

**The Chairman:** You publish it in the *Canada Gazette*?

**Senator Connolly (Ottawa West):** That is what I mean. It is published in the *Canada Gazette*. No one reads that. It is tabled in Parliament. It gets even more lost.

**The Chairman:** My own feeling would be to leave the requirement as they have it and not to require tabling. What is your view, Mr. Humphrys?

**Mr. Humphrys:** The only reason I raise it is that some of our other acts require reports to be tabled, and it does give a point, that they become public documents.

**Senator Connolly (Ottawa West):** I suppose that in the old days tabling in Parliament was a factor; but now the tabling is voluminous.

**The Chairman:** It provides a ready source, if you want to get information.

**Senator Connolly (Ottawa West):** It is in the *Canada Gazette*.

**Mr. Humphrys:** It would not be in the *Canada Gazatte*—not the publication of the report. So public notice that the report is out now appears in the proceedings of Parliament, because the reports are tabled.

**Senator Molson:** This refers to clause 19.

**The Chairman:** Yes, clause 19. The question is whether we should also provide for tabling of reports in Parliament.

**Senator Molson:** Does not the minister automatically table reports, as a rule?

**Senator Connolly (Ottawa West):** No, only where he is required by statute to do so.

**The Chairman:** How do you feel about it?

**Senator Phillips (Rigaud):** Why should we not leave it as it is? It seems sufficient.

**The Chairman:** It is a question whether there should be a statutory requirement to table it in Parliament. However, he can table it if he wishes.

**Senator Phillips (Rigaud):** There may be special circumstances where it would be desirable not to.

**The Chairman:** He can table it, if he wishes.

**Senator Phillips (Rigaud):** It is much better to give him the discretion.

**Senator Molson:** I move we carry this section.

**The Chairman:** Are there any other questions on section 19?

**Mr. Hugessen:** In the revision of it this morning we have effected a very small change in subsection (2) in the second last line. We talk now of the "annual or other statement" rather than just the "annual statement", because there may of course be an interim statement or some other statement of affairs.

**The Chairman:** Shall this section carry as amended?

**Hon. Senators:** Agreed.

**The Chairman:** With respect to section 20, the assessment of costs of administering the act is now based on assets rather than income, because the costs of such supervision are likely to be more closely related to assets rather than to income, which in some cases may be negligible.

**Senator Connolly (Ottawa West):** This again raises the question that was raised by a good many witnesses before the committee. They did not know why an act that was designed to protect the public, so they said, should be paid for by the industry itself.

Perhaps the subcommittee has already considered that in my absence.

**The Chairman:** Yes, and we have made a change.

**Mr. Humphrys:** We suggested that it would be more appropriate to be on the basis of assets rather than income in the kind of companies we are going to be dealing with here. All other cases are so dealt with—trust companies, loan companies, insurance companies and banks.

**Senator Molson:** I see no reason for objection, then.

**The Chairman:** Is there any change of language in section 20?

**Mr. Humphrys:** No, sir.

**Hon. Senators:** Carried.

**The Chairman:** With respect to section 21 on page 15, you will notice the language in connection with regulations has been very considerably changed. We now provide for regulations not inconsistent with the provisions of the act as the Governor in Council considers appropriate to insure the proper

carrying out of such provisions. Is that approved?

**Hon. Senators:** Carried.

**The Chairman:** We come now to section 22.

**Mr. Hugessen:** You will notice in the draft, owing to a Xerox fault, that the final word on the page has been left out. The word "statement" should follow the word "annual" in that section.

**The Chairman:** Is section 22 carried?

**Hon. Senators:** Carried.

**The Chairman:** Section 23.

**Hon. Senators:** Carried.

**The Chairman:** Section 24.

**Senator Connolly (Ottawa West):** There is no change.

**Hon. Senators:** Carried.

**The Chairman:** Section 25.

**Hon. Senators:** Carried.

**The Chairman:** Section 26.

**Hon. Senators:** Carried.

**The Chairman:** Section 27.

**Senator Connolly (Ottawa West):** There is no change there.

**Hon. Senators:** Carried.

**Mr. Humphrys:** Mr. Chairman, with respect to section 28, this provides the penalty for late filing of the statement. This is really an administrative matter in order to get the statements in on time. I am not sure that the power to waive the penalty in subsection (3) should be so formal as to require a judgment from the minister whether it is in the public interest or not. I would suggest that since it is primarily administrative procedure the words "when he considers it in the public interest" should be struck out.

**Senator Connolly (Ottawa West):** Does this not require it to go through Council?

**Mr. Humphrys:** No, sir.

**Senator Connolly (Ottawa West):** The Superintendent just makes the recommendation to the minister, does he?

**Mr. Humphrys:** Yes.

**Senator Molson:** Is there a precedent for the penalty of $10 a day mentioned in section 28?

**Mr. Humphrys:** It is in all our other acts.

**Senator Molson:** I see. It does not really seem to be much of a deterrent for somebody who is trying to fool the Superintendent. I should think the stakes would be higher than $10 a day.

**The Chairman:** It is a cheap licence.

**Mr. Humphrys:** That is only for late filing. If there is a refusal to file, that is a different matter.

**The Chairman:** Is section 28 carried?

**Hon. Senators:** Carried.

**Senator Phillips (Rigaud):** Mr. Chairman, some of us have to leave to attend the finance committee hearing. Before I do so, Mr. Chairman, I would like to record on behalf of the senators our appreciation to you for guiding us through this difficult bill and also in the choice of our counsel who has done such excellent work on this particularly difficult and complex matter.

**The Chairman:** Senator Phillips, I certainly concur in the second part of your remarks, because Mr. Hugessen has been easy to work with and has done an excellent job.

**Senator Connolly (Ottawa West):** He is a worthy successor to his father.

**The Chairman:** I think we should now turn back to the matters we had left from yesterday, when there was to be some discussion between Mr. Hugessen and Mr. Humphrys with respect to the wording of certain parts of the bill.

**Mr. Hugessen:** I understand Senator Molson wishes to leave in order to go to the finance committee. Perhaps I could then deal first with the matter of subsidiaries, since he is interested in that.

You will recall that we had subsection (5) of section 2 on page 3 of yesterday's draft which provided for the exclusion, from the whole calculation of the 40 per cent rule, of any holdings in a subsidiary, and the Superintendent and Senator Molson both pointed out that this might have the result of causing companies to be included which perhaps should in principle be excluded, and the example given was where you had a company

which had 90 per cent of its holdings in exempt subsidiaries, such as described in subsection (5), and then of course, if it had more than 4 per cent, that is to say 40 per cent of the balance, it would be an investment company. Now, we revised the language to take care of this situation and the new language is now found in subsection (5) of today's draft on page 3. But I should draw the committee's attention to the fact that the effect of this change, if it is passed, would be that you are excluding some companies that you would want to include, because, under the new rule or the new draft as submitted this morning, you could have a company which had $100 worth of assets, and $40 or $39.99 might be in investment-type assets, and the whole of the remaining $60 could be in a subsidiary, and that subsidiary also could have 40 per cent of its assets, which is 40 per cent of $60 or $24 so that whole complex now could have 64 per cent or 63.9999 of its assets in investment-type securities and could still be statutorily exempt from the application of the act.

**Senator Molson:** I would think that would be less serious because, if you get 64 per cent less a fraction in investment, it means you have 36 per cent in non-investment, and I feel such a situation would be more likely accidental than deliberate in moving that company into an investment company. I can be quite wrong, but I would suspect your real investment company or a true investment company would not very frequently get to those proportions. But I would be interested in other people's opinions on that.

**The Chairman:** Mr. Humphrys was discussing this point with us yesterday. Have you any contribution to make, Mr. Humphrys?

**Mr. Humphrys:** The point Mr. Hugessen made is a very valid point, and I think it is a question of repeating the possibility mentioned yesterday of producing a situation, which would be rather absurd, of bringing a company in on the basis of 4 or 5 per cent of its assets. We could deal with that latter case of exemption on the ground that the borrowing was incidental, but that might not be too easy. I think on balance my recommendation would be in favour of the revision notwithstanding we could have this 64 per cent case.

**Mr. Hugessen:** I just wanted to point that out.

**Senator Molson:** I think I agree with Mr. Humphrys on that. I can see the possible danger, but I think it is preferable to the other way round.

**The Chairman:** I think we will go with the revision. We must keep in mind that this bill is not at its terminal point yet.

**Senator Connolly (Ottawa West):** That is a very important consideration.

**The Chairman:** Then the committee approves of the revision of subsection (5) of section 2 on page 3.

Now could we go quickly through the revisions we made arising out of yesterday's session. I will ask Mr. Hugessen to do it because he and Mr. Humphrys have been working on it.

**Mr. Hugessen:** The first revision is in paragraph (b) of subsection (1) of section 2 on page 1. This is wholly consequential amendment. We have struck out the words "subject to the exceptions in subsection (3) hereof,". You will recall that yesterday we amended subsection (3) so as to make it an exception to the definition of an investment company but not an exception to the business of investment.

**The Chairman:** Agreed?

**Hon. Senators:** Agreed.

**The Chairman:** You will find these in the revision you got this morning.

**Mr. Hugessen:** Then on page 2, subsection (3) of section 2. In the first draft the opening words of that subjection (3) were "notwithstanding the provisions of paragraphs (b) and (g) of subsection (1)...". It was pointed out yesterday that in the case of a company incorporated after the coming into force of the act primarily for the purpose of carrying on the business of investment, that company should be an investment company notwithstanding that it might fall into one of these categories in subsection (3). In the new draft you will see that it starts with different words. It now reads "notwithstanding the provisions of subparagraph (ii) paragraph (g) of subsection (1)..." which relates it directly to carrying on the business of investment, and does not relate it to the specially incorporated company.

**The Chairman:** Agreed?

**Hon. Senators:** Agreed.

**Mr. Hugessen:** Then on the same page, paragraph (a) of subsection (3) you have the

words "its current or last completed fiscal year...". There was some discussion in the committee yesterday about the word "completed". Mr. Humphrys and I have suggested that the word "completed" should remain in there. If you simply refer to the "last fiscal year" it sounds as if the company has just died.

**The Chairman:** Carried?

**Hon. Senators:** Carried.

**Mr. Hugessen:** The identical change is in sub-paragraph (b) on the same page.

**The Chairman:** Agreed?

**Hon. Senators:** Agreed.

**Mr. Hugessen:** Then also in subparagraph (b) on page 2 we have added the words "determined in accordance with the regulations". The Superintendent suggested and I would recommend as well that it is proper to make recommendations for the determination of what is the capital surplus of a company.

**The Chairman:** Agreed?

**Hon. Senators:** Agreed.

**The Chairman:** Then we have dealt with the Molson amendment on page 3.

**Mr. Humphrys:** Then on page 3, section 3 subsection (2) gives the Minister power to grant exemption from the application of the Act to any investment company, if he is satisfied that the business of investment carried on by it is incidental to the principal business carried on by it. Senator Leonard raised a point yesterday about a company incorporated after the coming into force of the Act primarily for the purpose of carrying on the business of investment but which intends only to borrow from banks or from major shareholders. I suggested there was no way it could be exempt. I am suggesting now, to meet that point, that the subsection should be divided into two paragraphs so that it would read "(a) The business of investment carried on by it is incidental to the principal business carried on by it, or (b) the company is and intends to remain a company described in any of the paragraphs of subsection (3) of section 2."

**Mr. Hugessen:** "Subsection (3)"...?

**Mr. Humphrys:** "Of section 2". If it is a company that borrows and intends to borrow only from banks, then it could apply for exemption.

**The Chairman:** Agreed?

**Hon. Senators:** Agreed.

**The Chairman:** On page 3A?

**Mr. Hugessen:** On page 3A we find the insertions that were agreed to yesterday from the original draft of the act.

On page 4 there is nothing.

**The Chairman:** Page 5?

**Mr. Hugessen:** On page 5, subsection 11, at the bottom of the page, is the wording that was agreed to in principle, but no actual text was put before you yesterday. It permits the minister to direct a special audit and, to appoint an auditor for that purpose.

**The Chairman:** Carried?

**Hon. Senators:** Carried.

**The Chairman:** Page 5A. There is nothing there. We corrected the numbering.

Now on page 6?

**Mr. Hugessen:** The next change that is of significance is on page 8, where subsections (5) and (6) are taken from the original Bill S-17, as submitted to you, and replace the subsection (5) that was in yesterday's draft.

**Senator Connolly (Ottawa West):** This is in clause 8 of the bill?

**Mr. Hugessen:** That is correct, subsections (5) and (6) are now taken, with very small textual changes, from the original draft of Bill S-17. Some of that had been dropped in yesterday's draft.

**Senator Connolly (Ottawa West):** So you have restored those now?

**Mr. Hugessen:** Yes.

**The Chairman:** Agreed?

**Hon. Senators:** Agreed.

**Mr. Hugessen:** On page 8A, Senator Connolly (Ottawa West) raised a point yesterday as to whether an upstream investment by an investment company was permitted. Subsection (10), on page 8A, has been changed and wording has been put in there to make it quite clear that an upstream investment is permitted, provided that the parent in whom that investment is made complies with the provisions of paragraphs (a) and (b)

**The Chairman:** Is that agreed, Mr. Humphrys?

**Senator Connolly (Ottawa West):** May I look at that for a moment? There may be cases where this is important. If the parent does borrow from the subsidiary, then you want to get the annual statement on the condition of the parent?

**Mr. Humphrys:** Yes, and we want the right to inspect, if necessary.

**Senator Connolly (Ottawa West):** I think that is covered.

**Mr. Hugessen:** There is a small typographical error that has crept in here. Between paragraphs (a) and (b) there should be an "and", of course. There was yesterday, but it disappeared overnight.

**The Chairman:** There was a storm overnight.

**Senator Connolly (Ottawa West):** We are going to get a fair copy of all this, I take it?

**The Chairman:** It will be printed.

**Senator Connolly (Ottawa West):** Oh, great.

**Mr. Hugessen:** There is a further typographical error at the top of page 9. What appears as subsection (10) should now be subsection (11), and any reference that is made to subsection (9) should be a reference to subsection (10).

**The Chairman:** This brings us to the end of a road in connection with which...

**Mr. Humphrys:** There is one small point. Could I ask that we turn to page 14?

**Senator Connolly (Ottawa West):** Of the new draft?

**Mr. Humphrys:** Yes. If you look at the foot of page 13 and the top of page 14, I think there is another typographical error, because paragraph (c) at the foot of page 13 has been repeated at the top of page 14. I also wish to make a comment on one of those paragraphs (c).

**The Chairman:** We will delete the one at the bottom of page 13.

**Mr. Humphrys:** You will recall we discussed briefly earlier today the question about voluntary application for registration by a company that is not an investment company. We decided the penalties that follow refusal to grant a certificate should not be imposed on a voluntary application. Consequently, paragraph (c) should be changed so that "A company" should read, "An investment company", and the reference to "subsections (1) or (4)" should be merely "subsection (1)".

**Senator Hugessen:** That is correct.

**The Chairman:** Carried?

**Hon. Senators:** Carried.

**The Chairman:** Now I say, for the second time, that we have come to the end of a road upon which there has been a lot of work and a lot of effort. I repeat my thanks to the members of the subcommittee who certainly turned up when we needed them and applied themselves; to Mr. Humphrys for his steady, useful and continued efforts and contribution; and to our counsel who has not only worked diligently but very effectively to produce this result.

**Senator Connolly (Ottawa West):** And very intelligently.

**The Chairman:** I think I may say that the net result of all this—and I think it is supported by all those who have sat in on the phases of the bill—is that we have a better bill and a more effective instrument for doing the job it was intended to do, and we have more realistic powers and penalties.

We have recognized the merits contained in much of the evidence and submissions made by the various associations, etcetera, who appeared before us, and they are reflected in delineating the scope of the application of the bill. All that is left is for the committee to say whether we shall report the bill, with the amendments.

Is there anything you would like to add, Mr. Humphrys?

**Mr. Humphrys:** No, Mr. Chairman.

**Senator Connolly (Ottawa West):** I agree entirely with what you say. The bill is a much better bill than it was originally, and it is gratifying to know that the minister and his officials have agreed that these changes should be made.

It is with no reflection at all on Mr. Humphrys when I say I think the representations we had from the acceptance companies—from the association and some of the individual companies—were valid representations. I realize that they could not have been

dealt with in this bill, but I would simply say, for the record, that I hope the Government in its wisdom will see fit to do something about the very real problem with which that industry is faced. It is the only industry that has really asked for regulation and supervision. Although the Government cannot be expected to do it in this bill, I would hope that it would in some other measure, because that industry, as a result of bankruptcies and other unseemly conduct on the part of officials of various companies, has had a very black eye, and it is a good industry.

**The Chairman:** Shall I report the bill with the amendments?

**Hon. Senators:** Agreed.

**The Chairman:** It may be a few days before it reaches the Senate, because we have to prepare the report.

The committee proceeded to the next order of business.

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The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 46

WEDNESDAY, JUNE 18th, 1969

***Complete Proceedings on:***

1. The amendment made by the House of Commons to Bill S-26, "Hazardous Products Act", as passed by the Senate on March 28th, 1969; and
2. Evidence presented by the Canadian Petroleum Association.

WITNESSES:

*The Canadian Petroleum Association:* L. I. Brown, Chairman, Board of Governors. F. A. MacKinnon, Past Chairman, Board of Governors. D. Harvie, member, Board of Governors. G. Connell, co-ordinator, Economic Committee. R. Steele, Vice-Chairman, Income Tax Division.

REPORT OF THE COMMITTEE

20433—1

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

"A Message was brought from the House of Commons by their Clerk to return the Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products",

And to acquaint the Senate that the Commons have passed this Bill with one amendment, to which they desire the concurrence of the Senate.

The amendment was then read by the Clerk Assistant, as follows:—

1 *Page 7, Line 6:* Delete subclause (3) of clause 8 and substitute the lowing:

"(3) Every order adding a product or substance to Part I or Part II of the Schedule shall be laid before the Senate and the House of Commons not later than fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

(4) If both Houses of Parliament resolve that an order or any part thereof should be revoked, that order or that part thereof is thereupon revoked."

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the amendment be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
*Clerk of the Senate.*



20433—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, June 18th, 1969.
(51)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 9.30 a.m. to consider:

1. The amendment made by the House of Commons to Bill S-26, "Hazardous Products Act", as passed by the Senate on March 28th, 1969; and

2. Evidence from the Canadian Petroleum Association on the state of that industry.

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Hollett, Isnor, Kinley, Leonard, Macnaughton, Martin, Molson, Phillips (*Rigaud*), Thorvaldson, Walker and White. (22).

*Present but not of the Committee:* The Honourable Senators Everett, Hastings, McLean and Sparrow. (4).

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

After discussion and upon motion, it was *Resolved* to report recommending that the Senate do concur in the amendments to the said Bill.

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*The Canadian Petroleum Association;* represented by the following:

F. A. MacKinnon, Past Chairman, Board of Governors.
L. I. Brown, Chairman, Board of Governors.
G. Connell, co-ordinator Economic Committee.
R. Steele, Vice-Chairman, Income Tax Division.
D. Harvie, member, Board of Governors.

At 10.35 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, June 18th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the amendment made by the House of Commons to Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products", passed by the Senate on March 28th, 1969, has in obedience to the order of reference of April 22nd, 1969, examined the said amendment and now reports as follows:

Your Committee recommends that the Senate do concur in the said amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, June 18, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-26, to prohibit the advertising, sale and importation of hazardous products, met this day 10.20 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have before us this morning to consider, first, the amendment which was made in the House of Commons to Bill S-26. That has been standing before us for some time, but we have not been idle in the meantime because there have been discussions going on with the minister in connection with the form of the amendment.

If you will recall, in Bill S-26 there were two schedules. One contained a list of prohibited hazardous products which could not be imported, manufactured or sold; and the second list was one where such products could only be sold under regulations to be established. Then there was a provision in the bill that the Governor in Council might, by order, add to either of those lists or delete from them.

This committee took the position that, in those circumstances, at some time the order should go back to Parliament for Parliament to decide whether this should carry parliamentary sanction, since Parliament had established in the legislation these lists, and we put in an amendment under which we required that within two years an amending bill must be submitted confirming the order, and, if it were not confirmed or if a bill did not go in within that time, the order would cease to have any effect.

The minister at that time, when he was in committee here, indicated that in his view the Commons would not accept that kind of amendment; and Mr. Thorson came over here and spent a couple of hours to convince us this would clutter up the work of Parliament to such an extent that it could not be followed.

However, in the Commons they put in an amendment in committee, which the house did not accept; and then they put in another amendment in the house.

The one put in in the house, and which comes back to us now and asks for our concurrence, is this:

> Every order adding a product or substance to Part I or Part II of the Schedule shall be laid before the Senate and the House of Commons not later than fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

Then the next subclause:

> (4) If both Houses of Parliament resolve that an order or any part thereof should be revoked, that order or that part thereof is thereupon revoked.

This came back to the Senate, and the Senate was asked to concur in this amendment. On motion, that amendment was referred to this committee for consideration. Then the conferences followed with the minister, the difference being this, that certainly the view of the Chairman and some of the members of the committee was that it really is not anything when you say:

> If both Houses of Parliament resolve that an order or any part thereof should be revoked,

that in order to have any effect it should read:

> Unless both Houses of Parliament resolve to approve the order,

However, nothing seemed to have been resolved, and the bill does have meritorious points in it.

So, finally, Senator Leonard, as a skilled negotiator, hit upon this possible solution, that if Mark MacGuigan—who is the member in the Commons and who is likely to be identified with a committee which they have or are setting up in the Commons on statutory instruments, just to check into all these excesses where delegated authority is being taken where Parliament should really function—discussed the matter and presented an opinion, as far as Senator Leonard is concerned, I think it is fair to say, he was prepared to act on whatever opinion, with some reservations, Mr. MacGuigan would give.

I have read that opinion, and I think that if the opinion forms part of the record, I would be prepared, just as one member of the committee, to accept the amendment in the form in which it is.

May I read the opinion, and then you may then see why I would be prepared to accept it. This is a letter addressed to Senator Leonard and it says:

> You asked my opinion on the power of delegated law-making conferred on the Governor in Council by section 8(1) and (2) of Bill S-26 dealing with hazardous products and on the limitation on that power added by the Senate in section 8(3).
>
> I agree with your view that it is undesirable for the Governor in Council to have such broad powers in the absence of some form of subsequent scrutiny by Parliament, and my position would be the same whether the power was to vary a statutory schedule or merely to make regulations under a statute. However, I would suggest that what is needed is a general solution to the problem of delegated legislation rather than an ad hoc one. The Special Committee of the House of Commons on Statutory Instruments, of which I am chairman, is now in the process of studying what the best such solution would be.

Then he goes on to discuss the terms of reference of the committee and indicates:

> It would not be possible at this stage to forecast the detail of the Committee's recommendations,

but he indicates:

> that the Committee is giving serious consideration to the British and Australian precedents of standing committees charged with the responsibility of scrutinizing all statutory instruments according to certain criteria.

Then, in conclusion, he says:

> In light of the fact that a general solution is likely within the next year, I would see no danger in the Senate's acquiescing in the House's version of section 8(3). I would also think that the House solution would not stand in the way of the establishment of a general solution, since our Committee will have in any event to incorporate several existing statutory solutions.

In the face of that, knowing the bill is an important one, dealing with hazardous products, and that it would appear quite likely there will be a general solution of this problem it appearing too that the problem we spotted and sought to change is a recognized and acknowledged problem and was a defect in the legislation, I do not think we would be doing anything that would be any negation of our duties and responsibilities by reporting that the Senate should concur in the amendment. However, I would like to have the views of the members of the committee.

**Senator Phillips (Rigaud):** Should that letter form part of our record?

**The Chairman:** Yes.

**Senator Flynn:** It has been read.

**Senator Leonard:** This was my amendment originally, and I concur in your suggestion in the light of what has happened, particularly having in mind Mr. MacGuigan's letter. He was Dean of the Law School at the University of Windsor, and I have some respect for his legal opinions. You will see he concurs in the correctness of what we were doing, but suggest it should be on a general basis. Not only do I concur with that, but I would add that it may be desirable for the Senate also to refer to some committee the consideration of regulations or subordinate legislation passed in between Parliaments or during Parliament with respect to statutes, so that we will be in touch with the administrative section of Parliament, to see that administrative acts are in conformity with the legislation.

**The Chairman:** What you are suggesting is that perhaps we should have a specific watchdog committee on delegated authority.

**Senator Leonard:** Yes, something of that sort.

**Senator Croll:** Perhaps a subcommittee of the Standing Senate Committee on Legal and Constitutional Affairs.

**Senator Leonard:** It might even be a joint committee. If a Commons committee is to be set up, perhaps instead of having two bodies doing the same work we might work together. With that additional remark, I concur in your suggestion.

**Senator Flynn:** Having seconded the amendment moved by Senator Leonard, I want to add this. I generally concur with what you, Mr. Chairman, and Senator Leonard have said. This amendment made by the House of Commons to our amendment was discussed in principle here by Mr. Thorson, putting the onus on Parliament to revoke an order. I remember at the time we mentioned that in the House of Commons this was practically impossible at the initiative of one member. It is not the same thing in the Senate. I think that in the Senate this formula could work, because the Senate could decide whether an order should be revoked, whereas it is at the initiative of a private member in the Commons, which could have no result at all.

The amendment was made in the Commons, and if my memory serves me aright there was no objection from any corner of the Commons, so it is their responsibility. Who are we to tell the House of Commons how they should run their own affairs? When we adopted our amendment we took the facts into consideration and wanted to have a workable formula for them. However, if they do not like it, then it is their responsibility. I am satisfied that the Senate could proceed to revoke the order. I am satisfied that the House of Commons would have a problem in revoking the order unless the Government concurred. However, it is a House of Commons problem and not ours, and I just lay it in their lap.

**The Chairman:** Is it agreed that we report that in our view the Senate should concur in the amendment to Bill S-26?

**Hon. Senators:** Agreed.

The committee proceeded to the next order of business.

## EVIDENCE

*Presented by the*
*Canadian Petroleum Association*

**The Chairman:** Honourable senators, we have present representatives of the Canadian Petroleum Association. They were in Ottawa earlier this week making representations in connection with their interests, so I invited the association to appear before us. We had a good experience with them earlier this year, you will recall, when dealing with oil and gas rights. I think we would like to hear their point of view and some of the things they are concerned about. Senator Hastings, would you introduce the group?

**Senator Hastings:** As you have indicated, Mr. Chairman, the group represents the Canadian Petroleum Association, who are in Ottawa to make representations to the Prime Minister and Cabinet with respect to the state of the industry. As you said, at your kind invitation they are with us this morning to discuss with honourable senators any questions we might have concerning the state of the petroleum industry of Canada. I will simply leave it at that, except to indicate who they are. The group is led by Mr. L. I. Brown, Chairman of the Board of Governors of the Canadian Petroleum Association. He has with him Mr. Fred A. MacKinnon, a Past Chairman of the Board of Governors; Mr. Al McIntosh, a member of the Board of Governors, and Mr. Don Harvie, a member of the Board of Governors. I will not waste any more of your time, because they would wish to make an opening statement.

**The Chairman:** Mr. Brown, are you making the opening statement?

**Mr. L. I. Brown, Chairman, Board of Governors, Canadian Petroleum Association:** Mr. Chairman, honourable senators: what we would like to do, if it is agreeable to you, is to call on Mr. MacKinnon to give the highlights of our submission. We have supplied copies of our submission for distribution, but I do not know whether you have all yet had an opportunity to see it. We thought it might be best if we just gave you a quick summary of what we think are the important highlights of that submission, then if you have any questions we would be pleased to attempt to answer them.

**Mr. F. A. MacKinnon, Past Chairman, Board of Governors, Canadian Petroleum**

**Association:** Mr. Chairman, honourable senators: first, on behalf of the association I wish to express our appreciation for this opportunity of meeting here today. As has been indicated, our visit to Ottawa was to meet with the Prime Minister and the Cabinet, in preparation for which we had prepared and presented some time ago the submission that has been referred to. I notice that it is now being distributed, so you will not have had any opportunity to review it. We might deal at present with merely the highlights of the brief and the substance of our visit to Ottawa.

In the preparation of this report, the principal objective of the association was to provide a good insight into the operations of the industry and to focus attention on the industry's present and future role as a very important element in the Canadian economy. By such means we hope to accomplish the objective of developing a working relationship with our Government in Ottawa, which would lead to continuing consultation, which we feel is very important in pursuing these objectives. We feel that it is very evident that this industry will make a tremendous contribution to the country's economy in the future, and our association should like to have the opportunity of participating with authorities in Government in formulating the policies and regulations under which we would operate.

The brief that we have submitted was prepared early in 1969, and recent events have focused attention on certain problems now affecting our industry in both the domestic and export market aspects. We recognize that negotiation for extending crude oil markets requires consideration, not only of the problems of the producing segment of the petroleum industry but of other national industries as well. The association has therefore avoided the temptation to propose oversimplified solutions to the extremely complex problems involved in these matters. Nonetheless, these are important affairs to our country, and solutions must be found. We feel in these matters it is important for industry to meet and work together with the Government in pursuit of informed and aggressive oil marketing policies for Canada.

Reference has been made to the 1967 agreement between Canada and the United States which limits the growth of Canadian exports into the United States. This matter came to light after the preparation and presentation of the association's submission. We have made our views in this regard known by a letter to the Honourable Mr. Greene, and these affairs also have been discussed. Our main purpose here is to express our hope that in the various task force studies now under way these matters will be considered and will provide, through these studies, a reasonable basis for renegotiating such agreements in order to provide Canadians a more equitable participation in meeting the crude oil requirements of the areas concerned.

We also recognize that this matter must be dealt with in the context of its relationship with other important policies, such as those concerning domestic Canadian markets, the Ottawa Valley line, with respect to use of western Canadian crude oil and the security and other aspects of providing western Canadian crude oil a place in the Montreal market. We are not here demanding these things; we are here suggesting that our association has a vital role to play with the various Government bodies involved in making these studies. We like to be informed in such a way.

The main concern of the association, in all of these considerations, is to promote programs and policies which will provide the incentives necessary to maintain a strong vigorous, continuing exploration effort in Canada so that when the time comes Canada will be in the best possible position to supply the vast hydrocarbon energy requirements of the future in North America.

Some things can be said to emphasize these points. A total of 7.8 billion barrels of Canadian liquid hydrocarbons will be produced and marketed during the 10-year period between 1970 and 1980. At the present time in Canada we have 10 billion barrels of liquids, and in the period I am speaking of an additional 13.1 billion barrels of conventional crude oil or equivalent liquid hydrocarbons must be discovered in Canada by 1980 to have supplied Canada's requirements and still have 15 years' supply of reserves on hand, which is the present situation.

The supply-demand forecasts for the United States further emphasizes the magnitude of the finding effort required to supply the market in that country. United States demand in 1970 to 1980 will be 63 billion barrels. Since the inception of the oil and gas industry in the United States, 136 billion barrels have been found. Present reserves are 39.3 billion barrels and this, at present producing rates, will last in the United States for 10.3 years. In order to satisfy this market requirement

through 1980, and still maintain that 10.3 years of reserve of life index, a total of 96 billion barrels of reserves would have to be found in the United States if it were to supply all of these requirements from domestic reserves.

**Senator Everett:** It is not, in fact, doing that.

**Mr. MacKinnon:** We know that is not happening. The United States has not been adding to its net reserves, and it is reasonable to expect their needs will be supplied by exports, offshore drilling or from Canada. We expect the Canadian scene should provide a significant proportion of the imports into the United States. On that particular point our estimates show that imports into the United States will be in the range of five to eight million barrels per day, or two billion barrels per year by 1980. We would expect Canada should be able to supply about one to two million barrels per day or 400 to 800 million barrels annually by 1980.

Here are a few more figures regarding the oil and gas producing industry in Canada. The impact on the Canadian economy has been a very significant one. Without the oil and gas producing industry Canada would have experienced a $1.5 billion trade deficit in hydrocarbons and sulphur in 1968, a year in which exports were valued at $727 million. Expenditures in exploration for finding, producing and transporting crude oil had, by 1967, reached an accumulative total of $12.7 billion out of which governments in Canada received $3.4 billion in direct payments from mineral rights and royalties. On a cumulative basis to 1968, the industry had spent, excluding interest and income tax payments, $1.6 billion more than it had received in revenue. The visual evidence of economic growth and development in western Canada testifies very effectively to the contribution that the petroleum industry, along with agriculture and other basic industries, has made to that particular region. This development has at the same time contributed material economic benefits to other areas of the country.

Much of the machinery, for instance, that the oil industry uses in western Canada is manufactured and purchased by the oil industry in Ontario and Quebec.

Future exploration and production activities in new regions, particularly in the Maritimes, can similarly stimulate their economic growth. Much of this preliminary exploratory work in such areas is already beginning. The association's technical reviews confirm that geologically there still remains in Canada a vast oil and gas reserve which has not, as yet, been discovered. The development of these areas has been, and we hope will continue to be, encouraged by appropriate government policies.

The association believes that the continuance and extension of the existing incentives in exploration is absolutely necessary and more particularly having regard to the fact that the oil industry, by and large, is international in its character. There are many alternative investment opportunities in oil and gas elsewhere in the world.

I would mention again that the brief report that is in front of you is intended as a basis for continuing discussions with any government or government groups. We would emphasize once again that we are extremely desirous of continuing any kind of discussion that is apt to lead to better understanding and an opportunity for our industry to participate seriously with government in determining policy measures under which our industry will continue. Thank you very much.

**Mr. Brown:** Mr. Chairman, I should just like to mention that I shall be glad to answer any questions. We have Mr. Gordon Connell with us, the co-ordinator of our Economic Committee in the Canadian Petroleum Association. We also have Mr. Robert Steele, Vice-Chairman of the Income Tax Division. Thank you.

**The Chairman:** We have a very pleasant recollection of the representatives from your association who appeared here when we were dealing with the oil and gas rates bill and they were very very useful to us and you may have noted that we made some changes in the bill because of that.

**Senator Macnaughton:** Am I right in guessing that your industry, oil and gas, to be viable, should be from 10 to 15 years ahead in exploration in discoveries? In other words, you have a so-called bank on which you count at the present time from 10 to 15 years; but in order to make sure the industry progresses you must try and keep ahead this approximate time, which means investment in exploration and everything else?

**Mr. Brown:** Yes, sir. Actually, it takes us probably eight years from the time we start exploring an area before we actually start producing the oil. In some of these long range

projects, like the North Flow and the Mackenzie Delta and thinks like that, we have to look away down the road. It means we have to vest our money now and we will not start getting anything out of it for a good many years. That is one of the reasons why we need to foresee a good market in the future and to be sure that we can sell that oil once we find it.

**Senator Croll:** There is reference here to an agreement between Canada and U.S. oil interests. Is there such a document available? Is it a matter of record? They seem to know about it.

**The Chairman:** Are copies available, do you know? I do not mean, are they available here now.

**Mr. G. Connell, Chairman, Reserves Committee, Canadian Petroleum Association:** There are agreements right at this moment on the Lakehead pipeline and another pipeline, so the document is available.

**The Chairman:** Would you see to it that we get a copy of that, and then we can arrange for distribution?

**Senator Everett:** You say in your brief that re-negotiation of the oil agreement must be made in context of the relationship with other important policies set for those concerning domestic Canadian markets, particularly in the Ottawa Valley. Would you give me some more information on that?

**Mr. MacKinnon:** This is in connection with the national oil policy we were operating for so means years successfully. We would like to see the agreement with the Ottawa Valley line and the National Energy Board to be given whatever force is necessary to enforce it.

There are many complex features no doubt in it. The fact is that the Ottawa Valley line was the only one in the national oil policy to be a defined part of the country to be served with western crude oil.

From time to time there have been breaches of that line and we hope to see it amended.

At the same time, there are other problems which need to be examined. That is the simplest statement that can be made in respect of the Ottawa Valley line.

**Senator Everett:** So in fact you would not like to see it changed but you would like to see it enforced?

**Mr. MacKinnon:** We would like to see it enforced and considered and that study be given to the other problems concerned.

**The Chairman:** Mr. MacKinnon, there is a provision in the current income tax bill under which you may capitalize interest on borrowed money for exploration, and you can do that as to the whole of the interest or part of it, in the year in which you make your exploration, and you can go back for three years prior to that time. I suppose that would be of some help, but not a complete solution?

**Mr. MacKinnon:** I am not really able to discuss that question because in my own experience we have not been in the habit of borrowing money for exploration.

**The Chairman:** Oh, well.

**Mr. MacKinnon:** We depend for our exploration funds on cash flow from producing operations.

**The Chairman:** Yours is a self-sustaining operation. We should have more of them.

**Senator Molson:** I think this matter has been well publicized and it is well known, but I wonder if for the record if it would not be a good thing to ask what the situation is with regard to the eastern section of Canada in the case of the Canadian western crude oil, what the economic disparity at the moment is and what the future prospect is.

**Mr. Connell:** We have seen a brief with regard to the measures made in order to move Canadian fuel into the Montreal area. The prices which I am familiar with would indicate that the prices in Montreal for the same quality of fuel is approximately 20 to 25 cents per barrel less than the equivalent fuel in Edmonton.

The interprovincial pipeline tariff from Edmonton to the Toronto area is 53 cents so there is 73 to 78 cents for their oil. In addition to that there would be the cost of transporting from Toronto to Montreal. On a large segment of the pipeline, that might be of the order of 10 to 12 inch. So this could be something in the nature of 83 to 90 cents a barrel, total differential.

There could be some redemptory pipeline tariffs to offset that. However, as a part figure, one could put it that it is 80 to 85 cents a barrel disparity in price.

**Senator Phillips (Rigaud):** We will be getting, as you know, gentlemen, a White Paper

leading up to a revision of our tax laws generally, and of course you gentlemen know that you have your ups and downs, peaks and valleys, on the whole question of incentive legislation with exploration, and the other type of expenses.

I have two questions. One is this. Has the industry come up with a crystallized settled point of view as to the type of incentive legislation that would be desirable when a new bill will be set before Parliament in due course, as to what really should be done instead of the jungle that we have in the present Income Tax Act and regulations?

In other words, what are the real types of incentive legislation that the industry thinks necessary for its maintenance and expansion? That is the first question.

Question number two is this. It is probably a much more serious question. We are all more or less familiar with the fact that the industry is subject to the channelling of know-how from non-Canadian sources, specifically English and mainly from the United States. My question is, would it be feasible for the Canadian companies to cause a Canadian company to be formed in which the major companies would take a participation, with a view to proceeding to the development scientifically of know-how in your industry so that the Canadian people would have control and access to this centralized know-how instead of it now being in the position where the overall global know-how is obtained only by way of licence or royalty or contract moneys such as you pay to parent companies or the like.

In view of the importance of national defence and in view of the importance of scientific development in your industry, I think Canada would feel much more comfortable if this international industry operating in the main here now were to have a Canadian corporation which would be the company repository of world know-how in this particular industry.

**Mr. MacKinnon:** I do not wish to preempt any of the other members of our group from making comments on this, but I would like to answer your first question as far as incentives are concerned. We are not asking for any particular change from what we now have. What we would like to have is the assurance that they would be continued. We have, from time to time, made recommendations for some improvements, and I am speaking particularly of the depletion allowance which is a means by which the industry may, hopefully, regenerate the funds that have been spent as finding costs.

The other part is the write-off of exploration expenditures, and our concern about these results from some of the recommendations contained in the report of the Carter Commission.

So that we in our discussions have emphasized our hope and our need that these incentives should not be changed, but should be maintained and continued.

**Senator Phillips (Rigaud):** It would be very helpful, if you would do what you wished, as if there were no legislation in the Income Tax Act now, so that those interested in this problem would have available from your industry exactly what you would now like to see in a new act.

**Mr. MacKinnon:** I think our statements are on record in that connection.

**Senator Phillips (Rigaud):** They are on record? Thank you.

**Mr. MacKinnon:** On the matter of technical know-how and expertise, I should say that we are not short of technical know-how or technology and expertise in Canadians in Canada. We are working here very much in an international kind of industry, in any case, and Canada has had contributed to it from many other countries, not just the United States, a tremendous amount of capability, technical know-how, experience and background, and Canadians have learned that.

In any case, we recognize that many of the companies operating in Canada are not Canadian companies in the strictest sense; many of them are controlled outside the country. But the tendency is for more and more Canadians to become involved in top management positions in the Canadian operation of such companies, and it is my opinion that Canada is not suffering in matters of technical know-how by Canadians.

**Senator Phillips (Rigaud):** That is not quite the answer to my question. I did not indicate that we were suffering currently, because I know that there is a flow of the know-how from the outside world. The question that I put to you was whether the industry would react favourably to a nationally organized Canadian company which would be the depository of the world know-how in the industry. I am thinking in terms of the defence of our country and the autonomy and

independence of Canada. That is why I put the question.

**Mr. MacKinnon:** Yes, sir, I understand what you are driving at. The idea is an attractive one. It would be a difficult one for the kind of operation that is carried on in terms of the competition between these various operators, but it could be done.

**Senator Phillips (Rigaud):** Yes. Thank you.

**Senator Connolly (Ottawa West):** Mr. Chairman, on page 14 of the brief presented to the cabinet, I noted some comments about the Royal Commission on Taxation. From what has been said there I gather that the petroleum industry would consider the tax incentive it now has as rather minimal in the way of tax incentives that would help the industry make the kind of progress the association would like to see it make.

**Mr. R. Steele, Vice-Chairman, Income Tax Division, Canadian Petroleum Association:** We do consider them minimal in the present tax laws. It has been said that we have asked for various changes from time to time in our submissions to the Minister of Finance, but our main concern, when the Carter Report came out, was the drastic change that he proposed be made. The elimination of incentives could be important, considering the international competition for the investment funds needed. Other countries do have these incentives, particularly the United States, which has a depletion allowance, and if we eliminated ours we would be in a much worse economical position.

**The Chairman:** I am afraid you will have to speak up, Mr. Steele. We are all having difficulty hearing you.

**Senator Connolly (Ottawa West):** Mr. Chairman, the witness referred to the fact that the elimination of some of these incentives would decrease the competitive position of these producers. Now I should like to ask whether or not that competitive position would be affecting us both domestically and in foreign markets?

**Mr. Steele:** You mean whether our oil would be less competitive, for example, in exporting to the United States or other places that you might be able to export it to? Yes, it would.

**Senator Connolly (Ottawa West):** Just following on that, another witness mentioned the possibility of selling in the Montreal market and refining down there. How is your competitive position in northwest Europe? Can you compete there? Can you export into that market?

**Mr. Steele:** That a question of economics. Perhaps Mr. Connell should answer that question.

**Mr. Connell:** I would say definitely not. We cannot compete on the Montreal market and it would be even less competitive in the European market.

**Senator Connolly (Ottawa West):** Basically why?

**Mr. Connell:** Both the European market and the Montreal market reserve crudes from principally Venezuela, Africa and the Middle East. The prices on those crudes are considerably less, as indicated by the prices I quoted, approximately $2.30 per barrel into Montreal. They are considerably less than even our lowest price. So you would not have any hope on the present price structure of ever competing in the European market.

It may be possible that, if oil were discovered in the Arctic islands and could be moved by tanker, that oil, once it got on to the open seas, would not be too costly to move over to Europe. Even so, it would also have to compete with low-priced crude oil from Venezuela and the Middle East.

Also, under the present price structure, there is a tendency in most governments to obtain the highest price possible for their crudes. I think we will see some of the prices increasing shortly. But I cannot see—not for a number of years, at any rate—making up the gap of 85 cents a barrel, and it would be even more than that in Europe, because there would be the additional cost of tankering it over to Europe.

**Senator Connolly (Ottawa West):** Do you think that the assurance of supply from Canada as against not perhaps the assurance of supply from Venezuela but from Africa and the Middle East would be more secure in the event of a national emergency? You heard Senator Phillips (Rigaud) refer to the importance of national emergencies.

**Mr. Connell:** Well, I don't know. In 1956 during the Suez crisis and in 1967 during the Israeli-Arab war the supply of oil to the Montreal area was certainly reduced from the Middle East.

**Senator Croll:** How do our depletion allowances compare with those of the United States or any others?

**Mr. Brown:** The American depletion allowances are considered to be more beneficial because of the way they are applied. They are allowed 27½ per cent of the gross revenue but not more than 50 per cent of the net production revenue whereas ours is 33⅓ per cent of the net profits attributable to production after deducting all drilling and exploration expenses. The problem is that with many companies in Canada they cannot claim these depletion allowances because after the expense of drilling and exploration has been paid there are no profits left from which to claim them. In other words, we are only allowed to claim depletion allowances against income, and we do not have any income. In fact in some instances you may run out the production of a field before you ever get to the stage where you can claim depletion allowances and that is why the association has called for depletion allowances that could be taken from production revenue similar to the situation in the United States. At the present time unless you are in a profitable position there is no revenue after paying for drilling and exploration from which you can deduct your depletion allowances.

**Senator Molson:** In the brief on page 14 you comment concerning the Royal Commission on Taxation in sub-paragraph (d) and you say:

> Contrary to the Commission's findings, present tax law does contribute towards some measure of neutrality...

And those are the words I want to emphasize—"measure of neutrality". I do not know what that means.

**Mr. Brown:** It simply means that the Commission was saying that the tax law should be neutral rather than favouring or encouraging investment in certain areas. That is to say, it should have a neutral effect, and in the light of the economics of the situation the complaint was that this was not so in the oil industry. We are here trying to show there is some measure of neutrality, but how great it is may be difficult to nail down. You have to consider not only the income tax provision, but the fact that there are many other taxes, municipal and property taxes which the oil industry people have to meet and which may be more than that paid by any other industry. You have to consider all these things. The Commission said these things were outset their terms of reference and did not take them into account.

**Senator Everett:** In your brief you are expressing concern with several concepts particularly renegotiation of the agreement with the United States. You are in fact suggesting certain new tax incentives and you are also suggesting that the Canadian Government should not be involved in exploration ventures. It seems to me that these suggestions of yours would tend to cost the average taxpayer in Canada a considerable sum of money which you hope to take into your industry and use for exploration and development. Now all that is very worthy, and I am sure the people of Canada would generally support that, but in the long run they are consumers and they are going to want to know what the oil industry is doing about the prices of its products which the consumer uses for running his car and heating his home and many other purposes. What is your industry doing to decrease the costs of these to the consumer and what is your intention if you get this sort of special treatment that you are suggesting your industry should have?

**Mr. D. Harvie, Member, Board of Governors, Canadian Petroleum Association:** I think the answer to your question, senator, may sound as if I am trying to evade it. The organization here today is a producing organization and we are not competent to speak in terms of lower prices.

**Senator Everett:** I would not want to put you in any awkward situation but I would point out that the report on the retail oil industry in Alberta indicates in clear terms that there is a gigantic world-wide oil cartel and that some 5 or 6 international fully integrated oil operations control the oil industry in Alberta, in Canada and throughout the world. So I wonder if it is fair for you gentlemen to say "we are in exploration and production and that is our side of the equation and we cannot talk about marketing." You do represent an industry that is integrated from top to bottom on account of these major oil companies, mostly American but some European, that completely control the world-wide flow of oil. What I want to say is that I think when you as producers come here you should bear in mind that you have an obligation because you are part of that highly integrated industry, and that in the long run the benefits that you receive must be passed on to the consumer of Canada as a benefit to him.

**Senator Kinley:** Which is the bigger market, the domestic market or the American market for western oil?

**Mr. Connell:** Currently the Canadian market is the larger market being approximately 700,000 barrels per day. That is to say in 1968 it was 700,000 per day compared with 500,000 per day in the American market. But we expect in the future the American market should grow more rapidly and should eventually exceed the domestic market. You can see this by referring to page 22 where it shown that in 1980 the estimate for domestic consumption will be 1.1 million barrels per day while the export market will be 2.1 million barrels per day and in 1985 we expect domestic consumption to be 1.3 million barrels per day while the export market will be 3.0 million barrels per day. The prospects for growth are actually better in the American market than in the Canadian market.

**Senator Kinley:** Now, to take the Atlantic provinces, how far east do you go? Are you in Montreal with your pipe line?

**Mr. Connell:** No, the pipe line goes as far as Toronto.

**Senator Kinley:** In view of water transportation and the big tankers, do you not think that it would be advantageous for the Atlantic provinces to centralize their supplies in their own region and have it come in by water? For instance, in Come-By-Chance, Newfoundland, there is a big company and that region needs that kind of industry. Do you not think you could develop a farther east or is it not economically good?

**Mr. Connell:** It certainly is not economical at the present time. There may be oil discovered off the east coast of Canada which could move into, say, the Maritimes area or into Montreal. We expect, if this S.S. Manhattan project proves successful, that oil could be moved by tanker through the Northwest Passage in connection with the Arctic Islands. The market for the Arctic Islands oil would be Quebec and the Maritimes.

**Senator Kinley:** I heard Senator Connolly (Ottawa West) speaking of national emergencies. You have two major means of transportation in Canada that could be easily destroyed. It is a very restricted way of supplying from the ocean to the Maritimes, from the oil producing country, and you have the two opportunities instead of the one.

**The Chairman:** Are there any other questions? Then I thank the representatives of the association for coming here this morning. Gentlemen, we are glad you came.

The committee proceeded to the next order of business.

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

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The Honourable SALTER A. HAYDEN, *Chairman*

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No. 47

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WEDNESDAY, JUNE 18th, 1969

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***Complete Proceedings on Bill C-183,***

intituled:

"An Act to establish the Export Development Corporation and to facilitate and develop export trade by the provision of insurance, guarantees, loans and other financial facilities".

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WITNESSES:

*Export Credits Insurance Corporation:* H. T. Aitken, President.

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REPORT OF THE COMMITTEE

20435—1

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 12th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Leonard, moved, seconded by the Honourable Senator Isnor, that the Bill C-183, intituled: "An Act to establish the Export Development Corporation and to facilitate and develop export trade by the provision of insurance, guarantees, loans and other financial facilities", 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 Leonard moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

Robert Fortier,
*Clerk of the Senate.*



20435—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, June 18th, 1969.
(52)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met to consider:

***Bill C-183, "Export Development Act".***

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Gelinas, Hollett, Isnor, Kinley, Phillips (*Rigaud*), Walker, Welch and Willis —(16).

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

*Resolved,*—That 800 copies in English and 300 copies in French be printed of these proceedings.

The following witness was heard:

*Export Credits Insurance Corporation:*

H. T. Aitken, President.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 9:00 p.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, June 18th, 1969.

The Standing Committee on Banking, Trade and Commerce to which was referred the Bill C-183, intituled: "An Act to establish the Export Development Corporation and to facilitate and develop export trade by the provision of insurance, guarantees, loans and other financial facilities", has in obedience to the order of reference of June 12th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
*Chairman.*

# THE SENATE

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Wednesday, June 18, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-183, to establish the Export Development Corporation and to facilitate and develop export trade by the provision of insurance, guarantees, loans and other financial facilities, met this day at 8.30 p.m., to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

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

**The Chairman:** Gentlemen, I call the meeting to order. The first bill we have this evening is C-183 and we have two witnesses, Mr. Aitken and Mr. J. R. Midwinter.

Mr. Aitken, in accordance with our practice, would you come forward and tell us what this bill proposes to do.

**Mr. H. T. Aitken, President, Administration, Export Credits Insurance Corporation:** Mr. Chairman and honourable senators, I have been told I have six minutes to give you a resume of what this bill involves. I trust you know that the proposal is to establish the Export Development Corporation to succeed the Export Credits Insurance Corporation which has been operating for the past 24 years.

The Export Credits Insurance Corporation has been doing two things. We have been insuring Canadian exporters against non-payment by foreign buyers on the one hand and on the other side we have been providing long-term financing where capital projects abroad in the developing countries require such financing, and where it is not available from the private sector or commercial sources.

This bill provides for the establishment of an Export Development Corporation which will succeed the ECIC. It will differ in five main respects. First, the present board of ECIC is composed of people from the public service. The proposal in this bill is that there be eight people from the public service, as ECIC, plus four from outside—bankers, industrialists, financial people.

**Senator Connolly (Ottawa West):** Insurance executives?

**Mr. Aitken:** Perhaps. That is the first change.

The second change is that under ECIC we can insure only the export of goods and services. Under EDC we will be authorized to insure almost any transaction between a Canadian businessman and a foreign businessman—the leasing of goods, royalty arrangements, licensing agreements, the sale of goods and services, too. That is the second major change.

The third change is that we will be authorized to provide foreign investment insurance. If a Canadian company decides to set up a company say in Mexico, Brazil or Chile we, the EDC, will be authorized to insure that investor in the foreign country against expropriation of its assets, or against inability to repatriate the capital invested or to transfer profits back to Canada, or against the loss of his investment due to revolution, insurrection, rebellion, etc.

Those are the three main things against which EDC will be authorized to insure him.

The next most important change from what ECIC does to what EDC expects to do is that, thus far, since 1960, ECIC has lent funds for the export of Canadian capital goods for projects abroad on behalf of the Government.

We have received the money from the consolidated revenue fund and we have been principals in the lending, with the foreign borrower required to pay us. But we are not required to repay—ECIC is not required to repay the consolidated revenue fund unless we get repayment from the foreign borrower.

The proposal in this bill is that EDC will be both borrower and lender. We will operate as does the Export-Import Bank in the United States. We will borrow from the consolidated revenue fund or, alternatively, subject to the approval of the Minister of Finance we can borrow in the market place and lend abroad for all capital projects. The money is spent in Canada, to purchase capital equipment in Canada for shipment abroad.

Gentlemen, I think those are the main differences in this bill as compared with the operation of the Export Credits Insurance Corporation, which, as you know, has been in business for the past 24 years. One of the reasons for proposing this bill is that it is almost 25 years since the Export Credits Insurance Act was passed in August, 1944, and we have had 15 amendments to the present act so that it is a wee bit of a hodgepodge and a mixture. So the Government felt that it would be appropriate in bringing in these new concepts to have an entirely new bill presented to the House of Commons and to the Senate.

**The Chairman:** Are there any limitations on the amount of money you may get?

**Mr. Aitken:** Under the present ECIC Act we have $200 million credit for the corporation, and we can take up liabilities to that extent. The Government can tell us to insure up to $600 million. For example, when we sell wheat to Hungary, Czechoslovakia, Poland and Romania, we can do that. That is the Government's responsibility. So we have $800 million for insurance under the Export Credits Insurance Act.

Under bill C-183 the proposal is that the corporation, EDC, will have the power to insure, on the responsibility of its own board, up to $500 million. Then the Government will have the authority to instruct us to insure up to another $500 million, making a billion dollars in all as compared with the present $800 million.

On the long-term financing, at the moment, under the Export Credit Insurance Act, ECIC with Government approval, with an Order in Council required in each case, has authority to provide financing up to a ceiling of $500 million. The proposal under Bill C-183 is that the EDC will have the authority granted to its board to provide financing up to $600 million on its own responsibility, being both borrower and lender, just like the export credits bank in the United States, plus $200 million which the Government will be able to provide out of the Consolidated Revenue Fund, and we will act as lender but the Government will carry the risk. Thus, EDC will have $800 million to lend as compared with the present $500 million ceiling.

So that is a billion dollars for insurance as compared with $800 million; $800 million for financing as compared with $500 million plus $50 million for this foreign investment insurance, making a total of $1,850 million as compared with the present $1,300 million.

**The Chairman:** You do have a limitation on borrowings from the public or in the marketplace?

**Mr. Aitken:** Correct.

**The Chairman:** What is the nature of that?

**Mr. Aitken:** That is related to our capital, which is proposed at $25 million share capital and $25 million donated capital surplus, making $50 million in all. And our limitation of borrowing under that, having regard to that capitalization, is 15 times or $750 million. This will reflect the $600 million we are authorized to lend plus $150 million in relation to the export credits insurance activities.

**The Chairman:** This limitation of 15 times applies whether you borrow in the market or from the Consolidated Revenue Fund?

**Mr. Aitken:** Yes, sir.

**The Chairman:** Are there any questions?

**Senator Connolly (Ottawa West):** Mr. Aitken, what is your loss record?

**Mr. Aitken:** As I said, senator, we have been in business almost 25 years. We issued our first policy in September, 1945, and we have insured in gross a total of $2,800 million in exports, of which the corporation has insured $1.8 billion on its own with the Government insuring $900 million. We have paid out $15.5 million in claims in a total of 2200 claims to 800 exporters. Of the $15.5 million paid out we have recovered $11.5 million, leaving roughly $4 million out of which we have had to write off $1 million, with $3 million potentially recoverable. Out of the $3 million we might get back $1,500,000.

**The Chairman:** That is a pretty good operation.

**Mr. Aitken:** The important point is, sir, that we were set up to provide an insurance service on a break-even basis. If you take our total gross premiums less our net losses and our operating expenses, we are in the black only $4 million. When you consider that in relation to the $2.7 billion insured, it is just minuscule. It is just like that. We are just balancing. It is less than 2 per cent of our current outstanding liabilities.

**The Chairman:** You may have a formula there, Mr. Aitken, that other businesses would like to learn the know-how of.

**Senator Walker:** He also has a computer brain, hasn't he?

**The Chairman:** Oh, yes.

**Senator Connolly (Ottawa West):** He has performed here before.

**The Chairman:** Yes, we know him well. He has been before us a lot of times.

**Senator Kinley:** How about your rates?

**Mr. Aitken:** Well, senator, the average rate for the short-term insurance business we do—and that means consumer goods sold on terms ranging from cash against documents up to 180 days—the average rate is less than one third of 1 per cent. So, if you sell $1,000 abroad, all it costs you is $3 to insure with us.

**Senator Kinley:** Have you competitors in other countries?

**Mr. Aitken:** In effect, in that there are 21 countries in the world outside the Iron Curtain who have similar organizations. You may know that ECIC belongs to an international organization known as Union des Crédits Nationaux, and we meet periodically to discuss our practices, procedures, loss experiences and recovery practices. We also discuss premium rates, et cetera, and we feel that our rates are comparable with those of others. In certain cases they are higher; in certain cases they are lower.

**Senator Phillips (Rigaud):** Mr. Aitken, will you be good enough to look at section 23 in Part II of the bill, subsection (i), dealing with investment in a foreign country? That is on page 9 of the bill.

You indicated that one of the major changes in this bill was that for the first time we in effect will guarantee investments in a foreign country.

**Mr. Aitken:** Yes, sir.

**Senator Phillips (Rigaud):** Before I come to the question, I note that, in the way foreign countries are defined, there is generally no distinction drawn between underdeveloped countries and countries that are not underdeveloped.

**Mr. Aitken:** Yes, sir.

**Senator Phillips (Rigaud):** We are, therefore, giving powers to the new corporation to allow investments to be made in a foreign country by a Canadian, without introducing a limitation in respect of underdeveloped countries that the residents of that foreign country be invited to participate in the investment that a Canadian makes in such a country.

Now, we in Canada have been complaining about Americans coming in here and, in effect, controlling our economy to a very considerable degree because their capital is fluid and international. It would appear that we are doing the same thing here, in that we are encouraging Canadians to go to underdeveloped countries to invest in such countries, and in doing so inviting criticism in the event that such investments should be successful by not providing for the residents of such a country to be invited to participate in that investment while at the same time the national economy of our country and Canadians dollars at large are being used for that purpose. Now my question in this; has any consideration been given to this problem of the way in which we are exposing ourselves to the criticism that in Canada we are encouraging Canadians to invest particularly in underdeveloped countries while we are not inviting others to be associated with us in such investments and we foot the bill if it is a failure.

**Mr. Aitken:** If you look at page 17, section 34 (2) you will appreciate what I have described with regard to the insurance operation is so far as it relates to what a corporation such as the EDC will be able to do and what the Governor in Council considers it necessary to do with regard to a foreign investment. Only the Governor in Council can authorize a particular foreign investment and in relation to any particular foreign investment this section says as follows:

> (2) The Governor in Council shall not authorize the Corporation to enter into a

> contract of insurance pursuant to subsection (1)
>
> (a) in respect of any investment in a foreign country that will not provide economic advantages to Canada or contribute to the economic growth and development of the country in which it is made;

I think that is the salient feature of this particular section.

**The Chairman:** That might happen, and yet the local people might not have any investment.

**Mr. Aitken:** It is not inconceivable.

**Senator Phillips (Rigaud):** I think it is a mistake, Mr. Chairman, and through you I address this comment to Mr. Aitken, and I think it is bad government policy so to do. I realize at this stage of the session it is not desirable to suggest any amendments to hold up this bill, but I for one would like to record my concern about the failure to deal with this aspect of the subject, and I am inviting government to give serious consideration to an amendment to the bill to see that we do not expose ourselves in underdeveloped countries to the criticisms and dangers to which I have just referred.

**Mr. Aitken:** Perhaps it might be helpful if I were to tell the senator that in the memorandum to Cabinet preceding this particular provision in the Export Development Act, it was stipulated that investments might be made only in developing countries. In other words we will not be authorized under current government authority to provide, say, guarantees for investment in West Germany, for example. It may only be in a developing country in South America, Africa, the Middle or Far East, and the gross total is $50 million which is really not a very substantial sum.

**The Chairman:** It is a large sum if you owe it.

**Mr. Aitken:** But as a gross total it is not a very substantial sum. In addition, it is not the government's money we are putting up; it is the private investor who is putting up the money. I do not think the $50 million involved in this will be of such world-changing proportions that it will affect anybody.

**Senator Connolly (Ottawa West):** I would like to say something on this, if I may, Mr. Chairman, which might help Senator Phillips. I do not, of course, know too much about the non-Commonwealth countries, but this problem has been discussed at the Commonwealth Parliamentary Association meetings particularly in so far as it relates to developing countries, and I think it is fair for me to say that they welcome this kind of legislation and they welcome the help they get from it. I have yet to hear, and this matter has been discussed on a number of occasions, anybody say that they feel that Canadians are attempting to dominate any part of their economy as a result of the operation of this act. They are very glad that we do this. One of the things we have discussed is whether or not the domestic industries welcome the contribution that can be made from outside by this or other means to develop their economies, and whether or not they have any plans for expropriating these industries, or whatever it is that is insured. They always give an assurance that when they see this kind of development coming in they are very delighted indeed. It gives them a lift, and this applies particularly to countries that are not yet at what is known as the take-off point.

**Senator Phillips (Rigaud):** I would like to answer Senator Connolly by inserting in the record, notwithstanding what he said, that gratitude is a lively sense of favours to be received. Once you make these investments in these countries and the local people are not participants, we are heading for trouble.

**Senator Willis:** I would like to say, Mr. Chairman, that very few people have more experience than Senator Connolly in dealing with outside countries, and he knows what he is talking about.

**Senator Connolly (Ottawa West):** So does Senator Phillips.

**Senator Carter:** This is a principle and we would like to have some assurance that it will be considered.

**Mr. Aitken:** If you look at page 17 you will note in paragraph (d) that a corporation will be required to have an assurance that would insure the investment against risk of loss in a country.

> The government of which has not given a written assurance satisfactory to the Government of Canada, that, in the event of the payment by the Corporation of any loss under a contract of insurance entered into pursuant to subsection (1), the corporation will be ..(ii) accorded by that government and by the laws of that

country treatment as favourable as that accorded other persons suffering loss by reasons of the causes described in subsection (1).

That means that the government of the importing country would recognize the investment. Senator Phillips has suggested that there might be some concern on the part of the developing country that Canada was acting as we occasionally have felt that foreign investors were acting in Canada, but I think that this particular section of the act provides an assurance to the recipient country that they will have certain control over the investments to be made, and they will give such assurances as they feel they wish to give, and if they feel the investment is one which they do not welcome they will have the liberty to deny it.

**The Chairman:** That is not the point Senator Phillips made. He said that they might like the investment very much, and it might be very successful, and if it is, some of the local people might want to have a part of the investment. That was the point he was making.

**Senator Carter:** We have no provision for even inviting them to participate.

**The Chairman:** I would think, Senator Carter, if you have local people who wanted to make an investment of this nature the government would be very keen to bring them into the picture.

**Senator Walker:** What are the facilities under the bill for doing that?

**The Chairman:** Assuming there are not any facilities I would think that if any such attitude were indicated there would very quickly would be or could be preparations to operate less heavily in those countries.

**Senator Beaubien:** Mr. Aitken, in the past what kind of experience have we had?

**Mr. Aitken:** None.

**Senator Beaubien:** I do not necessarily mean us, but what experience has there been generally?

**Mr. Aitken:** There have been facilities in the United States for the past 20-odd years, and they have collected premiums of something like $75 million, and have paid out less than $600,000 in claims. In other words, it has been an extremely successful operation.

**The Chairman:** But that is not the angle we are interested in.

**Mr. Aitken:** I appreciate that, but, nevertheless, this is the type of thing. What the world is trying to do today is to transfer resources from the "have" countries to the "have nots"; to transfer from the private sector to the developing countries; to have the Canadians, the Americans, the British, the French, the Italians, the Germans, the people with the money, to invest in the developing countries. This is to encourage these people to invest in developing countries. Those countries will set forth their own regulations to determine what investments they will accept, but nevertheless they count. Canadians are striving to the 1 per cent of the Gross National Product goal to provide aid and capital assistance and investment, and this assistance will count towards that 1 per cent goal.

**The Chairman:** Mr. Aitken, would you, under the bill, feel you had authority to loan money to a local company in one of these developing countries, where the local citizens owned the actual equity in the company?

**Mr. Aitken:** Yes, sir.

**The Chairman:** Are there any other questions?

**Senator Connolly (Ottawa West):** But you would have to get that specially from the Government?

**Mr. Aitken:** No. The very first thing we did under ECIC, the same is true under OECD, the first foreign loan we made was to a company in Chile. They put up something like 50 per cent equity and we, Canada, ECIC, lent the 50 per cent borrowing, but they spent all that money in Canada, which provided the export of capital equipment from Canada. This is all related to exports from Canada, even the foreign investment insurance. As I said earlier, page 17, under paragraph 2(a), they are supposed to provide economic advantages to Canada.

Take a company which makes road graders, and let us say they are selling them to Mexico. The Mexicans say, "We are tired of importing them, and we want someone to build road graders here." And the company say, "All right, we will establish a subsidiary in Mexico, but it is going to cost $2 million." They agree to that, and then they come and say, "Will you insure this investment against expropriation, inability to repay, or revolu-

tion which may destroy the assets?" Then they set up a subsidiary and they sell to that subsidiary, not road graders but components which make the road graders, and that is, therefore, a benefit to Canada. Also, at the same time, that contributes to the economic growth and development of the country in which the road graders are made.

**Senator Connolly (Ottawa West):** But in that case you are insuring the Canadian who is doing the exporting?

**Mr. Aitken:** Yes.

**The Chairman:** Are there any other questions?

**Senator Phillips (Rigaud):** Yes. Following Mr. Aitken's point, will Mr. Aitken answer me this question. If, we will say, a company in Ghana is wholly-owned by residents thereof, are we authorized under the bill to guarantee the credits of that corporation, and, in the event of revolution or expropriation there, will we indemnify the residents of that country?

**Mr. Aitken:** No, we can indemnify only Canadian residents.

**The Chairman:** Are there any other questions?

Are you ready to deal with the bill?

**Hon. Senators:** Agreed.

**The Chairman:** Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** Thank you.

The committee proceeded to the next order of business.

The Queen's Printer, Ottawa, 1969

First Session—Thirty-eighth Parliament

1960

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 45

THURSDAY, JUNE 9th, 1960

*Complete Proceedings on Bill S-37,*

"An Act to amend the Industrial Design and Union Label Act".

WITNESS:

Department of Finance: J. A. Beattie, Superintendent of Insurance and Trust Companies Division.

REPORT OF THE COMMITTEE

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 48

THURSDAY, JUNE 19th, 1969

***Complete Proceedings on Bill C-195,***

intituled:

"An Act to amend the Fisheries Improvement Loans Act".

WITNESS:

*Department of Finance:* J. A. Renwick, Government Institutions and Business Division.

REPORT OF THE COMMITTEE

20437—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 18th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator McLean, moved seconded by the Honourable Senator Bourget, P.C., that the Bill C-195, intituled: "An Act to amend the Fisheries Improvement Loans Act", be read the second time.

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

The Bill was then read the second time.

The Honourable Senator McLean moved, seconded by the Honourable Senator Gélinas, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

Robert Fortier,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

THURSDAY, June 19th, 1969.
(53)

At 11:15 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

***Bill C-195,* "The Fisheries Improvement Loans Act".**

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Flynn, Gélinas, Hollett, Isnor, Kinley, Leonard, Molson, Phillips (*Rigaud*), Thorvaldson, Walter, Welch, White and Willis. (19)

*Present, but not of the Committee:* The Honourable Senators Irvine and Methot. (2)

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

*Resolved:*—That 800 copies in English and 300 copies in French be printed of these proceedings.

The following witness was heard:

*Department of Finance:* J. A. Renwick, Government Institutions and Business Division.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 11:40 a.m. the Committee adjourned.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

THURSDAY, June 19th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-195, intituled: "An Act to amend the Fisheries Improvement Act", has in obedience to the order of reference of June 18th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
*Chairman.*

# THE SENATE

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Thursday, June 19, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-195, to amend the Fisheries Improvement Loans Act, met this day at 11.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, Mr. Renwick, of the Department of Finance, is present to explain Bill C-195 to us. Will you proceed with your explanation, Mr. Renwick?

**Mr. J. A. Renwick, Department of Finance:** Thank you, Mr. Chairman. I think all members of the committee are aware of the fact that it was hoped to include these amendments in Bill C-151, which was before the House of Commons in January and February. It was not possible to do this, so it became necessary to present a second bill.

Clause 1 of this bill increases the amount of loan that a fisherman may have outstanding under this legislation from $10,000 to $25,000.

**The Chairman:** That is by way of loan?

**Mr. Renwick:** Yes, that is by way of loan.

**Senator Connolly (Ottawa-West):** Are those secured loans?

**Renwick:** Yes, they are secured.

**Senator Connolly (Ottawa West):** By what—the boats?

**Mr. Renwick:** Generally, by a mortgage on whatever was purchased.

**Senator Walker:** A mortgage on what?

**Mr. Renwick:** A mortgage on the boat or the particular equipment that the fisherman purchases.

**Senator Walker:** A chattel mortgage?

**Mr. Renwick:** Yes, and in addition a promissory note is signed by the fisherman.

**Senator Connolly (Ottawa West):** You do not take any other mortgages from the fisherman?

**Mr. Renwick:** This is possible. The legislation says that the bank may take such additional security as it deems expedient, but in the circumstances this very seldom happens. It is usually a chattel mortgage.

**Senator Carter:** Mr. Renwick, the fisherman still gets his loan from the bank?

**Mr. Renwick:** Yes.

**Senator Carter:** So it is really up to the individual bank manager to decide whether he gets the loan or not?

**Mr. Renwick:** Yes, a condition of the Government guarantee is that the bank makes the loan to the fisherman with the same care and caution as it would exercise in the normal course of its business.

**Senator Walker:** And if there is default, what happens?

**Mr. Renwick:** If the loan goes into default within a period...

**Senator Walker:** Who eventually pays?

**Mr. Renwick:** The Government evenually pays.

**Senator Flynn:** That is, if the fisherman is unable to repay the loan?

**The Chairman:** And if the assets are not sufficient to liquidate the loan.

**Senator Connolly (Ottawa West):** What is the loss ratio?

**Mr. Renwick:** It is extremely low. In excess of $7 million has been lent since 1955, and the Government has paid out just over $6,000 in claims.

**The Chairman:** That is not a bad record—$6,000 out of $7 million.

**Senator Burchill:** What interest rate does he pay?

**Mr. Renwick:** Currently the maximum rate of interest that may be charged is 7¾ per cent.

**Senator Burchill:** The current rate.

**The Chairman:** It is 7¾ per cent at the present time.

**Senator Thorvaldson:** In other words, it seems to me this would have been perfectly safe and sound banking business but the banks are just too conservative to tackle the business without guarantee. I think they ought to be censored for that!

**The Chairman:** Do not let us have a motion to that effect. This is a collateral issue, and that is not part of our instructions.

**Senator Walker:** This is just an amendment.

**The Chairman:** That is right.

**Senator Walker:** It is really a marine mortgage you are talking about.

**Mr. Renwick:** Yes.

**The Chairman:** Shall we report the bill without amendment?

**Hon. Senators:** Agreed.

The committee adjourned.

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament
1968-69

# THE SENATE OF CANADA

## PROCEEDINGS
## OF THE
## STANDING SENATE COMMITTEE
## ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 49

TUESDAY, JUNE 24th, 1969
WEDNESDAY, JUNE 25th, 1969

***Second and Final Proceedings on Bill C-191,***
intituled:
"An Act to amend the Income Tax Act".

WITNESSES:

*Department of Finance:* The Honourable E. J. Benson, Minister. J. R. Brown, Senior Tax Adviser. F. R. Irwin, Director, Tax Policy Division.
*The Canadian Life Insurance Association:* J. A. Tuck, Managing Director. E. G. Schafer, President. A. H. Lemmon, Chairman, Committee on Income Tax. K. R. MacGregor, Immediate Past President.

REPORT OF THE COMMITTEE

20439—1

## THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 17, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-191, intituled: "An Act to amend the Income Tax Act".

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

The Bill was then read the second time, on division.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*



20439—1½

# MINUTES OF PROCEEDINGS

TUESDAY, June 24th, 1969.
(54)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 3.00 p.m. to *resume* consideration of:

**Bill C-191**, "An Act to amend the Income Tax Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Carter, Choquette, Connolly (*Ottawa West*), Cook, Croll, Gelinas, Isnor, Leonard and Phillips (*Rigaud*).—(13)

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

The following witnesses were heard:

*Department of Finance:*

The Honourable E. J. Benson, Minister.
J. R. Brown, Senior Tax Advisor.

*Canadian Life Insurance Association:*

J. A. Tuck, Managing Director.
E. G. Schafer, President.
A. H. Lemmon, Chairman, Committee on Income Tax.
K. R. MacGregor, Immediate Past President.

At 5.50 p.m. the Committee adjourned further consideration of the said Bill.

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WEDNESDAY, June 25th, 1969.
(55)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 9.30 a.m. to *resume* consideration of **Bill C-191.**

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Gelinas, Isnor, Kinley, Phillips (*Rigaud*) and Thorvaldson.—(13)

*Present*, but not of the Committee: The Honourable Senator Langlois.—(1)

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

The following witnesses were heard:

*Department of Finance:*

J. R. Brown, Senior Tax Adviser.

F. R. Irwin, Director, Tax Policy Division.

At 10.15 a.m. the Committee deferred consideration of the said Bill until 12.00 noon this day, the Committee to meet at that time *in camera.*

At 12.00 Noon the Committee *resumed* consideration of **Bill C-191**, *in camera.*

A quorum being present, the Committee discussed the form of the Report of the Committee and after further consideration it was *Resolved* that the Committee recommend that the said Bill be not amended at this time, but that the Report contain certain observations and recommendations.

NOTE: (The full text of the Report appears by reference to the Report of the Committee immediately following these Minutes.)

After discussion and upon motion, it was:

Resolved:—That the account submitted by the firm of Smith, Davis, barristers &c., for the services rendered by James K. Hugessen, Special Counsel to the Committee, be approved.

At 1.50 p.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, June 25th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-191, intituled: "An Act to amend the Income Tax Act", has in obedience to the order of reference of June 17th, 1969, examined the said Bill and now reports as follows:

Your Committee was impressed with the views expressed by The Canadian Life Insurance Association on behalf of that industry, more particularly with respect to the subject matter of Contingency Reserve and Surplus. As relief with respect to the latter could be granted to the industry by Order-in-Council under the proposed law, your Committee drew the attention of the Minister of Finance to such representations. The Minister considered the matter but, before the Committee, he stated his unwillingness to grant the relief requested which was that the amount for Contingency Reserve be allowed to be deducted before the incidence of taxation applied to business incomes.

In reply to the Minister's statement the industry stressed most emphatically that such Reserve and Surplus are absolutely essential for the protection of their policyholders. The industry emphasized that its request was in accordance with its settled practice of maintaining adequate Contingency Reserves and such practice, in no small degree contributed to the financial strength of the industry and enabled it to withstand adverse economic cycles.

In the hope that the Minister will give further and favourable consideration to this request of the Life Insurance industry your Committee is disinclined to recommend any amendment at this time.

Parliamentary procedure on Budget matters gave no opportunity to the Life Insurance Companies representing eleven million policyholders to submit their views to an appropriate committee until the Bill reached the Senate even though the present legislation involves a radical departure from our taxation structure.

This experience prompts the Standing Senate Committee on Banking, Trade and Commerce to suggest that revised procedures be considered in the future, at least in instances where major changes are contemplated, so that interested parties and the public may have such opportunity.

Respectfully submitted,

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Tuesday, June 24, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-191, to amend the Income Tax Act, met this day at 3.00 p.m. to give further consideration to the bill.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** I call the meeting to order. We will continue our consideration of Bill C-191. The Minister is with us, but he is operating under certain time restraints, in as much as he has to get away by somewhere between 4 and 4.30 p.m. He has a statement and, to the extent that time will permit him, he will be available for questions arising out of that statement. Are you ready to proceed in that fashion?

**Hon. Senators:** Agreed.

**Honourable E. J. Benson, Minister of Finance and Receiver General:** Mr. Chairman and honourable senators, I felt that I should appear before you today in order to speak to the questions of policy concerning the taxes applied by Bill C-191 to life insurance companies and, indirectly, to investment income derived by policyholders from their life insurance policies. I will not endeavour to explain the voluminous details of this bill. I think it is better for Mr. Brown to do that on my behalf, although I can assure you at this stage that I understand what is in it, having gone through a very long procedure. However, the Canadian Life Insurance Association has expressed its views to the committee about the policies in this bill to which I think the Minister should reply as promptly as possible.

These provisions to tax insurance companies and policyholders are an important element in our tax reform program. In my opinion, they are long overdue. Neither the profits of the companies nor the investment income derived by policyholders in one way or another from insurance policies have been taxed in the past except to a minor and quite inadequate degree. This has left a considerable inequity in the treatment of insurance companies compared to other companies and in the treatment of the returns from investment in insurance policies as compared with other forms of savings. To the correction of this problem we have devoted a great deal of work in the past eight months which is reflected in the bill presently before you. We have proceeded with care because we realized that this was a difficult though necessary task, and we had to make sure that we took adequately into account the peculiar nature of this business and did not seriously damage an industry which has served Canada well both in insuring Canadians and in carrying on business in other countries.

I think that we have worked out a logical and equitable system for accomplishing these objectives. However, its introduction is a substantial change, imposing a sudden burden upon the industry. Perhaps it is inevitable that those engaged in the industry should have doubts about their ability to carry on their business successfully while absorbing this major new burden of taxation.

I have reached the conclusion after much study of this situation that the industry can meet this new burden. It is a profitable industry despite the competition of other savings institutions. The changes in our regulatory legislation in recent years, including those presently before Parliament which were approved by the Senate, will enable life insurance companies to have greater flexibility both in the types of plans they sell and in the investments they may make. This should enable them to compete successfully with other institutions, including mutual funds. The tax legislation now before the committee will make that competition take place on more even terms than it would be if we did not have a logical system of taxation apply to life insurance.

One of the basic questions raised by the Life Insurance Association has been whether it is right at this time to place a tax on savings. I think the answer is clearly yes. As a major borrower, indeed I suppose the largest borrower in the country when refunding is included, I am vividly aware of the difficulties in the capital markets at this time. However, we cannot defer indefinitely our tax reform program and we cannot carry it out properly unless we do include the taxation of life insurance companies and proceeds. I have taken into account the effects of this upon the flow of savings, as I indicated in my budget statement in October. I said then that on balance the gain in revenue to the federal government and to the provinces and the gain in equity in treating different channels of savings more fairly, would outweight the disadvantages of introducing this reform at this time. I still believe that to be the case. Our rate of saving in the country is high. The main problem is to get it channelled properly into fixed money obligations as well as into equities, which are all the fashion at the present time. In fact the great bulk of savings does flow into fixed money obligations and will I think continue to do so although this involves high interest rates to compensate for the risks of inflation.

The government is already doing much to facilitate savings both by tax measures and other measures.

Insofar as the income tax system itself is concerned, it provides a major exemption for savings in the form of pension funds, and in the form of registered retirement savings plans, introduced some years ago. This enables both employees and the self-employed to accumulate substantial sums for their retirement under arrangements by which up to reasonable limits they can deduct the amounts put into such funds from their incomes, accumulate the investment return on those funds free of tax, and then pay tax on the proceeds during retirement when their marginal tax rates are likely to be lower. The advantage of thus deferring tax is in itself a very substantial one, as the Royal Commission on Taxation has demonstrated.

I feel that this arrangement for pension plans and registered retirement savings plans, in both of which the life insurance companies can and do participate, is the fair way and sensible way of making tax provision for encouraging and facilitating savings. I think it is a better way than exempting insurance companies from taxation or giving special treatment for premiums paid on insurance policies.

I should note too that the government now as custodian of the funds of the Canada Pension Plan is accumulating on behalf of Canadians very large amounts of savings each year and investing them in provincial securities of one kind or another—investments which finance not only provincial needs but those of educational institutions and municipalities. This is where the need for savings is most urgent at present, bearing in mind the views that the market takes about long term fixed interest obligations.

Thirdly, the government now is operating on a substantial budgetary surplus for economic reasons, as I eplained in the budget of June 3rd, and in order that we can keep down our demands on the capital market. Insofar as the revenue derived from insurance companies increases that surplus, it does directly assist in enabling the needs for capital funds from the market to be reduced—in so far, at least, as they apply to the federal Government. In this sense it can be regarded as helping us to finance for example the very substantial requirements of the Central Mortgage and Housing Corporation for funds for housing of various types.

All taxes hit savings in some degree. Who of us would not save more if we did not have to pay taxes whether they be income taxes or taxes on our purchases? Of course some taxes hit savings more directly than others. I would not deny that the taxes on insurance companies will bear more directly on savings than many other taxes, but the difference is one of degree, not one of principle. We have taken it into account in making our proposals. We should also take it into account in our future budgeting and fiscal policy.

I turn now to deal with the criticisms that have been made of these taxes on life insurance. I will not try to deal with all the points raised by the Canadian Life Insurance Association or those representing it but only with the central issues and the major criticisms. Smaller points may be adjusted in future amendments to the Income Tax Act in the light of experience in the administration and in the problems of compliance under actual conditions.

There are three elements in our plan and the criticism largely attaches to the third of these.

The first element is the tax on the withdrawal of the proceeds of an insurance policy by the policyholder. The net gain on the policy is to be taxed as part of his personal income. There has been no significant argument about this element either in its conception or its workability. The companies did ask us for more time to prepare for this so that their policyholders would be better able to understand it and to have the data necessary to calculate their tax. Such deferral for a year was agreed, and the nature of the arrangement is such that the cost will fall mainly upon the companies as the amount subject to this tax is set off against the investment income on which the companies are taxed.

The second element in the plan is the tax on the investment income of the companies. This is intended to be an indirect tax on the income paid or accruing to the policyholders. As I said in the budget speech, the Royal Commission proposed valuing these elements of investment income each year whether or not received directly by the policyholder, and taxing them to him. We have worked out what I think is a much simpler and more practical method. I am glad to see that the Life Insurance Association indicates that they are not unmindful of the fact that the government has acceded to their suggestion of avoiding what they have called an administrative nightmare for policyholders.

This indirect tax on the policyholders is calculated at a flat rate of 15 percent which is a traditional rate in our income tax arrangements where we have withholding taxes and similar taxes on the source of income without being able to include it in the normal income tax at graduated rates. The rate is not high in relation to the graduated rates of personal income tax. If and when the policyholder draws out the proceeds of his policy himself he then has to pay tax at the appropriate graduated rate and the amount of income subject to this 15 percent tax in the hands of the company is reduced accordingly. There is, however, no adjustment to higher rates if the life insured dies and death benefits are paid.

The complaints of the industry on this investment income tax are essentially that the deduction for expenses and the tax credit for the provincial premium tax should be larger, and should be related to the kind of business done by the company.

In fact the government has gone a long way to meet the initial criticisms made by the industry of this tax. We have included a substantial amount of their administration and selling expenses in determining investment income attributable to policholders. It is not possible to make any thoroughly objective and accurate appraisal of what should be allowed. The problem is to get some reasonable allocation of the expenses and of the premiums that should be attributable to the savings element in policies rather than to the essentially insurance element. This savings element depends on the nature of the policy in question, on the age of the life insured, and on other factors. The mix of policies varies as between companies and over time. To calculate the savings elements for various policies or even various classes of policies for each company would be very complex and expensive. Any one rule is bound to be somewhat arbitrary. We thought, and I believe the companies think, that some simplicity is essential.

Our examination of the savings element in various types of outstanding policies and of the mixes of policies led us to believe that the appropriate average ratio would lie somewhere between 45 and 55 percent. This led us to choose the round figure of 50 percent. The companies believe it is low but have not been able to convince us that that was the case. Moreover, the figure of 50 percent of the expenses attributed to the savings element results in a ratio of expenses to investment income that is considerably higher than the expense ratio which the life insurance companies charge on deposit administration accounts and is considerably higher than the charges which trust companies and mutual funds make for the management of funds left with them for investment. Moreover, an examination of the expenses of banks indicates that for every $11 of expense other than those directly related to the management of loans and investments the banks receive about $5 in service charges. This would suggest that only about 55 per cent of the general and selling expenses of the banks reduced the investment income available to depositors. All in all I feel that this 50 per cent figure is a reasonable one for us to start with. Over the years it may be possible to get a more accurate determination of what is ultimately reasonable.

I would also be prepared to consider later any logical formula that the Life Insurance Association could suggest that produces a more equitable treatment of the differing mix of savings and insurance elements in the business of individual companies.

In deciding how much of the provincial tax of 2 per cent on insurance premiums should be allowed as an offset against our tax we have also used this 50 per cent formula. It too is subject to the same sort of arguments and defence as applies in the case of allocating expenses. We came to the conclusion that in putting the companies on a fair competitive basis with other institutions attracting and investing savings we should permit a credit for this premium tax insofar as it applies to the savings element in the policies. This provincial tax is of the nature of a sales tax which is not borne by other forms of savings but is borne by other forms of insurance.

The main complaints of the industry relate to the tax on their business income and particularly to the weight of the tax. Forecasting the weight of this tax is complicated because policy dividends are deducted, and properly deducted, in determining the business income of the company as distinct from the income flowing to its policyholders. As a result, if the company reduces its policy dividends in an effort to pass the tax on to policy holders, then its taxable income is increased and the overall weight of the taxes on the company as such is increased.

In general, the decision of the companies in regard to policy dividends will substantially affect the weight of the tax. The quantitative significance of these decisions is exemplified in the statement by the Life Insurance Association in their first paragraph under the heading "Weight of Tax". Of course, one could say that much the same would be true for companies in other businesses if they were able to pass on their income taxes to their customers. In so far as they succeeded in doing so they would increase their taxable income and thus would pay more tax.

What the life insurance companies do in this regard is of course up to them, subject to the restraints of competition and their own views as to the reaction of their policyholders and prospective purchasers of new policies. I did indicate in my budget speech of October 22 that I thought the tax on investment income might cause a moderate reduction in the policy dividends to be paid in future on many outstanding participating policies. I also indicated that in my view the taxes would reduce the annual accumulation of income in general contingency reserves of the life insurance industry. I still believe that these are the most likely effects.

The Association said in its statement—and a number of its representatives even more eloquently have said—that in their view there must be an accumulation of surplus and contingency reserves and they argue that the tax law should make provision for these. They state that these surplus and contingency reserves are absolutely essential for the protection of policyholders.

We do not provide in the income tax law for general contingency reserves of this kind for any business no matter what it is. We do not regard amounts required to build and maintain such reserves as expenses inherent in the provision of guaranteed insurance benefits, as are the expenses we have allowed.

Representatives of the industry have had many conversations with senior officers of the department and with myself as to the necessity for these before tax contingency reserves, particularly at the present time. They have not convinced us that we should allow more than is already in the bill and in the draft regulations that were made public. We have provided in the draft regulations for actuarial reserves for tax purposes on the "net level premium" basis, which permits higher actuarial reserves than the "Canadian modified" basis which is permitted by the regulations administered by the Superintendent of Insurance. On one balanced mature portfolio of policies which we had examined it was estimated that the net level premium reserves would total about $20 million compared with the Canadian modified reserves at $18 million. This is a greater margin than the 5 per cent proposed by the association in their brief. Of course it must be recognized that many of the companies already use in their statements the net level premium reserves, particularly when that is necessary to cover cash surrender values, and therefore do not show the difference in their surplus. It does indicate that the allowance for actuarial reserves has not in all cases been held to the minimum level permitted by the regulatory authorities.

In exploring this matter we asked the companies what kind of general contingencies had to be covered by these surpluses that they felt should be permitted on a tax free basis. They referred to adverse mortality experience, but the only example that they gave us was the flu epidemic of 1918-19, and we found on inquiry that this did not produce a mortality experience in either year which was worse than that provided in the mortality

tables. The second type of contingency was that the companies would be unable to earn the rates of return to which they are committed in the terms of their policies. In establishing the actuarial reserves we are permitting them to use reserves based on the interest rates implicit in their cash surrender values. These rates are somewhat lower, and therefore involve higher reserves, than those that are implicit in the premiums that the companies themselves charge for insurance policies. Similarly in annuities the interest rate to be used in establishing reserves is to be prescribed by formula to be at least one per cent lower than the interest rate implicit in the premiums for annuities. Thus there will be tax deductible reserves to provide protection against an adverse swing to interest rates of some significant proportions. Should interest rates decline again to the low level of the 'thirties and 'forties the situation would be different, but I feel that the companies should be able to accumulate enough surplus on a tax-paid basis to meet such a long term problem.

A third contingency to which the companies referred was that policyholders might surrender their policies and the companies would have to sell securities at a loss to meet these surrender values. Our examination of this did not lead us to feel that it justified what was proposed. The companies build surrender charges into their table of guaranteed surrender values in the case of early surrenders. This gives them a cushion against losses they may incur through the sale of securities to meet the surrender claims. In addition the system permits them to deduct an investment reserve of 1½ per cent of the book value of eligible assets. This reserve should enable them to absorb most of the losses likely to be incurred by any reasonable run of surrenders. Moreover, as I shall indicate in a moment, they are investing their current receipts at much higher interest rates than those implicit in the cash surrender values, so that their position should improve.

The fourth contingency that was mentioned to us was that operating expenses may well be higher than those contemplated when the companies entered into their contracts. There seems little doubt that operating expenses are more likely to go up than down. However, the bulk of the selling expenses connected with issuing a policy are incurred, and will be deducted for tax purposes, in the first few years of the policy's life, whereas the premium usually remains constant throughout the life of the policy. As a result, there is rather more of the premium available in later years to meet other operating expenses.

All of this is not to suggest that companies should not endeavor to build surpluses. A particular company can run into a combination of circumstances that are even more adverse than those covered by the protection I have outlined. Indeed, I expect the insurance companies to maintain free surpluses or contingency reserves, just as all businesses must provide a cushion against a series of rainy days out of their after tax income.

On the whole, however, we believe that the companies are being permitted to compute their incomes in accordance with rules that are at least as generous as those which apply to their competitors and that any further reserve strength needed by the companies should be provided out of after tax profits.

It must be borne in mind that at present the companies' actuarial reserves are being calculated at rates of interest of 3 or 3½ per cent on most policies. Already their average rate of interest earned on their investment has topped 6 per cent and it may be expected to increase in the near term future. For example, they are currently able to invest their earnings at 9 per cent in insured mortgages and at correspondingly high rates for bonds and other securities. I must say that I am convinced that with interest rates at current levels the application of the tax should not produce an excessive shock.

I should also like to point out that over the period of ten years from 1957 to 1967 the ratio of surplus to total liabilities on the world business of Canadian life insurance companies as reported by the Superintendent of Insurance has risen from 6 per cent to 7.6 per cent. During the year 1967 the ratio of surplus to total liabilities increased from 7.4 per cent to 7.6 per cent. My belief, after looking over the results for that year, is that many of the companies could have paid taxes comparable to those proposed in this Bill, they could have maintained their dividend scales at the rates which were in effect, and still they could have added to their surpluses or their contingent reserves an amount equal to about 5 per cent of the increase in their total liabilities.

I should like to note too that policy dividends as a proportion of total revenue have been increasing steadily over the past ten years and are now above 10 per cent. Given the high rates at which funds currently can

be invested, I would have thought that policy dividends could again be increased in future were it not for the tax. Consequently, merely holding them steady would provide some of the funds required to meet the investment income tax.

These are the considerations that have led me not to put into the bill or the regulations any provision for general contingency reserves as an expense in determining taxable income. I trust that they will commend themselves to the Senate in its consideration of this matter.

This is the main point which was urged by the association in regard to the determination of their tax on business income. The second most important one relates to the treatment of dividends received from taxable Canadian corporations. Such dividends are tax free when received by normal corporations. However, they are not tax free when received by mutual funds and comparable investment companies to be passed on to those investing in them. In the case of banks and trust companies the income from dividends is so small that we have not attempted to qualify the normal treatment, although if it should become large or if it should be regarded as a matter of principle we could treat it in a way similar to what we have proposed for the life insurance companies.

A large part of the investment income of life insurance companies is being paid to, or accrued for, the policyholders. This is what we are subjecting to the low flat tax rate. On that portion we are proposing to give a dividend tax credit for dividends from taxable Canadian corporations equivalent to that received by individuals. I think this is fair treatment for the policyholders. The balance of net dividends received flows to profits and will be exempt. We have to determine the portion of dividends received that should be attributed to policyholders and the portion attributed to profits. We do it by assuming that the portion of the profit of the companies that comes from dividends from Canadian companies is the same proportion as these dividends are of the total investment income.

Since dividends are now an important and increasing source of investment income to these companies and will undoubtedly be held out in future as an inducement for investment in life insurance policies, I think that this is a reasonable means of treating them. We shall consider the treatment of other investment companies in relation to what we have provided for insurance companies as part of our general review of the income tax law that is being carried out this year.

I have noted a number of the minor points and it is possible that some of these can be taken up in discussion. One of them to which some attention was paid the other night was the alleged severe impact on some of the medium and smaller life companies because capital improvements are only taken into account for depreciation if they are in excess of $100,000. Alternative means of dealing with this would have been possible but it was part of an overall complicated arrangement for dealing with the initial capital costs to be allowed in calculating income. These are such that no taxes will apply on any recapture of capital cost incurred in the past and written off to past years. Overall I think this capital cost arrangement is fair and even generous to the companies although it may not apply in the same proportion to all.

In regard to the last point made by the companies, the restriction on the losses on the sale of bonds held at the end of 1968, I should say that some safeguard of this kind was necessary or it would have been possible for the industry simply by switching bonds—that is, selling to one another—to have maintained the yield and the real values of their portfolios while taking book losses that would have eliminated their taxable income. The ten year spread was picked with an eye to the usual term of investments made by insurance companies. If a company did sell at a loss bonds held at the beginning of the taxable period and reinvested the proceeds, then that loss should serve to reduce the rate of return on the new investment and so bring it back to a rate comparable with that which would have been achieved had the company held on to the original bonds. Any period chosen for this purpose was bound to be somewhat arbitrary and I think this one is not unreasonable for these companies which are long term investors.

That concludes Mr. Chairman what I wish to say in answer to the various criticisms that were made. I think it is a good thing that your committee has provided an opportunity for the companies to state their anxieties, particularly about the weight of tax, and for me to indicate the reasons which have led me not to accede to all of their proposals. The industry undoubtedly faces major problems in adapting itself to this new tax regime and I have every sympathy for them in these

circumstances. As the minister responsible for the Department of Insurance, I have a very lively personal concern that we should not imperil the safety of the investments of policyholders or of the benefits to which their dependents would be entitled. I feel confident that these new tax arrangements will not imperil the safety of the industry.

I would like to add that the government is quite prepared to examine the working of this tax and its effect upon the industry after two or three years of experience of it, and to recommend such changes to Parliament as are warranted in the light of that experience. I think such an assurance will help the industry meet the problems of adjustment that it now faces.

**Senator Croll:** I gather you are for the bill?

**Hon. Mr. Benson:** Yes.

**The Chairman:** Yes, I would say this is a speech in favour of the bill. In accordance with our usual practice, the meeting is open for questions to the minister. What is your departure time?

**Hon. Mr. Benson:** I have to leave in about 15 minutes.

**Senator Phillips (Rigaud):** May I put one question to you. You indicated it was a good thing for this committee to listen to the representations of insurance companies. Would you like to express a view, having regard to this extraordinary change being made in the treatment of insurance companies, whether it would not have been desirable to follow the procedure in the other house, whereby a segment of the economy being subjected to taxation, more or less for the first time, would have had an opportunity to submit its representations, so that the public would appreciate the pros and cons of the case and not find themselves in a position like that of a committee of this Senate, which obviously is limited in that opportunity of suggesting relief, even though we may have such an impression, notwithstanding the very informative brief you have presented?

**Hon. Mr. Benson:** I am not particularly happy with the way budgetary measures are presently handled in the House of Commons.

When the rules were changed and all bills were referred to committees, the house in its wisdom maintained the rule that all budgetary measures must have clause by clause hearing in the house as such. I think a good deal of time is wasted in the house in this way that could be better used in committees where people could make representations. But that, senator, was not of my choosing, it was a matter of rules that were adopted.

**Senator Phillips (Rigaud):** The reason for my suggestion is that, many years ago—I do not know whether I preceded the late Mr. Carter or followed him, as chairman of the Canadian Tax Foundation—and I speak as an individual now—I remember we took up the point that it might be desirable to follow the system in the United States whereby, before a tax is made effective, an opportunity would be given for amendments to the law being dealt with in committee.

I think that it would be inclined to moderate your thought, that due consideration would be given, say, after two or three years, if you would be inclined to make an observation that due consideration would be given to revision after one year. If you would be inclined to make the observation that, possibly as a result of a White Paper coming in, that a new system would be followed whereby those aggrieved would be given an opportunity to be heard in public, it might change the attitude of those being suddenly subjected to taxation.

**Hon. Mr. Benson:** I publicly stated that I did not like the present system of dealing with budgetary matters in Canada. I said this quite publicly. I think that, except for tax rates which have to be imposed as of a specific date, if we are going to have the control over the economy that the Americans do not have in their system, and except for rates where new items are being proposed, the Minister of Finance should have more opportunities for consultation with people, so that the changes could be referred for discussion, before being presented in a budget speech which places the Government in jeopardy if they are not passed. This would be very useful.

Indeed, this is exactly what I propose to do with respect to tax reform. I am going to produce the White Paper. I have clearly said that anything in the White Paper will be subject to change, if, indeed, we can be convinced that it should be changed.

I should, however, say in fairness here to my officials and perhaps to myself that we did have a great deal of consultation with the life insurance companies. As a matter of fact, I was under a good deal of criticism in the

house about the bill's being held up for so long, because we took eight months and spent all of it consulting with the insurance industry, listening to them and coming down with what in our opinion would be fair decisions.

Now, to deal with the second point, whether it will be subject to review in a year, may I say that tax measures are open every year, and our tax reform will be coming forward next year. If we were convinced that this was acting unfairly towards the insurance companies and we had the data to support this at that time, then of course it would be subject to review at that time.

I can assure you that I believe in the life insurance industry; I think it is good for Canada and good for Canadians. I also think that with this tax burden it can continue to prosper and to develop, or the tax would not have been increased.

**Senator Phillips (Rigaud):** Mr. Minister, before you leave, and I realize I am appropriating too much of your time, may I say that the industry at large, in their submission, frankly stated that as an important segment of our economy they realized that in due course they would be subject to taxation. Having regard to the present status of the bill they are very much concerned about this question of surpluses and contingency reserves. Before you leave would it be possible to obtain from you your views on the decision as reflected in this memorandum so that in our discussion with Mr. Brown we may explore the possibilities of further relief in the initial year.

**Hon. Mr. Benson:** I believe, senator, if you will read the brief very carefully that we indicate that in our opinion the insurance companies are well protected against their liabilities through their actuarial reserve—through the one and a half per cent reserve on investments which is similar to what the banks have. We believe that they are on an absolutely safe basis. If one assumes this, then I personally cannot see justification for allowing funds to accumulate free of tax in the insurance industry vis-a-vis the banks, or vis-a-vis any kind of business.

In any kind of operating business one has to accumulate profits after tax in order to suport himself in the case of emergencies and I believe the insurance companies are quite capable of doing that. Indeed, I believe they will do it.

**Senator Phillips (Rigaud):** So that I do not subject myself to newspaper attention, Mr. Chairman, may I record that I am a director of an insurance company, although a small one.

**The Chairman:** It has been noted, senator.

**Senator Benidickson:** Mr. Minister, I have been following your address very carefully and I noticed that, although it did not affect the substance of your remarks, there were a few places where you made additions to what is contained in the prepared mimeographed statement provided to us. If I heard you correctly, in the first paragraph on page 15, in the last sentence of that paragraph you added the words "total investment income". Is there any significance in that addition?

**Hon. Mr. Benson:** No.

**Senator Benidickson:** Then on page 16, as I was trying to follow you attentively, I thought you added verbally some words on the commencement of the second paragraph. I believe you said it would have been possible for the industry simply by switching bonds, and you added here the words that were not in our text, "or selling to another". Is that significant?

**Hon. Mr. Benson:** No. Really, I think this protection had to be written in because it would be possible . . .

**Senator Benidickson:** But it is not in the text of June 24.

**Hon. Mr. Benson:** This just goes to show the mistake of distributing a text. Really, one could realize losses, you know, and reinvest the money and thus wipe out the entire profits of the insurance business, if one wanted to.

**Senator Benidickson:** Have you made other changes in the text?

**Hon. Mr. Benson:** No.

**Senator Benidickson:** Other than that, on occasion, you said, "In my opinion".

**Hon. Mr. Benson:** No, I made no other changes.

**Senator Connolly (Ottawa West):** Mr. Minister, last week we had a very thorough discussion of this bill with representatives of the industry. We made it crystal clear to them that in the Senate we are very severely circumscribed when it comes to a tax mea-

sure, because we can neither increase the incidence of a tax nor decrease it, because we might, in fact, upset the ways and means.

It seemed to me that the only place that there might be some consideration given was in clause 15 of the bill which adds section 68a to the act. In subsection (3) of that section, on page 17 of the bill, authority is given for the making of regulations with reference to this business of contingency reserves and surpluses.

**The Chairman:** Policy reserves.

**Senator Connolly (Ottawa West):** Yes, and surpluses. It was suggested that perhaps 6 per cent might be an appropriate figure and that, in any event, for every 1 per cent there would be $1½ million less tax.

In considering the amount of money that was being expected to be realized from this industry, the estimates varied from $95 million to $135 million.

Would a 3 per cent allowance, which would have come to about $4½ million on the basis of the figures given to us, make all that difference in your estimate of what your budgetary surplus might be?

**Hon. Mr. Benson:** Well, Senator Connolly, this, to me, is a matter of principle. It is not a matter of the amount of money involved. I believe that every company in Canada should have the opportunity, in constructing its balance sheet and making out its financial accounts, to provide for all its liabilities. I believe that funds beyond those necessary to provide for the liabilities of the company should be provided out of tax paid money rather than as a deduction before taxes. This applies in a manufacturing company, in a bank, in trust companies or whatever it may happen to be. If one wants to accumulate funds, whether it be in the form of a cushion for the business, or whether it be to expand from within in the case of a manufacturing business, it must be done out of after tax dollars rather than as a deduction before the determination of tax.

If I allowed a general contingency reserve for insurance companies, there would be great pressure on the Government to allow it for all sorts of businesses. You would then have arguments as to what amount of contingency reserves would be just for one kind of company and what amount for another kind and so on. Basically, it is not a matter of the money involved—$4 or $5 million or whatever it may be. It is a matter of principle. If it is for $5 million out of $100 million, that means it would cost 4 or 5 million dollars to the insurance companies, but they can still provide funds for the contingencies out of income.

**Senator Connolly (Ottawa West):** On the present principle, as I recall the arguments made by the representatives of the insurance companies, they said that there are times when this contingency reserve is of great importance, for example in times of adverse economic conditions and situations of that kind. There are other times when individual companies might become weakened as a result of almost any kind of cause, perhaps mismanagement or some such reason, and they emphasized then the importance of having a surer source of reserves from tax resources to meet different types of contingencies in the interests of an industry that is designed for the protection of an individual. I think that is the way the argument ran, and it seemed to me they did talk about the question of amount which they considered significant, and I thought it was significant to them and I think on that point the Minister agreed.

**The Chairman:** I think the statement went something like this; that policy reserves are determined under this bill by the companies and I would assume also reasonably closely by the superintendent of insurance on the basis of mortality tables and interest earnings and expenses. Then the question is; are there elements in the insurance business that would not be reflected adequately in all the circumstances by this measure for determination of actuarial reserves and saying that is what you can get as a policy reserve? The aspect of it that seems to hit in that way is the duration of many of the liabilities that are undertaken by life insurance companies and the areas where they might be affected in the value of assets and in mortality tables over long periods of time. It might be that for some time interest and expenses would be as important, although because of the increase in interest earnings may more or less to this date balance out the expenses, but there may come a time when expenses will go on and the interest will go down.

The question arises whether in all those circumstances there should be an element in the policy reserve that is a plus with something in addition to what you would call the actuarial calculation or policy reserve according to those factors; and the insurance compa-

nies thought there should be, because I understand they have been carrying on their business in that fashion. Of course there was no tax problem of that kind in that case, but I think they have gone on the basis of 6 per cent of the increase in actuarial reserves in a year. Whether the 6 per cent is a calculated figure or is one that is an informed guess, such as the 50 per cent and some of your figures in this bill, would depend upon a reasonable consideration of all the different factors at the time. On this basis they may have made a reasonable stab as to what the amount will be. It has always struck me that there is some element there. How does it translate? The Minister says there will be enough in surplus after paying the taxes to deal with these situations. Obviously there will be less money because if you take $1 and pay 52 cents in tax, you will have 48 cents left whereas before you had the whole dollar.

I am not saying there should not be corporate tax on profits, but it is a question of what, if any, additional amount should be deducted or should be set up in the form of contingency reserve or anything else before you have the amount subject to full corporate rates, and the practice of the insurance companies is that they have made use of a 6 per cent factor, an assessment that they felt was reasonable.

The Minister says they will have lots of money afterwards. I would say from what the witnesses said the other night that they need it against the potential contingencies that may occur. Who can speculate as far ahead as these contracts go as to what the situation may be? It is not as though the amount that went into the contingency reserve would not attract any tax in those circumstances; it would attract the 15 per cent. What we are really talking about is whether there is an element there which would take care of this projected situation in the future which may or may not occur, but you have to contemplate it; it is good insurance practice to contemplate it.

**Senator Connolly (Ottawa West):** Going back again to the evidence we had the other night, first of all we were told that to bring a company back that was in difficulties is almost an impossibility. I think the superintendent would probably agree with that. It would take a great deal of work and sometimes might mean the company being taken over by another company. But I think looking at it realistically if any weight is to be given to the evidence we had the other night, the only place the Senate could give it would be in attempting to persuade the Minister and the officials to do it through the regulations. Perhaps if they do not do it now, in the course of time and as a result of their experience they will see that it is desirable to make allowances along the lines that was suggested by the spokesmen for the companies the other night.

**Hon. Mr. Benson:** It really is a matter to be dealt with by regulation and this is subject to the government doing it without going back to the House of Commons. I should like to say, of course, that I have great respect for the views of the insurance companies. We have a sincere and honest difference of opinion in this regard. We do not question their actuarial reserves. Indeed we have indicated that they can be calculated on a fairly generous basis. I believe the companies should be able to provide it in determining their income and their liabilities, but the point on which we differ, and I have said it is an honest difference of opinion—I have my opinion and the insurance industry has theirs—is that beyond this provision for liabilities which one can foresee, any provision must be made out of tax paid money from the insurance industry the same as it has to be done by any other industry. It is true they are in long-term contracts and they can go through all sorts of difficulties over a long period of time. They make a contract, somebody dies 70 years later and they have to pay. Nevertheless, I think this sort of liability can be provided for in their actuarial reserves and, indeed, in the mortality tables, and I took this sort of thing into account.

**Senator Connolly (Ottawa West):** Your hands are free in the light of the fact you can act.

**Hon. Mr. Benson:** Yes, my hands are free, but I would not want to encourage anyone to think I would act because it would be dishonest, and under present persuasion, at least, I think I cannot take the step of allowing a reserve for general contingencies in the specific reserves allowed to companies in their financial statements.

**The Chairman:** There are two things I wish to draw to your attention. The first is that if companies increased their policy dividends the tax returns would be less and the surplus would be less, and your corporate tax return would yield that money. Secondly, if the

Superintendent of Insurance decides in his study of a particular company that he is not satisfied in the circumstances that the reserves which are deductible before arriving at a taxable income are adequate, he is not tied to anything provided in this bill. He may then say what it is that he wants, in which event the company would then have to provide additional reserves out of tax-paid surplus.

**Hon. Mr. Benson:** No, if they provided the additional reserves to provide for their mortality or their actuarial reserves were not taken into account in calculating it.

**The Chairman:** That is new to me. I do not think so.

**Hon. Mr. Benson:** I am sorry. Maybe I could clear this up. If the Superintendent of Insurance decided that companies should have surplus accumulated beyond everything else that is provided, it would have to be surplus after tax.

**The Chairman:** That is right. So these are factors that present possibilities of having to use after-tax dollars, where you get less than 50 cents on the dollar for that purpose, and where the demande for it comes from another department of Government.

**Senator Croll:** Mr. Minister, in speaking about cushions that you provided you say:

> In addition the system permits them to deduct an investment reserve of 1½ per cent of the book value of eligible assets.

First, I want to make myself clear and, like Senator Phillips (Rigaud), I declare my interest too: I am a policyholder.

**The Chairman:** That is interest on principal, senator!

**Senator Croll:** Two questions arise out of that: What other business gets that consideration? And how do you justify it?

**Hon. Mr. Benson:** The banks have the same provision, and really in large organizations where it is impossible to determine losses across a wide field, we indicated the reserve we thought would be fair at 1½ per cent. If experience proves this to be wrong, based on losses that occur, we can adjust it upwards. However, to sit down and go back to the banks and calculate the possibility of every loss on loans in the bank system would be impossible. The royal commission commented that the reserves they were presently keeping were too high and we said we would allow them 1½ per cent, which adjustment to this would provide us with $50 million a year over 10 years.

**Senator Croll:** This is the banks?

**Hon. Mr. Benson:** Yes, and we have done the same thing here.

**Senator Croll:** That is your statistic?

**Hon. Mr. Benson:** Yes, it is such a big business that you have to take something; you cannot take a look at each individual item.

**Senator Croll:** No, I realize that.

**Senator Benidickson:** I just want to raise this point, Mr. Chairman, because I think it affects the minister. While I never attained the high office of Minister of Finance, both he and I know that we held the same office, that of Parliamentary Secretary to the Minister of Finance, and had occasion to explain bills of this kind to Senate committees.

The question I raise is something I think is of importance to the Senate. I find this very important amending bill of many pages without anything printed on the right-hand sheets. I am told that you should never ask a question if you do not know the answer to it, but I am wondering what would have happened if, in my time, we had come to the Senate without some explanatory notes on the right-hand side of the bill to indicate what the substantial changes were and why they were there. I think it is the minister's responsibility. We have a blank bill here, as far as the right-hand pages are concerned, and, as I say, this is a very important bill. In the case of small bills amending other statutes, we usually get explanatory notes. This is a very important bill and we get none.

**Hon. Mr. Benson:** They are in on first reading, and it is a measure of the regard people have for the intelligence of the Senate that after first reading, in subsequent readings, they remove the explanatory notes, but the first reading copy has them.

**The Chairman:** How much comes off taxes for that?

**Senator Croll:** Do you say that on second reading you do have explanatory notes on the right-hand side?

**Hon. Mr. Benson:** On first reading.

**The Chairman:** They were in the first reading bill.

**Senator Benidickson:** We did not get a copy of the bill until it had passed third reading.

**The Chairman:** They were printed with all the amendments, and there were substantial amendments, but the notes were left out.

**Senator Croll:** Senator Benidickson has brought this matter to my attention with regard to two or three other bills, and we discussed this two or three days ago and decided that you people were giving us short shrift.

**Hon. Mr. Benson:** There was no intention whatsoever to do it. Of course, I do not print the bill; this is under the control of the Senate.

**The Chairman:** No, this is a Commons bill.

**Senator Benidickson:** The Minister wants his bill to pass, and to pass with some alacrity even in this place. He could not do it even in the dying hours of the session, if we were difficult because he had not assisted in the passage of the bill by providing some explanatory notes. I call myself a layman.

**Senator Connolly (Ottawa West):** I do not think the Minister needs any defence, but there are very few ministers who have come before us and have given us a 17-page brief.

**Hon. Mr. Benson:** Mr. Brown is going to stay with you, and he is the real expert on this bill.

**Senator Benidickson:** I did not want to scold Mr. Brown or anyone else, because at a lower level I went before the Senate and I hope that when I was presenting amendments to the Income Tax Act I had explanatory notes on the right-hand side of the clauses.

**Hon. Mr. Benson:** If I ever get into the Senate I will raise the same fuss.

**The Chairman:** It is getting tougher all the time, Mr. Minister. The Minister now has to leave—

**Senator Phillips (Rigaud):** Before the Minister goes, Mr. Chairman, I am sure he would not mind my reading into the record, by way of summary of this extraordinarily able brief that he has presented, a statement of the Canadian Life Insurance Association on the basic point on which there is disagreement. This summary of the subject matter "Contingency reserves and surplus" reads as follows:

> A unique characteristic of life insurance is its long-term nature. Contracts often span half a century, through wars, recession, inflation and other contingencies. We have been disturbed at an apparent lack of recognition of the need for certain safety factors essential to such a business.

Before the Minister leaves, I am still hopeful that he will indicate to Mr. Brown some room for flexibility in dealing with the subject matter before this committee.

**Hon. Mr. Benson:** I should simply like to say that reserves for liabilities that are there are provided for in the legislation. I am quite willing to provide these kinds of reserves, but I just do not find general reserves for contingencies acceptable. This is an honest difference of opinion. Perhaps I am wrong, and perhaps the insurance companies are wrong, but I certainly believe that we cannot embark in Canada under our taxation system on a program in which 50 per cent of the reserves for general contingencies—that is, for expansion and various other things that are necessary in business—is provided by the treasury of Canada.

**Senator Phillips (Rigaud):** This is not the first case I have lost, Mr. Minister.

**The Chairman:** Thank you, Mr. Benson.

I do not see any value at this time in going through even the life insurance portion of the bill clause by clause. I think, rather, we should address ourselves to the points that give us particular concern, and the points that were developed by the insurance officers the other night. In that connection, Mr. Tuck has a memorandum from the Canadian Life Insurance Association dealing with the question of the need for contingency reserves. Perhaps copies of that memorandum should be distributed, and we will see how we can work on Mr. Brown.

**Senator Croll:** In understood that Senator Phillips read the guts of this, as he put it. Are there more guts than that which was read?

**The Chairman:** Everything I have seen in the memorandum is important in presenting the case of the companies.

**Senator Croll:** I have not read the memorandum. I just took Senator Phillips' word for it.

**Mr. J. A. Tuck, Managing Director, Canadian Life Insurance Association:** Mr. Chairman and honourable senators, this is an elaboration of one reference in our brief that the chairman suggested we might prepare. I have copies here for the members of the committee. Later, at an appropriate time, some of the company representatives can expand on it, if that is your wish.

**Senator Benidickson:** This is in the way of a rebuttal to a brief presented the other night?

**Mr. Tuck:** No, it is an elaboration of one of the points—

**Senator Benidickson:** You had not seen this statement of the minister before?

**The Chairman:** Senator Benidickson, I thought that this was a good time at which to bring this in because there are questions arising out of it that Mr. Brown might deal with. Are you going to read this, Mr. Tuck?

**Mr. Tuck:** Yes, if that is your wish, Mr. Chairman.

**The Chairman:** I think the main portion of it should be read. The basis of your calculations at the end might be omitted.

**Mr. Tuck:** Then perhaps I might run down the main points, and leave out the detail. Our letter is addressed to Senator Hayden, and it reads this way:

> You asked for an elaboration of the reference to "a deduction of not less than five per cent of the increase in policy reserves" in the eighth and ninth lines of page 6 of the statement we presented to your committee last Wednesday evening.

Then we give a definition of "policy reserve", which is referred to in the bill and dealt with in the regulations.

> A policy or actuarial reserve is the measure of the funds that a life insurance company must hold specifically to fulfil its policy obligations. Such funds are required by the federal Insurance Acts to be so calculated that funds equal to such reserves, together with future premiums and interest earnings, would enable the company to pay its claims with nothing left over if assumptions as to mortality, investment earnings and expenses come to pass exactly.

Then, in the next paragraphs we deal with the need for contingency reserves and surplus.

> The duration of a single contract may bridge many contingencies that could affect mortality, investment earnings and expense experience, but the company cannot alter its commitments. These commitments also include obligations to make policy loans or pay cash values on demand—even if so doing involves the liquidation of long term investments at a loss. Surplus and contingency reserves are necessary to provide a safety margin over and above policy reserves and other specified liabilities to enable the company to keep all of its promises under the worst conditions that can prevail. It is therefore essential for the company to add enough to surplus and contingency reserves each year to maintain them at an adequate level.
>
> A life insurance company guarantees benefits in very long-term contracts—not infrequently extending more than 100 years from the original issue of a policy at a young age until final settlement by one of the instalment options payable to a younger beneficiary. The company and the supervisory authorities would be open to criticism if margins are not provided for unexpected risks over such a long period of time.
>
> The company's surplus is not free surplus that can be paid out, but rather a special risk reserve for contingencies that cannot be pinpointed in advance: for example, the abuse of disability insurance which was treated by many during the depression as if it were unemployment insurance, the 1918-19 influenza epidemic, wars, and the Halifax disasters.

There is a footnote referring to the fact that many companies had to draw down surplus during 1918. I might emphasize, Mr. Chairman, that these are only illustrations of the use to which contingency reserves have had to be put. There have been other occasions when they have had to be drawn down.

> These adverse occurrences have been infrequent in the past, but the possibility of their recurrence cannot be dismissed.

Nor can the possibility of accidental or intentional nuclear disasters in the future be dismissed.

On the other side of the balance sheet, a life insurance company has invested large amounts in long-term debt securities. Since bonds, other than Government bonds, must be valued at market value if this is less than book value, they are highly vulnerable to loss of statutory statement value as interest rates increase. A typical bond portfolio acquired over a period of years might right now have a statement value ten per cent to fifteen per cent below its amortized cost. Stock values can decline, and experience has shown that they can do so at a time of depressed bond values.

**The Chairman:** Yes, or yesterday.

**Mr. Tuck:** To continue:

If life insurance companies had not provided sufficient margins to offset losses in security values, some right now would be technically insolvent under the insurance law. Such margins are provided by contingency reserves and surplus. Again it is not free surplus that can be paid out, but rather a special risk reserve required to meet security market fluctuations which is a risk imposed on life insurance companies by insurance law.

We therefore believe that maintenance of a reasonable level of contingency reserves and surplus is a necessary element in the provision of guaranteed benefits just like the maintenance of policy reserves.

**The Chairman:** I think you can now move over to your proposals on the next page.

**Mr. Tuck:** Yes, and these, of course, deal only with the mechanism of how a change can be accomplished. At the bottom of the next page, under the heading "Our Proposal," we say:

Earlier we stated our belief that providing for a contingency reserve is just as necessary for companies guaranteeing future benefits in long-term life insurance contracts as providing for the increase in policy reserve.

An allowance for contigency reserves could be expressed in any one of a number of ways.

I will not deal with these in detail, but they are by reference to assets, by reference to premiums, and by reference to policy reserves. We then end up by pointing out that our specific suggestion that there be a reserve allowance in terms of "policy reserves" has been framed in the light of the provisions of the bill, and the draft regulations.

Then, Mr. Chairman, we come to a very important point having to do with the fact that our suggestion does not involve no tax at all on these transfers to contingency reserves.

Under the two-phased life insurance tax system in the bill, allowing a contigency reserve deduction in the calculation of taxable income for the business income tax would not exempt the amount deducted from tax completely. The effective rate of tax on additions to such contingency reserves would be approximately 15 per cent. This comes about because of the interaction of the business income and investment taxes together with the adjustment of the cost of insurance to pass the investment tax on to the policyholder.

Of course, any addition a life company chose to make to contingency reserves and surplus over and above the allowance we have proposed would first be subject to the full corporate rate.

Also, any amounts going into either policy or contingency reserves would be released into income when no longer required to cover obligations to policyholders.

**Senator Beaubien:** I should like to ask a question of Mr. Brown. If a life insurance company has $10 million book losses in Government of Canada bonds, can they if they want write off part or all of that?

**Mr. J. R. Brown, Senior Tax Adviser, Department of Finance:** As this law is written, on the sale.

**Senator Beaubien:** If they sell them?

**Mr. Brown:** Yes, sir.

**Senator Beaubien:** But they cannot buy another issue?

**Mr. Brown:** There is a special transitional arrangement whereby if they sell some of the bonds that were held when they started, the loss would come as a deduction over a period of years.

**The Chairman:** Ten years.

**Mr. Brown:** Ten years if they sell them in the first year, nine if they sell in the second, ending, if my quick mathematics are accurate, in 1978. We start this at a time when interest rates have been climbing, when most older bonds in particular are depressed, and some of the newer ones too, as you are well aware. Starting into a system like that you could argue that the insurance companies should start off with those low values, but that ignores the long-term nature of the life insurance industry. They bought those bonds for a six per cent or four per cent yield, maybe a seven per cent yield, and they were matching them up with liabilities, and consequently the Government felt that is the yield that ought to be brought to tax. They set their premiums on the higher rate.

On the other hand, if you look at the balance sheets now with these depressed values you will find a yield measured by reference to market value considerably higher than six per cent, seven per cent or four per cent yields, and the Government did not think it was appropriate to allow the loss right away of all of those depressed bonds. They thought it right to bring into tax only the yield they contracted for, the coupon yield, or if they bought at a bit of a discount a bit more than the coupon yield, but bring it in over the time they had contracted.

**Senator Beaubien:** So they pay tax on the coupon rate?

**Mr. Brown:** Effectively. If they bought at par they would pay tax on the coupon rate.

**Senator Beaubien:** If they sell the bonds they write off the losses over ten years?

**Mr. Brown:** Yes. The ten years is purely arbitrary. If they sell the bonds now we assume they will buy some other investment; maybe put it into a mortgage, and they will get some yield on the mortgage. After amortization over ten years the effective yield on that mortgage will be reduced back down to the coupon rate on the bond they sold.

**Senator Beaubien:** What about any other bonds they have, provincial or anything else?

**Mr. Brown:** The same treatment. Any bond they have bought in 1969, if it should move to a discount and they sell it, will be taken into account in the year in which they sell it.

**Senator Benidickson:** Government bond includes government at any level, municipal, provincial and federal?

**Mr. Brown:** This provision applies to all bonds.

**The Chairman:** And corporate bonds.

**Mr. Brown:** It applies to all bonds.

**Senator Benidickson:** Page 2 of the industry's brief refers to bonds other than government bonds in the second paragraph.

**Mr. Brown:** In the valuation of securities to apply the solvency test to insurance companies, I believe there is a distinction made between corporate bonds and government bonds. I believe Canadian companies are entitled to value certain government bonds at amortized values. If the market should be depressed temporarily, they are nevertheless entitled to treat these bonds at amortized value in determining whether they are a solvent company. The same is not true for corporate bonds. If corporate bonds that they hold go down, the companies have over a period of time, in accordance with the formula, to bring these bonds in their balance sheet down to market value, so the distinction is applied to the valuation for regulatory purposes, not that of taxes.

**The Chairman:** Are there any other questions to be addressed to Mr. Brown on contingency reserves and surpluses? I would expect that Mr. Brown might not depart from the text of what the minister has said, but I am willing to give him the opportunity! Having contingency reserves is an insurance practice of long standing, is it not?

**Mr. Brown:** That is true, sir. As you say, policy is a matter for ministers, and I think my minister dealt with perhaps that question primarily in his appearance here this afternoon.

**The Chairman:** I am not dealing with the question of policy, except policy reserves. I am dealing with the factual situation to see what your answer would be. It is a long standing practice of insurance companies.

**Mr. Brown:** Yes, it is, sir.

**The Chairman:** As you look at it, standing back over the years, it was a wise approach to this question?

**Mr. Brown:** Let me go further and say that the companies obviously have kept surpluses. The companies obviously ought to continue to keep surpluses. In fact, I am quite sure that Mr. Humphrys would get after them if they

did not keep surpluses. On the issue whether those surpluses should be out of before tax profits or after tax profits, I would point back to the statement made by my minister, which seems to me to cover all aspects of it and leaves me no room to elaborate.

**The Chairman:** Except that for the purpose of what you are saying you are enlarging your language. You are talking about surpluses, whether the surpluses should be first subjected to tax or not. I am not talking about the principle involved in this bill of taxing certain revenues of insurance companies, which we call surplus. I am talking about some additional deduction, or some additional thing you might take out of the amount before you subject the whole thing to corporate rates. That is the element I am talking about, and on that element you have agreed with me that insurance companies have always followed that practice and will undoubtedly continue to do so.

**Mr. Brown:** I think so.

**The Chairman:** And that Mr. Humphrys may whip them into line if they do not.

**Mr. Brown:** I have that feeling.

**Senator Benidickson:** Did the minister say that, so far as life insurance companies are related to what you call reserves, they are being brought into line with the inner reserves related to banks? Is there some attempt to go forward parallel with these things.

**Mr. Brown:** I think, Senator, that the closer parallel between those two has to do with the investment reserve that is being provided for insurance companies. As you know, the inner reserves of banks, so-called, have been computed basically by reference to the assets which they hold.

**Senator Benidickson:** And they were reduced by a recent budget.

**Mr. Brown:** Yes, in this same budget, senator, it was reported that the maximum amount of the banks reserves should be reduced to or towards the 1½ per cent. It would be some years to get to the 1½, of eligible assets, and a similar reserves based on eligible assets is being provided for the insurance companies.

**The Chairman:** Mr. Brown, the minister's statement and your reference to it now, puts us in the position where we may not be able to dictate to you what you shall put in your regulations. But we are still left in the position, maybe within certain limits, where we can study the bill and see if there is any place in the bill where we can provide, by amendment, what we have been trying to accomplish by some redrafting of the regulations. Of course, that course is open to us.

It hardly seems advisable—Senator Connolly looks at me in a somewhat puzzled fashion—I would think it would be open to us, in the question of the regulations, to suggest—by amendment, to add a proviso, as to some minimal or basic statement in the question of a plus to actuarial reserves. I certainly do not think we are interfering with Ways and Means.

**Senator Connolly (Ottawa West):** I would think, Mr. Chairman, that if we cannot persuade the minister to exercise his discretion in framing the regulations along the lines proposed by the companies, that we would be pretty well precluded from interfering here.

**The Chairman:** Interfering—when you say "here"—in what?

**Senator Connolly (Ottawa West):** In the bill, with any of the tax proposals. We can defeat the bill, of course, but I do not think anyone wants to do that. It seems to me that our powers are pretty well restricted to the persuasion with respect to what he has in his regulation.

**The Chairman:** We cannot increase any rates.

**Senator Connolly (Ottawa West):** Nor could we decrease them, without interfering with Ways and Means.

**The Chairman:** And you say that we cannot decrease them, without interfering with Ways and Means. I think there are even limits in that.

**Senator Croll:** Are you not interfering with Ways and Means when you interfere with the tax contingency reserves? Are you not on even thinner ice than normally, when you take that attitude as to the powers you possess in the Senate?

**The Chairman:** That is not the question that I have been discussing.

**Senator Croll:** I thought it was the question . . .

**The Chairman:** The question is whether there is an element of reserve for which there

should be a reduction. In other words, in the provision for policy reserves there should be a factor which reflects the contingency situation.

**Senator Croll:** Has he not made an allowance for that factor?

**The Chairman:** He has not made an allowance for that factor and I do not think we are interfering with Ways and Means in that narrow field.

**Senator Connolly (Ottawa West):** If we could persuade the minister to exercise his discretion . . .

**The Chairman:** The question does not arise, if you persuade the minister to do that. I am talking about it obviously in that we have not persuaded him.

**Senator Connolly (Ottawa West):** We did ask him whether he would exercise his discretion and, if he did give the companies the relief they sought, whether we would be interfering with his budgeted surplus. I do not think he answered that question specifically.

**The Chairman:** However, I think this is a question we have to come back to later. I do not think we can argue it with Mr. Brown. He is not going to take part in it, and I would advise him not to take part in it, because we are getting into an area that he should not be concerned with.

Have we any other question to ask Mr. Brown on this particular point?

**Senator Benidickson:** In dealing with the bill in general, or in this particular.

**The Chairman:** I think it is clear what the bill is intended to cover. I do not think there can be any other doubt on that.

Remember, there are other phases of the bill dealing with the question of taxation of life insurance companies, and you may have some questions, and now is the time, if you have. This bill is divided into two sections, one is for life insurance companies and the other is the tax amendments. Mr. Brown is here to deal with both of those.

There was a question raised the other day. The minister dealt with it, after a fashion, in his statement here. That is the question of depreciable assets and the provision that you make with respect to write-off, and you say that if there is an addition to the building—it is on page 63, clause 32 of the bill. At page 15 of the minister's statement.

In regard to the $100,000 that you have provided there, in effect what you have said is that you have a capital improvement to some extent and it costs more than $100,000 and it is made any time after the original structure and before this new law comes into force, it would treated as a separate and distinct building, so that the capital cost allowances would be regained from that date.

Otherwise, is it your interpretation of the bill that, if the cost is less than $100,000, that it become part of the original cost, even though it may have been constructed 20 years later and, if the original building has a 40-year life, it takes on a 40-year life for the purposes of capital cost allowances?

**Mr. Brown:** That is the way it would work, senator. It is part of an important problem of how to start capital cost allowances for companies which have not been in the tax field for 50 years.

One way might have been to recompute capital cost allowance as it would have been had they been in the tax field all along. In which case, one would have taken a straight line depreciation to the end of 1948—it may be at half rates, it may be at full rates, depending on whether the company had profits in that year—and then apply the declining balance system from that date and so bring out the capital cost allowance to the end of 1968, bear in mind that the declining balance method has higher rates than is suggested here on straight line. In fact, on balance, the cumulative provision for declining balance remains higher than the straight line depreciation for 32 years. Of course, our system only started in 1948, so that is only 21 years. So, buildings older than that would have had such a computation—I am speaking now only in the case of computations for the purpose of arriving at capital cost allowances on the original structure—of the undepreciated capital cost, meaning that any sale could result in recapturing allowances up to whatever the capital cost was.

As part of the arrangement to make the thing manageable—because no one wanted to reconstruct the depreciation schedules back for 20 years—we struck on this device of being able to look at the balance sheets of the companies, with limited exceptions and saying: "All right, you have had the building 10 years, 15 years, cumulative allowances will

be cost times the number of years, multiplied by 2½ per cent". We reduce it to capital cost. We say: "This is what you start with, just as if you bought it today for that purpose, and the only depreciation we will recapture is whatever is written after today."

Then the problem came up, what about major additions—air conditioning, the installation of elevators, and so on. It seemed that it might well be that the cost of some of these additions had been written off to expenses. Some of it might well have been capitalized in the company's accounts, but some might have been written off as current expenditures.

The question comes up of how much digging is one prepared to do; how much digging is it right to get the companies to do and how much checking. Well, the $100,000 figure is admittedly arbitrary. In the first draft, the draft for first reading in the house, the $100,000 only referred to an extension outside the walls of an existing building. The industry came and said, "Look, a lot of buildings have been air-conditioned. You can hardly even turn around without spending $100,000. Shouldn't this include internal extensions or improvements as well?" So that at second reading an amendment was put in to that effect.

So there is no doubt that for some small buildings this may not be as generous as I should like to think it is for those with big buildings, but as the minister says, it is a fair deal over-all.

We might have been more precise; instead of having $100,000 we might have had it as 10 per cent applied, no matter how large or how small the building.

**The Chairman:** As I see it, there are a few of the smaller companies to which $100,000 would be an amount of some considerable importance.

**Mr. Brown:** I agree.

**The Chairman:** You might, alternatively, have provided an option to the effect that, if they did not want to accept this basis, they could go to the regular accounting basis.

**Mr. Brown:** That is true, senator. We could have provided that.

**The Chairman:** If you were thinking in terms of the smaller company and that it was important enough, that is what you might have done. What you are really trying to do is to simplify the administration. Is that right?

**Mr. Brown:** That is right, senator, and compliance for the companies.

**The Chairman:** Yes.

**Mr. Brown:** This is where I say there were two points to it. One was to use the straight line, which is by and large beneficial; and the second was to deem that what we had got at the end was capital cost rather than undepreciated capital cost. There is a matter of recapture. The third point was to put in the $100,000.

Two work one way and the third works the other. I readily agree that it works the other way more for the small companies than for the large companies.

**The Chairman:** On the question of recapture, coming to the starting point of January 1, 1969, with a fully depreciated building, then anything that you might realize on that building any time afterwards would come into income.

**Mr. Brown:** It would, you say?

**The Chairman:** Yes, wouldn't it?

**Mr. Brown:** No. We have deemed that the starting figure would be capital cost, which means that any proceeds in excess of that figure would not come into income.

**The Chairman:** What I said was that, if I fully depreciate by that time, then anything I receive afterwards...

**Mr. Brown:** Would be capital gains, senator, to the extent that it exceeded this beginning value of the building.

**The Chairman:** All right, I am glad to get that straight.

Now, are there any other questions that the committee wants to ask in relation to the life insurance business as dealt with in this bill? It would appear that the point uppermost in the presentation we received from the insurance companies was the question of contingency reserves, because there are other parts to this bill that we might deal with and, later, I intend to invite the representatives of the insurance companies to make whatever reply they wish to make on the minister's statement.

**Senator Leonard:** Mr. Chairman, on page 17 of the bill, subsection (3) (a) (i) there is power there in computing a life insured income to deduct such amounts in respect to policy reserves for the year of life insurance policies of a particular class as allowed by regulation. This seems to give power by regulation to provide the amount of those policy reserves. Now, if the companies in the past have felt that, over and above their method of calculating their policy reserves, it was necessary to have this contingency reserve out of surplus, then, in the light of the change in taxation, they might feel that they should strenghthen their policy reserve. I presume there is power under this subsection to allow additional policy reserves or allow such policy reserves as they may feel necessary?

**Mr. Brown:** Senator, I think there is quite a wide scope for the Governor in Council to pass regulations which would permit various levels of policy reserves. The draft regulations have been made public to give an indication of what this would mean, because it is a very essential point to the taxation of life insurance companies. But I think it is only fair to say that the regulations are not meant to introduce a voluntary tax system which permits insurance companies to write any type of policy reserve they choose.

I believe that the regulations as presently drafted provide for fair policy reserves. Perhaps, in a few areas, they are a little on the generous side; perhaps in a few other areas the companies would say otherwise.

**The Chairman:** Senator Leonard, I was wondering whether you had thought that this provision to deal in this manner by regulation might really have the effect of imposing tax.

**Senator Leonard:** I should hope it would have the oposite effect.

**The Chairman:** Just looking at it, the Governor in Council passes a regulation and decides to allow certain actuarial reserves, but other reserves he does not include in the regulation. The effect is exposing more of it to tax.

**Senator Leonard:** I presume that happens in a great many tax statutes.

**The Chairman:** That would happen and would be perfectly all right where, in the statute, you have the deductions, but here you have only the authority for the deductions, but not for a specific amount.

**Senator Leonard:** Sooner or later the amounts of tax would be the same, just as in the case of depreciation allowances which are generally by regulation and depend upon the class of article and the length of its life and so on. I would think that this is along that line. But what I was really anxious to find out was whether there was sufficient in flexibility in this that I would expect that companies might have to change their method of calculation as a result of this tax, and justifiably so. And they would have to change their policy reserves or method of calculating their policy reserves. I presume the regulation will apply to all companies—that is to say, one company may not be able to take a too generous amount of reserve and another company may not take sufficient reserve. There may be some general rule with respect to the various kinds of policies, but within that scope, if the companies felt they really did need to strenghthen their policy reserves in the light of this change, that could be taken into consideration in the regulation.

**Mr. Brown:** Senator, I think it is clear that there is quite a scope here for the Governor in Council to increase the policy reserves in ways which are beyond those that are in the draft now.

**The Chairman:** But the Minister said that he could not recommend it at this time, which means that even though the scope is there, this will not be done in the regulations.

**Mr. Brown:** Well, all that I might say that might be helpful is that it will not be the only industry where it is felt for regulatory purposes that they should have capital surplus, contingency reserve or whatever you like to call it, out of after-tax income. The Canadian general insurance companies are required by law to have assets equal to 115 per cent of their liabilities, and therefore they are required to keep a contingency reserve of 15 per cent of liabilities. This has to be provided out of after-tax profits. The trust and loan companies also have set ratios which limit the loans they can make by reference to the capital they can provide which means that they too are required to provide a cushion for the protection of their customers. This capital is in many instances provided out of after-tax profits. There are similar although not quite so forthright regulations for the banks. Many financial intermediaries are faced with a solvency test which they must meet in part out of after-tax profits. I do not want to get into a debate of the merits of this.

**Senator Phillips (Rigaud):** But, Mr. Brown, there are some judicial decisions which hold that the taxpayer is the best judge, as long as he is an honest taxpayer, as to the reserves he needs for the running of his business. That being so, and in view of the compliment that the Minister gave to the life companies that there is a legitimate difference of opinion, could this not be taken into consideration? This is not a group of taxpayers coming and trying to minimize legitimate taxation that should be rendered against them. Do you not think that there is something in this point where there is this honest difference of opinion on the part of a very important group of taxpayers that you might well apply the judicial decisions that in assessing or determining taxable income the view the taxpayer may be the best criterion as to what is taxable income.

**Mr. Brown:** It is dangerous for me to comment on judicial decisions in your company, senator, but would it be fair to say that those decisions have to do with reasonable amounts of expenses rather than reserves.

**Senator Phillips (Rigaud):** Expenses, and reserves in some instances. The general conception is that the taxpayer is the best judge under normal conditions, if he is an honest taxpayer, as to what this taxable income is. Here you have the Minister saying that this group of taxpayers have expressed an honest difference of opinion, and this is expressed also in the brief. They have said that in order to run their business properly and to protect their policyholders and so on that they run a risk of being reduced to determination of taxable income in excess of total profits in the normal sense of the term. That is a very important opinion expressed by a very important group of companies. So I request—and let me make it clear that I am not a spokesman for the insurance companies; I am speaking in my capacity as a senator—that you consider this as a very serious point. This is not a group of people coming to seek an amendment to a law on an *ad hoc* basis. You can see the reaction of this Senate group and you can see a sense of frustration in the interpretation of the present constitutional practice that not much can be done, and this is why this point is being pressed notwithstanding the consistent rebuffs we have been getting. Perhaps, in order not to be understood, I should not use the word rebuffs. Perhaps I should say "resistance".

**The Chairman:** Senator Beaubien?

**Senator Beaubien:** On Page 17 of the bill, clause 3, we have the point that Senator Leonard is talking about. Does this mean he wants insurance companies to put away more than 1½ per cent tax free?

**Mr. Brown:** In this case it is not the Minister himself, it is the Governor in Council.

**Senator Aseltine:** In making the regulation.

**The Chairman:** The Governor in Council could in the regulations define the reserve.

**Senator Beaubien:** The Governor in Council then might let them put away the higher amount of the tax-free reserves.

**The Chairman:** But the Minister said he would not recommend it at this time.

**Senator Connolly (Ottawa West):** The Minister himself might say that the time could come or a situation could arise in which he could exercise power here to determine some of these reserves to be increased with tax-free money, not with tax paid money. He talked about tax paid money constantly because he intends to tax it at this time and apparently he is immovable on that.

**Senator Leonard:** In the final drafting of those regulations, I would like to suggest to Mr. Brown and through him to the Minister that they should take into account the great depreciation that has taken place in Dominion of Canada bonds and in fact in all government bonds, so that at this particular time the installation of a new tax and of a 1½ per cent allowance on investments is obviously considerably out of tune.

**The Chairman:** It is inadequate.

**Senator Leonard:** What I am really suggesting is that the allowance of policy reserves should take into account this degree of great depreciation on number 1 bonds.

**The Chairman:** Even if we are reporting the bill without amendment, Senator Leonard, you could always include recommendations along the line you are suggesting in the report.

**Senator Leonard:** I would be very happy if you would do that.

**Mr. Brown:** I will take your message back to the Minister.

**Senator Connolly (Ottawa West):** Obviously Mr. Brown, the Minister, and he says he was here the other night when we had representa-

tives of the industry, knows the very great concern there is on this point, and I think it will have to be watched and even if the Minister is adamant at this time, it seems to me that if the matter were drawn to his attention before the bill is open again, there might be a change.

**The Chairman:** I am going to suggest that while we are on the subject of life insurance rather than move to other parts of the bill we might now hear from the life insurance representatives if there are any representations they wish to make at this point. We are ready to hear any further representations or emphasis or reemphasis on what was said the other evening that the insurance representatives may wish to offer.

**Mr. E. G. Schafer, President of the Canadian Life Assurance Association:** I will call on Mr. Lemmon to speak on this.

**Mr. A. H. Lemmon, Chairman, Special Committee on Federal Income Tax, Canadian Life Insurance Association:** Thank you very much, Mr. Chairman and honourable senators, for the opportunity of speaking to you again.

I read with a great deal of interest the brief that was submitted by the Minister of Finance to the meeting here today, and I think it bears evidence, again, of what we said the other evening when we were here about the number of hours that were spent by representatives of our association with representatives of the Department of Finance in discussing all aspects of this bill. This is an excellent explanation of many of the points that were covered in those hours of negotiations, and we wanted to make it perfectly clear that the representatives of the Department of Finance recognized many criticisms that we made of the original draft and amendments made from time to time. I think the Minister brought out very clearly those that are left are matters of differences of opinion on the importance of certain items where we were not able to arrive at an agreeable solution with the Department of Finance before the bill and the regulations came down.

I read with particular interest the first four pages of the memorandum, and we were very happy to see that the Government fully recognizes the potential impact of this tax on the savings habits of Canadians and on the generation of what you might call fixed interest capital in this country. The industry did submit to the Department of Finance a very complete summary of our estimates of the effect of these proposals on the generation of that capital. Unfortunately, we did not receive an opportunity of discussing these in depth with the officials involved.

It is evident from these pages that these did make some impact, and I was particularly noticing the sentence at the bottom of page 4, where the Minister said:

> I would not deny that the taxes on insurance companies will bear more directly on savings than many other taxes,...

It is obvious the Minister has come to a judgment on his own assessment of the impact, weighing it against the volume of revenue that he is to receive and the principle of equity as between institutions. I can only say that our institution feels that perhaps the effect on the savings habits of Canadians and on the generation of fixed interest capital will be more serious than perhaps even the Minister appreciates.

On page 6 the Minister does start to enumerate those areas where there still remains a difference of opinion with the industry, where he says:

> The complaints of the industry on this investment income tax are essentially that the deduction for expenses and the tax credit for the provincial premium tax should be larger and should be related to the kind of business done by the company.

His analysis at the top of page 7 of the difficulties involved is an excellent one. I suggest, however, that in the paragraph at the bottom of the page...

**The Chairman:** That is, page 7?

**Mr. Lemmon:** I am referring to page 7, about a quarter of the way from the bottom, where this appears:

> Moreover, the figure of 50 per cent of the expenses attributed to the savings element results in a ratio of expenses to investment income that is considerably higher than the expense ratio which the life insurance companies change on deposit administration accounts...

I submit, Mr. Chairman, that this is not really a comparison because the deposit administration accounts are basically investment administration accounts with very little other expense attached to them, whereas for their ordinary policyholders there are selling

expenses and administration expenses of a type that are not applicable to a deposit administration account at all.

Somewhat the same remarks would apply in comparing it with mutual funds and management of funds left with trust companies for investment. I am not in a position to comment on the comparison with banks. These are figures that I have not seen before.

The industry, I think, would agree with the minister's last sentence in that paragraph at the top of page 8:

> Over the years it may be possible to get a more accurate determination of what is reasonable.
>
> I would also be prepared to consider later any logical formula that the Life Insurance Association could suggest that produces a more equitable treatment of the differing mix of savings and insurance elements in the business of indiindividual companies.

Our Association will continue to provide officials of the department with additional information in this area. We still think that the split of 50-50 is low, and we would hope that before too long we can demonstrate that with a sufficient degree of force that some alleviation will be granted.

**Senator Connolly (Ottawa West):** By regulation?

**The Chairman:** By whatever it takes.

**Mr. Lemmon:** By either amendment of regulation. I believe that most of that would have to be done in the act. Is not that so, Mr. Brown?

**Mr. Brown:** I believe so.

**Mr. Lemmon:** I believe that there would have to be an amendment of the act.

**The Chairman:** Of course, if you have convinced the minister then there will be no difficulty about getting an amendment.

**Mr. Lemmon:** So far as the premium tax is concerned, it is the opinion of our industry that it is not on all fours with the expense provision at all. This is not a tax that is levied on any other institution, and it is levied not only on the savings element but on the whole element. It is, in effect, a service sales tax which was originally applied to the life insurance industry in lieu of income tax. Therefore, we submit that when a income tax is, in fact, imposed on the life insurance companies, they should be granted 100 per cent alleviation from the premium tax, and not 50 per cent.

The comparison with general insurance companies is not really valid, in our opinion. They are not taxed in the same way that life insurance companies are. They are taxed on their investment income, and to just pick out this one aspect in order to compare them with general insurance companies, is, in our opinion, not quite valid.

**Senator Connolly (Ottawa West):** When you talk about premium tax you are talking about a tax that is levied by the provinces?

**Mr. Lemmon:** This has now been assigned to the provinces. At one time the dominion shared in this tax.

**Senator Benidickson:** Was it assigned just the other day at the conference?

**Mr. Lemmon:** No, it was years ago—at least 20 years ago.

**Senator Connolly (Ottawa West):** What you are looking for is 100 per cent relief from that in the interests of avoiding double taxation.

**Mr. Lemmon:** That is right. It is a sales tax on service that no other service is asked to bear.

**The Chairman:** The minister admits it is a sales tax.

**Mr. Lemmon:** It is a sales tax which no other industry is yet asked to bear. Shall I underline the word "yet"?

**The Chairman:** Yes, I think you should.

**Mr. Lemmon:** The Minister is quite right in what he says in the last paragraph on page 8, that the main complaints of the industry relate to the tax on their business income, and particularly to the weight of tax. I think his last sentence on that page, going over to the top of page 9, points out very well the substantial problems involved in our proposals. Perhaps I might read that:

> As a result, if the company reduces its policy dividends in an effort to pass the tax on to policyholders, then its taxable income is increased and the overall weight of the taxes on the company is increased.

I think honourable senators are well aware of the way in which life insurance is carried on in this country. The majority of the busi-

ness is carried on by mutual companies. The Minister recognizes the need for surplus in a company and says that any company needs a surplus. This is quite true. Other types of companies have other ways of raising that necessary surplus. They may ask their stockholders for additional capital; they may reduce dividends to the stockholders, which does not increase their tax burden at all. Mutual life insurance companies, and to a very large degree stock life insurance companies, in this country have only one way of raising additional reserves for surplus, and that is withholding dividends from policyholders; in fact, to raise the price of their product, and it is necessary under the formula proposed to cut taxes by approximately $1.75 to produce an addition to surplus of $1. I submit that this produces terrific pressure on the managements of life companies, pressing them to live more dangerously than perhaps they should in view of all the hazards that face the industry over the years. This would be particularly true for those companies that are perhaps less competitive and in a less strong position to do it.

The pressure on the managements of those companies to live dangerously, to reduce their tax burden by cutting the price of the product to their consumers, will be very difficult to resist. We think this will have an overall effect of weakening the companies and their ability to fulfill their long term contracts.

**The Chairman:** If that happens, of course, it would be pointed up right away, I would expect, by the Superintendent of Insurance.

**Mr. Lemmon:** It would certainly be pointed up by the Superintendent of Insurance. He is here, and he will have to speak for himself. I suggest, however, that it may well have the result of compounding some of the difficulties he might have now, and create some that perhaps he otherwise would not have.

**The Chairman:** Others that he would not want but may get.

**Mr. Lemmon:** On page 9, in the last sentence of the third paragraph the Minister says:

> I also indicated that in my view the taxes would reduce the annual accumulation of income in general contingency reserves of the life insurance industry. I still believe that these are the most likely effects.

With this I heartily agree. It is our opinion that the impact of this compounding of the tax on any reduction on dividends will put pressure on managements, which will produce problems.

I think those are the comments I would wish to make, Mr. Chairman. At the bottom of page 10 the minister points out the leeway allowed in the tax law for varying the reserves carried. However, the companies are limited in taking advantage of this by the very wording he used:

> ...particularly when that is necessary to cover cash surrender values, and therefore do not show the difference in their surplus.

This reduced the ability of the company to take advantage of the leeway that is granted in the act.

**The Chairman:** Do I follow it? You mean the difference that results between the net level premium basis and the modified basis?

**Mr. Lemmon:** And the modified basis, that is right.

**The Chairman:** We are tied in. Does that mean you will not be able to use to any great extent the alternative?

**Mr. Lemmon:** This will depend and vary from company to company, dependent on the cash value basis?

**Senator Benidickson:** I am sorry, Mr. Chairman, I was out.

**The Chairman:** We are dealing with Canadian Life.

**Mr. Lemmon:** There are other points in the memorandum. I hesitate to point them out, Mr. Chairman. They are not quite accurate. One is at the bottom of page 11:

> A third contingency to which the companies referred was that policyholders might surrender their policies and the companies would have to sell securities at a loss to meet these surrender values. Our examination of this did not lead us to feel that it justified what was proposed. The companies build surrender charges into their table of guaranteed surrender values in the case of early surrenders. This gives them a cushion against losses they may incur through the sale of securities to meet the surrender claims.

Mr. Chairman, in the life insurance industry it does not work that way. The surrenders

in the early years do not cause a drain of cash: it is the surrenders in the later years, when there are no surrender charges, that cause the loss of cash.

**The Chairman:** You cannot surrender something until it builds up.

**Mr. Lemmon:** And by the time it builds up, the surrender charge has disappeared.

**Senator Benidickson:** There might be a rebuttal of that. I have made a note of that.

**The Chairman:** There cannot be any rebuttal on the fact of the cash surrender value.

**Senator Benidickson:** You will have people here on that—not that I am asking for a rebuttal, I am just saying this.

**Mr. Lemmon:** On page 12, in the second paragraph, the second last sentence:

> However, the bulk of the selling expenses connected with issuing a policy are incurred and will be deducted for tax purposes in the first few years of the policy's life whereas the premium usually remains constant throughout the life of the policy.

The next sentence is the one to which I take some exception:

> As a result there is rather more of the premium available in later years to meet other operating expenses.

Unfortunately, mortality risk increases in those later years and uses up a larger and larger proportion of the premium, so in the later years very little is left for expenses.

**Senator Benidickson:** It is this kind of thing that I wanted to...

**The Chairman:** It is useful, because it will be put in the memory bank as a lot of facts, so that when any changes are being considered they will not be considered entirely on this memorandum but will be on the corrections to it. It is important to have the corrections.

**Senator Benidickson:** This comes back to the regulations and the value of this committee for discussion of the regulations.

**Mr. Lemmon:** I would like to discuss a paragraph on page 13:

> I should also like to point out that over the period of ten years from 1957 to 1967 the ratio of surplus to total liabilities on the world business...

I underline the words "world business"...

> ...of Canadian life insurance companies as reported by the Superintendent of Insurance has risen from 6 per cent to 7.6 per cent. During the year 1967 the ratio of surplus to total liabilities increased from 7.4 per cent to 7.6 per cent.

The companies are becoming increasingly aware of the declining market value of their assets.

The next sentence reads:

> My belief, after looking over the results for that year, is that many of the companies could have paid taxes comparable to those proposed in this Bill, they could have maintained their dividend scales at the rates which were in effect, and still they could have added to their surpluses or their contingent reserves an amount equal to about 5 percent of the increase in their total liabilities.

I have not seen those figures or had an opportunity to examine them. I know the figurés of my own company in some detail and I wonder if, in examining those figures, the Minister took into account that this is the world business of life insurance companies and not just the Canadian business. In the case of our own company, in the year 1967, if we had deducted from our Canadian earnings for that year the tax that is now proposed, we would have had a very substantial deficit. On the other hand, if it had been deducted from our world earnings we would not have had adeficit. We are required by law in the United States and by the tax law to maintain a surplus in the United States.

I submit that that is not a fair figure to be brought into our ability to pay taxes in Canada. We do also carry on business in the British Isles where the law is not as rigid. We are not required to carry a surplus there but, in fact, do.

I just wonder if these figures have taken into account that many of the large Canadian companies do carry on business outside of Canada and that much of their retained earnings accrues to business outside the area subject to this tax.

**The Chairman:** If it does not bring that in or reflect that, then it is not a fair statement, because the only tax we are talking about is the tax on Canadian life insurance business income.

**Mr. Lemmon:** That is right, sir.

**The Chairman:** Yes.

**Mr. Lemmon:** On page 14 the question is raised as to the treatment of Canadian common stocks dividends. It was not the submission of our association that there was anything wrong with the basis that was proposed for life insurance companies. We merely pointed out that it was inconsistent. It appears from the last sentence on page 15 that the inconsistency may be removed in another way.

**The Chairman:** Maybe you will get a vote of thanks for calling their attention to it.

**Mr. Lemmon:** I think that concludes my remarks, Mr. Chairman. We appreciate very much the opportunity of presenting our views to this forum.

In the early stages of our discussions with the Minister of Finance we were led to believe that the proposals would be introduced in the House of Commons in the form of a White Paper and that ample opportunity would be given to representatives of the association to present their ideas before the proposals actually came down in bill form. Somewhere along the line the Government changed its mind in this matter and brought the proposals down in bill form, which did not give us an opportunity to present our views before the House of Commons or the members thereof. Therefore, we doubly appreciate the opportunity of presenting our views before this body. Thank you very much.

**The Chairman:** Are there any questions?

**Senator Carter:** Mr. Lemmon, the impact of this legislation on the companies will, I presume, carry over to the policyholder. Will it affect policyholders who have paid-up policies?

**Mr. Lemmon:** If they are participating policies and are still receiving dividends on those policies, yes.

**Senator Carter:** Will it carry over into the new policies of people who have just started to take out policies?

**Mr. Lemmon:** Yes.

**The Chairman:** And who receive dividends?

**Mr. Lemmon:** And it may well affect the premiums on non-par insurance as well. This is an individual company matter.



**Senator Benidickson:** Senator Carter raised a very interesting question. Your reply was equally interesting. You said participating insurers. I can understand that. It would affect their dividends. But on a contractual basis, where the profits of the company were not distributed, say, on...

**Mr. Lemmon:** On what we call non-participating contracts? No, they will not be affected.

**Senator Benidickson:** They have contracts with you for a certain period, and you have made your investments on that basis and you have anticipated your taxes on that basis.

**Mr. Lemmon:** That is not quite right, but there is a provision in the bill recognizing existing non-participating contracts which will be exempt from the 15 per cent investment tax.

**Senator Aseltine:** How will this bill affect the premiums of people applying for insurance from now on?

**Mr. Lemmon:** I am sorry I cannot even answer that for my own company let alone answer it for the industry. This is a matter for the individual members. Each company has to decide the impact of the tax on that particular company and what effect it will have on the premiums and the dividends of each individual company. This is something we do not talk about amongst ourselves.

**Senator Benidickson:** But we are in an era of fabulous interest rates for your industry. I mean the individual speculator might expect more but your industry has always been conservative because you have a gilt-edged security for long terms at very high rates. A new buyer of insurance could participate in that.

**Mr. Lemmon:** That is right. This will be taken into account as well.

**Senator Isnor:** I would like to pursue the question raised by Senator Carter about paid-up policies. There must be hundreds and thousands of paid-up policies, 15 or 20 years' old. You have said that those policies would be affected.

**Mr. Lemmon:** If they are not receiving dividends on the paid-up policies, those dividends could be affected, but only the dividends.

**Senator Isnor:** In what way?

**Mr. Lemmon:** This again I cannot answer. It is a question for the individual company to resolve as to how it will alter its dividend distribution to take this tax into account.

**The Chairman:** If you assume the dividends continue in the amount at which they are now, that amount would be income in the hands of the particular policyholder.

**Mr. Lemmon:** Only if he surrendered the contract. If it matures as a death claim, it does not.

**The Chairman:** I am talking about a limited contract.

**Mr. Lemmon:** No, it is only affected if it is surrendered.

**Senator Benidickson:** Could I ask a question to which I do not know the answer? Is there a difference between a mutualized group—and we have had a lot of legislation about mutualized groups and the ordinary insurance company. What would the effect of this legislation be on the policyholders of such a group as compared to, say, an insurance company that was owned by private investors.

**Mr. Lemmon:** Basically there is no difference on the impact of this tax on a stock life company and an ordinary insurance company.

**The Chairman:** If there are no other questions of Mr. Lemmon, I understand Mr. MacGregor has something he wishes to say. I might also add that when we finish dealing with these life insurance company matters, we might adjourn until 9.30 tomorrow morning to deal with the other aspects of the bill which will not take long. This will enable Senator Leonard's committee to go to work this evening.

**Senator Leonard:** Thank you very much, Mr. Chairman. The Finance Committee has a meeting at 8 o'clock this evening.

**Senator Connolly (Ottawa West):** In addition to this bill, do we have any other bills to consider?

**The Chairman:** Tomorrow morning we have the two National Housing bills, but they will not take very long.

**Senator Benidickson:** Mr. Chairman, because of my former association, to which I referred earlier this afternoon, with the Department of Finance, before Mr. MacGregor speaks may I say for the benefit of the record of today's proceedings that Mr. MacGregor is a gentleman who frequently gives testimony before this committee, in the past usually for the Government. I would like to say that he is highly respected and very much admired by us.

**The Chairman:** It is all right to say it, but it is quite unnecessary because we all know Mr. MacGregor well.

**Senator Benidickson:** I wanted the Canadian Life Insurance Association to know that anything he says will be highly regarded.

**Senator Connolly (Ottawa West):** He had a standing ovation the other night too!

**Mr. K. R. MacGregor, Immediate Past President, Canadian Life Insurance Association:** Mr. Chairman and honourable senators, I think Mr. Lemmon has adequately commented on most of the points in the Minister's statement. However, if I may be permitted to do so, I should like to add just a word about the need for contingency reserves in a life insurance company and the weight of the tax proposed.

Before so doing, might I simply comment on three statements made by the Minister? First of all, near the bottom of page 12, the last full paragraph, the statement is made:

> On the whole, however, we believe that the companies are being permitted to compute their incomes in accordance with rules that are at least as generous as those which apply to their competitors and that any further reserve strength needed by the companies should be provided out of after tax profits.

My first comment on this statement is that I do not think any of our competitors are subjected to what I have referred to previously as a double-barrelled tax formula whereby they pay on one ingredient of their business regardless of their overall operating results.

Secondly, we have not been asking for an appropriation for contingency reserves after tax, but at the assumed policy holder rate of tax of 15 per cent rather than at the full corporate rate of 52 per cent.

**Senator Connolly (Ottawa West):** That is very important. I do not think that has been brought out as clearly before. Would you say it again, Mr. MacGregor?

**Mr. MacGregor:** It is simply this, senator, that we have not been asking for an appro-

priation to contingency or general reserves after tax but, rather, at the assumed policyholder rate of tax of 15 per cent and not the full corporate rate of 52 per cent.

**The Chairman:** That was developed in my questioning of the Minister, and he agreed that because you are permitted to set up contingency reserve pre-tax, it did not mean the amount of it escapes any tax.

**Senator Connolly (Ottawa West):** Oh, I remember that now.

**Mr. MacGregor:** The second statement to which I should like to refer is at the bottom of page 13, to which Mr. Lemmon has already alluded:

> My belief, after looking over the results for that year, is that many of the companies could have paid taxes comparable to those proposed in this bill, they could have maintained their dividend scales at the rates that were in effect, and still they could have added to their surpluses or their contingent reserves an amount equal to about five per cent of the increase in their total liabilities.

As a general statement I certainly question that. I do not know the companies to which reference is made. It certainly does not apply to my company, which does business entirely in Canada. It could not have added anything to contingency reserves, and its surplus would not have been increased had the present tax formula been in effect.

The third statement to which I should like to refer is on page 17, at the end of the first partial paragraph:

> I feel confident that these new tax arrangements will not imperil the safety of the industry.

I believe that these proposed taxes will have a very profound effect upon the industry, and I believe that they will weaken their financial position. I believe that inevitably the imposition of a tax burden of this magnitude in one fell swoop will induce companies not to face up to reality as quickly as they should—in other words, not to cut their policyholders' dividends in one fell swoop—but to try to smooth it as much as they can, and in the process they will inevitably grow thinner. Perhaps the Minister feels that this is desirable. In his Budget Speech, in reference to predicted results, he foresaw a moderate adjustment in dividends and a deduction in contingency reserves in respect of which, if I remember correctly his own words, he said "is as it should be".

Well, the minister also referred to an honest difference of opinion about the need for contingency reserves. I am afraid nothing that anyone can say will alter my opinion about the need for contingency reserves for the life insurance companies.

The Minister also referred to our request as involving a principle of appropriating moneys to the general or contingency reserves—and I put in quotes there "pre-taxed", although as I mentioned earlier, we have in mind that it would not be pre-taxed, but at a different and lower rate. His comments, I thought, indicated that in many respects—and perhaps most respects—the business of life insurance is not any different from any other business. At least, I got the impression from what he said that it should certainly be taxed in the same way. I would agree to that as far as practicable; as far as our business is similar to others. But, I do think that the life insurance business is different from other businesses. Our guarantees are very long term. Our investments in the main are very long term. They are not comparable to the investments made by banks and trust companies. We are buyers of long-term bonds, and not short-term bonds.

**Senator Isnor:** That is a matter of policy, is it?

**Senator Benidickson:** You do that to match your annuity responsibility?

**Mr. MacGregor:** We do it mainly because our liabilities are all long-term liabilities.

**The Chairman:** It is part of the fabric of your operation.

**Mr. MacGregor:** Somehow it seems that since the war, when conditions have been so good, many people do not see any need for contingency reserves at all; investment values have been rising, real estate values have been rising and so on. It was not always this way, and I do not believe it always will be this way.

**Senator Connolly (Ottawa West):** And that is not only because you are Scottish, is it?

**Mr. MacGregor:** When one mentions an investment reserve of 1½ per cent against bonds and mortgages, I suggest one ponders for a minute the position of the bond accounts of most Canadian life companies today. In the

letter to the honourable chairman it was said that some portfolios had depreciated perhaps 10 per cent to 15 per cent. I can say that in the case of my own company our bond portfolio at the end of last year had a book value of about $415 million. Its market value, using November 1, 1968, values, which are prescribed under the act, was $60 million less than book value; that is 15 per cent. I wish the market today were still as good as it was last November.

**Senator Beaubien:** It is way down.

**Mr. MacGregor:** We had, I admit, an excessive market over book value on stock account. I do not know where we are today, frankly. I question whether any Canadian life company today has an excess of market over book value on bond and stock accounts. If there is one, I do not know of it offhand.

**Senator Benidickson:** That is a very important statement.

**Mr. MacGregor:** Of course, we may be told, "But these are just currently depreciated values. You are not going to sell the bonds. You do not have to." In answer to that I would say that if a company grows thin and a remedy has to be found, no potential buyer, no other company, will have regard for anything else but current market values. I have gone through that on more than one occasion. What can be done if a company grows thin? In a mutual company you have to find your way out yourselves. You cannot call on shareholders; there are not any. If you cannot nurse it back to health you have to look for a potential re-insurer, some company to take it over. I could quote companies that in a relatively short time after being strong for 50, 75 or 100 years nearly, suddenly grew weak.

There is a bill in Parliament now to transform a mutual fire insurance company, with a long and honourable history, which was a very strong company, into a stock company, because it needs to be taken over, and the stock of the new company will be bought by another existing mutual company. That is simply a means of taking it over. In a stock life company there is no remedy of calling on shareholders if the company grows thin. The capital in a stock life company grows so small relative to the liabilities that you could not possibly call on the stock, and it has not the authorized capital to do it anyway. You have to nurse it back or look for a potential re-insurer. All I can say is that I lived through the 'thirties, when times were not as they are today, when companies were not subject to these taxes.

**Senator Benidickson:** Where were you then? In the Government?

**Mr. MacGregor:** Yes I was. I was in the Department of Insurance, from 1925. It was necessary to nurse several companies and they were not subject to taxes at current levels. Of course, life companies have varying inherent surplus earning capacity. In some companies the rate is quite good, in the larger more mature companies. In the smaller companies, generally speaking, their inherent surplus earning capacity, before dividends, before earning at all, is much smaller.

In those days—of course, the figures are not relevant in today's earnings—in those days, if a company had surplus earnings, invested surplus earnings, before dividends, of the order of 2 per cent of their fund, they got out of the their difficulties in a relatively short period.

Those with a surplus earning capacity of 1 or a ½ per cent had a terrible struggle and they are still small and never got anywhere. Had they been subject to tax of this kind, I believe some of them would not be in business today at all.

I am disappointed, I must say, that the minister and the tax officials cannot see their way clear to provide deduction in the business tax formula for some appropriation to contingency reserves.

I think it would mean a great deal for the future of the industry, particularly having in mind the conditions that are likely to lie ahead. Among those conditions I have in mind, hopefully, a declining interest rate. Surely interest rates cannot continue to rise or even stay where they are at this level indefinitely. As those interest rates come down, our earnings of course will come down and our taxes will go down. But our taxes, I am afraid, will remain a relatively heavier burden, compared with our earnings, they will not come down as fast.

I just see difficulties ahead. I quite appreciate the views of the tax officials about precedents for pre tax contingency reserves.

I do not think our business is the same at all as the manufacturing business to which the minister referred. The moneys we are talking about are essentially policyholders' funds, they are not shareholder's funds, they are policyholders' funds, in the main.

I think it is in the interests of the country, of the economy of the country, to keep our life companies strong. They have been strong, but to take the view that they will remain just as strong and do just as good a job as they did is straining reality. It is a great pity. I have nothing more to say but I would be happy to answer questions.

**The Chairman:** Thank you very much. Are there any questions?

**Senator Phillips (Rigaud):** I have one question. Do you not think that, as a result of the new tax rates, that premiums are bound to rise, as part of the cost of doing business?

**Mr. MacGregor:** The "non-par" (non-participating) business is bound to rise.

**Senator Phillips (Rigaud):** Incidentally, as a result of the increase in the premiums and the 2 per cent provincial tax that is now paid under the act, there will be no possible credit for the increased 2 per cent on the increased premium.

**Senator Leonard:** In effect, the participating premiums also go up, because you get less value for the same amount of premium.

**Mr. MacGregor:** That may be a matter of company policy, Senator Leonard. Some companies have had the same policy over the years—they charge relatively high participating premiums and pay relatively high dividends.

**Senator Leonard:** But even if the premium remained the same, obviously the taxes could not come out of somewhere.

**Mr. MacGregor:** The tax burden sooner or later will be borne by the policyholder.

**Senator Leonard:** Over the same amount of premium.

**The Chairman:** Mr. MacGregor, with this tax bill in force, how would you justify raising the premiums on participating policies so as to be able to maintain the high level of dividends or to pay higher dividends? All you are doing is inviting more taxes, are you not?

**Mr. MacGregor:** It is the differential between the premium level and the tax that counts, because the dividend is deductible from the premium. So, taxwise, it does not make any difference, if you have a high premium and a low dividend or a low premium and a relatively high dividend.

**The Chairman:** If you increase the premium, unless you increase the dividend as well, you may have more money becoming subject to the corporation rate.

**Mr. MacGregor:** It would depend on the policy of the company.

**The Chairman:** Thank you very much.

Now, honourable senators, if there is nothing further at this time, the committee adjourns until tomorrow morning at 9.30, at which time it will proceed with the other aspects of the bill.

The committee adjourned.

**Ottawa, Wednesday, June 25, 1969**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-191, to amend the Income Tax Act, met this day at 9.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we are continuing our hearing on Bill C-191 and what we will look at now are those general amendments to the Income Tax Act. Yesterday we concluded the first part which dealt with taxation of life insurance companies, and there were some 10 or 12 amendments which I referred to and gave some explanation of to the committee. Therefore I thought I might give Mr. Brown an opportunity first to deal with any items he wants to pick out as number 1 or number 2. If he does not wish to do that, then I would suggest dealing with the headings.

**Mr. J. R. Brown, Senior Tax Adviser, Department of Finance:** I can deal with them in whichever order you wish.

**The Chairman:** Well, would you take a moment to deal with what might be called the unpaid amounts, whether those amounts are deductible by the person who is supposed to pay them and how the treatment is proposed in this bill as against what is in the act.

**Senator Phillips (Rigaud):** May we in addition have some attention to the cost of borrowed money.

**Mr. Brown:** On page 3 of the bill you will find clause 3 which deals with unpaid amounts,

and the changes have to do with unpaid amounts in respect of salaries, wages, bonuses and that sort of thing. We have had in the act for some years a section dealing with the general area of unpaid amounts when the person to whom the amount was owed was not at arm's length with the company or the taxpayer who owed it. This type of provision is necessary in our view because some taxpayers are on an accrued basis, as you know, and can deduct expenses when they record the liability, while other taxpayers are on a cash basis and do not pay taxes until they receive the money, and the possibility of a hiatus did not pass unnoticed. Consequently, we felt we needed something in the act to keep this type of accrual to reasonable limits. There has been one for some time dealing with accrued amounts where the person to whom the liability was owed was not at arm's length with the payer, and in that situation the rule has generally been that if it was not paid for two years after the end of the year in which it was first accrued, then the taxpayers have a choice; they either sign an election in which basically the man to whom the payment is owed says that he will pay tax on it notwithstanding whether he receives it or not, and the other alternative of course is that he does not sign such an election, and here the act is rather rough, because it simply says that we will now reverse that accrual for tax purposes and we will put the amount back into income in the third year. That is the income of the payer, the one who owes the money. It is generally thought that people will sign the election. There came to be rather more widespread use of this hiatus I mentioned earlier with respect to accrued salaries, wages and bonuses than was the case with anything else, and to keep it within reasonable bounds, the decision was to move from two years after the end of the taxation year to one year after the end of the taxation year, so that now if the unpaid amount relates to salaries, wages etc.,—and this is true whether the employee is a shareholder or not—then they have to sign the election at the end of one year. Otherwise these dire consequences follow.

If they do sign at the end of one year, then the employee is saying he will pay tax on the amount of money now rather than when he gets it. In order that this should not be too much of a burden on him, the act imposes the obligation on the employer to withhold tax and send in the money so that the employee will be in the position of saying "yes, I will sign the election, but you will withhold at source so that it will not cost me any money."

**Senator Burchill:** Mr. Brown, as the law stands at present, are dividends in the hands of paid-up policyholders taxable?

**Mr. Brown:** As received?

**Senator Burchill:** Yes.

**Mr. Brown:** No.

**Senator Burchill:** This will not change that?

**Mr. Brown:** No, this will not affect that.

**The Chairman:** But there is the provision with regard to any salaries, wages or other remuneration arising from an office or employment, that at the end of this period, if the payment has not been made, it shall be deemed to have been received by the employee?

**Mr. Brown:** Only if the employee signs the election. If he does not, then it will not.

**The Chairman:** If he does not sign an election?

**Mr. Brown:** Then the employer has it reversed.

**The Chairman:** Then the employer has it reversed, and what he had taken as an expense goes back into income?

**Mr. Brown:** Yes.

**The Chairman:** Are there any questions on that?

**Senator Phillips (Rigaud)** raised the item relating to the cost of borrowed money.

**Senator Phillips (Rigaud):** Page 44, I think.

**The Chairman:** That is in clause 24 of the bill, and you will find it starting on page 44.

**Mr. Brown:** This is a change which I believe I cam say, without reservation, works to the advantage of the taxpayer, so it is a pleasure to be able to explain it.

**The Chairman:** They are getting rarer all the time.

**Mr. Brown:** Yes, that is why I made my opening remark.

**The Chairman:** They stand out like a ruby in a crown, do they not?

**Mr. Brown:** The effect of this is to permit taxpayers, if they choose, to capitalize

interest paid during construction of whatever sort of industrial plant or dam or what-have-you, rather than charging it to expense; and I should repeat that it allows them to at their option.

The effect of that is that it permits them to defer the deduction, if they choose, and some taxpayers will choose to because if they had to charge it to expense as they incur the interest, it would create a tax loss which they would not be able to make use of in the five-year carry-over period.

So, the effect of this section is to permit them during the construction period, if they borrow money, to capitalize interest paid, and as the plant gets into operation, in effect, it allows them to say, "Now we are in commercial production we will switch from capitalizing interest to charging it to expense."

The same is true with borrowed money used to explore or develop in the case of mining companies. It allows them to say, "We have passed this phase during which commercial practice would cause us to capitalize interest, and now we are into production the interest should be charged to operating expense."

**The Chairman:** There is something in the bill which says you capitalize for tax purposes in the year in which the money is spent.

**Mr. Brown:** Yes.

**The Chairman:** And then you can go back and pick up the previous three years.

**Mr. Brown:** Yes.

**The Chairman:** So that your capitalization, which will start in the year in which the money was spent, will cover the period of that year and backwards three years.

**Mr. Brown:** Yes.

**The Chairman:** In the meantime, to the extent that such companies have to file returns, I suppose, they have to treat this as an expense?

**Mr. Brown:** Yes. I think they would be showing a tax loss during those years.

The situation that is in mind is that of a company that may arrange a rather large borrowing in advance of the time when it is actually to be expended. They might borrow—and let us take a good figure—say $10 million, and they might arrange that borrowing because, without that arrangement, they could not contemplate undertaking a construction contract. The $10 million, or some part of it, might be put temporarily, let us say, in bank deposits, term deposits, and they would draw it down and use it on construction. So, during that interim period they would file returns, and those returns likely would show losses.

**The Chairman:** If they draw money down right away and invest it in short-term paper of some kind or another, they have income.

**Mr. Brown:** Yes.

**The Chairman:** Then they come to a period three or four years later and spend the money for the purpose for which it was borrowed, and then they capitalize and capitalize the previous three years, and that leaves them with some offsetting income.

**Mr. Brown:** At that point they are entitled to capitalize less than all of the interest. If I were in their shoes, I would capitalize the amount that left me with a break-even period.

**Senator Connolly (Ottawa West):** You can assure us, as far as subsection 2 and any relevant sections connected with it are concerned, that none of the incentives for exploration, prospecting and developing which now exist in the Income Tax Act are withdrawn as a result of this?

**Mr. Brown:** Not as a result of this; in fact, I think they are enhanced.

**Senator Connolly (Ottawa West):** Oh!

**Mr. Brown:** In that, as I said earlier, if they had had to charge this interest to expense for tax purposes, even in the very first few days of the company's life, it might be a tax loss they were unable to use within the five-year carry-over period. With regard to a company starting from scratch or from a loss position for tax purposes, if it borrows money to go into exploration, it can now be certain it can hold off the deduction of expense.

**Senator Connolly (Ottawa West):** It should be helpful?

**Mr. Brown:** Yes.

**Senator Connolly (Ottawa West):** The reason I mentioned it is that we had representatives from the oil industry here the other day and this is one of the things they were very interested in. However, you have answered the question.

**Senator Phillips (Rigaud):** I am not sure whether I am capturing the point. I agree this is very progressive legislation. Why are you confining the right to capitalize in an instance where money is used for construction or exploration; or, why, as a general principle, should it not be allowed under 11 and regulations to all taxpayers, even if the money is to be used for industry or other purposes?

**Mr. Brown:** It has to do with retaining some bite to the five-year carry-over. I recognize it is debatable whether five years is long enough, but so long as the law provides for that five-year carry-over of losses, there should be some meaning left to that.

In this instance what is being contemplated is a start-up position. I know you are aware, but I should make it clear for the record, that this would also apply to the acquisition of machinery or equipment for installation.

**Senator Phillips (Rigaud):** Depreciable property?

**Mr. Brown:** Yes, any depreciable property or exploration and development. Here we have a situation in which the tax losses, the losses for tax purposes, are not really economic losses at all; they are losses by virtue of the statutory rules concerning the deduction of interest and would not be viewed as a loss by men in business. Consequently, it was to relax the rule concerning the five-year loss carry-overs to bring it closer to the business concept. I think most businessmen who borrow for inventory would nevertheless consider in their financial statements they should record it as an expense. I recognize the force to the argument there is a borderline there and it is not all black and white, as the law inevitably makes all borderlines.

**Senator Phillips (Rigaud):** Now the door has opened, you may have opened it a little farther.

**Senator Connolly (Ottawa West):** Even if you have to squeeze in sideways.

**The Chairman:** Even though you get the door ajar, it is just as difficult to move it farther as it is to get it ajar in the first place.

**Senator Phillips (Rigaud):** Well, you do better according to the way you put your foot in.

**The Chairman:** It makes you feel better. You can see inside.

**Senator Connolly (Ottawa West):** Hope springs eternal—

**The Chairman:** There is another item that may arise out of this, and that is clause 21 dealing with the sale of oil and gas leases. Clause 21 commences on page 39, and it amends section 83A of the act.

**Mr. Brown:** This provision, senator, as you are aware, works in the opposite direction from the one we have just referred to. To put it shortly, this closes a loophole in our act. Since 1962 the proceeds of the sale of oil leases have been income. At the same time, the cost of oil leases was made a deductible expense.

The proceeds of the sale were brought into income as received—a sensible provision, since that is when the cash would be on hand to pay the taxes but one of the unexpected results, which perhaps we should have foreseen, was that a non-resident who owned oil leases in Canada and sold them for so much down and so much a year had to bring into tax the proceeds that he received in that year in which he made the sale, but subsequently he did not have to bring the cash collections into income because he was not carrying on business in Canada, or was resident in Canada.

A shortcoming in the act may go unnoticed for as long as a week a half, but very rarely does it go unnoticed for much longer than that. So, there were non-residents, both non-resident companies and non-resident individuals—and I think it is open to suspicion that some of the non-resident companies may have been controlled by Canadians—who were in a position where they were selling leases on perfectly normal commercial terms with so much down and so much a year, and the end result was that we were getting tax on very little and the purchaser was deducting very much. It was felt that it was necessary to take steps to offset this.

The technical procedure has two aspects. First, the taxability of the proceeds was put on an accrual basis. It is recognized that that is too rough to be left unameliorated, so at the same time the taxpayer was given the right to a reserve in respect of the profit relating to the unpaid amounts. Now, the advantage is that no reserve is given in the year in which he ceases to carry on business in Canada, so that the effect for a Canadian company selling this type of lease is exactly the same as it was before, but the effect on non-residents is that they will pay tax at the time they cease to carry on business in Canada on this accrued amount.

**The Chairman:** Otherwise they can set up a reserve equal to the receivable?

**Mr. Brown:** Yes.

**Senator Beaubien:** Mr. Brown, how does it work in the United States if a Canadian was working there in that way?

**Mr. Brown:** Senator, I am really not competent to give an answer to that question. I do not think, generally speaking, that the proceeds of the sale of oil leases go into ordinary income in the United States. I think they are given capital gains treatment, which means half rates to a maximum of twenty-five.

**Senator Connolly (Ottawa West):** What is the rate in a case like that where a non-resident purchases an oil lease?

**The Chairman:** It is the corporate rate.

**Mr. Brown:** Most of these transactions are carried on through corporations, so it becomes the corporate rate. If the transaction was carried out by an individual we would then be talking about the individual rates which would be applied to his Canadian income. If the income were large enough it would go right through the scale to as high as 82.4 per cent. Perhaps that fact, quite apart from any other benefits, explains why any large operation is carried on through corporations.

**The Chairman:** There is the special mortgage reserve that is dealt with in clause 24 at pages 42 to 44 of the bill. I think that perhaps we should have some comment on that.

**Mr. Brown:** For some time we have had in the act a provision that mortgage companies can, instead of going through their mortgages and trying to assess those that were doubtful, and to what extent they were doubtful, take an average rate of reserve against all mortgages, and there would be no need for them to justify it to the tax assessor, nor for the tax assessor to be bothered to investigate as to whether it was more or less than was needed to measure the doubtful element in the total mortgage portfolio. Until this budget the maximum amount to which this reserve could go over a period of years was 3 per cent of outstanding mortgages.

On investigation of loss ratios it was decided that this figure of 3 per cent was too generous, and it was decided that the maximum to which it could be brought over the years should be reduced to one and a half per cent. When I say "over the years" I should mention that in the case of a new company there is a restriction in the act that it can only add to the reserve so much in any one given year. Effectively it amounts to one-half of one per cent of the outstanding mortgages at the end of the year. Previously, it was one-half of one per cent, but eventually they could work up to a maximum of three per cent. It is proposed in this bill that it be one-half of one per cent in any given year working up to a maximum of one and a half per cent.

It is also recognized that some companies will be in a position presently where their reserves are more than one and a half per cent of the outstanding mortgages, so a phase-in provision in included, whereby the excess that they had on hand at the end of 1968 can be worked off over a ten-year period to bring them down to the one and half per cent.

May I say that at the same time the reserves of banks which have been on the same basis were also restricted to one and a half per cent, and the same ten-year procedure is being followed by the banks to bring their reserves to one and a half per cent.

**The Chairman:** The effect of this is not that the Government loses any tax on either the old rate or the new rate, but because when the mortgage is paid out in full at some stage the reserve as it relates to that becomes unnecessary.

**Senator Beaubien:** It would go back into income.

**Mr. Brown:** Ultimately. Taking each mortgage as an individual item, that is perfectly correct, senator. I think though in a growing business, or in any business that is not declining, any reserve of this nature constitutes a virtual permament postponement.

**The Chairman:** It would be a continuing reserve and, therefore, it would appear in the deductions every year.

**Mr. Brown:** That is quite true.

**Senator Beaubien:** Mr. Brown, if a company had a big loss it could write it off? It does not stop them from writing off any loss?

**Mr. Brown:** No, the deduction for losses is separate and additional to this reserve, senator.

**Senator Phillips (Rigaud):** Generally speaking, I do not think you apply that philosophy to taxpayers at large, do you?

**Mr. Brown:** In respect of receivables, senator?

**Senator Phillips (Rigaud):** Do you not require the average taxpayer, say a manufacturer dealing on a current basis, to value his accounts receivable at the end of the year rather than allow him a percentage of outstanding debts as a reserve?

**Mr. Brown:** That is quite right in a commercial concern. If they want the deduction for reserve for doubtful debts they must first convince themselves of the proper amount, and then convince the assessor it is in fact proper.

**Senator Phillips (Rigaud):** I mention that because in referring to banks, where you are following the one and a half per cent and so on, there should be some indication to the committee in respect of normal manufacturing commercial operations that you do an exact valuation.

**Mr. Brown:** Yes, we do.

**Senator Connolly (Ottawa West):** As a matter of interest, when you arrived at the one and a half per cent did you survey a certain number of mortgage companies to see what the situation was?

**Mr. Brown:** Yes, we did. We found it was a little less than one and a half per cent. We felt that to serve this purpose and to reduce their trouble and to reduce our trouble it had to be generous.

**Senator Connolly (Ottawa West):** It is not a figure picked out of the air.

**The Chairman:** There are a few items that have particular significance. I think we might profitably take a moment on the children's allowances, which is clause 5 of the bill.

**Mr. Brown:** As honourable senators are aware, we have had two levels of deductions for dependent children in our act for some time. At the present the lower amount of $300 applies to children in respect of whom family allowances could be paid and the higher amount of $550 in respect of children for whom family allowances could not be paid. Effectively, for 95 to 99 per cent of the children this has meant the same as saying $300 so long as they are not 16 and $550 once they turn 16.

However, there have been two groups for which that was not true. I might mention in particular the armed forces who are sent overseas. When they are overseas they do not get family allowances as such. The parents get another set of allowances, which include an amount in respect of family allowance but which is not called family allowance. Therefore, these people were getting the family allowance and the higher exemption. This was brought out in committee reports, and is also mentioned in the Auditor General's Report, and ultimately this is part of what lies behind this change.

Another group was those who are in Canada while their children are not. Here one might mention immigrants or people who send their children abroad to school. With immigrants, often the children were in European countries where there is a family allowance scheme in effect, so again we were faced with the situation where people were getting family allowances, although not necessarily from the Canadian Government, and also the higher allowances. This is what lies behind it.

It is rather interesting to note that the U.K. government spoke to us, because some of the Canadian soldiers in the U.K. were getting these allowances of which I spoke in lieu of family allowance from us, were receiving family allowances from the U.K. government, and they were also getting the higher exemption, so I wonder if we will ever get any of them home!

**The Chairman:** Maybe this will bring them home.

**Mr. Brown:** Maybe.

**The Chairman:** Are there any questions on that?

I would now like to invite comment from you, Mr. Brown, on the philosophy behind the change in the payment dates for corporations.

**Mr. Brown:** The corporate speed-up.

**The Chairman:** I would say this is about top speed.

**Mr. Brown:** I suppose the whimsical comment would be that I do not see how we can go any further.

**The Chairman:** I think I made that comment.

**Mr. Brown:** I am not surprised. This will put corporations on a more current basis.

They will begin payment in the first month of their year and will have concluded on the basis of estimates by the end of the year. In most cases, of course, with a growing company there will be a balance to pay, which will be paid three months after the year. It puts them very much on the same footing as individuals who pay monthly as they go along and settle up four months later. In order to avoid unreasonable interest we continue what I might describe as a safe haven, in that a company can pay on the basis of known figures rather than estimated figures. If they do so, no interest can be charged. They are entitled to pay either on the basis of the figures for preceding years that are known or on their estimate of the current year.

**The Chairman:** Even on their estimate of the current year, for the first two months, I believe, they may pay on an estimated basis without risk.

**Mr. Brown:** I think what we have done is to say that if you go to the safe haven, the known figures, during the first two months of the year you do not have to use the year just finished, because you might not know the details, you can use the year before. A company with a calendar year end can base their payments in January and February of 1970 on either their actual figures for 1968 which are known or on their estimate of 1970. For the remaining ten months...

**Senator Connolly (Ottawa West):** Why not 1969?

**Mr. Brown:** In January, 1970, the companies felt they might not know 1969. If they are using known figures they use 1968 for January and February and 1969 for the rest of the year. If they chose an estimate, they use an estimate throughout the whole of the year. At the end of the time the interest is measured by the lower amount, so they have the safe haven of the known figures or, if the year looks bad, they can take a bit of a risk on interest and pay on the estimate.

**The Chairman:** With regard to the suggested headings, these would appear to be the major items of general amendment to the Income Tax Act. There are other items, like adding certain medical expense items that are deductible.

**Senator Burchill:** Have we left the item of payment?

**The Chairman:** Yes, unless you have some questions.

**Senator Burchill:** What about the custom in the United States? Do the United States demand payment every month from corporations?

**Mr. Brown:** They are in the process of changing. I believe they are still on a quarterly basis, and for some considerable time it applied only to the very largest companies. Over a period of years, starting I suppose with the late President Kennedy's tax reform bill, they began to extend it to more and more corporations, until the current suggestion before the house Ways and Means Committee involves bringing all corporations on this basis over the period of the next few years. However, I believe it is still quarterly.

**Senator Connolly (Ottawa West):** I suppose the general philosophy behind this is that the government gets the benefit of the interest on payments when they are made sooner.

**Mr. Brown:** I think that is the general philosophy. There is one other point, too, that at the end of the year it is always easier to collect a small amount than a large amount.

**Senator Connolly (Ottawa West):** That applies both to quarterly and to monthly payments.

**Mr. Brown:** I do not want to put it too strongly but it is easier to make the smaller payments three times for some people than a large payment at the end of three months. That is not true of large strong companies, but it may well be true of smaller companies where there are lots of ways to spend any given dollar and if it were not sent to the Government in January and February it may not necessarily be in the bank account in March.

**The Chairman:** There is the other point that the companies, as early as January and February, even if they billed out in those two months, may not have been paid. They may have to do the borrowing to make the payment. I would assume the least that you would do is permit them a deduction for the interest on that borrowed money.

**Mr. Brown:** I do not think there is a deduction specifically provided, but in the course of things, I believe the interest on normal business loans is always deducted.

**Senator Burchill:** Mr. Brown, a great many companies are seasonal companies. They do not make any income; they are building up a

production perhaps and make a sale on an average of every three or four months, sometimes less than that. I mean bulk shipments. I am thinking of shipments to the United Kingdom, and particularly in the business I am interested in, the lumber business. We do not have any income at all. The first part of the year—we are actually paying on income we do not have at all.

**Mr. Brown:** Senator, I quite recognize that problem. Many industries have a sort of cyclical year. The only thing I can say is that companies can choose their year end and some companies happen to choose the year end just before they get all this money in, to use your terms, and in that instance, of course, they have now transformed it from a point where they get a lot of money late in the year until they get it early in the year. We do not ask for any acceleration in payments beyond what is in this bill.

**The Chairman:** This covers the headings and main topics that are representing amendments. Unless any member of the committee has some particular item he wishes to speak about, I think this would conclude our hearing. We have two other bills to deal with and I think there may be some discussion on the form of our report on Bill C-191. Therefore, I was going to suggest that we defer that phase of it and go ahead with the other two bills and meet afterwards in camera to discuss the report. Is that agreeable?

**Senator Croll:** Are we not dealing with the bill at all at the moment?

**The Chairman:** Clause by clause? No, what I am saying is that we are now concluding our examination of the bill and we have heard those who wished to be heard. The decision as to reporting the bill, even without amendment, is a matter that I do not think we can settle at this moment. We should confer later this morning in camera, to do that.

Whereupon the committee proceeded to the next order of business.

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament
1968-69

# THE SENATE OF CANADA

## PROCEEDINGS
## OF THE
## STANDING SENATE COMMITTEE
## ON

# BANKING, TRADE AND COMMERCE

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The Honourable SALTER A. HAYDEN, *Chairman*

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No. 50

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WEDNESDAY, JUNE 25th, 1969

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***Complete Proceedings on Bills C-192 and C-201,***

intituled:

"An Act to amend the National Housing Act, 1954."

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WITNESSES:

The Honourable Robert Knight Andras, Minister without portfolio, in charge of housing. H. W. Hignett, President, Central Mortgage and Housing Corporation. Harold Taft, Director, South Central Toronto Businessmen's Association.

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REPORTS OF THE COMMITTEE

20441—1

THE STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gelinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 18th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Langlois, moved, seconded by the Honourable Senator McDonald, that the Bill C-192, intituled: "An Act to amend the National Housing Act, 1954", be read the second time

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

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

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"Pursuant to the Order of the Day, the Honourable Senator Langlois, moved, seconded by the Honourable Senator Smith, that the Bill C-201, intituled: "An Act to amend the National Housing Act, 1954", be read the second time.

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

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*



20441—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, June 25th, 1969.
(56)

At 10:15 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

**Bills C-192 and C-201, "An Act to amend the National Housing Act, 1954".**

*Present:* The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Gelinas, Isnor, Kinley, Phillips (*Rigaud*) and Thorvaldson. (13)

*Present,* but not of the Committee: The Honourable Senator Langlois. (1)

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

*Resolved:*—That 800 copies in English and 300 copies in French of these proceedings be printed.

The following witnesses were heard:

1. The Honourable Robert Knight Andras, Minister without portfolio in charge of housing.
2. H. W. Hignett, President, Central Mortgage and Housing Corporation.
3. Harold Taft, Director, South Central Toronto Businessmen's Association.

Upon motion it was *Resolved* to report the said Bills without amendment.

At 11:00 a.m. the Committee adjourned until later this day.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORTS OF THE COMMITTEE

WEDNESDAY, June 25th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-192, intituled: "An Act to amend the National Housing Act, 1954", has in obedience to the order of reference of June 18th, 1969, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

SALTER A. HAYDEN,
*Chairman.*

WEDNESDAY, June 25th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-201, intituled: "An Act to amend the National Housing Act, 1954", has in obedience to the order of reference of June 18th, 1969, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

SALTER A. HAYDEN,
*Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Wednesday, June 25, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which were referred Bills C-192 and C-201, to amend the National Housing Act, 1954, met this day at 10.15 a.m. to give consideration to the bills.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

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

**The Chairman:** Honourable senators, we have two bills before us this morning, C-192 and C-201, being amendments to the National Housing Act, 1954. I suggest that we hear whatever the minister has to say in relation to both bills at the one time. Mr. Andras, have you a statement to make at this time?

**The Honourable Robert Knight Andras, M.P., Minister Without Portfolio, Minister Responsible for Housing:** Yes.

**The Chairman:** Would you go ahead?

**Senator Connolly (Ottawa West):** I think this is the first time Mr. Andras has appeared before this committee.

**The Chairman:** Yes, and we welcome you and hope that you will come often.

**Hon. Mr. Andras:** Which implies survival.

**The Chairman:** Yes.

**Hon. Mr. Andras:** Mr. Chairman and honourable senators, it is a great occasion for me to appear before you and I welcome the opportunity most enthusiastically. I heard your chairman suggest that the two bills are not contentious. I think I will then abide by the principle that one might be wise to quit while one is ahead and therefore make my statement relatively brief. I shall not deal at length on the background against which the new NHA amendments have been developed.

I am very much aware of my studies over the six or seven weeks since I received this assignment, and due to some previous knowledge that you gentlemen had a great deal to do over the years with Canada's National Housing Act and housing policy. In fact, I believe and recognize that you contributed measurably to its evolution. I rather place myself at your disposal this morning to answer any questions you may have in regard to the new recommendations and amplify the policy behind any particular amendment.

I have with me Mr. Jean P. Lupien, Vice President of Central Mortgage and Housing Corporation, supported by Mr. K. D. Tapping, one of the senior administrative officers of the Corporation. Mr. H. W. Hignett, President of CMHC, will be along very shortly. He was delayed slightly.

In addition to being prepared to attempt to answer any questions I shall certainly look forward to benefitting from any observations you may have to put forward which would eventually be applied to future changes in our housing policy and to the act. There is no doubt about it that if the federal Government is to continue to play its full role in our national development, vis a vis housing, then our housing legislation and housing policy must be constantly revalued, reassessed in the light of changing circumstances.

These present changes which you are examining are but a step forward and a major step forward, but only a step forward in a far-reaching plan to create, in our federal act, the means to bring good housing within the reach of every Canadian family and particularly, I think, in terms of federal direct responsibility, in order to bring housing to those who cannot meet open market prices. Although some of the amendments aim to stimulate the climate for higher levels of housing production, generally adding to the total stock, I believe that honourable senators will recognize that many of the changes have

been directly weighted to give new impetus to the distribution of housing to those of the lower income ranges.

**The Chairman:** What ranges would you say?

**Hon. Mr. Andras:** In my view the major problem we face is in the range from say $8,000 down. It varies according to what I would call the distress level in various regions of the country. In some areas, as I think we are all aware, a $5,000 a year income—and this applies to some of the smaller towns and the more isolated areas—can provide a great deal more than say a $8,000 income in the heart of Toronto or places like that. So it is a relative matter. There is all the poverty level discussion on this—for it is those with ranges of income at the low end of the income scale who are really caught in the rising costs.

**The Chairman:** I take it the income is a factor which either triggers or does not trigger action under this legislation.

**Hon. Mr. Andras:** Under part of it—the areas to which we intend to devote most of our CMHC capital budget—the direct federal investment in housing. Such programs as we have, under 16, 16A, limited dividend, non-profit co-operative housing, are what I would call devoted to the higher end of the low income scale. The public housing projects, for which we provide subsidized rental, is for the low end up to $6,000 to $6,500 a year. There are some subtle differentiations there. This is devoted to low income people.

**The Chairman:** Would that include what they call senior citizens?

**Hon. Mr. Andras:** Senior citizens, yes.

**The Chairman:** There are people who, by reason of health or age, or some other conditions, are not able to afford regular rental accommodation. I think there is some development in Toronto where such people, not necessarily senior citizens, can move into these areas at the lower rental, which just could not be obtained anywhere else. I would expect that, since the city would operate this, they would subsidize the rental?

**Hon. Mr. Andras:** In every case we deal through the provincial housing authorities—the Ontario Housing Corporation is a very active provincial housing corporation or a limited dividend and non-profit or co-operative housing association, we provide loans at preferred interest rates, allowing amortization over 50 years. This is quite new. Under an amendment to the act we have broadened the sponsorship of this kind of operation to include individuals, corporations, public housing authorities, municipalities, provincial organizations. It is much broader than it used to be.

**The Chairman:** For instance, when going into New York by train in the early days, one could see quite a slum area. I understand one of the companies, Metropolitan Life, acquired all that area and constructed an ideal type of accommodation there, where the apartments were laid out with ground areas and playgrounds. I would think that is a low income area. It may be that some provision was made by governments or by the city, I do not know, but they are certainly low rental areas.

**Hon. Mr. Andras:** The net effect is the low rental. In the case of limited dividend non-profit organizations, in return for the preferred interest rate, in return for the extended amortization period, in return for a very high loan to value—which is now 95 per cent by virtue of amendments to the act—we ask that the organization sponsoring this commit itself directly to a rent level that is approximately 20 per cent below the level of rent for comparable accommodation.

Public housing operates under two plans sponsored under the NHA. One is the federal-provincial ownership arrangement, where we as a federal Government provide 75 per cent of the capital cost for construction, and the province supplies 25 per cent of the capital cost; and subsequently, because the rents are geared to income—and I will come back to that in a minute—we share in the operating loss, we subsidize the operating loss in that same ratio 75 to 25. That is one public housing method.

Another public housing plan is the loan and joint subsidization of losses. In the first one we joined with the province in the 75-25 partnership, and the partnership holds the asset until the end of the road.

**Senator Connolly (Ottawa West):** Do you share maintenance in that same proportion?

**Hon. Mr. Andras:** In the general context of sharing the operating loss, in that proportion, then, yes, maintenance being one of the contributing factors to the operating loss.

The second plan, which is used a great deal by the Province of Ontario, is a loan to the Ontario Housing Corporation—this would apply to all provinces—90 per cent of the value of the public housing project, and operating losses are shared 50-50 by the provinces and ourselves.

These operating losses occur because of the rent to income scale and as this ranges now the tenant would pay 16 per cent of his income, where income is in the neighbourhood of $200 a month or $2,500 a year. Regardless of the accommodation in the housing project, that is what he would pay—16 per cent.

As his income rises up to, say, a level of $500 a month, he would be paying 25 per cent of his income. It is geared that, if his income goes past that, it becomes uneconomic for him to stay in that housing project, because the cost may rise to 30 per cent.

The principle here is sort of "onward and upward"—to make that accommodation available for other people in the low income brackets, where the first person moved out into the general or free market area.

This is the rent to income scale. This, along with very many other aspects of public housing, has been the subject of considerable concern during past months, due to the "task force," due to the recommendation of social agencies and interested individuals. We are putting it under the microscope now. We will be discussing this with the provinces to establish new criteria to apply to the approval of public housing projects which are sent to us in their final stages.

We wish to develop new guidelines, new criteria, as quickly as possible, to apply as quickly as possible, so we can set a line for ourselves. If this is negotiated with the provinces, it could apply to the provinces and be due to start in 1970.

I would like to be able to see it done more quickly than that, but one faces the problem of how quickly one can introduce a needed change without disruption to the point of affecting the people who need the shelter. One cannot be too dramatic in making a change or in breaking new ground.

**Senator Croll:** How does the announcement made yesterday by the provincial government of Ontario affect it? You saw it? How does it fit into your plans?

**Hon. Mr. Andras:** I think it will augment. The Ontario Government is financing by making available a $50 million fund.

**Senator Croll:** On a 75 per cent first and 25 per cent second scale.

**Hon. Mr. Andras:** This is going to attract more money from conventional lenders. Approved lenders operate under the umbrella of NHA insurance. In some cases they are one and the same organization. They will choose one loan to make under the NHA insurance and another loan to make under the conventional form.

We have expanded the amortization period for approved lenders loans to be negotiated under the act. We have increased the loan to value ratio. We have increased the maximum loan from $18,000 to $25,000.

In the case of existing housing we were limited, under the act as it was, to a $10,000 loan and certain other inhibiting conditions were attached. That has been changed to provide for a loan of up to $18,000 on an existing house, with no requirement that particular improvements be made. Because of the lack of federal insurance, the Government backing on the thing they would be a little more cautious in the loan to value ratio and, generally, it would be around the area of 75 per cent of the amount needed to buy the house.

Now, the announcement yesterday in Ontario will provide an additional 20 per cent of the loan to value to go on top of that as a second mortgage up to a maximum of $5,000, and that second mortgage will be amortized up to a 35-year period—not a five or 35-year period—to market rates in terms of...

**Senator Croll:** In interest.

**Hon. Mr. Andras:** Yes.

**Senator Connolly (Ottawa West):** Talking about market rates, do you mean for second mortgages?

**Hon. Mr. Andras:** I should really qualify that. The announcement I saw indicated that it would be at the same rate that CMHC will be making its direct loans under section 40 of the act.

**Senator Croll:** Am I wrong in assuming that this is a more generous approach than we are making in this act?

**Hon. Mr. Andras:** No. It is not more generous. We are providing 95 per cent. We will insure 95 per cent of the value on new houses and on existing houses up to $18,000.

**Senator Croll:** If it is not more generous, then why are they doing it? If it is available under this act, then why are they doing it?

**Hon. Mr. Andras:** They are going to attract, senator, loans from an area of conventional lenders which has been operating outside the act. It is an assist to the whole thing and will broaden the flow of mortgage funds into residential housing.

**Senator Croll:** To that extent, then, it goes further than you go.

**The Chairman:** No, it enlarges the field.

**Senator Croll:** That means that you are going further. The purpose of this act is to enlarge the field; it is an opportunity for people to obtain housing.

**Hon. Mr. Andras:** The effect is correct, but the conventional lenders, who are in many cases the same people who are NHA approved lenders, could choose to make those loans. We provide the facilities and the backing and the guarantee to those same people to do it under NHA insured, loans, but in some cases they have chosen for their own reasons to go by another route. They may get a little more interest on the first mortgage.

**Senator Croll:** What area of funds is available for direct loans from the federal Government?

**Hon. Mr. Andras:** Well, section 40 of the act permits CMHC to make direct loans for mortgages.

**Senator Croll:** How much money is available, approximately?

**Hon. Mr. Andras:** I will get into that this way: in the past there has been more money available under section 40 for direct loans than we intend to provide as a ratio of the total CMHC capital budget, by my thinking. Our strategy, senator, is simply that we recognize that to provide the housing needs of this country we are going to be very dependent, by necessity—realism dictates that there are many other social priorities than just housing—we are going to be very dependent, by necessity, on the private sector of the market to provide the bulk of the mortgage funds. We have done many things in this act to attract that sector. We have removed inhibitions and the start-stop mortgage funds related to quarterly adjustments of rates. We have provided insurance on five-year mortgages which will attract the short-term money companies which borrow on a five-year term and which otherwise would be reluctant to commit themselves for 25 years. We have done many things like that.

We are meeting the approved lenders in a few days and I intend to tell them that, since we have made the mortgage yield attractive and competitive, the onus will now be upon them, and we hope they will put more and more money into the mortgage fund. This has to look after the bulk of mortgages for people of the middle income and up, and it puts us in a position to devote more and more of the CMHC capital budget, the direct federal availability of funds, into, as I should like to see, the low income directed programs which, frankly, have been neglected before because we had to bolster the private market before.

**Senator Croll:** Are you implying public housing?

**Hon. Mr. Andras:** Public housing, yes, and limited dividend loans and all that sort of thing. Frankly, we reallocated the CMHC capital budget in the light of our examination of the situation and our consultation with those involved, and in the light of new amendments to the act, and we will be devoting over 50 per cent of that capital budget to 16-16A and 35A-35B, which are the limited dividend, non-profit areas of our activity.

This is a considerably greater proportion of CMHC's capital budget than ever before devoted to that area.

The strategy is very dependent upon the approved lenders. Institutional lending is, I would say in the vernacular, "coming to the party".

**Senator Connolly (Ottawa West):** You mean mortgage companies, trust companies, insurance companies, banks and so on?

**Hon. Mr. Andras:** Exactly.

**Senator Connolly (Ottawa West):** Your main dealing, I take it, in these general considerations in not with the individual housebuyer or houseowner but is rather with the developer or contractor who provided many living units, whether they be multi-unit or single unit. You are dealing, I suppose, to a very large extent with the relatively large homebuilders, whether they be of apartments or of private homes.

**Hon. Mr. Andras:** I assume that is the case and experience. Mr. Hignett might care to elaborate on that.

**Senator Connolly (Ottawa West):** It seems to me that you are going to have a policy directed in that direction rather than to the individual who goes and hires an architect and gets a contractor and builds his house. You have got to talk to the people who are in the wholesale business.

**Hon. Mr. Andras:** But that individual can get assistance, advice and guidance, and we welcome that. We hope to promote it to a degree perhaps greater than ever before.

**Senator Connolly (Ottawa West):** Really?

**Hon. Mr. Andras:** Yes. We hope to improve the accessibility of our services across the country.

**Senator Connolly (Ottawa West):** Most people buying houses today don't build their houses themselves. They go to a stock builder. Perhaps Mr. Hignett might say what percentage of loans are made to individuals for individual homes.

**Mr. H. W. Hignett, President, Central Mortgage and Housing Corporation:** Senator Connolly, in terms of the insured lending program we are merely insuring the loans made by the lending institutions. The situation is as you describe. Activity centres mainly in urban Canada in about 29 cities. They deal mainly with large landlords or people who are building houses for sale, and this is the kind of housing production that takes place in urban Canada. As you say, very few people build their own homes.

In rural Canada, however, the situation is different. There is no organized building industry. The lenders, because of administration costs in rural areas, are not keen to operate there and this is where section 40 is used. It is not used in big cities to any great extent. So, in our section 40 program, a very high proportion of it is used for loans to individuals for home-ownership in small places or in rural places.

**Senator Connolly (Ottawa West):** When you come to deal with the large operator in one of these 29 cities, do you look at all at the profit that he might make out of the work he does? The profit that he gets out of the units he sells? Is that part of your approach to the thing?

In other words, individual housing is so expensive—and in certain areas seems to be going up all the time—that it makes one wonder whether there is anything like an exorbitant profit being taken from it. Do you ever have to consider that?

**Mr. Hignett:** We consider this in reverse, Senator Connolly. The market for housing is free in the sense that the builder of houses can sell his products for whatever he considers the market will bear. There is a great difference of efficiency as between building firms; some builders are highly efficient and others are not. Our concern is rather whether he is going to make any profit at all or whether he is going to go bankrupt in the process. If we are satisfied about his financial competence and that he can undertake and complete the performance which he proposes, then we are inclined to go along with him. If we are not so satisfied, we will not. But we do not look into the other aspect of it; there are no controlled sales prices in this country.

**Hon. Mr. Andras:** There are programs where we check with the limited dividend and non-profit organizations.

**Senator Croll:** But the limited dividend has been a dead letter on our books for a long time. We have never been able to get much interest in the thing from the time we first put it on. It has been reviewed and brought to life from time to time but then it has always become a dead letter again.

**Hon. Mr. Andras:** I think there is a surprising amount of activity in this field. I was surprised at the figure for the number of units we have in Canada now on limited dividends—about 40,000; we only have about 40,000 units of public housing as well. We are hopeful to have more because of the new broadened sponsorship and because of the new more favoured loan aspects which some of the amendments to the bill will stir up, plus the fact that we are devoting more money in our capital budget to limited dividends. Perhaps this has now become a misnomer under the act, but before profits were limited to 5 per cent of equity. That is being removed but it will not mean an increase in rents because we are going to control them by a fixed contractual obligation. We believe this will encourage better efficiency in these projects if the fixed rents which I have explained is about 20 per cent below the comparable rents in the community because we believe you can get a better profit through efficiency. If it is less than that, that is unfortunate, but the rent control factor and the physical form of the building and all these things will be supervised before we grant the loan.

**Senator Burchill:** The Province of New Brunswick made an announcement some time ago concerning various low-rental projects being authorized in certain sections of that province. Are you familiar with the scheme they are talking about?

**Hon. Mr. Andras:** We are working with the Province of New Brunswick mainly on a 75/25 per cent basis. We have seen programs which are providing a 75/25 per cent capital cost operating loss subsidy sharing between the federal and provincial government. The Maritimes and the Atlantic Provinces generally use that, and at the moment there is an increase in the total whereby we lend 90 per cent of the value to the provincial housing authority and the province puts up 10 per cent, and we share in the operating loss on a 50/50 basis. They are starting to swing into the second program now probably because in the end they will acquire assets.

**Senator Burchill:** Meanwhile the housing corporation owns the houses?

**Hon. Mr. Andras:** In New Brunswick the housing corporation in the second plan would own the houses or apartment buildings or row housing, yes.

**Senator Burchill:** What would be the rental?

**Hon. Mr. Andras:** It is on a rent to income basis which would be 16 per cent of an income of $200 a month and would go up to 25 per cent of an income of $500 a month. Beyond that it becomes burdensome for the tenant to stay in that kind of housing because he is becoming more affluent and he can compete in the open market.

**The Chairman:** Mr. Harold Taft is here to make a short submission on some aspects of urban renewal. I was wondering if the Minister would care to make a comment on this subject.

**Hon. Mr. Andras:** Yes, urban renewal was initiated under National Housing five years ago and generally speaking its objective is to identify, plan and finally implement with federal assistance renewal in the blighted sections of communities in Canada. I believe there have been almost 200—some 190-odd plans developed across the country at varying stages since the introduction of that feature. Many plans go through a study stage and then they go through a scheme preparation stage and eventually enter what is called an implementation stage. At that stage it comes to us and the federal government at the final implementation stage provides an outright grant for approved plans of 50 per cent of the cost of acquiring and clearing the land area for the renewal action. The other 50 per cent is shared in most cases by the province and the community itself, and the ratio of that share varies from province to province. In addition we provide a loan to the municipality for their share of the cost of that endeavour. Up to $\frac{2}{3}$ of the cost of it is recovered over a period of time. The amendment to the act which is before you now recognizes another feature which has been brought to our attention as a possible weakness in this approach, that is that our program seemed to be geared too much to the acquisition and clearing of land and demolition of buildings rather than rehabilitation, so the amendment widens the authority of the federal government to provide for the acquisition and clearing of land and the acquisition and rehabilitation of buildings where they are identified as being salvageable, and of course the 50 per cent grant of monetary fiscal injection applies to that additional authority as well.

**The Chairman:** Perhaps Mr. Taft who has a very short memorandum might like to speak now while the Minister is still here to hear it. Then if the Minister wishes to comment, he will be in a position to do so.

**Mr. Harold Taft, Director, South Central Toronto Business Mens Association:** Mr. Chairman, this memorandum is a brief on urban renewal to the Standing Senate Committee on Banking, Trade and Commerce. The following are recommendations for implementation in an urban renewal area.

The policy of acquiring properties which are not needed until some future date, and leaving them vacant to deteriorate, should not be permitted. Often, people are deprived of much needed housing, which is very scarce in Montreal, Toronto and Vancouver, and are forced to vacate their homes with nowhere else to go.

The freeze imposed on big, expensive, urban renewal projects should be maintained, and the money instead should be invested in homes for lower-income families. This would include houses owned by people too poor to fix them. In such cases a cash grant could be given to the owner to repair his house. In the case of a landlord, he could, in exchange for

a grant, be allowed to repair his house to minimum building standards, and at the same time he would agree to a fixed rental for some prescribed period.

In the past, there has been too much wholesale destruction of property, and the cost of acquiring this valuable property for demolition is too high.

Finally, it destroys the roots of the community and it does not solve the housing problem.

When the expropriating authority acquires property which can be rehabilitated, it should be repaired to minimum building standards. If the property is beyond repair, it should be demolished and the property rebuilt in the same character as the community.

The owner who fixes up his house at his own expense, to comply with minimum building standards, should be permitted to retain ownership of his house, and it should not be expropriated.

Expropriation for parking in an urban renewal area, where sufficient commercial parking nearby is already available, should be completely banned. Often it is an excuse to expropriate land which may not be needed for eight to ten years from the time of expropriation. As a brief aside, I have evidence of this occurrence in my possession at this time, should any of you gentlemen wish a briefing. High borrowing costs are being paid for the money lent to pay for the acquisition of the above surplus land.

This concludes my brief summation to you distinguished gentlemen. I want to thank you for your making my presence here possible to make my few brief remarks. I thank you.

**The Chairman:** Thank you, Mr. Taft.

Mr. Minister, have you any comments?

**Hon. Mr. Andras:** Yes, Mr. Chairman. In general terms, I find myself with a considerable degree of sympathy for the points raised by Mr. Taft in his brief. The rehabilitation grant aspect which he has suggested is a matter that we are looking at for future.

I think Mr. Taft and honourable senators would realize that we are in this area of divided jurisdictions and the implications of such a grant have to be very carefully viewed. I do not think there is much doubt about it that they would require the introduction and exercise of municipal standards and municipal inspections,and it will be the subject of consultation in the next few months with the provinces, to get the feel of their attitude towards this sort of thing. But, in general, in terms of rehabilitation, I am very conscious of the validity of the suggestions, and we will be exploring these, to view all the implications of it and to see what may be done in the future. I cannot commit myself at this time, but I am simply saying I recognize the problem.

In terms of the so-called freeze on urban renewal projects, there are 12 projects before me now at the federal level which are at the stage where implementation would begin to proceed if they are approved, and they range right across the country and vary in type. Some are commercial, with a heavy content of commercial rehabilitation, others have housing content, and each one is different.

Time simply has not yet permitted me to bear down on this. I want to develop a rationale and to be sure there is a viable objective in view, rather than just be program oriented on this. I have made commitments to give answers which may or may not be favourable in every case. And this is not a threat; it is simply a frank statement that I do not yet know, but with regard to these 12 projects I hope to by July 15.

I am aware that indecision and delay also have their price and that the confusion that results as a consequence of not knowing is something that has to be recognized as well.

Behind that, again, there are some 140-odd urban renewal plans in the various stages—the study stage, the scheme preparation stage—which will be moving up into final application for approval of implementation. We have to address ourselves to this matter with great intensity, and will do so as soon as possible.

Mr. Taft, I realize the concern. There are many more concerns—the social implications of the dispersal of kin groups. I had a delegation before me the other day of the Chinese community of Canada, and the day before that from the Kensington Market area in Toronto, and we have to do a sober analysis of this whole project approach and develop a rationale for it. If that sounds indecisive, I must accept that criticism.

**The Chairman:** The report crystalizes certain factors, it is now a matter of record, and I know it will be considered by your office.

**Hon. Mr. Andras:** Very much so.

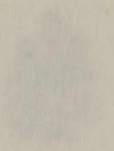
**The Chairman:** If there are no other questions, are you ready to authorize reporting the two bills without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** We will adjourn until 12 noon, at which time we will meet to consider our report on Bill C-191.

The committee adjourned.

The Queen's Printer, Ottawa, 1969



First Session of the Forty-first Parliament

1969

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable LAZARUS PHILLIPS, *Acting Chairman*

No. 51

THURSDAY, JULY 3rd, 1969

*Complete Proceedings on Bill C-302,*

*intituled:*

"An Act to provide for the development of productive employment opportunities in regions of Canada where it is considered to require special measures to facilitate economic growth in those regions."

*Department of Regional Economic Expansion*, W. J. Lavigne, *Assistant Deputy Minister (Incentives).*

REPORT OF THE COMMITTEE

First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

## OF THE

## STANDING SENATE COMMITTEE

## ON

# BANKING, TRADE AND COMMERCE

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The Honourable LAZARUS PHILLIPS, *Acting Chairman*

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No. 51

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THURSDAY, JULY 3rd, 1969

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***Complete Proceedings on Bill C-202,***

intituled:

"An Act to provide for the development of productive employment opportunities in regions of Canada determined to require special measures to facilitate economic expansion and social adjustment".

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WITNESS:

*Department of Regional Economic Expansion:* W. J. Lavigne, Assistant Deputy Minister (Incentives).

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REPORT OF THE COMMITTEE

20443—1

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

| | | |
|---|---|---|
| Aird | Croll | Leonard |
| Aseltine | Desruisseaux | Macnaughton |
| Beaubien | Gélinas | Molson |
| Benidickson | Giguère | Phillips (*Rigaud*) |
| Blois | Haig | Savoie |
| Burchill | Hayden | Thorvaldson |
| Carter | Hollett | Walker |
| Choquette | Isnor | Welch |
| Connolly (*Ottawa West*) | Kinley | White |
| Cook | Lang | Willis—(30) |

*Ex officio members:* Flynn and Martin

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, July 3rd, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Prowse, for the second reading of the Bill C-202, intituled: "An Act to provide incentives for the development of productive employment opportunities in regions of Canada determined to require special measures to facilitate economic expansion and social adjustment".

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 Robichaud, P.C., moved, seconded by the Honourable Senator Prowse, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

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

ROBERT FORTIER,
*Clerk of the Senate.*



20443—1½

# MINUTES OF PROCEEDINGS

THURSDAY, July 3rd, 1969.
(57)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 3.20 p.m.

*Present:* The Honourable Senators Benidickson, Blois, Carter, Connolly (*Ottawa West*), Flynn, Martin, Phillips (*Rigaud*), Thorvaldson and Willis. —(9)

In the absence of the Chairman, and upon motion, the Honourable Senator Phillips (*Rigaud*) was elected *Acting Chairman.*

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

The Committee proceeded to the consideration of:
**Bill C-202, "Regional Development Incentives Act".**

The following witness was heard:

*Department of Regional Economic Expansion:*

W. J. Lavigne, Assistant Deputy Minister (Incentives).

Upon motion it was *Resolved* to report the said Bill without amendment.

At 4.20 p.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

THURSDAY, July 3rd, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-202, intituled: "An Act to provide incentives for the development of productive employment opportunities in regions of Canada determined to require special measures to facilitate economic expansion and social adjustment", has in obedience to the order of reference of July 3rd, 1969, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LAZARUS PHILLIPS,
*Acting Chairman.*

# THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

## EVIDENCE

**Ottawa, Thursday, July 3, 1969.**

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-202, to provide incentives for the development of productive employment opportunities in regions of Canada determined to require special measures to facilitate economic expansion and social adjustment, met this day at 3.45 p.m. to give consideration to the bill.

**Senator Lazarus Phillips** (*Acting Chairman*) in the Chair.

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

**The Acting Chairman:** Honourable senators, the bill before us is Bill C-202 and we have with us as a witness today Mr. W. J. Lavigne, Assistant Deputy Minister (Incentives). He was previously Commissioner of the Area Development Agency.

As a result of the debate that was held in the Senate there will obviously be some questions that will be directed to our witness by way of further explanation of the bill, but I think with your approval we might follow the general procedure heretofore of asking Mr. Lavigne to give us a general bird's eye view of the bill itself, and its basic intent, and so forth.

Mr. Lavigne, you have the floor.

**Mr. W. J. Lavigne (Assistant Deputy Minister (Incentives), Department of Regional Economic Expansion):** Thank you, Mr. Chairman. Members of the committee will recall that this is an outgrowth of the program that was given birth in 1963 when the Government introduced a program to attract industry to areas where there was an exceptionally high degree of unemployment. They were offering to industry, located in these areas, a three-year tax holiday and accelerated capital cost allowances. This was followed in 1965 by the Area Development Incentives Act when the Government changed the program from an income tax holiday to a cash grant program, whereby companies located in designated areas across the country were given cash grants according to a formula. If the companies met the few conditions set down in the act or if a company established new facilities in a designated area in which 95 per cent of the machinery equipment was going to be new, they obtained the grant according to the formula stipulated in the act. Since it was a statutory grant there was no discretionary authority at all if the rent was paid, regardless of whether or not the industry really needed the grant.

An example of this is the pulp and paper industry which is based on forestry resources. If a company decided to go ahead with the pulp and paper mill, and invariably if this was in a designated area, the Government was obliged to pay then the maximum grant of $5 million.

The minister introducing this bill has indicated that these are windfalls, and that there is no need to pay resource-based industries because they cannot normally be moved economically. They are companies that take advantage of the resources available. There is not much that one can do to have them move these facilities from one area to another. The committee members will appreciate that this whole program is based on attracting manufacturing and processing industries which are considered to be footloose and which can be attracted into areas of the country where resource-based industries cannot be attracted from one place to another. They are necessarily based on where the resources are located. For this reason, an attempt is made here not only to attract those industries which are desirable, but on the other hand to save money by not having to pay windfalls to industries that would have to be established where they are anyway. Consequently, this is the reason for more discretion in the proposed bill than was available to the

minister under the Area Development Incentives Act.

In the matter of designating areas, at the outset in 1963...

**The Acting Chairman:** Before you come to that, would you mind a slight interruption? Could you not have a situation where you would have natural resources in a particular area which for some reason or another are not developed? Would not that call for encouragement to industry and to the area for the development of those natural resources?

**Mr. Lavigne:** This might occur, Mr. Chairman. It is anticipated that the minister should be able to take advantage of such a situation and under the Organization Act he has the authority to draw the plan with the province to encourage such a development.

**The Chairman:** I am sorry I interrupted you on that point.

**Senator Thorvaldson:** I do not wish to interrupt, but it occurred to me that the Area Development Incentives Act is not repealed, is it? It is going to remain?

**Mr. Lavigne:** It runs out on March 31, 1971. Provisions are made in this bill for applications to be received by the minister until the end of this year for benefits under the Area Development Incentives Act. Where a company would apply for benefits under that act and might decide that it would be more advantageous to obtain benefits under the present bill, then, until the end of the year, they would have that choice. But the terminal date of the act is March 31, 1971, which means that commercial companies must come into production at that time.

**Senator Benidickson:** Mr. Lavigne will be well aware that under the old legislation he heard from many of us in northwestern Ontario complaining that the regulations were frustrating, in that one of the criteria seemed to be unemployment. We may not have had unemployment. We exported our young people, we lost them to the places where there was employment. Briefly, does this bill make it easier for the minister to recognize a situation such as we have in northwestern Ontario where our population is going down? We sent our young people away, although we did not fare too badly on some of the bare bones of statistics that you previously held very important.

**Mr. Lavigne:** Yes, sir. At the moment there is a committee of officials consulting with the provinces. The consultations are almost completed.

I started out to say that in 1963 the designation was done by choosing those areas with experience of high degrees of unemployment during the summer months. In 1965 the criteria was changed to take into account not only above the national average unemployment figures but also the low non-farm family income and the distribution of income.

For the purposes of this bill it is proposed that not only these factors be taken into account but also the matter of no-growth and out-migration.

**Senator Benidickson:** That is our big problem—no growth.

**Mr. Lavigne:** In consultation with the provinces it is hoped to deal with those areas where unemployment has to be taken into account as well as the out-migration and the fac that there is no growth.

**Senator Benidickson:** Thank you.

**Mr. Lavigne:** I have given an overall view of the two main points, the criteria. I might go into the matter of mechanics of grants for a moment. Under the Area Development Incentives Act the Government was paying a grant according to a formula. As I said, the first step was 33⅓ per cent of the capital cost of the new facility, on the first quarter of a million dollars invested. Then 25 per cent of the amount invested, between $250,000 and $1 million. And finally, 25 per cent of the balance of the money invested by the company in the new facility, up to a maximum grant of $5 million.

In the bill before the committee it is proposed that there be a two-step grant paid to companies willing to establish in areas that will be chosen, the first step being a grant of 20 per cent of capital cost and, where need is proven by the company, and it is also evident to the minister or to the department that the need of the region is such, that a supplementary grant or grants be paid. Provision is then made to add another 5 per cent to the capital cost, plus $5,000 per job.

**Senator Connolly (Ottawa West):** What do you mean by $5,000 per job?

**Mr. Lavigne:** That means jobs created in the operation or in the facility. It means that if 40 jobs were created in the new facility, there would be $200,000 in grant money allocated, in addition to 25 per cent of the

investment in capital assets. The maximum grant allowable in the bill is $6 million for the basic grant of 20 per cent. Under the Area Development Incentives Act it had been $5 million. The maximum for the secondary grant is 5 per cent or $5,000 per job, or $12 million or $25,000 per job, or half of the capital cost in the operation, whichever is the least amount. This is a one-shot grant which is based on the least amount of $25,000 per job, $12 million or half the capital used in the operation.

**Senator Connolly (Ottawa West):** When you get your facilities established in a certain area and they are working and there is need for newer facilities or different facilities in that same area or in other areas, would you have to come back to Parliament to replenish the fund?

**Mr. Lavigne:** This will be a matter budgeting each year for anticipated expenditures and it will be done through the Appropriation Acts.

**Senator Connolly (Ottawa West):** In other words, the amounts you mentioned are not provided for in the bill. The bill simply provides the machinery. In other words it is enabling legislation to get the money through the Appropriation Act?

**Mr. Lavigne:** That is right.

**The Acting Chairman:** With respect to the contribution to capital cost, will the beneficiary be entitled to depreciation in respect to the contributions to the cost of the capital asset?

**Mr. Lavigne:** Not under the proposed bill, but under the Area Development Incentives Act, the entrepreneur could obtain accelerated capital cost allowance, not only on the investment he made, but on the grant. However, under the proposed bill he can only get it on the investment he makes.

**The Acting Chairman:** That is important.

**Mr. Lavigne:** Normally this is an expensed item by the company and is consequently not taxable under the Income Tax Act, but that goes for any equipment that is used that is expense rather than capital.

**The Acting Chairman:** When a contribution is made to the beneficiary company based upon the number of jobs created, is that amount regarded as a contribution to surplus of the company or will it be deemed to be part of the wage or salary expenditure of the company?

**Mr. Lavigne:** It will not be taxable, sir. I think that is the point you have in mind. It will be a grant that is not taxable. The formula is simply based on the quantum.

**Senator Connolly (Ottawa West):** It is a method used in measuring additional capital assistance.

**The Acting Chairman:** It is a contribution to the surplus of the company.

**Senator Blois:** I have a question to ask, and perhaps I should ask it now. I was not too clear from what the witness said earlier about something to the effect that companies that are well established or have financial resources would not get this grant. Did I understand you to say that?

**Mr. Lavigne:** I do not recall saying that, but I did say that the amount of grant would be calculated according to the need of the company in establishing in a designated area as well as on the need of the area for further industrialization to provide jobs for the unemployed.

**Senator Blois:** I have in mind a company that is quite well to do financially. Now, it might go into a new product that it is not making now, and the question in my mind is would it be able to get capital to buy the new machinery. It does not need it financially, but I suppose on the other hand it would be unfair to give it to somebody else. Now if this company makes let us say an additional 20 or 25 jobs, would it be entitled to the job money as well?

**Mr. Lavigne:** I will have to answer that by saying that it might be because provision is made in the bill not only to encourage the establishment of new facilities but also to encourage the expansion and modernization of existing facilities and this secondary grant I mentioned, 5 per cent of the capital cost as well as $5,000 per job is available not only for new facilities but also for the expansion of existing facilities in new production lines.

**Senator Blois:** In other words, in this firm I am speaking of, if there are 22 new employees they will get the $100,000?

**Mr. Lavigne:** They may. This would depend on the importance of its expansion to the region and also on the need of the company for this assistance.

**Senator Blois:** How can I answer this firm that has asked me about it, because I am not clear from what you tell me?

**Mr. Lavigne:** They could well qualify for assistance under this program; they have to make a case.

**Senator Blois:** This company does not need the money, but they will make extra jobs.

**Mr. Lavigne:** They have to convince the minister this is beneficial to the region and they need the assistance to go ahead with this expansion.

**Senator Blois:** It will be beneficial to the community, but the firm does not need the money. This point was not made very clear in the bill, and it does not seem quite right.

**Mr. Lavigne:** Under the Area Development Incentives Act the minister's hands were tied. He necessarily had to make a grant according to a statutory formula, whether the company needed it or not. Under this act it is proposed that there will not be any windfalls, and if a company does not need the assistance available under it...

**Senator Blois:** But supposing there is another firm within 40 miles and they need assistance, they would get job assistance plus another $100,000. It seems to me very unfair legislation, just because one firm has been very careful and has built up a strong reserve of capital, they cannot get it, and yet another firm, which started later on but has not been under good direction, they could get it and all this money. It seems to me to be an unfair situation.

**Mr. Lavigne:** I think we have to agree that such a program is discriminatory in all aspects. It is discriminatory in the sense that you designate one side of the street, but you do not designate the other side; consequently, some people get it and others do not. It is discriminatory in that certain companies can qualify for assistance and others cannot. I think this is an advantage of such legislation, that if you are going to do something for an area which needs assistance, you have to discriminate somewhere, and this is what is happening.

**Senator Connolly (Ottawa West):** Following what Senator Blois has said, it seems to me that you are putting a premium on improvidence.

**Mr. Lavigne:** If I did not make myself clear on this point, I should like to have the opportunity to do so.

Under the Area Development Incentives Act I am pleased to report that there was not one industry that went bankrupt or that we lost sight of, simply because there were safeguards such as the matter of equity. Always we looked to sufficient equity being put into the business by the shareholders. Under this program it is proposed that we look at equity as well, and if the shareholders are not willing to put their own money into it, I do not think they should expect the Government to do so. If they are willing to, they must be quite confident they can make a success of it.

**The Acting Chairman:** I think we should look at section 3 of the act, where we get the hard core of the intent. What we are looking at in this bill is the development of a distressed area rather than incentives to the applicant. In other words, you can have a successful company that can make an application, and it would be entitled to support under the terms of this bill, not because that particular applicant needs it or does not need it, but the test is whether that particular applicant will do something to the area which will be designated, which will have an area of not less than 5,000 square miles. So, the theory under section 3 is not to deal with the status of the applicant but, rather, with the consequences resulting from the incentives that will be given to the applicant in providing employment for a particular area. So, there is nothing discriminatory when you look at it from that angle, because the successful company to which you refer, senator, could still go into that distressed area and make an application, as can any other company. The fact that the successful company makes an application as against a new company does not put it in a discriminatory position. Indeed, that company puts itself in a better position because it is in a better position to supply part of the capital.

**Senator Thorvaldson:** Mr. Chairman, in respect of clause 3 I should like to ask what is the theory behind the proposal that such an area must not be less than 5,000 square miles. That is a very large area.

**Mr. Lavigne:** One of the criticisms of the designations of areas under the two previous programs was that we had a patchwork effect. If the small Canada Manpower centre areas were designated all across the country they

would cause a patchwork effect. If an area did not measure up to the statistics then it was not designated, while its next door neighbour was designated. The minister here wants to be able to designate regions rather than areas, because it is recognized that certain regions—as one of the senators pointed out with respect to northwest Ontario—suffer from a certain amount of emigration.

**Senator Thorvaldson:** They suffer from a lack of growth.

**Mr. Lavigne:** Yes. If these areas were designated according to the Canada Manpower centres then we might end up with a patchwork. Some areas would be designated while others would not. Under this legislation the whole of northwestern Ontario would be designated, because the bill calls for an area of 5,000 square miles. This simply means that the area might be 50 miles by 100 miles; it does not necessarily have to be square, but in total it would be an area of 5,000 square miles and it would represent a region rather than a small area. A larger area or a larger region is being taken into account rather than small areas.

**Senator Thorvaldson:** Yes, thank you. I do not disapprove of there being an area of that size.

**Senator Connolly (Ottawa West):** When you are considering the making of grants do you take into account the technology behind an industry? In other words, are you going to establish a wind and water industry when you can establish an industry that will be run by electronic means, and which will have a smaller labour force, but which will be much more efficient and have better domestic and foreign markets? I take it that these factors are all part of your criteria?

**Mr. Lavigne:** That is right, sir. We would be very concerned with whether the industry exports not only out of the country but out of the region in which it is going to locate. We will be very concerned about the linkages it might create with other industries. We will look at what other industries might be attracted to establish close to it. We will also be very concerned with the technology, as you put it, of the industry, because it has been shown in other countries that industries with a high degree of technology have a tendency not only to bring about the development of other industry but to contribute to a great deal of social adjustment. It tends to improve the calibre of expertise locally through demanding better skills of the people.

**Senator Connolly (Ottawa West):** We have told that, for example, specifically about Port Hawkesbury, where a large refinery is to be established, but there are to be ancillary industries which will flow from the establishment of the refinery and the products made there, which will perhaps alleviate unemployment not only right at the Strait but on the whole island of Cape Breton, and perhaps some of the mainland as well. These things seem to me to be very important. If those are the criteria you are looking at, this commends itself very strongly. This is what we should do in a distressed area, raise the level of the skills and the standard of living.

**Senator Thorvaldson:** What is the essential difference between this bill and the Area Development Incentives Act which was passed in 1963? We have operated under that act, and I have knowledge of some industries that have certainly raised the whole calibre of communities. That act has operated very well to my personal knowledge. What is the essential difference between this bill and that act?

**Mr. Lavigne:** I think the essential difference is that under the Area Development Incentives Act, which obtained very good results in many areas of the country, the Government, if you will, paid grants according to a formula regardless of need, regardless of the location. I am thinking now of one community that might have been better prepared for industrial development than another, thinking in terms of growth centres. Because there was a formula, the Government paid the money regardless of need for the region or for the industry.

Under this proposed bill the minister would have discretionary authority not to pay money where it was not required, not to pay windfalls to industry which will do something anyway, but on the other hand to increase the assistance that might be given in other cases where the industry would be very good for the area in that it will create employment of the right type, and being the type of industry it is may attract other satellite industries. More discretion is proposed in this bill than was available to the minister under the Area Development Incentives Act, under which he was working to a formula so that if a company met a few conditions set down it got the whole package of goodies, so to speak, and

that was all there was to it, so there were some windfalls.

**Senator Thorvaldson:** What do you mean by "windfalls"? Do you mean companies did not need any assistance?

**Mr. Lavigne:** That is right, sir.

**Senator Thorvaldson:** Nevertheless, those companies would not have developed a certain industry in an area without the assistance of that act. Is that not correct?

**Mr. Lavigne:** Not only because the company may not have needed it, but they would have gone ahead anyway and done what they were going to do. Just pulling an example out of the air, one might think of a company setting up a grist mill in an area, not because there is not a grist mill but because there is a market for the feed, so they set up the grist mill. Under the Area Development Incentives Act they had to be paid a grant, although really they knew it would be profitable, that it would work out, and they would have established it anyway because the market was there. Under this bill, after the application has been looked at and the market and the need of the company examined, the minister may decide there is no point in giving the company any assistance because they are going to do it anyway.

**Senator Connolly (Ottawa West):** This is where Senator Blois' question arises, does it not, because the company he referred to is the one that has the capital? I suppose if the fellow had the capital and was ready to go ahead and make the development and did it, then the other people might very well, on a shared market, be denied the opportunities available under this legislation.

**Mr. Lavigne:** Under the proposed bill it would be a matter of examining each case on its own merits, looking not only to the need of the company, but also to the need of the region and making sure that development does take place where it is required.

**Senator Connolly (Ottawa West):** Perhaps I should not ask you this. If it is not a proper question, Mr. Chairman, we will rule it out. Under the old act were there any industries established that should not have been established, and as a result of this did you have any failures?

**Mr. Lavigne:** As I indicated, sir, we have not any record of a company that has fallen by the wayside under the Area Development Incentives Act. I would not say that some type of industry was not overdeveloped as a result of the incentive. I think an example of that is the pulp and paper industry. The pulp and paper mills were put under the Area Development Incentives Act. I suppose in some cases several of them would have gone ahead anyway. Here again, if they met the conditions set down by the legislation they were eligible for a grant according to a formula, and therefore they were paid.

**Senator Gouin:** I would not want the witness to think that I am opposed to this bill; I am in favour of it.

**The Acting Chairman:** I was about to develop, if I could, a further amplification of the point that seemed to be bothering you and all of us and what was the large amount given in respect of the jobs created. I should like to draw the attention of honourable senators to section 15 of the act which deals with the regulations. Under subsection (b) there is really some protection, because it was provided that the Governor in Council may make regulations. (b) is as follows:

> prescribing, for any designated region or for any class of manufacturing or processing operation, an amount less than the maximum amount of a development incentive provided for by this Act, which lesser amount shall, in relation to that region or any manufacturing or processing operation of that class, be deemed to be the maximum amount provided for by this Act;

You really have a situation where through regulations you can get contracts for the maximum amount. That, I think, covers the first reaction that some of us have had of the amount per head as being very large. There is provision that the minister can grant so much per head of jobs created. I have two questions under that heading: first, do the jobs include ordinary executive and salary jobs, otherwise known as white collar payments; second, will there be any provision for the permanency of such jobs? In other words, could we have employees there for two or three months and off they go and this bonus is given to the applicant?

**Mr. Lavigne:** It is expected that all permanent employees or on-site employees or employees dependent on facility will be taken into account for the job bonus. This does not include people who may be related to sales

and live on the other coast. It has to do with the people who actually live in the area.

The method of calculating the amount of job bonus a company should obtain, will be based on the man years of employment for the two years following commercial production. In other words, we will be looking at the records and determining the number of man years work, less any work stoppages due to statutory holidays, strikes, and so on over the two-year period, and establishing the job bonus that this company should obtain.

**Senator Thorvaldson:** I would like to ask Mr. Lavigne whether, under the Area Development Act there is a similar provision as is contained in clause 3, with reference to consultation with the provinces.

**Mr. Lavigne:** No, sir. According to section 2 of the Department of Industry Act the Minister has been given authority to designate areas where there was a need for the development of productive employment. That act has been superseded by the Organization Act, C-173 which gave the Minister authority to designate special regions for assistance, and now under this proposed bill the Minister will have authority in consultation with the provinces to designate areas where productive employment and special measures are required to facilitate economic expansion and social adjustment.

**Senator Thorvaldson:** Would you care to comment on what is meant by the words "after consultation with the governments of the provinces"?

**Mr. Lavigne:** In order to determine what regions require special measures, as I have indicated, account is going to be taken not only of unemployment and non-farm family income and distribution of income. We are at the moment consulting with the provinces and getting their views on their programs for development and economic expansion, and the areas that they think require special measures of assistance. It is hoped that by using an element such as the criteria I have described along with consultation with the provinces that we might be able better to identify the areas that really require assistance rather than to depend solely on cold statistics that come out of a machine.

**Acting Chairman:** Any other questions?

**Senator Flynn:** In clause 15 you say "The Governor in Council may make regulations" and then we have (a), (b), (c) and so on. Now I would like the witness to comment on the very wide powers given to the Governor in Council under this clause to include or exclude many operations, and I would say many assets for the purpose of determining the subvention.

**Mr. Lavigne:** Actually sir what is intended is that the regulations like the Act be broadened, although it will be pretty hard to broaden the class of assets that would be taken into account over what was allowed in the Area Development Incentives Act. We allowed all the machinery and equipment on a site needed to operate the facility and this took into account not only the production machinery but also office equipment, and if a cafeteria was required in the plant to feed the employees, the equipment in the cafeteria was also taken into account. It is proposed in the regulations, according to this act, not to narrow the list but, if possible, to broaden it.

We will be taking into account, for instance, in the assets to be considered for grant purposes, on-site vehicles required for transporting materials. There is even a provision to allow 20 per cent above the normal investment in the facility for such things as access roads and services such as water and sewers, or storage sites, power stations—anything that is required to make the operation of the facility possible. So, it is a matter not of restricting but, rather, of broadening those assets which will be taken into account.

**Senator Thorvaldson:** I would like just a quick answer to this. Are the funds provided under this act a charge on the revenue or on the capital account?

**Mr. Lavigne:** They are obtained through the Appropriation Act.

**Senator Thorvaldson:** Are they contained in the Estimates?

**Mr. Lavigne:** Yes.

**Senator Thorvaldson:** Or are they capital?

**Mr. Lavigne:** They are contained in the Estimates.

**Senator Connolly (Ottawa West):** They would be an item in your departmental estimates?

**Mr. Lavigne:** Yes, under the Appropriations Act.

**Senator Connolly (Ottawa West):** I think we are interested more in the philosophy of this

act than in the actual operation, because that has to be worked out. It is obviously an enabling act and it is obviously one that is going to require some careful attention, certainly in the first stages. There are many parts of this country which are underdeveloped and where there is great poverty. I take it some of these areas are ones where this act really cannot bring the kind of development that could be brought in other areas which would qualify—is that so?

**Mr. Lavigne:** That is true, sir.

**Senator Connolly (Ottawa West):** In other words, you are going to have enough to do dealing with areas where there is promise, rather than trying to rescue all those areas which are practically hopeless—is that so?

**Mr. Lavigne:** I think it is fair to say that we will be giving a deal of attention to areas with potential growth centres, if you want to call them that, where there is some industrial potential and where it is possible not only to attract industry and to expand existing industry, but to attract satellite industry which will be built on to the initial industry to be established there.

**The Acting Chairman:** Are there any other questions?

**Senator Connolly (Ottawa West):** I move that we report the bill.

**The Acting Chairman:** It is moved that the bill be reported without amendment. Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Thank you very much, honourable senators. Thank you, Mr. Lavigne.

**Mr. Lavigne:** Thank you, sir.

The committee adjourned.

The Queen's Printer, Ottawa, 1969

act here in the actual operation, because that has to be worked out. It is obviously an enabling act and it is obviously one that is going to require some careful attention, certainly in the first stages. There are many parts of this country which are underdeveloped and where there is great poverty. I take it some of these areas are ones where this act really cannot bring the kind of development that could be brought in other areas which would qualify—is that so?

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The Acting Chairman: Are there any other questions?

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Hon. Senators: Agreed.

The Acting Chairman: Thank you very much, honourable senators. Thank you, Mr. Lavigne.

Mr. Lavigne: Thank you, sir.

The committee adjourned.

The Queen's Printer, Ottawa, 1969

SENATE OF CANADA

Standing Committee on Banking, Trade and Commerce
28th Parliament 1st Session 1968/69

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