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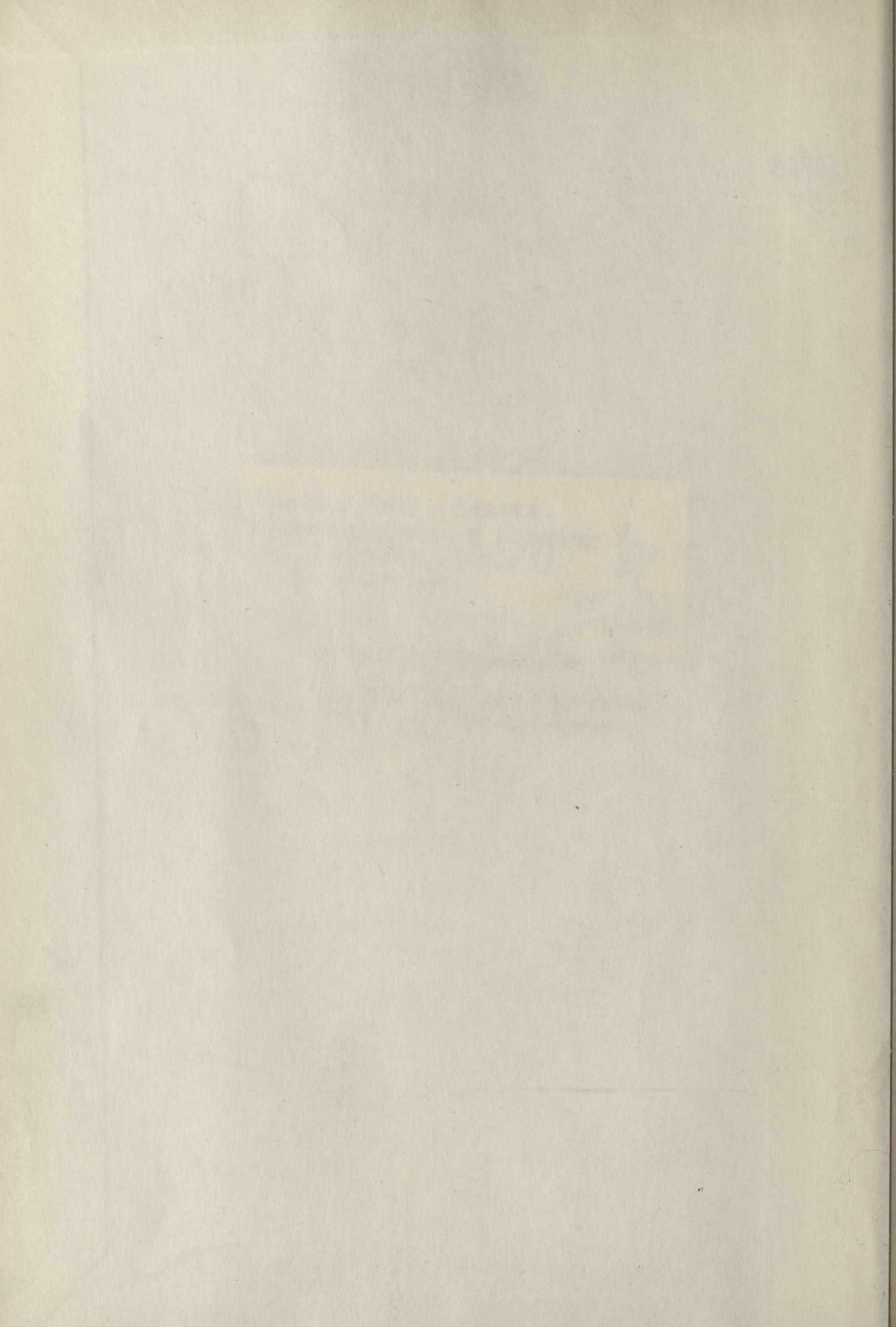
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1952-53

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill (R-3), intituled:
An Act relating to Trade Marks and Unfair Competition.

The Honourable **SALTER A. HAYDEN**, Chairman

No. 1

WEDNESDAY, MARCH 18, 1953

WITNESSES

Mr. Charles Stein, Q.C., Under Secretary of State.
Mr. Christopher Robinson, Q.C., Ottawa, Ontario.
Mr. J. C. Osborne, barrister-at-law, Ottawa, Ontario.

BANKING AND COMMERCE

THE HONOURABLE SALTER ADRIAN HAYDEN, CHAIRMAN

The Honourable Senators

Aseltine	*Haig	McIntyre
Baird	Hardy	McKeen
Beaubien	Hawkins	McLean
Bouffard	Hayden	Nicol
Buchanan	Horner	Paterson
Burchill	Howard	Pirie
Campbell	Howden	Pratt
Crerar	Hugessen	Quinn
Davies	King	*Robertson
Dessureault	Kinley	Roebuck
Emmerson	Lambert	Taylor
Euler	MacKinnon	Vaillancourt
Fallis	MacLennan	Vien
Farris	McDonald	Wilson
Gershaw	McGuire	Wood
Gouin		

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, February 12, 1953.

"Pursuant to the Order of the Day, the Honourable Senator Hayden moved that the Bill (R-3), intituled: "An Act relating to Trade Marks and Unfair Competition", be now read a second time.

After debate, and—

The question being put on the said motion,

It was resolved in the affirmative.

The said Bill was then read the second time, and—

Referred to the Standing Committee on Banking and Commerce."

L. C. MOYER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 18, 1953.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 3:30 p.m.

Present: The Honourable Senators:—Hayden, Chairman; Baird, Beaubien, Bouffard, Buchanan, Campbell, Crerar, Davies, Emmerson, Euler, Fallis, Haig, Hardy, Hawkins, Horner, Howard, King, Kinley, Lambert, MacKinnon, McDonald, McIntyre, Paterson, Pirie, Roebuck, Vaillancourt, Wilson and Wood—28.

In attendance:—Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate; the Official Reporters of the Senate; Mr. J. P. McCaffrey, Registrar of Trade Marks; and Mr. Willis George, of the Canadian Manufacturers' Association.

Bill R-3, intituled "An Act relating to Trade Marks and Unfair Competition", was considered.

On motion of the Honourable Senator Euler it was resolved to report as follows:—

"The Committee recommend that it be authorized to print 800 copies in English and 200 copies in French of its proceedings on the said Bill, and that Rule 100 be suspended in relation to the said printing."

Mr. Sidney Lang, Winnipeg, Manitoba, accountant of the Dominion General Benefit Association, made representations to the Committee with respect to certain sections of the Bill.

The following, who were members of the Trade Mark Law Revision Committee, were heard in explanation of the Bill:—

Mr. Charles Stein, Q.C., Under Secretary of State.

Mr. Christopher Robinson, Q.C., Ottawa, Ontario.

Mr. J. C. Osborne, barrister-at-law, Ottawa, Ontario.

At 5 p.m. the Committee adjourned until Tuesday, March 24, 1953, at 10:30 a.m.

Attest.

JAMES D. MacDONALD,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, WEDNESDAY, March 18, 1953.

The Standing Committee on Banking and Commerce, to whom was referred Bill R-3, an Act relating to Trade Marks and Unfair Competition, met this day at 3.30 p.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: Honourable senators, we have before us Bill R-3, an Act relating to Trade Marks and Unfair Competition. Before we proceed with our consideration of the bill would some member make the usual motion in connection with printing the verbatim report of our proceedings?

Hon. Mr. EULER: I move:

That the committee report recommending that it be authorized to print 800 copies in English and 200 copies in French of its proceedings on Bill R-3, intituled an Act relating to Trade Marks and Unfair Competition, and that Rule 100 be suspended in relation to the said printing.

The motion was seconded and carried.

The CHAIRMAN: We have with us today Mr. Charles Stein, Q.C., Under Secretary of State, and Mr. James McCaffrey, Registrar of Trade Marks, together with Mr. Christopher Robinson, Q.C., Mr. J. C. Osborne, and Mr. Willis George, who were members of the committee which sat for a number of years inquiring into this whole matter of trade marks. I understand that Senator Haig has a gentleman here who has a problem. Do you think possibly the best way to proceed would be to get an opening statement from one of the members of the committee, and then deal with the situation as far as Senator Haig's friend is concerned so that he may get away tonight?

Hon. Mr. HAIG: I would appreciate that very much. I should like to outline the situation in one or two words. The gentleman I wish to introduce is Mr. Lang of Winnipeg, who is treasurer of a certain insurance company which, in 1949, applied for a trade mark for the use of certain words in connection with one of its policies. At that time the Department claimed it did not have the power under the Act to grant the trade mark and that it would consider the whole matter and that subsequently a bill would be brought in. This is the bill and we absolutely concur with it. We do not object to the bill at all. I would like to ask a favour of the committee. Mr. Lang has to leave at 4.30 in order to catch his plane.

The CHAIRMAN: Possibly we could let him put his question, and one of these gentlemen from the Department will attempt to answer it. Then we can commence our consideration of the bill itself.

Hon. Mr. HAIG: I would not be too good in describing his problem, and he has a clear understanding of it.

The CHAIRMAN: Let Mr. Lang come forward and he can ask his question.

Hon. Mr. HAIG: He is the treasurer of his company and he has only one black mark against him. At one time in his life he worked for the Income Tax Department.

The CHAIRMAN: We shall excuse him for that.

Hon. Mr. WOOD: I thought you were going to say that he is a Conservative.

Some Hon. SENATORS: Oh, oh.

Hon. Mr. HAIG: To tell you the truth, I do not know what his political following is. I do know he is a very efficient employee of his company, and that his company is wholly co-operative in this undertaking. I will tell the committee the issue.

Hon. Mr. EULER: Excuse me, but what is the name of the company?

Mr. LANG: The Dominion General Benefit Association.

Hon. Mr. HAIG: It was incorporated by an Act of Parliament of Canada about—

Mr. LANG: 1945.

Hon. Mr. HAIG: Before that it was a co-operative organization, was it not?

Mr. LANG: Yes.

Hon. Mr. HAIG: Well, the issue is this. The company has been using on one of their policies a sign called the Blue Shield. They call their policy the Blue Shield policy. After reading the Act we can see no conflict between that and the Blue Cross emblem. We have no objection to that at all, and I just want to mention this fact in case any objection is taken. It is on that issue that Mr. Lang has come down to Ottawa. I am not acting as lawyer for the company. The only connection I have is that my brother is one of its directors, and he wrote and asked me to look after it because he could not be here. I should like to know if the committee members have any objection to me being here or voting. As far as we know the Department had the power and would have been willing to grant a trade mark as used in connection with that. There is no trouble over that issue, but we did not want to be prohibited from using the word "Blue" by some regulation that may be put in the bill.

Is there any question now anybody would like to ask Mr. Lang?

The CHAIRMAN: Mr. Lang, have you a specimen of the policy in connection with which you use this Blue Shield? Is this a special type of policy?

Mr. LANG: It is a special type of insurance policy.

Hon. Mr. EULER: May I ask a question which seems to touch upon the vital point? Perhaps our Law Clerk could answer it. Is there anything in the bill that would prohibit Mr. Lang's company from using this label, if you want to call it that, known as a Blue Shield? Is there a regulation under the bill which would prohibit you from doing that? Is that what you want to know?

The CHAIRMAN: No, it is more than that. Mr. Lang wants to know whether or not there is anything in this bill which would prohibit or prevent the Department of the Secretary of State from afterwards registering this as a trade mark. I think that is what he wants to know.

Hon. Mr. KING: He has been using the title heretofore?

The CHAIRMAN: Yes, but under the present Act a trade mark is only in connection with wares. Under the new bill it extends to services as well, and the question is whether, having regard to that extension, the Blue Shield policy can be registered as a trade mark. That is the simple question Mr. Lang wants an answer to.

Mr. STEIN: If I may say, as the Chairman has just pointed out, under the proposed new bill you will be able to register a trade mark for services, which is something you cannot do now. We do not know whether this particular trade mark will be registrable when the Act goes into force. The registrar will have to examine at that time any possible conflict with any other trade mark for which application may also be filed. I think that is about the only answer we can give today. Under the bill as it stands today there is no objection in principle to this sort of trade mark.

The CHAIRMAN: There is no prohibition.

Mr. STEIN: No.

Hon. Mr. HAIG: We are satisfied with this bill, if we can get our application granted. We were informed that the Blue Cross organization was going to ask for an amendment to be put in the bill which would prohibit this kind of thing. We thought the whole matter would be discussed today and that we would hear their side of the story, but they are not here.

The CHAIRMAN: We will be watching for that next Tuesday.

Hon. Mr. HAIG: We wanted Mr. Lang to be heard so he could answer questions.

Hon. Mr. CRERAR: When you speak of the Blue Cross you mean the Blue Cross organization in Manitoba?

Hon. Mr. HAIG: Yes, they are going to get a trade mark, too, under this bill.

Hon. Mr. CRERAR: Might a conflict arise?

Hon. Mr. HAIG: We are using the words Blue Shield. There is no conflict at all really.

Hon. Mr. CRERAR: There is a hospital organization in Manitoba known as the Blue Cross organization.

The CHAIRMAN: That organization exists all over Canada.

Hon. Mr. CRERAR: I understand that but I made the observation that it is in Manitoba, which is correct. The question I was going to ask is this. This Blue Cross hospital organization has the Blue Cross as its emblem. This company has a shield which it calls the Blue Shield.

Now, if the Blue Cross and the Blue Shield made an application to the department at about the same time, or even different times, to have their respective emblems registered as a trade-mark, the question I would like to ask is, would the witness consider there would be conflict if such application were sustained?

Mr. STEIN: That is difficult to answer. I might express an opinion, but it would not be worth much. The registrar would deal with it, and on appeal to the court it would have to be decided whether one or the two should prevail and should be registrable, and the other not, if that arose. All I can say now is that this sort of trade mark is registrable and that there is no prohibition against this particular trade-mark today in the bill.

Hon. Mr. CRERAR: Ordinarily, if there is a clear distinction between the two, each would be registrable.

The CHAIRMAN: If they should be otherwise registrable.

Hon. Mr. CRERAR: One is a Cross, and the other a Shield?

The CHAIRMAN: Yes.

Mr. LANG: If they are not held to be in confusion by the courts they would both be registrable under the new Act.

The CHAIRMAN: We are not going to settle it here today, tomorrow, or the next day. The question before the committee is, if the new Act comes into force, would they be qualified to apply for a trade mark.

Hon. Mr. WOOD: Would you be asking for a trade mark for services?

Hon. Mr. HAIG: I do not know, for instance, how many life insurance companies there are in Canada, but they are all incorporated in the same way and are all doing business; and we do not grant a licence to one, and keep the others out. One is a shield and the other is a cross. The point is, if I had a policy with a Blue Cross on it I would think I was getting medical

service from the Blue Cross. The same applies, in my judgment, here. This is an insurance policy. Now, if another insurance company tried to get a trade mark for Blue Shield, and we had ours, we would object, and the department or court, whichever made the final decision, would decide whether it was or not.

Hon. Mr. KINLEY: Is there not a commission? When there is a conflict, who deals with it?

Mr. STEIN: An advisory committee prepared the bill and the report explaining it. The Registrar, and on appeal, the Exchequer Court, would have to decide in a case of conflict.

Hon. Mr. HAIG: That is correct.

The CHAIRMAN: We have dealt with the other question troubling you, Mr. Lang. Unless there are any other questions, we will excuse you now.

Mr. LANG: Thank you, Mr. Chairman.

The CHAIRMAN: Now, I was suggesting for the consideration of the committee that possibly we could get an opening statement of the general principle of this bill, and the major differences, where those differences may be extensions of, departures from, or restrictions against the present law.

Mr. STEIN: Gentlemen, as a general, explanatory note, this is a bill to revise the existing Act, namely, the Unfair Competition Act, and I might enumerate briefly the salient features, the main changes, the bill would bring about in the existing law. Of course, you will find in the report itself, which was prepared by this advisory committee that drafted the bill, the supplementary explanations that are required; and I have here, as the Chairman said, the report of the committee. I should add that, unfortunately, the Chairman of the committee, Dr. Fox, St. Catharines, Ontario, is ill in hospital and cannot be here. The main points are the elimination of the arbitrary division of trade marks into word marks and design marks. That was introduced in 1932, by the existing Act, the Unfair Competition Act.

The second point is a more adequate definition of what constitutes a trade mark in the light of modern commercial practice.

The third one is the applicability of trade marks to services in addition to those mentioned a moment ago.

The fourth point is relaxation of the present rigid rules applying to the assignment and licensing of trade marks.

The fifth point is the clarification of the principles governing the ownership of trade marks in Canada and the persons entitled to registration, including the right to file an application for registration prior to commencing actual use of the trade mark.

The sixth point is the provision for publication of trade mark applications and for opposition procedure.

Reverting to what was said a moment ago, you might have an application from this company, say the Blue Cross might file in opposition. That is the way it would arise, or one way in which it might arise.

And the seventh point: Inclusion of provisions presently contained in statutes other than the Unfair Competition Act which provide prohibitions against the adoption and use of certain emblems and marks or symbols; like the R.C.M.P., or a university emblem, or an insignia of the armed forces.

Now, as I say, beyond this general statement in enumeration of the main points and the explanation in the report, we are prepared to answer any questions to the best of our knowledge.

Hon. Mr. DAVIES: Does this bill have anything to do with trade slogans?

Mr. ROBINSON: I am not quite sure what you have in mind as trade slogans. Would it be something like Packard's slogan "Ask the man who owns one"?

Hon. Mr. DAVIES: For instance, "The Pause That Refreshes"?

Mr. ROBINSON: It would apply to anything. Under the bill, a trade mark is a mark either on the goods themselves or on the package, or is in some way connected with the goods, so that when people see that phrase or mark they think of those goods. If it is that, then it is a trade mark.

Hon. Mr. KING: What happens, Mr. Chairman, to those who already have trade marks today? Will they continue, or will they have to be re-registered?

The CHAIRMAN: They carry on.

Mr. ROBINSON: They carry on the present registration as it stands; but any people who come on after this bill passes will come on subject to the provisions of the bill.

The CHAIRMAN: Mr. Stein has given us a very sketchy outline of the principal features of the bill and the departures from the present law. I was wondering if we could have an amplification on some of those points. We do not have to take them in the same order as Mr. Stein gave them. I was thinking, for instance, of this very moot question of assignments and licensing. Could we have a clear statement as to the present law, and then the changes by virtue of the provisions of this bill.

Mr. ROBINSON: Mr. Chairman, I will do what I can, but it is not an easy subject.

Roughly speaking, under the present law a trade mark is simply one element of a business, and you cannot transfer your trade mark to somebody else unless you transfer your whole business to that person. For example, it would not be possible under the present law for Coca-Cola to sell its trade mark to somebody else, without selling the whole business of Coca-Cola. The trade mark is looked upon as simply being an off-shoot of the business itself.

In a great many cases that law works perfectly satisfactorily; but there are many cases, under modern business conditions, where it gives rise to all sorts of difficulties. The rule about transfer applies not only between two strangers, or two individuals, but it probably applies even between related companies. I cannot put it more strongly than that; it probably applies even between companies which are closely related, such as parent and subsidiary companies.

The position under the present law is that company A could not safely transfer to company B, its subsidiary, one of its trade marks; and a company which itself controls a number of other companies, as often happens, cannot safely own all the trade marks of the family and allow the various children—that is the various subsidiaries—to use them. Under modern commercial conditions it is very often desirable that that sort of thing should be done. Almost every important country except Canada has in the last fifteen years modernized its law on the subject of the transfer and licensing of trade marks. Great Britain did so in 1937: almost all the other Commonwealth countries have done so in the interval. The United States went a long way in that direction in 1946. Canada, however, still retains the old traditional concept, and it is a concept which gives rise, particularly under Canadian conditions, to very great difficulties, because of the fact that so many Canadian companies are very closely related to corresponding American companies; and, as a practitioner, I know you are always running into difficulty with cases where the American company is doing the American business and the Canadian company is doing the Canadian business and the whole trade-mark position has got mixed up because the ordinary business man, very naturally, thinks of two closely related companies, one of which may be 100 per cent-owned by the other, as being really the same. He thinks of them in that way and treats them in that way; and you will find a situation where a trade mark may be owned by one company and used by another. That kind of situation will give rise, probably, to the invalidity of the trade mark.

What is being proposed by the bill is that all these—what are really, under modern conditions rather artificial—restrictions—should be removed, and that it should be possible for anyone to transfer his trade mark quite freely to anyone else, in the same way that he can transfer other pieces of property. Certain restrictions are put on the transfer in order to be sure that as a result of it you do not find two companies using trade marks which are so alike that people would get confused between them. But subject to that, we are proposing that trade marks may be transferred freely from person to person without necessarily a transfer of the entire business, because very often that is something which is impossible. The trade mark owner does not want to do it. But under the existing law he either has to do it or he goes at the thing in various round-about ways to try to get a result which, if he got it directly, might lead to great trouble so far as the validity of the trade mark is concerned.

Another thing is that, under the present law, if I own a trade mark and someone else wants to make goods under that trade mark, I cannot give him permission; I cannot license him to use that trade mark.

Hon. Mr. WOOD: They do that in the United States, for instance with "Hopalong Cassidy".

Mr. ROBINSON: They can in the United States, but they cannot in this country. In the United States the complaint has been that they have really freed the thing so that the licence is subject to very little, if any, control. The proposal under the bill is that we should not go as far as that, but we should adopt a system of statutory licensing, subject to the control of the Registrar of Trade Marks and, on appeal, the Court. The system, which is known as the registered user system, and which we borrowed really from the British Act of 1937, has been reproduced substantially in that form in most Commonwealth countries. We feel it will be possible for licensing to take place when it is proper and necessary that it should, but it will be subject to some control, so that the possibility of public confusion will be reduced as far as possible.

The CHAIRMAN: What are the elements of control?

Mr. ROBINSON: The elements of control are that if you, the trade mark owner, want to license someone else to use the trade mark, you and the proposed licensee must make a joint application to the Registrar of Trade Marks, set out all the relative facts, and you must show what the degree of control of the owner of the registered trade mark over the operations of the proposed licensee will be. Those facts are all considered by the registrar, and if he is satisfied that there is the appropriate extent of control he will license the licensee as a registered user; and if not, he will refuse.

The CHAIRMAN: Let us take a practical application. Let us assume the manufacturer of some article uses the trade mark which he owns in connection with the use and sale of that article. Now then, some person else who may be connected in some subsidiary relationship with that organization, or maybe a stranger, comes to him and wants to make an arrangement for the production of that article and for the use of the trade mark in connection with it. On that set of facts, would the bill permit an application to the registrar to grant a licence, or for the granting of a licence by the owner?

Mr. ROBINSON: An application could be made, and would, under the bill, be one that could properly be granted, provided that the owner of the trade mark were in a position to exercise sufficient control over the operations of the proposed manufacturer to ensure that the general quality of the product being put out by the proposed licensee would be similar to the general quality of the product already put out by the registered owner.

The CHAIRMAN: Because the danger otherwise would be that you would have the same article being made, say, by two different firms, bearing the same trade mark, and there might be vast differences in quality.

Mr. ROBINSON: Exactly. One might be very good and one might be shoddy.

Hon. Mr. WOOD: Would "margarine" be a trade mark?

Mr. ROBINSON: Not "margarine", no.

Hon. Mr. BAIRD: Is the licensing limited only to one person?

Mr. ROBINSON: No, there is no limitation on the number of licencees. For example, you may get a company which has perhaps ten different subsidiaries operating in ten different geographical areas: there are various bases of division between them, and it might be desirable that the whole family should use the trade mark.

The CHAIRMAN: The use of this licensing provision is more likely to be confined to subsidiary and parent companies than almost any relationship you can think of.

Mr. ROBINSON: That is what we expect, sir.

Hon. Mr. CRERAR: The licence to use a trade mark is transferred perhaps to quite an independent company. Has the owner of the trade mark the right to withdraw it without the approval of the Department?

Mr. ROBINSON: Yes—either the owner, or the licencee, which under the bill is called the registered user: the registered user may ask to have the registration as such cancelled—he does not want to be a licencee any more—and the registered owner may without the consent of either the Department or the user cancel it. He simply gives notification that it has been cancelled.

Hon. Mr. CRERAR: If he notifies the Department that he withdraws his licence, that settles it?

Mr. ROBINSON: Yes.

Hon. Mr. KINLEY: Are "vaseline" and "aspirin" trade marks?

Mr. ROBINSON: They are both trade marks in Canada.

Hon. Mr. KINLEY: How does that affect the importation of "aspirin" and "vaseline" in Canada?

Mr. ROBINSON: The general rule, sir, is that if something is a trade mark in Canada, then the importation from abroad of goods marked with that trade mark and made by someone other than the owner of the trade mark in Canada may be forbidden.

Hon. Mr. KINLEY: Well, "vaseline" is made by the same people, as it were, both in Canada and in the United States. Is this not correct?

Mr. ROBINSON: Yes, it is, sir. Perhaps I did not make my point clear. If "vaseline" is made by the Chesebrough Company, then that company could prevent anyone from importing into Canada petroleum jelly under that Trade Mark made in the United States or wherever you like.

Hon. Mr. KINLEY: Excuse me. Is not the same thing true about "aspirin"?

Mr. ROBINSON: I understand so, yes.

Hon. Mr. KINLEY: And "Parker" pens?

Mr. ROBINSON: That is true, yes. They have a registration with the customs people.

Hon. Mr. KINLEY: They have a clause in the Customs Act?

Mr. ROBINSON: That is right, yes.

Hon. Mr. PATERSON: There are a thousand different people in Canada making dry ginger ale.

Mr. ROBINSON: That is a very good illustration of this whole licensing problem. In the case of many soft drinks, the basic syrup is put out by a company and is distributed to a number of bottlers who have arrangements with this company and they bottle in various areas in the country.

Hon. Mr. BOUFFARD: Is that under a trade mark?

Mr. ROBINSON: Yes, and there is some question it has not gone to court but it is at least arguable—that that sort of operation might put the trade mark in some danger.

The CHAIRMAN: It might put it in jeopardy.

Mr. ROBINSON: Yes.

Hon. Mr. WOOD: There could be a difference in the product too. In different areas of the country the water could be different.

Mr. ROBINSON: Yes. In most cases these companies try to supervise that, and work out arrangements with their bottlers to see that the bottle that is put out in Halifax is as nearly as possible identical with the bottle put out in Vancouver.

Hon. Mr. KINLEY: The point I wish to make is that it prevents you from buying on the cheapest market even if you are willing to pay the duty. The man in the United States controls the sale in this country because you cannot import at the prices for which he is selling in his own country.

The CHAIRMAN: Are there any other questions on this particular subject of the assignment and licensing provisions in the bill?

Hon. Mr. McDONALD: May I ask the gentleman who has just taken his seat what his position is?

The CHAIRMAN: He as a member of this committee is Mr. Christopher Robinson, Q.C., who is representing the Patent Institute of Canada.

Hon. Mr. McDONALD: May I ask Mr. Robinson if the proposed changes in this bill will speed up the time it takes to issue licenses?

The CHAIRMAN: There was no such provision before, so therefore it is new.

Mr. ROBINSON: No, there is no provision under the present law for licensing, and as far as granting applications for registration are concerned, actually the position under the present law is that most applications are granted very soon after they are filed unless there is some particular objection to them. There is this difference, that under the present law, in certain circumstances by statute, an application must wait in the Trade Mark Office for six months before a registration can be granted. That provision will be eliminated under the proposed bill.

Hon. Mr. KINLEY: Will it be good for twenty years?

Mr. ROBINSON: It will be good for fifteen years.

Hon. Mr. KINLEY: I wonder if the witness will explain the difference between a trade mark and a patent right when it comes to these things that are in question?

Mr. ROBINSON: Perhaps the difference is this, sir, that a patent is a monopoly for a limited term of years given for some new development that the public never had before. It is only if it is new that you get a patent at all. If you have a patent it is for a period of seventeen years, and as the patent owner you are the only person who is entitled to manufacture that product or permit others to manufacture it. You must produce it yourself; otherwise somebody else can get compulsory permission to produce it. But your patent covers all the articles of a particular type regardless of the person by whom they are made or out of what material they are made, and so on.

Now, then, you, as a patentee, may invent a new toy and perhaps various toy manufacturers are concerned with it. You may license, say, three toy manufacturers to make that toy. We will say it is a doll. Now, each of these doll manufacturers may put out its dolls under its own trade mark. Mr. "A" as "Ajax", Mr. "B" as "Regent", and Mr. "C" as—my imagination fails me—

The CHAIRMAN: As "Polly".

Mr. ROBINSON: Yes. Now, each of these three people may put out your patented doll. Mr. "A" will put them out as "Ajax" dolls, Mr. "B" as "Regent" dolls, and Mr. "C" as "Polly" dolls. One of these manufacturers may be putting out a number of other dolls that are not patented at all, and he will call them all "Ajax" because what he is concerned with is that when anybody sees "Ajax" on a doll he will say "Yes, I know 'Ajax' dolls; they are good dolls. This is a new line of 'Ajax' dolls, and I will get it." Now, the patent holder has the right only to prevent manufacture of the particular type of doll covered by his patent. He can prevent that manufacture by anyone at all, but he has no control over the other types of dolls which each of those manufacturers make. Similarly, each of those manufacturers has control over the use of his particular trade mark on any dolls at all. Manufacturer "A" can prevent anyone else from putting out dolls as "Ajax" dolls, and the reason for that is that if someone else were allowed to put out dolls as "Ajax" dolls, then that particular manufacturer's business would suffer, and the public would be confused because when they saw "Ajax" they would not know whether they were made by Mr. Smith or Mr. "X" or Mr. "Y". That is the position of each of these manufacturers.

Now, as far as importation is concerned, the patentee can say "Nobody except my licensees shall either make in Canada or import from abroad dolls of the patented type." The manufacturer who puts out a doll as an "Ajax" doll can prevent any dolls from being sold in Canada whether they are made here or imported under the trade mark "Ajax". I do not know whether that has clarified the question.

Hon. Mr. WOOD: Would the patentee control the price at which the other manufacturers would sell their dolls?

The CHAIRMAN: That is a matter of agreement, and they would have to be very careful with their agreements.

Hon. Mr. BOUFFARD: I should like to know if a trade mark which has been registered in the United States has any bearing in Canada? Suppose a trade mark like "Coca-Cola" has been registered in the United States, would the fact that it has been registered in that country have any effect in Canada?

Mr. ROBINSON: Under the bill it would have this effect, senator, that there are three bases on which you can justify an application for registration in Canada. One is that you have used the mark in Canada; another is that you have used the trade mark abroad and you have advertised it in Canada, and the third is that you have registered the trade mark abroad and you have used it somewhere abroad even if you have not advertised that fact in Canada.

Hon. Mr. BOUFFARD: There is another question I should like to ask. For instance, Coca-Cola has a certain type of bottle. Is the bottle or container considered to be a trade mark?

Mr. ROBINSON: It can be, yes. We have provision in the bill for registration as trade marks of what are called distinguishing guises. There is provision under the present Act for registration of distinguishing guises. The Coca-Cola bottle is an example. The Haig whisky pinch bottle is another example. Any shape of a bottle or any particular way of wrapping goods that has come to be recognized by the public in such a way that when they see that particular bottle, quite apart from any name on it or any label, or when they see a particular way of wrapping, they say "Oh, yes, that is Mr. Smith's goods. I recognize that." If that is the fact, then that particular form of bottle or that particular form of wrapping may be registered as a distinguishing guise. The change that the bill makes with respect to the present Act is that under the present legislation you merely apply for registration and you say, "Here is a bottle. This bottle is my distinguishing guise. I want to register it" and this is

done. We felt that that had gone too far; and under the bill we have provided that a distinguishing guise may be registered only if the applicant satisfies the registrar that in fact people do associate that particular form of bottle with his goods. In other words, the applicant must satisfy the registrar that when the consumer goes into a shop and he sees a bottle on a shelf, he says "Oh, yes, that must be Smith's goods because I recognize the bottle."

Hon. Mr. BOUFFARD: Are you not afraid that companies would get together with a glass manufacturer?

Mr. ROBINSON: There is a limitation in the bill to this effect, that no distinguishing guise may be registered if (and I may not remember the exact words) the use of the distinguishing guise would interfere with the use of any utilitarian feature embodied in it; and also that the registrar will not register it unless he is satisfied that the use of the distinguishing guise is not likely unreasonably to limit the development of any art or industry. Moreover, if the registration has been granted, it can be cancelled subsequently by order of the court.

The CHAIRMAN: That is section 13 of the bill.

Hon. Mr. HAIG: Supposing in the United States the sign reads "Blue Cross", and it has been registered—patented by somebody with a trade name and they do not re-register in Canada at all—would that prohibit our department here from granting a trade mark to Blue Cross?

Mr. ROBINSON: No, sir. Registrations abroad have no effect as far as the rights of anyone who applies here are concerned. Their only significance is to afford a basis for an application for registration in Canada by the owner of the foreign registration.

Hon. Mr. HAIG: If they want to come here?

Mr. ROBINSON: If they want to come here.

Hon. Mr. HAIG: But supposing this bill passes and the Blue Cross of Canada want to take out a trade-mark as applied to hospitalization, then if somebody in the United States has that now, which would get precedence, the first applicant?

Mr. ROBINSON: It depends, sir. If the person in the United States has not used the trade-mark in Canada and has not advertised it in Canada—and I am assuming that would be the position—then the Canadian person would get it.

Hon. Mr. HAIG: Thank you, that is what I wanted to know.

Hon. Mr. BAIRD: If he had advertised, that would put him in the position of a prior user?

Mr. ROBINSON: Yes, but Blue Cross is not perhaps such a likely case as others. You may have some trade-mark, and particularly one that has started fairly recently. It may be highly advertised in the United States; and as we all know, if those advertisements are displayed in magazines of international circulation most Canadians know about them as well as Americans. The bill provides, as in fact the present Act does, that if that is the situation, then someone cannot come in and register in derogation of the rights of that person who has made his trade-mark known here.

Hon. Mr. DAVIES: Whether registered or not? If it were advertised in the national magazines, and was a United States product that had a trade-mark, but had not been registered in Canada, would not the Canadian applicant for a similar trade-mark be given precedence?

The CHAIRMAN: You mean if the United States' magazines had a proven circulation in Canada?

Hon. Mr. DAVIES: Yes.

Mr. ROBINSON: No sir; the man who would be entitled to the registration would be the American man.

Hon. Mr. DAVIES: But he was not registered in Canada.

Hon. Mr. WOOD: He probably sold goods here.

Mr. ROBINSON: It might even be at that stage where he has not sold the goods. The reason we drew the provisions in the bill the way we did was that we recognized that substantial advertising in American magazines of international circulation cannot help but be brought to the knowledge of the Canadian public and that, therefore, if "Ajax" came out, we will say, with ten successive issues of advertising in the *Saturday Evening Post*, with a double-page spread, all Canada would know about it. The Canadian public would be misled if, following that, some Canadian manufacturer had picked up the trade-mark and put it on his own goods and put them on the market. The Canadian public, seeing "Ajax" goods on the shelf would say, "Those are the goods we saw advertised in the *Saturday Evening Post*", when, in fact, they would not be.

Hon. Mr. DAVIES: I do not think it is fair to a Canadian magazine published here, that something advertised in a magazine published in the United States should qualify them here.

Mr. ROBINSON: Perhaps I put it too strongly, sir. It would be necessary in any given case to prove that there was, in fact, a very substantial Canadian circulation.

The CHAIRMAN: Yes.

Hon. Mr. DAVIES: But supposing a Canadian without a registered trade-mark advertised in *Macleans*, or in *Liberty*, would he have rights without even registering his trade-mark?

Mr. ROBINSON: If the Canadian has advertised in a Canadian magazine, he does not get rights on that footing alone. He will only advertise in a Canadian magazine because he is using his trade-mark here, just as the American man will use an American magazine because he is using his trade-mark there. He gets his rights on the basis of use only. Take the case of a Canadian who begins to use a trade mark in Canada. He may not advertise to any substantial extent, but he begins to use it somewhere in Canada. If after that an American, who may have started to use it in the United States before the Canadian used it in Canada, starts to advertise in a magazine which is circulated in Canada, the Canadian would nevertheless have the prior right.

Hon. Mr. DAVIES: But the magazine wouldn't be published in a foreign country.

Mr. ROBINSON: Yes. My point is that the Canadian would then have the prior right. As the bill is set up, the man who has the best right is the one who first used the trade mark in Canada, or first made it known in Canada.

The CHAIRMAN: That is right.

Hon. Mr. DAVIES: Do you not think that Canadians should always have the prior right?

The CHAIRMAN: Not if he keeps it a secret.

Mr. ROBINSON: There is a difficulty which we were very conscious of in the committee, that in dealing with trade marks you are not simply dealing with matters of private property; you must consider the position not only of the trade mark owner but also the position of the public.

If you were to say that an advertisement in an American magazine would have no effect at all in Canada, regardless of how great the circulation, then you would be running a grave risk of creating a situation where the Canadian public would in the end be confused and they would be the losers. For instance, some small manufacturer who perhaps puts out shoddy goods might

see an advertisement in an American magazine circulated in Canada, and say to himself "I will take that up, and I will get the benefit of this advertising". He would put his shoddy goods on the Canadian market, and the people would buy them not knowing that they were of Canadian manufacture but thinking that they were the goods they had seen advertised in the American publication. In that way the public would be the losers.

Hon. Mr. DAVIES: I would like to agree with you, but I do not think I can. Suppose in the case of the *London Times*, which has a big circulation in this country, some English firm used an advertisement. Would you think they would have a prior right in the establishment of a trade mark in this country over some Canadian who wanted to register it?

Mr. ROBINSON: It would depend, sir, on the extent to which the advertisements had made the trade mark known to the relevant public. I say "relevant public" because in the case of consumer goods that means the consumers, in fact; but in the case of goods used only in certain industries, it means the industrial people concerned. If the position were that the effect of the advertisements was to have made that trade mark known in general to the relevant public, then the bill gives the prior right to the man who has done the advertising, and, in our view, properly so.

Hon. Mr. KINLEY: What consideration, Mr. Chairman, is given to the man who inadvertently lets his trade mark lapse? For instance, a man who has trained the public to know his goods but for some reason has let his mark lapse?

The CHAIRMAN: He can renew it.

Mr. ROBINSON: He can re-register.

Hon. Mr. KINLEY: How long before somebody else could register his trade mark?

The CHAIRMAN: Nobody else can.

Mr. ROBINSON: Nobody else could register it even though his registration has expired and there is nothing on the register. If somebody else came along and tried to register it, and the registrant came back and applied for re-registration, the registrant would have priority because he is the earlier man.

Hon. Mr. KINLEY: What about the renewal features?

The CHAIRMAN: On that question, if I were using a trade mark in connection with certain goods, and my registration had run out—and I forgot to re-register it—if I continued to manufacture my goods under that trade mark, nobody else could produce the same goods and sell under that trade mark without facing the possibility of proceedings.

Hon. Mr. KINLEY: But still there is a fifteen-year limit on trade marks.

The CHAIRMAN: The fifteen-year limit does not matter at all; if I continue manufacturing and using the trade mark, I have a monopoly on it, no matter what anybody else tries to do.

Hon. Mr. KINLEY: I would prefer to have the mark renewed.

Speaking of the newer features provided by the bill does it deal with slogans that claim merit for the goods, for instance "Stanfield's unshrinkable underwear"?

Hon. Mr. HAIG: Hear, hear.

Hon. Mr. KINLEY: Everybody knows it is unshrinkable but are they entitled to a trade mark using the word "unshrinkable"?

Mr. ROBINSON: The position of words of that sort, which are essentially descriptive words, is to be decided by whether it can be shown that such words with a descriptive tinge, or very descriptive words such as "unshrinkable", have become distinctive. The minute anybody hears the word "unshrinkable" in connection with underwear, do they say "Yes, Stanfield's"?

Hon. Mr. HAIG: They do yet.

Mr. ROBINSON: If that is the position, and can be proven to be the position then, it may be possible to register "unshrinkable", but it would be extremely difficult to do so—possibly as difficult as anything.

Hon. Mr. KINLEY: I would think so. There are some others like "Good to the last Drop".

Hon. Mr. WOOD: Which brand is that?

Hon. Mr. HAIG: That is "Haig & Haig".

Hon. Mr. KINLEY: Who decides whether the word is proper or improper.

Mr. ROBINSON: It goes to the Registrar in the first instance, and on appeal to the Exchequer Court.

The CHAIRMAN: I think we have exhausted the subject of the provisions with respect to assignments and licensing, and have got on the general features of trade marks. I was wondering if we could continue to develop what Mr. Stein said. If I understood you, the provisions with respect to registration have been enlarged so as to permit more effective opposition proceedings at the stage when the application is pending, and that is an improvement over the present law? Would you just explain that very briefly?

Mr. J. C. OSBORNE: Mr. Chairman, the position under the present law is that there are no official opposition proceedings at all. If an application is filed, it may never be drawn to the attention of an interested person because the first publication comes upon registration; it then appears in the Patent Office Record and by that time, the registration has been made. In practice, there is a good deal of opposition of an unofficial character because many people watch the pending applications in the Trade Marks Office which are open to the public and may be searched by private individuals, solicitors or attorneys. If they observe that an application has been filed which they regard as in conflict with an established right, or perhaps simply contains a word which, from the general standpoint, should not be monopolized by an individual, the practice has developed of filing with the registrar a letter which draws attention to whatever ground of objection there may be. If the registrar does not regard the objection as frivolous—and perhaps he might do so—he will refer that letter to the applicant, and the applicant, in turn, will be given an opportunity to reply to it. Then the registrar will make up his mind as to whether the objection is well-founded or whether the application should proceed to registration.

The practice followed in the United Kingdom for many years, and in the United States, has been to carry on opposition proceedings in a formal and well-organized way. We propose to adopt substantially the procedure followed in both the United Kingdom and the United States. If the provisions of the bill are accepted, there will be publication of applications for registration. Applications will be given preliminary examination by the registrar who make certain objections at that stage. If he passes them on preliminary examination and they are in order for registration, so far as he is concerned, they will then be published in the Patent Office Record, which is widely circulated, and interested persons may come in and file statements of opposition. These are to be filed with the registrar and served on the applicant. The applicant will then be given an opportunity to reply and to file affidavits in support of his position, if he chooses to do so. The objecting party also may file affidavits in support of his position. The registrar will be given power to direct a hearing at which the parties will be heard personally or by their representatives, and then a decision is made. The application is either allowed or rejected. And that, of course, would be subject to appeal to the Exchequer

Court. But the important feature is that there will be public notice of the applications that are being filed, an opportunity given for opposition and machinery laid down for the opposition.

Hon. Mr. BOUFFARD: What kind of publication will be made?

Mr. OSBORNE: In the Patent Office Record.

The CHAIRMAN: Do you think that is enough?

Mr. OSBORNE: That is the official Gazette, if you like to use that wording, issued by the Patent Office, which now contains extracts of issued patents and a summary of registered trade marks and copyright registrations.

Hon. Mr. BOUFFARD: To whom is it sent? Is it subscribed to?

Mr. OSBORNE: It is subscribed to, and it is quite widely subscribed to. Mr. Stein reminds me that I should mention that the publication is to be in the manner prescribed. I think perhaps it is in all our minds that it will be in the Patent Office Record, which is the place in which the issued registered trade marks now appear, and there is a comparable procedure in both the United Kingdom and the United States. As Mr. Robinson says, it is the natural place where people interested in the subject-matter would look. I think it is fair to say that those interested in trade-marks who may not now be subscribers to the Patent Office Record will certainly be subscribers in future. The fact is that today the only way in which you can get information to keep your eye on the applications which are being filed, is to be constantly in the Trade Marks Office, either yourself or through a representative, have lists made from the little index cards that are maintained there and examine them. That service is maintained by a number of people. It is awkward and, in many cases, expensive.

Hon. Mr. BOUFFARD: How often do issues of this paper appear?

Mr. OSBORNE: The Patent Office Record is issued weekly. The subscription is \$10 a year.

The CHAIRMAN: I take it the statute permits the enactment of regulations that can provide in any particular case, in the discretion of those administering the act, for even a broader publication than just the Patent Office Record?

Mr. OSBORNE: That is correct, sir.

The CHAIRMAN: That would be up to the judgment of the registrar in the particular case, and the Governor in Council would then make the regulations?

Mr. OSBORNE: Yes. As a matter of fact, the procedure with respect to opposition will be governed to quite an extent, we would anticipate, by regulation. A good deal of the machinery with respect to the filing of affidavits and service would not be suitable for incorporation in a statute.

Hon. Mr. DAVIES: Is the Patent Office Record copyright? Is it possible for some trade journals to take the Patent Office Record and publish in their own journals applications which they think may interest their subscribers?

Mr. OSBORNE: That, I understand, is quite largely done.

Hon. Mr. DAVIES: Any objection to that on the part of the Patent Office Record?

Mr. OSBORNE: I think no objection would be taken. Whether there is any technical point involved I do not know. I may say that the pharmaceutical people have a whole system of keeping the trade informed of pharmaceutical applications which are filed.

Hon. Mr. BOUFFARD: Would there be an interval of time between the first publication and the hearing of the application?

Mr. OSBORNE: Yes. There is a period of one month from the publication within which notice of opposition may be filed, and further periods will be prescribed within which the various steps must be taken.

The CHAIRMAN: Are there any other questions under this heading?. In the course of dealing with two of these main headings we have delved into the general law in relation to trade marks; but the thing is wide open for anyone who has questions.

Hon. Mr. KINLEY: There are certain limitations now on the use of words, I understand. For instance, if I said I had as a trade mark the "Ottawa" brand, that would be going pretty far, would it not?

Mr. OSBORNE: Yes. Under the present Unfair Competition Act there are prohibitions against words which are clearly descriptive or misdescriptive of the character or quality of the wares or of their place of origin. Geographical names are not normally good trade marks. There are findings on that. The words "North Pole" are undoubtedly geographic, but as applied to bananas there would be no objection to them.

Hon. Mr. KINLEY: Or to ice cream.

Mr. OSBORNE: Perhaps not as applied to ice cream, either. The real point that the trade mark law is designed to enforce is that if a member of the purchasing public might assume that the wares originated at a particular place, say in Birmingham, Montreal or Toronto, those words ought not to be monopolized by any single person.

Hon. Mr. KINLEY: Take another case. The number of people who use the word "Evangeline" on their products, especially in the Maritimes, is very great. If one man has that word would it exclude everybody else from using it, or perhaps as regards only one product? For instance, Evangeline ginger ale, Evangeline cheese,—

The CHAIRMAN: Hosiery.

Mr. OSBORNE: I think the word is widely used. The first answer is that whatever monopoly one would obtain by registration would be confined to the wares in association with which the owner of the mark uses it,—let us say hosiery. There is a lingerie shop here. That would be the general proposition. You may have in mind something suggesting a geographical area. That might be arguable. "Acadia", I suppose, is not, strictly speaking, a geographic word in the sense of being able to look it up in a gazeteer, and yet—

Hon. Mr. KINLEY: "Acadia" is used everywhere.

Mr. OSBORNE: —it might be objectionable, as being geographic. For instance, I think it has been in issue with respect to apples; and no single trader would be permitted to obtain registration of the word "Acadia" as applied to apples.

Hon. Mr. KINLEY: They have got it on machinery and in connection with companies, though, of course, that comes under the Companies Act; there is some protection there. But the word "Acadia" is widely used in the Maritimes. Of course you are opening up a field with a new feature of the act.

Mr. OSBORNE: This, sir, is old law. It is in the Unfair Competition Act. It was in the preceding Trade Mark and Design Act of 1905. It is a basic proposition of the common law that you cannot monopolize words that have geographical significance in connection with particular wares. Perhaps the words "North Pole" are, to use an expression of the House of Lords, "dislocated" from bananas but, as I say, words may be objectionable from a geographical point of view.

Hon. Mr. BOUFFARD: In some cases it might be important. Take, for example, "Gaspé" salmon.

Mr. OSBORNE: I venture to say, unquestionably, that word could not be properly registered under the act, because the prohibition is there, as in the

present act, against the registration of words that are clearly descriptive or deceptively misdescriptive of the character or quality of the wares or of their place of origin. Whether the salmon came from Gaspé or not it would be descriptive or it might be deceptively misdescriptive.

The CHAIRMAN: Any other questions on the general subject, or would you care to examine the bill clause by clause? Or have we done enough work for today? We have to hear a number of people on Tuesday.

Hon. Mr. HAIG: I was going to suggest that we do not consider it clause by clause today. I think we should hear these other people.

Hon. Mr. KINLEY: Are there any objections to it?

The CHAIRMAN: No, after all, this committee has been working for some five years and they have had representations from all the organizations that could possibly be said to be interested in this subject matter. They have studied the law in relation to the subject matter in other countries. They have made draft after draft which have been subject to comment—and submitted for comment and criticism—and they ultimately evolved this final draft. Even the bill introduced last spring in the Senate and not proceeded with has been revised since largely, as I understand it, because of further representations that have been made. So that if any subject matter has had exhaustive treatment, this one has had just that. It had exhaustive treatment in the hands of those who are most capable of giving it just that kind of study. As to the features that have been developed here today, they have had in mind the idea of bringing the practice and the law in relation to trade marks in line with modern business operations and as it is done in other countries.

Hon. Mr. HAIG: I have been delighted with the explanation given by these gentlemen who served on that committee. I can say that it has given me a better understanding of the whole subject.

The CHAIRMAN: As to the other points Mr. Stein mentioned in his opening remarks, I think we have more or less wandered into them in the course of our discussion today. Are there any features we should mention particularly? There is a provision for an easy cleaning up or housecleaning of the registry from time to time, whereas at the present time the registry is cluttered up with trade marks that have been registered and have not been used or have been abandoned.

Hon. Mr. HAIG: I suggest we adjourn and meet next Tuesday at 10.30 o'clock.

The CHAIRMAN: Is that the wish of the committee?

Hon. Mr. KINLEY: It will give us a chance to read the bill.

The CHAIRMAN: Well, then, there is a motion to adjourn until next Tuesday morning at 10.30. You understand that at that time there will be certain representatives here from the Blue Cross, and I think a doctor from New Brunswick and others who want to make sure that their own particular operation is protected. We will just have to do the best we can on the advice of the advisers present. I should direct your attention to this fact. I think each senator was sent a copy of the report of the committee that dealt with the preparation of his bill, together with a full explanation of the changes and why they were made. I would suggest that it would be worth while if each senator were to read this report in the interval. Strangely enough, it is easy to read. This will give us a better understanding of the whole subject matter and enable us to deal with the bill more expeditiously next Tuesday.

The committee adjourned until Tuesday, March 24, at 10.30 a.m.

1952-53

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill (R-3), intituled:
An Act relating to Trade Marks and Unfair Competition.

The Honourable **SALTER A. HAYDEN**, Chairman

No. 2

TUESDAY, MARCH 24, 1953

WEDNESDAY, MARCH 25, 1953

WITNESSES

Mr. Charles Stein, Q.C., Under Secretary of State.
Mr. Christopher Robinson, Q.C., Ottawa, Ontario.
Mr. J. C. Osborne, barrister-at-law, Ottawa, Ontario.
Mr. Willis George, Ottawa, Ontario.
Mr. A. H. Fleming, Q.C., Toronto, Ontario.
Mr. W. G. Fraser Grant, Q.C., Toronto, Ontario.
Mr. Redmond Quain, Q.C., Ottawa, Ontario.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

BANKING AND COMMERCE

THE HONOURABLE SALTER ADRIAN HAYDEN, CHAIRMAN

The Honourable Senators

Aseltine	*Haig	McIntyre
Baird	Hardy	McKeen
Beaubien	Hawkins	McLean
Bouffard	Hayden	Nicol
Buchanan	Horner	Paterson
Burchill	Howard	Pirie
Campbell	Howden	Pratt
Crerar	Hugessen	Quinn
Davies	King	*Robertson
Dessureault	Kinley	Roebuck
Emmerson	Lambert	Taylor
Euler	MacKinnon	Vaillancourt
Fallis	MacLennan	Vien
Farris	McDonald	Wilson
Gershaw	McGuire	Wood
Gouin		

**ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, February 12, 1953.

"Pursuant to the Order of the Day, the Honourable Senator Hayden moved that the Bill (R-3), intituled: "An Act relating to Trade Marks and Unfair Competition", be now read a second time.

After debate, and—

The question being put on the said motion,

It was resolved in the affirmative.

The said Bill was then read the second time, and—

Referred to the Standing Committee on Banking and Commerce."

L. C. MOYER,
Clerk of the Senate.

TUESDAY, March 24, 1953.

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

Present: The Honourable Senators:—Hayden, Chairman; Baird, Beaubien, Buchanan, Burchill, Crerar, Davies, Emmerson, Euler, Fallis, Haig, Hardy, Hawkins, Horner, Howard, King, Kinley, MacKinnon, McDonald, McIntyre, Pirie, Pratt, Quinn, Robertson, Roebuck, Taylor, Vaillancourt, Wilson and Wood.—29.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate; the Official Reporters of the Senate; Mr. Charles Stein, Q.C., Under Secretary of State; Mr. J. P. McCaffrey, Registrar of Trade Marks; Mr. Christopher Robinson, Q.C., Ottawa, Ontario; Mr. J. C. Osborne, barrister-at-law, Ottawa, Ontario, and Mr. Willis George, of the Canadian Manufacturers' Association.

Consideration of Bill R-3, intituled: "An Act relating to Trade Marks and Unfair Competition", was resumed.

The following witnesses made representations with respect to certain sections of the Bill:—

Mr. A. H. Fleming, Q.C., Toronto, Ontario, representing The Canadian Council of Blue Cross Plans.

Mr. W. G. Fraser Grant, Q.C., Toronto, Ontario, representing the Ontario Society for the Prevention of Cruelty to Animals, and other organizations of a similar nature.

Mr. Redmond Quain, Q.C., of the Ontario and Quebec Bar Associations.

At 1 o'clock p.m. the committee adjourned.

At 4 o'clock p.m. the committee resumed.

Present: The Honourable Senators: Hayden, Chairman; Aseltine, Baird, Beaubien, Buchanan, Burchill, Crerar, Dessureault, Emmerson, Euler, Fallis, Gershaw, Gouin, Haig, Hawkins, Horner, Howard, King, Kinley, Lambert, McDonald, McGuire, McIntyre, McLean, Paterson, Pirie, Pratt, Taylor, Vaillancourt and Wilson.—30.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate; the Official Reporters of the Senate; Mr. Charles Stein, Q.C., Under Secretary of State; Mr. J. P. McCaffrey, Registrar of Trade Marks; Mr. Willis George, of the Canadian Manufacturers' Association, and Mr. A. H. Fleming, Q.C., Toronto, Ontario, representing The Canadian Council of Blue Cross Plans.

The following witnesses were further heard in explanation of the Bill:—

Mr. Christopher Robinson, Q.C., Ottawa, Ontario, and Mr. John C. Osborne, barrister-at-law, Ottawa, Ontario.

At 6 o'clock p.m. the Committee adjourned.

At 8 o'clock p.m. the Committee resumed.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Baird, Buchanan, Burchill, Crerar, Emmerson, Fallis, Gershaw, Gouin, Haig, Hawkins, Howden, King, Kinley, McDonald, McGuire, McIntyre, McLean, Pirie, Quinn, Taylor, Vaillancourt and Wood.—24.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate; the Official Reporters of the Senate; Mr. J. P. McCaffrey, Registrar of Trade Marks; Mr. Willis George, of the Canadian Manufacturers' Association and Mr. A. H. Fleming, Q.C., Toronto, Ontario, representing The Canadian Council of Blue Cross Plans.

The following witnesses were further heard in explanation of the Bill:—

Mr. Charles Stein, Q.C., Under Secretary of State; Mr. Christopher Robinson, Q.C., and Mr. J. C. Osborne, barrister-at-law, Ottawa, Ontario.

The question being put on a motion for the adoption of clause 9 of the Bill, the Committee divided as follows:—Yeas: 9. Nays: 10.

The Motion was declared passed in the negative.

At 9.45 p.m. the Committee adjourned until tomorrow, Wednesday, March 25, 1953, at 2 p.m.

Attest.

JAMES D. MacDONALD,
Clerk of the Committee.

WEDNESDAY, March 25, 1953.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2 p.m.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Baird, Beaubien, Bouffard, Buchanan, Burchill, Crerar, Davies, Emmerson, Euler, Fallis, Gouin, Haig, Hardy, Hawkins, Horner, Howard, Howden, Kinley, McDonald, McGuire, McIntyre, McLean, Paterson, Pirie, Pratt, Quinn, Robertson, Roebuck, Taylor, Vaillancourt and Wood.—33.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate; the Official Reporters of the Senate; Mr. Charles Stein, Q.C., Under Secretary of State; Mr. J. P. McCaffrey, Registrar of Trade Marks; Mr. Christopher Robinson, Q.C., Ottawa, Ontario; Mr. John C. Osborne, barrister-at-law, Ottawa, Ontario; Mr. Willis George, of the Canadian Manufacturers' Association and Mr. A. H. Fleming, Q.C., Toronto, Ontario, representing the Canadian Council of Blue Cross Plans.

The consideration of Bill R-3, intituled: "An Act relating to Trade Marks and Unfair Competition", was resumed.

The Honourable Senator Robertson moved that clause 9 of the Bill be reconsidered.

The question being put on the said motion the Committee divided as follows:—Yeas: 16. Nays: 10.

The motion was declared carried in the affirmative.

The Honourable Senator Crerar moved that clause 9 of the Bill be amended to provide certain restrictions on the use of the "Blue Cross" emblem and the expression "Blue Cross".

At 2.30 o'clock p.m. the Committee adjourned.

At 4 o'clock p.m. the Committee resumed.

Present: The Honourable Senators:—Aseltine, Baird, Beaubien, Bouffard, Buchanan, Burchill, Crerar, Davies, Dessureault, Emmerson, Euler, Fallis, Farris, Haig, Hardy, Hawkins, Horner, Howard, Howden, Kinley, McDonald, McGuire, McIntyre, McLean, Paterson, Pirie, Pratt, Quinn, Robertson, Roebuck, Taylor, Vaillancourt and Wood.—33.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate; the Official Reporters of the Senate; Mr. Charles Stein, Q.C., Under Secretary of State; Mr. J. P. McCaffrey, Registrar of Trade Marks; Mr. J. C. Osborne, barrister-at-law, Ottawa, Ontario, Mr. Willis George, of the Canadian Manufacturers' Association and Mr. A. H. Fleming, Q.C., Toronto, Ontario, representing the Canadian Council of Blue Cross Plans.

In the absence of the Chairman, and on Motion of the Honourable Senator Beaubien, the Honourable Senator Bouffard was elected Acting Chairman.

The Honourable Senator Crerar moved that the Bill be amended as follows:

"That Section 9 be amended by adding the following to sub-section (1).

(p) the emblem of the Blue Cross as adopted by the Canadian Council of Blue Cross Plans and used by its affiliated organizations, and the expression "Blue Cross;" and by adding the following sub-section:

(3) Nothing in this section prevents the use of the emblem of the blue cross or the expression "Blue Cross" by any society for the prevention of cruelty to animals in connection with its activities or by a veterinarian in the practice of his profession."

The question being put on the said motion, the Committee divided as follows:—Yeas: 14. Nays: 17.

The motion was declared passed in the negative.

On motion it was Resolved to report the Bill with the following amendments:—

1. *Page 4, line 2:* after the word "person", where it first appears in said line, insert the word "only"

2. *Page 5, line 12:* delete the word "create", where it appears in the two places in said line, and substitute therefor the word "cause" in both places

3. *Page 6, line 17:* after the word "forces;" insert the words "and used by the Canadian Red Cross Society"

4. *Page 6, lines 40 and 41:* strike out the words "or of any fraternal or charitable society"

5. *Page 6, line 45:* after the word "university" strike out the comma and the word "society"

6. *Page 11, lines 5 to 14:* delete subclause (1) and substitute the following:—

"(1) The registration of a trade mark is invalid if

(a) the trade mark was not registrable at the date of registration;

(b) the trade mark is not distinctive at the time proceedings bringing the validity of the registration into question are commenced; or

(c) the trade mark has been abandoned;

and subject to section 17, it is invalid if the applicant for registration was not the person entitled to secure the registration."

7. *Page 11, line 17:* after the word "become" strike out the word "generally"

8. *Page 14, line 19:* after the word "numerals," add the word "and"

9. *Page 14, line 20:* delete the word "constitute" and insert the word "be"

10. *Page 15, lines 20 and 21:* delete the words "names of the countries" and insert the words "name of a country"

11. Page 17, line 27: after the word "date," add the words "which period shall not be extended,"

12. Page 20, lines 39 to 46: delete subclause (2) and substitute the following:—

"(2) An application to extend the statement of wares or services in respect of which a trade mark is registered has the effect of an application for registration of the trade mark in respect of the wares or services specified in the application for amendment."

13. Page 21, lines 1 to 8: strike out subclause (3)

14. Page 22, lines 1 to 4: delete lines 1 to 4 and substitute the following:—

"44. (1) The Registrar may at any time and, at the written request made after three years from the date of the registration by any person who pays the prescribed fee shall, unless he sees good reason to the contrary, give"

15. Page 24, line 17: after the word "purposes" insert the words "or in any of the manners"

16. Page 24, line 20: after the word "purposes" insert the words "or in any other of the said manners"

17. Page 27, lines 11 to 44: delete clause 51 and substitute the following:—

"51. (1) Where it is made to appear to a court of competent jurisdiction that any registered trade mark or any trade name has been applied to any wares that have been imported into Canada or are about to be distributed in Canada in such a manner that the distribution of such wares would be contrary to this Act, or that any indication of a place of origin has been unlawfully applied to any wares, the court may make an order for the interim custody of the wares, pending a final determination of the legality of their importation or distribution in an action commenced within such time as is prescribed by the order.

(2) Before an order is made under subsection (1), the plaintiff or petitioner shall be required to furnish security, in such amount as the court may fix, to answer any damages that may by reason of the order be sustained by the owner or consignee of the wares and for any amount that may become chargeable against the wares while they remain in custody under the order.

(3) Where, by the judgment in any such action finally determining the legality of the importation or distribution of the wares, their importation or distribution is forbidden, either absolutely or on condition, any lien for charges against them that arose prior to the date of an order made under this section has effect only so far as may be consistent with the due execution of the judgment.

(4) Where in such action the court finds that such importation is or such distribution would be contrary to this Act, it may make an order prohibiting the future importation of wares to which such trade mark, trade name or indication of origin has been so applied.

(5) Any order under subsection (1) may be made on the application of any person interested either in an action or otherwise and either on notice or *ex parte*."

At 5 p.m. the Committee adjourned to the call of the Chairman.

Attest.

JAMES D. MACDONALD,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Tuesday, March 24, 1953.

The Standing Committee on Banking and Commerce, to whom was referred Bill R-3 Trade Marks Act, met this day at 10.30 a.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: We have a quorum, so we can begin. We have gentlemen here making representations in connection with some points on the bill, and we will hear them first. We have Dr. Piercey, Mr. Durnford, Mr. Ogilvie, Mr. Fleming and Mr. Fraser Grant.

Have you settled on an order of priority for the presentation of your views?

Mr. FLEMING: We have.

The CHAIRMAN: Will you come forward, Mr. Fleming, representing the Blue Cross.

Hon. Mr. HAIG: From where?

The CHAIRMAN: From Toronto.

Hon. Mr. KINLEY: The Medical Health Program.

The CHAIRMAN: Hospitalization, yes. This is Mr. Fleming, representing the Blue Cross, gentlemen, and he has certain representations to make.

Mr. FLEMING: Mr. Chairman, and honourable senators, we are speaking for the Canadian Council on Blue Cross Plans, and we are asking for an amendment to the bill, which we think is in the public interest.

Hon. Mr. HAIG: Mr. Chairman, what part of Canada does that represent?

The CHAIRMAN: Yes, will you tell us, Mr. Fleming, where they operate and how they operate?

Mr. FLEMING: The council is an unincorporated body made up of representatives of the Hospital Service Blue Cross Plans in Canada. There is only one Blue Cross Plan in each of eight provinces. In Saskatchewan and British Columbia they have a measure of provincial health insurance, and there is no Blue Cross Plan in those provinces; but if an association similar to those operating in the other provinces is to be formed, in Saskatchewan or British Columbia, to take over that field, they would have the same status in this unifying body, the Canadian Council of Blue Cross Plans, as the other plans have in it.

Now, the first Blue Cross organization in Canada was incorporated in 1938 by statute in Manitoba, and the others followed in this order: Ontario, 1941; Quebec, 1942; Nova Scotia, 1943; New Brunswick and Prince Edward Island, 1944; Alberta, 1948 and Newfoundland in 1949. The one corporation known as the Maritime Hospital Service Association, which was originally incorporated in Nova Scotia, was reincorporated in each of the other three Maritime provinces, so that in the result we have one corporation functioning under a separate Act of each of the four Maritime provinces; but it is the one corporation, the Maritime Hospital Service Corporation. So that adding it up we have altogether, the Maritime Plan, the Quebec Plan, the Ontario Plan, the Manitoba Plan and the Alberta Plan—five Blue Cross organizations providing this hospital service in those eight provinces of Canada.

As I think you must all know these are all nonprofit corporations; they are all operated on a nonprofit basis. They were organized, in the first instance, for the purpose of enabling members of low income groups to obtain hospitalization when required without leaving themselves saddled with a heavy debt.

Hon. Mr. EULER: You say low income groups. Does that exclude those unable to pay the regular contributions?

Mr. FLEMING: There is no exclusion. I speak of the idea which led to the formation of these organizations. I am underscoring the "nonprofit" and, speaking in the broad sense of the word, the charitable character of these organizations. From the other point of view they were formed, as I say, from the one point of view of protecting individuals who could not afford it, from being saddled with the debt of a big hospital bill and, on the other hand, from relieving the hospitals of having to go to the municipalities or the provinces and ask for money to pay for this hospitalization. In other words, if a man could not pay for it, it had to come from somewhere, and if there was not some piling up of a fund to take care of that from the contributions of private people benefitting by it, then it had to come out of the public treasury. So that one of the purposes for the incorporation of these Blue Cross Plans was to provide—protect municipalities of this province against this demand. Now, these associations are only kept alive for that purpose, and their boards are made up of representative citizens who are giving their time to this kind of thing. They are representatives from medical professions, and the employers and the employees, the hospitals themselves and the general public on the boards. None of these directors receive any remuneration at all.

At the moment, there are upward of 3 million people in Canada who are protected by these Blue Cross organizations. Sixty-five per cent of the population of Ottawa is under Blue Cross. The annual subscription paid under this plan exceeds \$40 million. Obviously, it is a very wide and important matter.

Hon. Mr. DAVIES: Mr. Fleming, may I ask you whether the subscriptions vary from year to year, and whether it depends on the ups and downs of your financial position.

Mr. FLEMING: That is in effect true.

The CHAIRMAN: You mean as to rates?

Mr. FLEMING: The rates will be changed as money is required to buy service. The contract is to provide service and hospitalization; the rate is designed to put enough money into the pot to pay the hospital for providing that service.

Hon. Mr. DAVIES: Therefore, if the rate is higher or lower some years than it is other years, it is because of the financial position at your headquarters?

Mr. FLEMING: It is because the plan has had to change the rate in order to meet contingencies of the fund.

Hon. Mr. EULER: Do you ever have a surplus?

Mr. FLEMING: Oh yes. You see these plans all started out without anything except the prospect of the money coming in. Today the Blue Cross subscriber gets much better protection than he did when the plan was first started, for the simple reason that a reserve has been accumulated. The plans have accumulated reserves which are subject to the scrutiny of the Insurance Departments in the various offices; and those reserves are available for either the provision of additional services or the reduction or maintenance of rates.

Hon. Mr. HAIG: As I understand it, each one of the provinces, except the maritimes, operates separately?

Mr. FLEMING: In each of the maritimes—

Hon. Mr. HAIG: Take Manitoba, for instance.

Mr. FLEMING: Yes; it just operates in Manitoba.

Hon. Mr. HAIG: The plan just operates in the province, and the money is kept in that province?

Mr. FLEMING: Yes. And in a sense, the maritimes each operate in their own province, but it is one corporation with a separate legal status.

Hon. Mr. KINLEY: I could be a different rate in each province.

Mr. FLEMING: Yes; it could be.

The CHAIRMAN: The subscriptions are governed by the amount charged by the hospitals in the particular province.

Mr. FLEMING: For the kind of service they propose to offer, yes.

The CHAIRMAN: Where do the reserves accumulate, at the head office of the Plan?

Hon. Mr. HAIG: No; in each province.

Mr. FLEMING: In each province.

Hon. Mr. HAIG: The tendency to increase the cost of Blue Cross is governed largely by the increase in the hospital accommodation in different parts of the country.

Mr. FLEMING: That is the pressure, sir; that is what has led to the increase in rates.

Hon. Mr. CRERAR: For my information, do I understand from what you say that the benefits are confined to hospital expenses and do not apply to doctors' expenses?

Mr. FLEMING: They apply to hospital and ancillary services. The plan in Quebec has for some time offered medical services while in hospital, along with hospitalization. Ontario is now doing the same thing. It is possible for a subscriber to the Ontario plan to obtain medical care in hospital, along with hospital care.

Hon. Mr. CRERAR: By paying an additional premium?

Mr. FLEMING: That is so.

Hon. Mr. McINTYRE: Mr. Chairman, if a subscriber in the Maritime provinces became ill and required hospital accommodation in Ontario or Quebec, would he come under the provisions of the Maritime provinces plan of the Blue Cross or under the Ontario or Quebec plan?

Mr. FLEMING: Legally, his protection would be limited to his contract with the maritime association, which provides that it will give him service in the hospital acceptable to the maritime association, with which there is an arrangement. Of course that association would not have an arrangement with a hospital in Ontario or Quebec. However—and this is where the Canadian Council of Blue Cross Plans comes in—the various Blue Cross organizations in their conference of Plans have agreed with each other that they will take care of patients on other plans in an outside province. If, therefore, a Maritimer is in Ontario and needs hospital care, even though he has no contract that would give him that care with that hospital, he will get it by virtue of the arrangement among the plans. May I, Mr. Chairman, just ask Mr. Ogilvie to confirm that?

Mr. OGILVIE: That is correct; that works throughout Canada.

Mr. FLEMING: Thank you.

Hon. Mr. EULER: I do not like to interrupt you, but may I ask another question?

Mr. FLEMING: Yes.

Hon. Mr. EULER: I appreciate that this Blue Cross organization has been of tremendous help to many people, particularly those in the lower bracket of income. Is that benefit by reason of one of two things? First, does it operate the same as a life insurance company, where premiums are paid in by everybody, but not everybody benefits, in that some do not get ill, and it averages out; or is the benefit by reason of the fact that the Blue Cross gets the services of doctors and hospitals at a lower rate than an individual can?

Mr. FLEMING: I would answer "No" to your second proposition, and "Yes" to the first. You understand, the more people who contribute to the pool, the more even is the incidence of demands. Incidentally, as a general rule, the rate will be lower because of the more people you have in who do not require service.

Hon. Mr. BEAUBIEN: And the greater the service?

Mr. FLEMING: Yes.

Hon. Mr. EULER: But you pay the doctor and surgeon, in the hospital just as much as an individual would pay them who does not belong to the plan?

Mr. FLEMING: No; I cannot say that. As you know, the bill you would get from your doctor might differ very much from the bill which somebody else might get from him.

Hon. Mr. EULER: But would my doctor charge me the same if I had Blue Cross, or would he charge a lesser amount?

Mr. FLEMING: If the doctor had agreed to accept from the Blue Cross what it would pay, that is all he could get; but unless he had done that there would not be any restriction of that kind.

Hon. Mr. QUINN: He would soak Senator Euler.

Hon. Mr. EULER: No, he would not soak me. But if I were a wealthy man—

Some Hon. SENATORS: Hear, hear.

Hon. Mr. EULER: —he might charge me \$500 or \$1,000 for a certain operation. If, on the other hand, I belonged to Blue Cross, would he charge the same, or is there a limit to what he could charge?

Mr. FLEMING: I can speak for the Ontario Association because I know about it, and I think the same thing applies in Quebec. The agreement is to provide so far as medical services are concerned—and I am speaking now of medical services only, because hospital services are on a different basis—there is not a dollar limitation except in the matter of X-Ray and maternity cases. I think there is some dollar limitation on hospitalization, but in medical cases the Blue Cross makes an arrangement with the subscriber to pay to his doctor a certain sum of money for certain surgical procedures in the hospital, and a fixed amount per day or per visit for the attendance of that doctor while in the hospital; but that would not prevent the doctor rendering the subscriber a bill for a larger amount.

The CHAIRMAN: But you must have a panel on which there is a large list of doctors who have agreed to accept in full the fees which the Blue Cross is prepared to pay?

Mr. FLEMING: No, Mr. Chairman; that is not the case. We only agree to pay a certain amount; therefore there is no necessity of binding any doctor to agree to a certain amount. We don't agree to render a medical service; we agree that if a man is in hospital and needs medical attention and gets it, that we will pay to his doctor so much per visit.

Hon. Mr. EULER: What you think is a fair charge?

Mr. FLEMING: It is a fixed charge, sir; and if I am correct, it is in accordance with the tariff.

Mr. OGILVIE: It is in accordance with the Ontario Medical Association schedule of fees.

Hon. Mr. WOOD: Then he gets limited protection under this plan?

Mr. FLEMING: It does not quite work out that way. When the patient has been attended in the hospital by a doctor, and he knows that the Blue Cross has paid that doctor a certain amount of money for that attendance—and that amount is in accordance with the tariff of the Ontario Medical Association—it is going to be very difficult for that doctor to collect any more money from that patient.

Hon. Mr. WOOD: But you indicated to Senator Euler that he could?

Mr. FLEMING: Oh, yes, he could. Legally he could. Then he has this limited protection.

Hon. Mr. MCINTYRE: The patient who comes in under the Blue Cross, if he takes a room in the hospital, the Blue Cross only pays a certain percentage of the cost of that room? Say the room is \$10 a day; the Blue Cross only pays a certain percentage of the cost of the room; the patient has got to pay the rest?

Mr. FLEMING: No: we are talking about hospitalization. That is in a different category. It is treated in a different way than the medical. You have in mind that these organizations we are representing went into the hospital field in the first instance. There was no provision of medical care. That has come recently. Now they agree to provide the service. The Ontario contract with me has to provide me with semi-private accommodation in a participating hospital, that is a hospital that has an arrangement with the plan to provide the service; and there is no money limitation on that. I get the semi-private service there, and all I pay is the rate I pay to the Association. In addition to that, I get the use of the operating room and anaesthetics and certain drugs and medications, certain X-rays and that kind of thing. I get the service. It is an agreement to provide the service, and that is a different thing to an agreement to pay somebody a certain amount for what they do.

Hon. Mr. MACKINNON: Semi-private accommodation is provided. A person who takes a suite in a hospital pays the difference himself?

Mr. FLEMING: Oh, yes. He will get a credit equal to what the association would have paid if he had stayed in the general accommodation.

Hon. Mr. PRATT: I assume the principle is that the Blue Cross does not wish to interfere in the first place with the rights of selection of the physician or the surgeon for the patient. That is his own selection.

Mr. FLEMING: That is right.

Hon. Mr. PRATT: And they do not wish to tie the patient down to a certain accommodation which the Blue Cross can afford, with its organization, to meet, but if anyone wishes to have better or more suitable accommodation he can have it at extra cost?

Mr. FLEMING: That is right.

Hon. Mr. PRATT: The policy is not to have an inflexibility, so that the patient can select the doctor, with regard to cost. Accommodation at the hospital is at the discretion of the patient?

Mr. FLEMING: That is right.

Hon. Mr. DAVIES: Do all doctors agree to accept the Blue Cross?

Mr. FLEMING: Oh, no, we have no agreement from any doctor to accept anything.

Hon. Mr. CRERAR: What is the attitude of the doctors generally towards this whole scheme of Blue Cross hospitalization?

Mr. FLEMING: Well, I think I know, sir, because I have the impression that I am the solicitor for the Canadian Medical Association, and I have acted on it, and I am the solicitor for the Physician Services Incorporated, which is the medical plan in Ontario; that is the doctors' medical plan there. Now the medical plan and the hospital plan in Ontario work in very close co-operation. When they have a difference they sit down and talk it out and straighten it out. There has been the greatest co-operation between the medical profession and the Blue Cross in Ontario. You could not ask for anything much better.

Hon. Mr. CRERAR: Well, then, it will be safe to assume that this insurance scheme—because that is what it is—carries generally the support of the medical profession?

Mr. FLEMING: I think it does; decidedly so.

Hon. Mr. CRERAR: I think that is important.

Hon. Mr. HAIG: Some provinces just have the hospitalization?

Mr. FLEMING: That is right.

Hon. Mr. HAIG: In Manitoba you can buy for hospitalization, and also you can buy for hospitalization and medical attention if you want to?

Mr. FLEMING: May I check that? Is Manitoba limited to hospitalization?

Mr. OGILVIE: Manitoba and Alberta are limited to hospitalization. The Blue Cross plan in other provinces provides for hospitalization and medical attendance.

Hon. Mr. WOOD: What rates do they charge?

Mr. FLEMING: I cannot give you that. But I have been paying them since the beginning, and they have not seemed to me to be very heavy.

Hon. Mr. WOOD: Would it be fifteen, twenty dollars?

Mr. FLEMING: Mr. Ogilvie, will you give the rates in Ontario?

Hon. Mr. WOOD: Just for hospitalization.

Mr. OGILVIE: For a family, Blue Cross coverage: \$2.75 for standard ward accommodation, and \$3.65 for semi-private.

Hon. Mr. EULER: Per person?

Mr. OGILVIE: Per family, and all children up to eighteen.

Hon. Mr. EULER: Per year?

Mr. OGILVIE: Per month.

Hon. Mr. EULER: Does it matter how many children there are?

Mr. OGILVIE: It does not matter, up to eighteen years.

Hon. Mr. KINLEY: How does that compare with your competitors?

Mr. FLEMING: We know that our rates, because of our non-profit structure, are lower than other rates.

Hon. Mr. ROEBUCK: Then you have higher rates for some services?

Mr. FLEMING: Our best service is semi-private accommodation. We have never gone into luxury service. The semi-private is \$3.65; standard ward, \$2.75, for families.

Hon. Mr. EULER: What does "semi-private" mean? Two in a room?

Hon. Mr. HAIG: Two, at least.

Hon. Mr. DAVIES: What do the Women's Institutes pay?

Mr. FLEMING: That would be higher.

Hon. Mr. DAVIES: I understand it is \$5.25 now.

Mr. FLEMING: It may be something like \$5.

Hon. Mr. DAVIES: It has gone up?

Mr. FLEMING: Because of the extraordinarily heavy utilization in that section. It is a small section of our enrolment which has been a high cost to the plan.

Hon. Mr. McINTYRE: What does it take in?

Mr. FLEMING: Protection against the cost of standard ward accommodation for husband, wife, and all the children—the bed charge. But not medical fees. We are talking about Blue Cross hospital coverage.

Hon. Mr. ROEBUCK: How long is that made available?

Mr. FLEMING: That provides payment, in the first year of membership, for fifty-one days of hospital care. In the province of Ontario, with each year of participation, ten days of premium is added, so that a participant with two years' membership would have sixty-one days, three years seventy-one, and so on. The maximum is two hundred and one days.

Hon. Mr. McDONALD: Does the name change in the several areas? For instance, I have in my hand a receipt from the Maritime Hospital Service Association, showing "Blue Cross", written in words, "Blue Seal", and then the cross, a blue cross and a blue seal. Is that the same in the other areas or is there a difference?

Mr. FLEMING: There is a difference in the other areas. In the United States these voluntary pre-paid medical plans have been endeavouring to adopt or have adopted a common seal, a common name, and they call these medical plans the Blue Shield Plan. They have the Blue Shield as their insignia.

Hon. Mr. HAIG: That is medical?

Mr. FLEMING: Medical, yes sir. In the Maritimes, the Maritime Hospital Association, in providing medical services, has obtained an approval of its plan by the American Blue Shield group and they are therefore using that insignia and that name in respect of their medical services, and the Blue Cross in respect of their hospital services. That is why you get the two on the receipt.

The CHAIRMAN: Mr. Fleming, I was just wondering, after this general information, if you could tell us what your objective is? We assume that you have some purpose in being here, and I am wondering what the objection is that you have to the bill in its present form and what you are asking for.

Mr. FLEMING: I think you have the information which will enable you now to approach our problem. Here it is. We say that the name Blue Cross and the emblem Blue Cross have only one significance to these three million people. They mean the organization that is providing them with their hospital services. That is what it means to these three million people and to all the other people who have heard about Blue Cross. Since 1938 the Blue Cross has been used as the emblem and, shortly after that date, the name Blue Cross has been used to identify these non-profit organizations and their services. So it is something of more than a very recent development. To many more than these three million people the Blue Cross emblem and name have a significance comparable only to that of Red Cross. I do not know of anything you could compare it to, having regard to the number of people who are interested and who know about it and who are protected. Look at that area. Look at the population we have here. I do not think there is anything you can compare it to except the Red Cross. It has a similar significance in that wide area to the words Red Cross. Now, if somebody adopts the name Blue Cross or the Blue Cross emblem in connection with business as a trade name or as a trade mark, these people will at once assume that the product or the service is manufactured or sold or sponsored by one of these service organizations.

The CHAIRMAN: You mean if it is a product like beer or cheese or something of that kind, that they would assume you were in the business?

Hon. Mr. WOOD: You are referring to health insurance?

Mr. FLEMING: I will answer that. I have a couple of specific instances on that which I will give you. Now, if this vast number of people in Canada is to be protected from that kind of deceit and if the public interest which is served by these Blue Cross organizations is to be furthered, it is surely obvious that this name and this emblem should be prohibited for use in trade by anybody else; I say that the adoption of it in the future by somebody else should be prohibited. That is my point. Let me develop it. If the honourable senators are satisfied it is in the public interest that the name and emblem should be protected, then we should consider how it should be protected.

The CHAIRMAN: You mean protected by a specific prohibition against its use in trade?

Mr. FLEMING: That is what I mean.

The CHAIRMAN: Because under this bill it would be protected, for it is identified with a service.

Mr. FLEMING: Well, Mr. Chairman, I am just on the verge of meeting that point. It was stated on the second reading of this bill in the Senate that we might have all the protection we need under section 10 of the bill. I do not know whether you are all sufficiently familiar with the details of the bill to identify section 10 without having a look at it, but that is a very general section:

Where any mark has by ordinary and *bona fide* commercial usage become recognized in Canada as designating the kind, quality, quantity, destination, value, place of origin or date of production of any wares or services, no person shall adopt it as a trade mark in association with such wares or services or others of the same general class or use it in a way likely to mislead, nor shall any person so adopt or so use any mark so nearly resembling such mark as to be likely to be mistaken therefor.

That is a passing off section. Let us have a look at how effective that section might be. We do not think section 10 would be adequate. That section was in the Unfair Competition Act and it is the law of the land now. It has been the law since 1932, but in 1951, two years ago, the name Blue Cross and the emblem Blue Cross were registered as a trade mark by the Trade Marks Office on shoes. What happened? That registration was made at a time when the name and the emblem had become recognized throughout this Dominion over a period of years as representing the Blue Cross Hospital Organization and their services. This is what happened. Our clients were not aware of this registration until recently when about a month or so ago a shoe store in Toronto within two blocks of the large office building, which is occupied by the staff of the Blue Cross in Toronto, put on a display of shoes. In the company of the shoes was a very lavish display of blue crosses. I am instructed that inquiries were made at the Ontario Plan in all seriousness—it was not just a case of somebody pulling somebody else's leg—as to whether the Plan had gone into the shoe business or was sponsoring these shoes. That is what happened under section 10, so that we do not think this section is adequate. Now, if it is left open to the Registrar—

The CHAIRMAN: Excuse me. You are discussing this on the basis that if and when the new bill becomes law it will extend to include services. You could apply to the Registrar to register Blue Cross as a trade mark in respect of these services?

Mr. FLEMING: I am going to deal with what kind of protection we might get if that is all we have. If it is left open to the Registrar to register the name, if he has a free hand and it is left open to him to register the name or the emblem as a trade mark, he will be under constant pressure by those seeking to take advantage of the public interest now attached to the Blue Cross and the Blue Cross insignia. The widespread special significance of these terms lifts that issue, we say, out of the ordinary field of issues between competitors in business. That is clearly an issue between the public on the one hand and the individual who is seeking the privilege of deceiving the public on the other. We think that issue might well be taken out of the hands of the Registrar. You take it out by giving the protection in the statute. We are not suggesting that this protection be given in a way which will interfere with the rights of anybody who has already adopted a trade mark. What we want to do is stop any future adoption of the Blue Cross name or emblem in business as a trade mark.

The CHAIRMAN: Why should we have to go that far? I am looking for your point of view on this. If you were granted a trade mark under this bill when it becomes law, would that not give you adequate protection?

Mr. FLEMING: There again, I think, Mr. Chairman, I will develop my argument in answer to that. I think I am answering it. And I will be glad to come back to your point.

Hon. Mr. WOOD: That would apply, in any case, only to your services.

The CHAIRMAN: Take Blue Cross on shoes, for instance, I find it almost incredible to accept that anybody can seriously confuse the Blue Cross in a shoe store window in relation to shoes with your Blue Cross Plan and conclude that these were commodities that you people were selling as part of your plan to the public.

Mr. FLEMING: Well, Mr. Chairman, nurses' feet are awfully important, and the shoes that she wears on her feet are very important. If somebody is talking about Blue Cross shoes to a nurse she will assume it has something to do with the Blue Cross Association, with hospitals behind it.

Hon. Mr. EULER: It might be a factor in obtaining good health.

Mr. FLEMING: Yes.

Hon. Mrs. FALLIS: Mr. Chairman, I quite agree with the witness. I think that anyone passing along the street and seeing a display in the window of Blue Cross shoes would immediately think of the Blue Cross Plan of Hospitalization, and think of them in terms of nurses, and think that here is a shoe that has the sanction of the Blue Cross organization. I think that thought would come in the minds of a great many people.

The CHAIRMAN: There are Red Cross shoes in the United States, and I have not heard of the Red Cross in the United States being affected: and they are well-advertised throughout the United States. You have Johnson's baby powder in the United States and I have not heard that the Red Cross organization has been confused with the powder.

Hon. Mr. WOOD: I think Mr. Durnford would like to make a remark with respect to that.

Mr. DURNFORD: I happen to be interested in the Red Cross as well as the Blue Cross. On the question of shoes in the United States under the name of Red Cross, they were able to get the name Red Cross changed to the name Gold Cross.

The CHAIRMAN: That must have happened recently.

Mr. DURNFORD: It has been within the last five years that they changed it to Gold Cross Shoes.

Hon. Mr. KINLEY: Many doctors throughout the country have a Blue Cross on the front of their car as a distinguishing mark, which is beneficial, I presume. As solicitor for the Medical Association of Canada, what is your information with regard to that? How do they get that Blue Cross on the front of their car?

Mr. FLEMING: I have no idea. May I ask Dr. Piercey, Mr. Chairman?

Dr. PIERCEY: That is news to me, sir.

Hon. Mr. KINLEY: Well, you know they do carry a blue cross on the front of their car.

Mr. FLEMING: Well, sir, when you say that you have seen it, that is enough for me.

Hon. Mr. QUINN: It is quite common in Nova Scotia.

Hon. Mr. CRERAR: I find myself in considerable sympathy with the point of view of the witness. Supposing a firm starts up and registers Blue Cross flour, as a distinctive mark. Now, we have Five Roses flour, and we have other different brands of flour that are known by the brands. If this firm proposes to establish a milling industry, and comes to the department and says, "We want to register a trade-mark as Blue Cross flour", in the first place, I cannot see that there is any relationship, apparently, between Blue Cross flour and Blue Cross Hospital Service. They are miles apart; and because of that, the gentlemen who have to do with the issuing of these trade-marks sit down solemnly and consider the whole thing and say, "Well, there is no relationship between Blue Cross flour and Blue Cross Hospital Service." So we issue the trade-mark, and Blue Cross flour goes on the market. Now, what follows from that. They say there will be thousands of people throughout Canada, maybe tens of thousands, who within their minds associate Blue Cross flour with Blue Cross Hospital Service. It lends itself to that confusion. I do think that is very important. As far as I am concerned, I am wholly in support of the view put forward by the witness.

Hon. Mr. HAIG: I think the witness should direct his argument to a point that has not been raised yet. I do not think that parliament should ever pass legislation making special exemptions to people.

An Hon. SENATOR: Hear, hear.

Hon. Mr. HAIG: What we should do is to make this legislation general so that it would cover it without specifying Blue Cross, or anything else, because that is only one part of it. This trade-mark covers everything used in connection with it; and I think you should show us why you should put special exemptions in general legislation. It is a very dangerous thing to do.

Mr. FLEMING: The way I am putting it, sir, is how are you going to protect the public from deceit in the manner in which Senator Crerar has mentioned, unless you put it in the Act? You are not going to be able to do it by registration. There is a level at which you cannot deal with things except by legislation. That is what the legislature is for.

Hon. Mr. ROEBUCK: What do you propose by way of an amendment to section 10?

Hon. Mr. WOOD: May I ask a question?

Mr. FLEMING: Yes.

Hon. Mr. WOOD: How did you come by this name Blue Cross—probably through Red Cross?

Mr. FLEMING: Well, it has been a development. I have tried to get to the bottom of that, and I have gone back as far as about 1932.

Hon. Mr. WOOD: In some respects, you are capitalizing on Red Cross?

Mr. FLEMING: On Red Cross; probably there is some significance to that.

When somebody starts to adopt a name which the public identifies, the mind of the public is at once associated with the thing that is adopted by somebody; and you now have upwards of 3 million people doing that.

The CHAIRMAN: I do not want to interrupt your train of thought, but there is one question I would like to ask, Mr. Fleming. Do you put Red Cross and Blue Cross on the same plane so far as the treatment or the protection that should be given to the use of that mark is concerned?

Mr. FLEMING: That is where I am going to put it.

The CHAIRMAN: I suppose you have to, to make the case you have been making.

Mr. FLEMING: Yes. Of course, we might be content to put it on the level that this bill proposes to put the insignia of a fraternal or charitable organization, but I am coming to that.

Now, the objective would be attained if the Blue Cross name or emblem be given protection under section 9. Section 9, gentlemen, is this:

"No person shall adopt in connection with a business, as a trade-mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for". Now, we suggest we include in that list as subsection P,—

The CHAIRMAN: Which is now?

Mr. FLEMING: In the list, that is in section 9. So that it would read this way:

No person shall adopt in connection with a business, as a trade-mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for.

(p) "The heraldic emblem of the Blue Cross or the expression 'Blue Cross'".

Then going down to the end of the section:

Nothing in this section prevents the use as a trade-mark or otherwise, in connection with a business, of any mark described in subsection (1) with the consent of Her Majesty or such other person, society, authority, or organization as may be considered to have been intended protected by this section.

And you will note, gentlemen, that the section starts "No person shall adopt", and adoption refers to the future, and not to the past. We are only seeking protection against the future adoption of the words Blue Cross and the Blue Cross emblem.

Now, this will not prejudice the Humane Societies in continuing to use a Blue Cross as the emblem on their stationery, literature and ambulances. There has never been any objection by them or us to the use of the emblem in those fields; and we have made no attempt to reach the various societies throughout Canada that are in the humane field, that is, the normal field. We have been in touch with the Ontario Society for the Prevention of Cruelty to Animals, and the Toronto Humane Society, and we understood that they are not only not objecting to this request, but supporting it and Mr. Grant is here today to speak for the Humane Society.

Now, it has been suggested that the veterinary surgeons have been using a Blue Cross on their offices and on their stationery for many years, and that the newcomers in that profession should not be prevented from adopting it. Now, if that is really the situation, I must say that I am not familiar with that; but if that is the case, we would not wish to stop the use of it, and we do not think the public or our associations would suffer if the words were adopted, to make an exception in the case of veterinaries, if there is that use established, in our plan.

The CHAIRMAN: Do you express the view, Mr. Fleming, that if paragraph P was added in the form in which you suggest, these organizations which are presently using the Blue Cross, would after this bill comes into force still be able to use it in the face of the prohibition?

Mr. FLEMING: Yes. The prohibition is a prohibition against adoption, and that applies only to the future.

The CHAIRMAN: Very well, then the future. The moment this bill becomes law and there is a prohibition against adoption, if the Humane Society have the Blue Cross on their wagon the next day, they have adopted the Blue Cross.

Mr. FLEMING: Oh, no.

The CHAIRMAN: We will ask our Law Clerk what he things about it.

Hon. Mr. EULER: What do you have to say about it, Mr. MacNeill?

Mr. MACNEILL: I don't know.

Mr. FLEMING: Gentlemen, we have had the benefit of a very enlightening discussion with your advisory committee, and I want to say right here that we appreciate it very much. We have had nothing but the utmost co-operation from them, and their frank exchange of ideas, from Mr. Stein down the whole list. It has been very helpful in assisting us in knowing what you people would likely be concerned about when we got here. It is their view, if I understand it correctly, that the word "adoption" would not prevent the use of any mark or seal now in use by any organization.

Hon. Mr. EULER: Mr. Fleming, you are here to advocate the inclusion of a certain amendment?

Mr. FLEMING: Yes.

Hon. Mr. EULER: Would you mind reading that once more?

Mr. FLEMING: Yes. My suggestion is that we add to paragraph (p) of section 9 the words "the heraldic emblem of Blue Cross or the expression Blue Cross". That is quite similar to the Red Cross, or the name Red Cross.

Hon. Mr. ROEBUCK: Why are you not covered by paragraph (n) of section 9 (1)? It provides: "no person shall adopt in connection with a business, as a trade mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for . . .

(n) any badge, crest, emblem or mark

(i) adopted or used by any of Her Majesty's naval, army or air forces,

(ii) of any university or of any fraternal or charitable society"

The CHAIRMAN: I should point out, Senator Roebuck, that there is a proposal from the departmental officers to amend subparagraph (ii) by striking out the words "any fraternal or charitable society". When we are dealing with the bill section by section we will have to consider that.

Hon. Mr. ROEBUCK: But we haven't done it yet.

The CHAIRMAN: No.

Hon. Mr. ROEBUCK: Does that protect you, or does subsection 2 of section 9 restrict it?

Mr. FLEMING: I just don't follow you, sir.

Hon. Mr. EULER: Do you mean that the words "charitable society" would cover Blue Cross?

Mr. FLEMING: What would protect us?

Hon. Mr. ROEBUCK: I will read again that provision: "No person shall adopt in connection with a business, as a trade mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for—

(n) any badge, crest, emblem or mark

(i) adopted or used by any of Her Majesty's naval, army or air forces,

(ii) of any university or of any fraternal or charitable society."

Why does that not cover you?

Hon. Mr. EULER: Do you suggest that he is covered by "charitable society"?

Mr. FLEMING: May I answer that, Mr. Chairman, as I understand it, it has been stated here that your advisory committee proposes to strike out those words from the bill?

Hon. Mr. ROEBUCK: But we have not done so yet.

Mr. FLEMING: If the suggestion is that we are a fraternal or charitable society, I appeal to my friend, Senator Roebuck, as a lawyer, to tell me does he think that in view of the activities as I have outlined them today, we would come within the definition of "charitable society" as our courts define it?

Some Hon. SENATORS: No, no.

Hon. Mr. WOOD: How could it be charity when it is paid for?

Hon. Mr. ROEBUCK: Why do you not ask to have paragraph (n) amended so as to make it more specific?

Hon. Mr. BURCHILL: We have made a provision for the Red Cross, why not do the same for Blue Cross?

Hon. Mr. CRERAR: Just on that point, Mr. Chairman. Does not paragraph (f) of that subsection protect the Red Cross? If I am not mistaken, the suggestion is that Blue Cross should be protected in something the same fashion as Red Cross is protected.

Mr. FLEMING: That is a plain way of putting it.

Hon. Mr. KINLEY: But Red Cross is covered by the Geneva Convention; it is an international organization.

Mr. FLEMING: I will deal with that.

Hon. Mr. HAIG: Could you not add after Red Cross, "and Blue Cross"?

Mr. FLEMING: It would not fit into that section, sir.

It is suggested that there might be some doubt under section 9 (2), if our amendment were allowed, as to what society or organization might be considered to have been intended to be protected. Consideration has been given to this point, and as it appeared that each and every one of the Blue Cross organizations might not be recognized, they have all agreed that the name and emblem shall be vested in their unifying organization of the Canadian Council of Blue Cross plans. Those are all the Blue Cross plans in Canada, and any Blue Cross plan will get in on it.

I am now dealing with the arguments against this proposal. It might be urged that while our amendment would prevent someone adopting the words "Blue Cross" or the Blue Cross emblem as a trade mark in the manufacture or sale of cough syrup, it would also prevent its adoption in connection with motor cars, and therefore it would be too broad. To attempt to define in a statute the fields in which there might be deception, and those in which there would be none, would be an impossible task. It therefore becomes a matter of weighing the interests of the motor car manufacturer, shall we say, against the danger to the public. It could hardly be said that any harm would be done to anyone by removing the name and emblem from the available field for the future. Is

there likely to be some motor car manufacturer, or some other manufacturer, come along and say "That is a terrible infringement on my rights and I am suffering from it"—if he is not able to use the Blue Cross and he wants to. It would certainly be used to deceive the public.

It does not appear that the prohibition in respect to the Red Cross has created the slightest practical hardship to anybody; and it is hard to see where a similar situation with respect to the name Blue Cross or the Blue Cross emblem would produce any different result. It has been said that the Red Cross is governed by the Geneva Convention, and that we are obliged to protect it. I put this proposition to you, gentlemen: I do not think anyone would suggest that if we were not bound by the Geneva Convention that we would not give the Red Cross the protection now provided by section 9. In other words, if there were no international obligation, would you gentlemen take the Red Cross out of section? I don't think you would.

The CHAIRMAN: The question rather is, if there were no obligation by virtue of this international convention, would Red Cross be in the prohibited class? It is not would you take it out, but would it be in?

Mr. FLEMING: I would say it certainly would.

The CHAIRMAN: You were proposing the test, would it be taken out?

Mr. FLEMING: Well, it is already there.

The CHAIRMAN: Well, it has been there because of the Convention.

Mr. FLEMING: Maybe so. I think perhaps that is correct. It was put in there in the first instance because of the international obligation. That goes back many years.

Hon. Mr. ROEBUCK: The Convention was passed in order to meet circumstances. So that the Convention does not add very much.

The CHAIRMAN: We undertook in the Convention to prohibit the use for any other purpose.

Hon. Mr. ROEBUCK: Yes, but the Convention was because of the facts of the situation, the inadvisability of allowing people generally—

The CHAIRMAN: It must have been that.

Hon. Mr. KINLEY: On the other hand, it might have been for the benefit of their own service and not the restriction of other people. The Red Cross is something that has grown and has international significance and denotes an international endeavour for a certain purpose. It is not commercial; we know that it started through the efforts of one who was the first nurse in a certain war. It is the highest grade and the highest level; it has nothing to do with business or competition with other people.

Hon. Mr. HAIG: You said the Blue Cross applies in Manitoba. What do they use in connection with hospital services in Saskatchewan? What sign? Do they use Blue Cross?

Mr. FLEMING: Well, there are some subscribers in Saskatchewan who are protected by Blue Cross contracts by reason of the fact that the contract was made with an organization that crosses provincial boundaries and has employees in more than the province in which the particular contracting company is.

Hon. Mr. HAIG: But in Saskatchewan the government gives hospital service.

Mr. FLEMING: They do not use the Blue Cross on their service.

Hon. Mr. HAIG: Can they, if we put this amendment in?

Mr. FLEMING: No.

Hon. Mr. HAIG: Is British Columbia the same way?

Mr. FLEMING: No, they can't.

The CHAIRMAN: Why not?

Mr. FLEMING: Well, now, sir, as regards British Columbia—let us be realistic about it: will the British Columbia government or the Saskatchewan government want to use the words “Blue Cross” on their Plan? I don’t think so.

Hon. Mr. WOOD: No, I would not think so.

Hon. Mr. HAIG: I think they would.

Mr. FLEMING: No; they will want to show the difference between the government plan and an outside plan.

Hon. Mr. HAIG: A private plan cannot get in there. Are you incorporated in British Columbia?

Mr. FLEMING: No, they can’t get in there.

An Hon. SENATOR: By what names is the Blue Cross incorporated in various provinces?

Mr. FLEMING: There is the same name in the four Maritimes, one in Quebec, one in Manitoba, one in Ontario, one in Alberta. The Ontario Hospital Association in Ontario is incorporated, and one of its powers is to operate a voluntary prepaid hospital service plan, and it is a non-profit corporation incorporated under the Ontario Companies Act. That is why you have not got in any legislation in Ontario any protection for the name and the emblem such as there is in other provinces.

Hon. Mr. EULER: You have no corporation called the Blue Cross?

Mr. FLEMING: No, we have no corporation, but that name has been used from the outset in connection with this hospital plan in Ontario, and that emblem has been used.

Hon. Mr. KINLEY: But you get protection for your name in Ontario?

Mr. FLEMING: The gentleman who is asking the question is looking at it from the angle that he thinks, if you have got some name with the words “Blue Cross” in it, you have a certain amount of protection for the name.

Hon. Mr. KINLEY: Under incorporation, yes.

Mr. FLEMING: Certain it is that the incorporating department of a province or the Dominion, once they have given that name to a corporation, will not give it to someone else. But we have not that protection anywhere, because “Blue Cross” is not in any of those names.

Hon. Mr. KINLEY: It is not incorporated?

Mr. FLEMING: It is not incorporated in the name “Blue Cross” or “Blue Cross Plan”. So there is no protection under the incorporating statutes for the name.

Hon. Mr. ROEBUCK: Why do you not change the names in that regard and incorporate the Blue Cross in your names?

Mr. FLEMING: In all the provinces?

Hon. Mr. ROEBUCK: Yes.

Mr. FLEMING: Oh, yes. If we had it in our names—

The CHAIRMAN: You would be limited to the services that you are rendering?

Mr. FLEMING: Yes, it would be limited to hospitalization. Thank you very much, Senator Hayden. That is clarifying the situation a bit on that one.

Hon. Mr. ROEBUCK: Do you want to do anything else than what you are doing now?

Mr. FLEMING: No, we do not. We have got two “we’s”. We have “we” in the sense of the hospital plan, and on the other side we have three million-odd people. What we are talking about particularly here is to protect that group from deceit, and I do not know how you can do it unless you put it under section 9.

The CHAIRMAN: If you call your company in each province "Blue Cross Hospital Services" or "Hospital Services, Blue Cross Limited", would not that give you the exclusive right to the name in that field?

Mr. FLEMING: I have never examined it, but I do not know that the Senate, with this bill before it, would want to leave it to that contingency.

The CHAIRMAN: Really you want to lift the word "Blue Cross" out of any field of use at all, except for yourself?

Hon. Mr. ROEBUCK: But he does not do that in this amendment, because the opening words of the section are "No person shall adopt in connection with a business".

Mr. FLEMING: The kind of thing where the danger lies is the adoption of the word in connection with merchandise. We have not a bit of fear of any other hospital service association adopting the name "Blue Cross". They are not that kind of people. The people who are running these groups do not do that kind of thing. They want to have something that distinguishes their own service, their own name, and their own business from the other person's business. We are not worried about that class, but we are worried about—

Hon. Mr. EULER: Bad business, manufacturers?

Mr. FLEMING: Yes, that is it.

The CHAIRMAN: If we granted this thing that you are asking, then should not we also, in the way that Senator Haig has suggested, deal with all co-operative forms of hospitalization plans so as to give them the same protection in this general way in relation to whatever designation they may use?

Mr. FLEMING: The distinction between their plan and our plan is in the three million people.

The CHAIRMAN: You mean you have more people at the present time?

Mr. FLEMING: It has a wider significance.

The CHAIRMAN: Numbers won't balance off the principle.

Mr. FLEMING: No, but it is numbers that has put the Red Cross in there. It is the wide significance of the term.

Hon. Mr. HAIG: No.

The CHAIRMAN: I think it is the kind of service.

Mr. FLEMING: Red Cross would be there, I submit, whether there was any international Convention or not. You would not take them out of the protection; you would give that protection to Red Cross, you would not let people use it on shoes or anything else. In this country the words and emblem "Blue Cross" have acquired a significance that in Canada is just as wide as "Red Cross".

Hon. Mr. HAIG: No, no.

Mr. FLEMING: Maybe that is going a little too far, but it is pretty wide.

Hon. Mr. WOOD: Supposing some other organization should come along and want to use the words "White Cross". Would you object to that?

Mr. FLEMING: I cannot see there would be any objection to that.

Hon. Mr. WOOD: Well, it would have the same significance.

Mr. FLEMING: There is quite a difference.

Hon. Mr. KINLEY: Mr. Chairman, may I ask a question?

The CHAIRMAN: Yes.

Hon. Mr. KINLEY: My experience is that this organization is in competition with all the other people who are doing this kind of insurance business in Canada. That is my experience. I have had many representatives of these companies call on me, including representatives of Mr. Fleming's company.

They are all after business. Your company is after business the same as any other company. Now, in asking for this Blue Cross, which really does have something of value, are you not asking for an added advantage over the other people in similar business in this country?

Mr. FLEMING: I have something to say on that, sir.

Hon. Mr. KINLEY: All right.

Mr. FLEMING: Sometimes I have had to jump and take these objections a little out of the order that I have them, but if I may get back to my own order for a minute I should like to do so. It does not appear that the prohibition in respect to the Red Cross has created the slightest practical hardship. I have dealt with that point. It might be suggested that our amendment would in effect give the Blue Cross a statutory trade mark, and there seems to be some bogey about a statutory trade mark. Honourable senators well know, as has already been pointed out, that the legislation already gives the emblems and marks of fraternal and charitable organizations that very thing, a legislative trade mark, a statutory trade mark. Not a few of these fraternal organizations—for example, the Independent Order of Foresters—provide sick benefits on a rate payment basis. They are all protected by this legislation. Their emblems and their names are protected. Why should we not have that protection?

Hon. Mr. KINLEY: The Chairman has indicated that they have taken that protection out of the bill.

Mr. FLEMING: Well, it is not out yet, as somebody has said. This is the first time we have heard it is going to be taken out. We did not come here anticipating that it was going to be deleted.

Hon. Mr. DAVIES: What advisory committee is going to suggest that this provision be taken out of the bill?

The CHAIRMAN: What I said a few minutes ago was that it has been indicated to me that the Department is proposing certain amendments to the bill which is before us for consideration in committee, and one of them would involve taking out these words "fraternal and charitable". It is still being considered.

Mr. FLEMING: I cannot see any reason why non-profit organizations, devoted to hospital and ancillary services, should not have similar protection for their trade mark as do charitable organizations or, as you like, the Independent Order of Foresters. It may be urged that a statutory trade mark, as somebody has put it, would give us a preferred position *vis a vis*—using the phrase of my friend Mr. Osborne—others interested in hospital and medical insurance. Now, they are not the kind of people who, I have said, will attempt to pass their services off as ours. The names and marks which they now use will not be prejudiced by our amendment.

Hon. Mr. EULER: Has there been any protest from any of those organizations?

Mr. FLEMING: I have read the minutes of your last meeting and I think there was a gentleman here at that meeting who was concerned as to whether the emblem of their particular association would be protected under this legislation, or could get protection. There was some discussion here. Incidentally, I suppose this is the first time that we have stuck out our heads, asking for this kind of protection.

Hon. Mr. CRERAR: May I ask Mr. Fleming a question relative to the point raised by Senator Kinley?

The CHAIRMAN: Yes.

Hon. Mr. CRERAR: If I understand this whole matter aright, what you are seeking is protection against the use of the name?

Hon. Mr. FLEMING: Yes.

Hon. Mr. CRERAR: Senator Kinley raises the point that there may be other organizations with which you may come in conflict. Let us assume, for instance, that a group of people in some province or maybe in two or three provinces start up a new medical service called the Pine Tree Hospital Service, or the Beaver Hospital Service. What you are seeking would not prevent them from doing so?

Mr. FLEMING: No, sir.

The CHAIRMAN: Oh, no.

Mr. FLEMING: No, senator, we are only seeking a prohibition against the use of the Blue Cross emblem and the words Blue Cross.

Hon. Mr. CRERAR: That is right.

Hon. Mr. KINLEY: Is this not true? As an insurance company you are seeking an advantage in trade by the use of an emblem to which I do not think you are quite entitled?

Hon. Mr. BEAUBIEN: Why not. It is a non-profit organization.

Hon. Mr. CRERAR: I am thinking, for instance, of insurance companies in Manitoba. There is the Wawanesa Mutual Fire Insurance Company which does business all over the province, and there is the Portage la Prairie Mutual Fire Insurance Company. They are doing the same kind of business, but the Wawanesa Company cannot capitalize on the name of the Portage la Prairie Company and vice versa. There is no difficulty that arises. If I understand this aright, that is what you are trying to reach here.

The CHAIRMAN: No. We are trying to go a little further. Let us assume that you gave the Portage la Prairie Fire Insurance Company the exclusive right to use that name, and that you prohibited anybody from using the words "Portage la Prairie". Supposing you prohibited anybody else from using the words "Portage la Prairie" in a shoe company or a flour company.

Hon. Mr. EULER: No, that is different. That is the name of a city.

The CHAIRMAN: Well, if you are going to argue on a name, then let us take any name at all. Let us take "Beaver".

Hon. Mr. DAVIES: One of your competitors, I believe, in Ontario, is the Continental Hospital Service. Have they a registered trade mark?

Mr. FLEMING: I do not know. Let me say in all fairness to the Continental Company because it illustrates what I mean when I say we are not afraid of that kind of people. I think it was the Continental—was it not, Mr. Ogilvie?—who started to use a mark which we thought might be confusing with ours, and a set-up in some of their literature which we thought might be confusing with ours. We took the matter up with them and they said "Well, we think there is something to that, and we will not use it any more". Those are not the kind of people we are worried about. They want to distinguish their service from ours.

Hon. Mr. BUCHANAN: I want to clear up a point. The name Blue Cross is not to be used by any organization in a similar business as yours. Is that the idea?

Mr. FLEMING: No sir, that is not right.

Hon. Mr. BUCHANAN: Let me go a little further. If a drug store calls itself the Blue Cross Drug Store, what then?

Mr. FLEMING: I say that if a drug store is now called the Blue Cross Drug Store, we cannot touch it. If this amendment is adopted, it would mean that somebody cannot in the future start calling his drug store the Blue Cross Drug Store. Right here in Ottawa there is a Blue Cross Animal Hospital. We cannot touch that.

Hon. Mr. BUCHANAN: You are not endeavouring to interfere with anyone who is already using Blue Cross as an emblem?

Mr. FLEMING: May I draw a distinction from what you put to me and what we are asking. You use the word "using". We are not prohibiting the use, we are prohibiting the adoption. In other words, we want to prohibit somebody from using this mark in the future who has not used it heretofore. That is the point.

Hon. Mr. BEAUBIEN: Should we not look at this from the standpoint that this is a non-profit organization and is not in competition with anybody else? It is rendering a service without profit. I think that is entirely different from other kinds of organizations.

Hon. Mr. HAIG: Lots of insurance companies are doing that.

Hon. Mr. BURCHILL: All your co-operatives are doing that.

Hon. Mr. QUINN: They are not doing business just for fun.

The CHAIRMAN: Shall we let Mr. Fleming continue?

Mr. FLEMING: Would you allow me to deal with the comment about the co-operatives? It is suggested that we are not in any different position from the co-operatives. I think we are.

My impression is that the co-operatives regularly distribute to their members, their profits. Now, we don't distribute anything. That money stays there and is used either to reduce rates, or to steady rates or increase services.

Hon. Mr. HAIG: Mutual insurance companies do the same as you are doing, exactly.

Mr. FLEMING: But is this not the case: In a mutual insurance company I will get the benefit as a policy holder in the mutual insurance company of the profits that have been made in the period my contract has been running.

Hon. Mr. HAIG: Yes; and I belong to the Manitoba Blue Cross. If they make a profit, my benefits next year will not be cut down.

Mr. FLEMING: I get a credit on my next year's premium.

Hon. Mr. KINLEY: Not the profits themselves, the surplus.

Mr. FLEMING: I do not think I will worry you much longer, gentlemen, although you do not appear to be worried. It will no doubt be urged that registration—and that has been suggested here—under the provisions of the bill would give all the protection that is needed, both to the public and to the plans. Our answer to that is that registration in connection with hospital and ancillary services would not have prevented the registration of the same name and emblem in respect of shoes.

We should not have to protect the public from that kind of deceit, out of our money. Money to decrease rates and increase services should not have to be used to defend the public against deceit from manufacturers who adopt or want to adopt, or try to adopt, the name Blue Cross, or to use the Blue Cross emblem.

Now, the legislatures of the four Maritime provinces, and Quebec and Alberta, have recognized that statutory idea of protection, of reserving by statute to the local Blue Cross organizations the exclusive right to the use of the name Blue Cross and the Blue Cross emblem in connection with those providing hospital care and treatment in the Blue Cross system of those provinces. It is in the Act of incorporation of each of those provinces, and it provides that the use of the name and emblem may not be adopted for any other hospital service association of those provinces than the ones incorporated.

Hon. Mr. EULER: If that is a matter of provincial jurisdiction, why come here?

Mr. FLEMING: We are told here, sir, that that legislation is probably ultra vires, and if we do not get the protection in the provincial statute, where I think it ought to be, that may be useless.

Now, in the Maritimes, there is one other point. The legislatures of the four Maritime provinces and Québec and Alberta have recognized that to the degree of reserving by statute, to the local Blue Cross Associations, exclusive right to the use of the Blue Cross name and emblem in connection with the providing of hospital care and treatment. It would seem more appropriate to give that protection in this bill particularly as it is suggested that that provincial legislation is ultra vires.

Hon. Mr. KINLEY: Have they that in the United States?

Mr. FLEMING: They are protected in the United States by registration. Now, having in mind that the United States Trade-Mark Act was revised and passed in its present form in 1946, it should be pointed out that the Blue Cross in 1953 is entirely different; it is much broader in 1953 than in 1946, and the American Hospital Association just did not stop there. Finally, we have not any assurance that protection will be granted by registration. We have not any assurance that we will get registration, and in the public interest there must surely be no room for doubt on this matter about protection, that is, the prevention of the use of those names. If we are left to registration, it will be granted only to the plans in their own fields of hospitalization, and that will not be broadened to adequately protect the public.

Now, gentlemen, I submit all this with great respect, and I appreciate very, very much the very kind consideration which you have given us.

Hon. Mr. DAVIES: A very good witness, I think.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. ROEBUCK: Mr. Chairman, may I say that I am very sympathetic to this application. If it were a question of incorporating a company with the name Blue Cross in the company, we would not hesitate for one moment to get that name and to preempt its use to them to the extent that incorporation does preempt a name. But I am impressed with the section itself. Section 9 says this:

"No person shall adopt in connection with a business, as a trade-mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be taken for". And then it sets out a lot of other things besides Blue Cross and Red Cross. For instance, The Royal Arms, crest or standard; the arms or crest of any member of the Royal Family; the standard, arms or crest of His Excellency the Governor General; the arms, crest or flag adopted by Canada or by any province or municipal corporation in Canada; the heraldic emblem of the Red Cross; and the heraldic emblem of the Red Crescent; the equivalent sign of the Red Lion and Sun used by Iran; any national, territorial or civic flag, arms, crest or emblem; any matter that may falsely suggest a connection with any living individual; the portrait of any individual, whether living or dying, within the previous thirty years; the words "United Nations"; and any badge, crest, emblem or mark adopted or used by any of Her Majesty's naval, army or air forces; of any university or of any fraternal or charitable society; any public authority; and the name Royal Canadian Mounted Police, and so on.

Now, that is a pretty wide coverage, and in there you find the Red Cross. It is not as though we were singling these people out and giving them a special position. A great many others have been protected, but some of them for very much the same reasons. I cannot see that we would be doing any harm to anybody if we stopped using Blue Cross shoes, or Blue Cross hospitals, or Blue Cross tooth brushes, or something of that kind, in connection with any business. I am sympathetic towards their application, in view of the fact that, as Mr. Fleming has told us, 3 millions of people are actually members of the Blue Cross

Societies. Would it not be a fair piece of legislation to say that no one should use Blue Cross for the purpose of trade and business, to confuse it with the reputation gained by the people for their services to 3 million people?

Some Hon. SENATORS: Hear, hear.

The CHAIRMAN: Dr. Piercey, do you wish to add anything to what has been said?

Dr. PIERCEY: No.

The CHAIRMAN: Mr. Dunford?

Mr. DUNFORD: No thank you.

The CHAIRMAN: Mr. Ogilvie?

Mr. OGILVIE: I have nothing to add.

The CHAIRMAN: I will now call on Mr. W. G. Fraser Grant, who represents the Ontario Society for the Prevention of Cruelty to Animals and other humane societies.

W. G. FRASER GRANT, Q.C.: Mr. Chairman, and honourable members, may I state briefly that the parties for whom I am speaking are engaged as official and accredited organizations in the field of animal welfare, for the most part under the title of the Society for the Prevention of Cruelty to Animals. Many similar organizations in local centres are known by the alternative title of Animal Welfare League and similar titles.

I represent, Mr. Chairman, and honourable senators, the Ontario Society for the Prevention of Cruelty to Animals, which is an organization created by statute of the Ontario legislature, in 1915. By a re-enactment of that act in the past year, the Ontario S.P.C.A.—if I may use that abbreviation—is in effect a federation of all of the local municipal humane societies for the prevention of cruelty to animals under their various names throughout the municipalities in Ontario, of which there are approximately forty in number.

The statute created by the Ontario society provides that all local societies shall be affiliated with the Ontario society. Therefore, I represent all of the Ontario humane organizations.

I am also president and counsel for the Toronto Humane Society, which, outside the Montreal organization, is perhaps the largest individual operating humane organization in Canada. It is unfortunate that there is not a dominion-wide organization under the title of S.P.C.A. But it has only been organized at provincial levels thus far, and under the provincial society the local societies function as I have mentioned. As I am sure honourable senators are aware, similar organizations exist throughout the United States under similar titles and under the federated head of the American Humane Association; and the organization widely known throughout the world more or less as the parent organization for this continent, the Royal Society for the Prevention of Cruelty to Animals, in Great Britain.

I should say, sir, that not all of these humane organizations make use of the Blue Cross emblem, but I think many of them do, and have done so for many years. In the case of the Ontario Society and the Toronto Humane Society, the use of the Blue Cross emblem which I think is identical or practically so in form and size with that used by the hospital association, dates back to the early part of this century or perhaps in some instances the beginning of the last century. I shall submit to you, Mr. Chairman and honourable gentlemen, that the use of the Blue Cross therefore designates the work of a charitable organization. There is some significance to the use of the words "charitable organization" as will become apparent from my later remarks. I believe it is a charitable organization in the true sense of the word, as it is entirely supported

by charities except for certain municipal services in which some humane societies, by arrangement, relieve the city administration of the policing of dogs and so forth. But, for the purpose of this bill, Mr. Chairman, I think the societies I represent can be assumed to be charitable societies.

I am, therefore, in an uncertain position by reason of the possible removal of paragraph (n) from section 9 (1). As distinct from my friend Mr. Fleming, the people I represent are clearly within the definition of "charitable societies", and presumably might protect themselves adequately by registration under paragraph (n) and by the procedure prescribed by that paragraph.

Hon. Mr. EULER: I take it, you would like to see that paragraph remain?

Mr. FRASER GRANT: Yes, we want to see it stay in the bill. If it remains in the bill, Mr. Chairman and gentlemen, my other remarks may not add much to what has already been said by Mr. Fleming. There are, however, certain respects in which the humane organizations differ, for the purposes of this legislation, from Mr. Fleming's client.

I should say, sir, that in the time available it has not been possible for me to obtain full instruction from the Ontario organizations. I am informed by the Montreal organization that it has no interest in this legislation, as it does not use the Blue Cross emblem. It is one of the exceptions among the humane organizations which do not use the Blue Cross. My authority is, therefore, limited to the Ontario organizations. I do know there are provincial organizations and humane societies in this country and the United States which use the Blue Cross; however, it is not used universally, as I have indicated in the case of the Montreal society.

The purposes for which the humane organizations in effect support Mr. Fleming's submission, and ask that the users of the Blue Cross be brought within the prohibition section are three: I should, however, preface my mention of those three by submitting, that the Blue Cross as applied to humane organizations has acquired international significance. In that respect our identification with the Blue Cross goes further afield, and dates farther back in time than its usage by the hospital plan.

The purpose for which we seek the protection of the prohibitory section 9 is, first, the commercial use of Blue Cross on products capable of identification with animals. Our work is entirely in animal welfare. We suggest that we are, in the animal world, the opposite number, if I may use the term, of Red Cross in human mercy work. The humane organizations seek to avoid the use of the Blue Cross on commercial products which might be identified, rightly or wrongly, or however misleadingly, with articles for use in connection with animals, notably foods, whereby the public, the owners of animals, may be misled into the belief that that particular product has the recommendation or the endorsement of the official accredited humane organizations. So far as I am aware, I believe this is true in Ontario. I cannot speak authoritatively beyond. The official organizations—by "official" I mean those having their existence under the provincial statute—do not sanction, recommend or approve any foods or medicines or drugs for use in connection with animals. We wish in our field to avoid the threat which, I think, has been suggested to you by Mr. Fleming in the medical field, namely, that of the incursion of spurious manufactured articles and products under the pseudo-endorsement of the humane organizations.

Hon. Mr. DAVIES: Is it the practice of any commercial firm to use the Blue Cross on animal foods at the present time?

Mr. FRASER GRANT: Not so far as I am aware, sir. I am open to contradiction on that, but I do not know of any. If there were any within Ontario we would have sought to restrain it. I am subject to correction in other territories of which I have no knowledge, but I do not know of any. The second

reason why we wish to be brought for maximum security and protection into the prohibitory sections is, against the use of the symbol by those engaged in the business of breeding and selling animals, whether it be horses, dogs, cats, or cattle—livestock, because the humane organizations are very active in all these fields. We are the official inspectors of the stock-yards and all cattle coming in and out of Toronto, for instance, and we are identified in the public mind in the field of cattle sales as well as with domestic pets and business-used industrial animals. We wish to avoid the use of the symbol on any articles or by stables passing off animals bought by or for sale by them as having the approval or the endorsement, implied by the Blue Cross, of official humane animal protective associations. There is a third threat inherent in the use of the Blue Cross by other organizations in our field, and that is the confusion in the mind of the public with other individuals, societies or organizations who may be approaching it for funds for charitable purposes. The Blue Cross, as used notably by the Toronto Humane Society and, I know, by others in Ontario, is very conspicuously featured in all our contacts with the public. It bears a prominent place in the centre-top of all our stationery and all of the documents of any sort officially emanating from the humane societies—the Blue Cross, sometimes with the slogan “We Speak for Those who Cannot Speak for Themselves”, but very often without it, and thereby standing, as the identification of the humane organization, very much in the public eye. One of our sources, and very essential sources, of the revenues of the humane organizations, in Toronto notably, is through the annual tag day. Whatever we may think of tag days they are essential to the financing of these organizations, and the tags sold on tag day, and which produce many thousands of dollars of revenue for the society, consist of a large blue cross. That is a symbol, sir and honourable members, of the extent to which we feature, and have for a great many years featured, the emblem of the blue cross as implying and identified with humane animal work.

If, sir and honourable members, the prohibition of the use of the “blue cross” as requested by Mr. Fleming were granted, then, as I understand it, the effect of that would be to restrict the user of the blue cross to the organization represented by Mr. Fleming and the other organizations which have already heretofore adopted the emblem of the blue cross and made it known, within the meaning of the bill, as the emblem of the product, or, as in our case, the services of that organization. I need not remind you, Mr. Chairman and the committee, that inasmuch as ours is entirely a service organization, there has been nothing in the statute upon which we could base any previous application for protection of the blue cross. It comes now for the first time within the field of practical possibility, by virtue of the present bill.

To sum up my submissions, then, Mr. Chairman and honourable members; I support Mr. Fleming's application on the ground that the blue cross, as identified with welfare work in the animal field, has acquired not only a local but a national and an international significance denoting a work of mercy and charity, which—while the comparison is rather paltry, though at the same time it may be accurate—is analogous in the animal world to that of the Red Cross in the mission of mercy to humans. And on that submission, sir, the Blue Cross, as applied to the humane work of the organizations I represent, and kindred organizations, might properly and should properly be brought within the prohibitory section of the bill. As an alternative—if this is the correct time and place to make it—we submit that the words “charitable society” should be continued in paragraph (n) of section 9 of the bill. We feel this provision should be continued inasmuch as our organization—I do not know whether there may be others—may find a deserving protection under it if we do not come under the entirely prohibited classification. Thank you.

Hon. Mr. HORNER: For a long time I have been looking for a prominent member of the Humane Society to whom I could make a general complaint. It seems to me that your people are not where they are needed most. You mentioned stockyards. A lot of the workers handling cattle around the stockyards these days seem to have a great ability for using the cane or whip. I have observed this sort of practice at the stockyards in Saskatoon. When you beat cattle over the head they instinctively close their eyes. They cannot see where they are going, yet the attendants just keep on hitting them over the head. I simply cannot watch this sort of thing going on, particularly when these people are handling my own cattle. I have told them to quit this sort of thing, and to let the cattle see where they are going. I think a great deal more could be done by the Humane Society than is being done at the present time.

Mr. GRANT: I agree with you entirely, sir. I will assure you, however, that this sort of thing does not exist in our jurisdiction because we have two fully qualified cattle experts on duty twenty-four hours a day at the stockyards. Unfortunately the jurisdiction of our Ontario organization does not extend as far as Saskatoon.

Hon. Mr. QUINN: Let me ask Mr. Grant this question. Would the prohibition of the use of the words Blue Cross in connection with your organization have any harmful effect?

Mr. GRANT: The prohibition of the use of what?

Hon. Mr. QUINN: Of the name Blue Cross.

Mr. GRANT: You mean if it were prohibited in such a way that we might not be able to use it?

Hon. Mr. QUINN: Yes.

Mr. GRANT: Yes, it would have a very serious effect.

Hon. Mr. QUINN: It would have a harmful effect?

Mr. GRANT: Yes, on the identification and recognition of our organization by the public.

Hon. Mr. QUINN: Your organization is generally identified by the initials S.P.C.A., and in my opinion I think those initials would be of more advantage to you than the name Blue Cross.

Mr. GRANT: We use both. Our trucks, for instance, are painted with a grey background and have a cross painted on them in blue. I might say that we were identified by a blue cross before we were identified by the initials S.P.C.A.

Hon. Mr. QUINN: I am a pretty old man and I have always known your organization by the initials S.P.C.A.

Mr. GRANT: It would depend considerably where you have known the organization.

Hon. Mr. QUINN: Nova Scotia.

Mr. GRANT: Yes, I believe in the Maritimes it is known as the S.P.C.A.

Hon. Mr. QUINN: I have never known of a blue cross in connection with it.

Mr. GRANT: As I said before, it is not universal in Canada. The Society has an annual budget of between \$110,000 and \$120,000 in Toronto for animal welfare work, and the Blue Cross has been used as the emblem of the Toronto Society since its inception in 1888. We have become strongly identified with it locally. If anyone else were allowed to use that emblem to our exclusion, our charitable support among our members could be seriously affected. I say that in all seriousness. I know that in some districts it has not been used to

the same extent as in others. I am frankly, sir, presenting my submissions in the cause of those who have come to depend upon the Blue Cross to the extent they have used it in their own areas.

Hon. Mr. BAIRD: Mr. Fleming is not opposed to your use of it, as I understand?

Mr. GRANT: That is what I understood from him before the meeting this morning, and I so understand now. I am not so sure, however, that it is clearly understood by this committee or by the law department whether the granting of Mr. Fleming's request would necessarily protect those who have had a prior use of the symbol. If Mr. Fleming's amendment is granted then, to use the expression, our wagon would be hitched to his star. I am quite sure that Mr. Fleming is not asking that we, having used the emblem for some fifty years, be cut off from its further use. I am not sure, however, what the legal interpretation of his request is.

Hon. Mr. BAIRD: You want to be sure that you will be protected?

Mr. GRANT: Yes.

Hon. Mr. KINLEY: From what you say, Mr. Grant, I gather that the symbol of the Blue Cross has become rather valuable to your service. I also realize that anybody in private industry would be very happy to have that emblem if he could exploit its use.

Mr. GRANT: I agree with the first part of your statement. The emblem has become a very valuable asset to us.

Hon. Mr. KINLEY: I agree that people in trade and commerce should not be able to use this emblem, but are you willing to admit that Mr. Fleming's organization should be able to use this glamorous emblem in order to build up its business in this country when it is in competition with other organizations doing similar work? Do you not think he is asking too much?

Mr. GRANT: May I answer your question, senator, by saying that we have no objection whatsoever to being identified with Mr. Fleming's organization in the use of the emblem Blue Cross. We do not oppose it. We do not believe it is for us to say whether it has become of sufficient public significance to be identified with his organization. Mr. Fleming's organization has been using this emblem for a considerable length of time and, if it is not a charitable organization or even *quasi* charitable, it is a form of public service. We certainly do not oppose its use of the words Blue Cross.

Hon. Mr. KINLEY: You think that the inclusion of the words "charitable society" will bring you under the bill and protect you?

Mr. GRANT: I have made that interpretation for myself.

Hon. Mr. KINLEY: Mr. Fleming wants us to say that he will be the only man in the country who could use it.

Some Hon. SENATORS: Oh, no.

Mr. GRANT: With respect, I did not understand that. If so, it changes the entire basis of my argument. I do not think that was his objective but I may be wrong.

Hon. Mr. HAIG: Mr. Grant has stated that his organization has been using the symbol of the Blue Cross for a good many years. I should like to ask Mr. Fleming how long his organization has been using it?

Mr. FLEMING: Since 1938 in Canada.

Hon. Mr. HAIG: Only in part of Canada.

Mr. FLEMING: It started in Manitoba.

Hon. Mr. HAIG: Yes, I know.

Mr. FLEMING: And then it started in Ontario in 1941.

Hon. Mr. HAIG: That is all I wanted to know.

Hon. Mr. KINLEY: There is no reason why you should not continue to use it.

Mr. FLEMING: No.

Hon. Mr. BAIRD: They want protection on its use.

The CHAIRMAN: Honourable senators, these are all the representations that are going to be made on this particular phase of the bill. Mr. Redmond Quain, Q.C., is here. Mr. Quain, do you desire to make a general representation now or to make representations as to particular sections when we get into a section-by-section consideration of the bill?

Mr. QUAIN: I think perhaps a general one, sir.

The CHAIRMANS We will hear you now, then. Would you, first, tell us your qualifications?

Mr. QUAIN: I am a barrister practising in Ottawa and Hull, and I am a fellow of the Patent Institute of Canada. I am the author of Quain's Digest of Exchequer Court Cases. In this particular connection, I have been asked by the Council of the Bar of the province of Quebec to consider the first part of the bill and submit my suggestions to them; and after submitting them, they asked me to present my suggestions to this committee.

My status in this matter, of course, is purely voluntary. I am doing it to help you here, and to help with the Act.

I originally submitted a brief to the committee on some 80 odd suggestions and recommendations for amendments. Of those 85 suggestions, I think, some 20 were mere suggestions of precautions they might take. So you have 65 suggestions that I made. The committee adopted 44 of them.

The CHAIRMAN: Your average is pretty good.

Mr. QUAIN: I am not here to complain about anything, I am very well treated by the committee. That left some 20 odd suggestions for amendments. Of those 20 odd, I came to the conclusion that perhaps six of them I was not right on, so that left about 14. I had a discussion with the committee yesterday, and they were kind enough to ask me to come to see them and tell them what I had to say about the remaining points, and as a result of that there are very few points I have to mention to this committee. Some of the points I have abandoned, because I feel that after the number of years the committee has had to deal with this bill, unless something rather serious arises, one should not press it or we shall never get this bill through by arguing about minor points.

The first point is that I do not think the words "deemed to be a thing", is capable of an easy interpretation; and we have in three or four sections, such and such a thing "shall be deemed to be an adoption", that I do not insist on. You will find it in almost all statutes—"deemed to be"; if "deemed to be" is the same as "is", I say we should use "is". If "assumed to be" is the same, unless the contrary is proven, I suggest we use that. That is my first point.

The second point is the wording, "if it is made to appear"—to appear to the Exchequer Court, in certain sections. I think that is a bad expression. You can say, "if the Exchequer Court finds", or "if it so"; that is sufficient for that. This is just a matter of words.

Then, a third point. As I say, these are not too serious, you find them in all kinds of legislation emanating from this house and they have been passed by without any trouble.

Section 22 is the prohibition against using a trade-mark in such a way as to depreciate the value of that mark. There are certain evils that the committee have tried to remedy, and undoubtedly those evils should be corrected, but I don't agree that they had to put a prohibition in that prevents my saying penicillin has some drawbacks. I do not think that is a prohibition that should

appear in the Act. You must not use a trade-mark to depreciate the value. Some court may hold that saying that penicillin has some drawbacks, or that my kind of camera is better than a Kodak, was not covered. I rather think it is, and should not be there.

Hon. Mr. DAVIES: Are you opposing clause 2 of section 22?

Mr. QUAIN: I am opposing the language of section 22. I think it is the intention of the committee, (and there is a good argument for putting it in, it is another point of view I am putting forward) that it does prevent my saying "my product is as good as penicillin".

Hon. Mr. HAIG: I think what we are doing now is a waste of time. I think his objection should be taken to those sections when we come to them, and then we would understand exactly what he is arguing, and what the committee's side of the answer is.

The CHAIRMAN: Yes. You will appreciate, Mr. Quain, that if you are not here when the particular section comes up, the viewpoint you may now express may be missed at that time.

Mr. QUAIN: My third point is under 1209 of the Customs Act, as mentioned in the report, and I think that many people will agree with me when I say that is a frightful section that we should not do anything to extend. It is a section that absolutely prohibits importation to Canada of certain things. Among the things prohibited are certain kinds of trade marked articles, and also used motor cars, used buses and lots of things which are now out of date.

Hon. Mr. WOOD: Why should they be prohibited?

Mr. QUAIN: They should not be prohibited at all.

Hon. Mr. DAVIES: What has this to do with trade marks?

Mr. QUAIN: Because certain trade marked articles are prohibited under that item. I think if these things are to be prohibited it should not be done under that section of the Customs Act.

The CHAIRMAN: But that section is not now before us.

Mr. QUAIN: No; it is a recommendation of the committee.

Hon. Mr. KINLEY: That is paragraph 30 of the report of the Commission.

The CHAIRMAN: Yes.

Hon. Mr. KINLEY: It invokes the aid of trade marks for tariff protection.

Mr. QUAIN: That is what it does, exactly.

The CHAIRMAN: But that is something which exists at the present time in the customs tariff.

Hon. Mr. KINLEY: Yes.

The CHAIRMAN: That cannot be dealt with in this bill, but we will have the customs tariff before us later on.

Hon. Mr. KINLEY: I think the customs tariff has been changed, according to this paragraph.

The CHAIRMAN: This is just a recommendation that it be changed.

Hon. Mr. KINLEY: It seems hardly fair trade practices. For instance, vaseline is made by the Imperial Oil Company in the United States and is made in Canada by a subsidiary company. At one time I could buy it in the United States, import it and pay the duty on it; but now, by reason of its trade mark in Canada, they have invoked the section of the Criminal Code which prohibits its importation into Canada, and one has got to buy in Canada at their price.

The CHAIRMAN: But Senator, there is no provision in this bill which deals with that matter. The committee, in its report, recommends some changes be made in that respect, but we cannot deal with that on this bill.

Hon. Mr. KINLEY: It is in the report that is now before us, and the witness spoke of it. That is the reason I amplified it.

The CHAIRMAN: Quite true. We may get an opportunity to deal with it when the customs tariff comes before us.

Mr. QUAIN: That is all I have to say, Mr. Chairman. If this were the first year and the first attempt being made to deal with trade marks, I would go further in a number of these things but if we are ever to get the bill through, if everybody is to be heard and the committee rewarded for its labours, we must abandon much of our arguments pro and con.

The CHAIRMAN: Thank you, Mr. Quain.

Two briefs have come in, one from the board of Trade of the city of Toronto and another from Alec. E. McRae and Company of Ottawa. The departmental officers and advisers have reviewed these briefs, which came in on March 19th and 20th, and I think during the course of our section by section consideration of the bill some reference may be made to the several points they raise. I do not think there are any other people here who would like to make representations at this time on this bill, and therefore I see no reason why we should not deal with it section by section.

Hon. Mr. KINLEY: Except, Mr. Chairman, we have heard the representations made by various people here today, and we should have the benefit of the experience and knowledge of the departmental officials on their reaction to what has been said.

The CHAIRMAN: My thought was that when we deal with the bill by sections we would get the viewpoint of the department.

Hon. Mr. HAIG: Mr. Chairman, I move that we adjourn now and resume after the Senate rises. Our session this afternoon should not take more than fifteen minutes.

The Committee adjourned until the Senate rises this afternoon.

The Committee resumed at 4 p.m.

The CHAIRMAN: We start with section 2 of the bill. What is the pleasure of the committee?

Hon. Mr. CRERAR: I suggest we start with section 1 and just run through them, and when we come to questions we can ask officials of the government.

On section 2—Definitions.

The CHAIRMAN: Section 2 is the definitions section. I think it is fair to say that the contents are mainly reproduced from the present act. Is that right?

Mr. OSBORNE: Quite largely that is correct.

The CHAIRMAN: By and large this section 2 is reproduced from the present act.

Hon. Mr. WOOD: Have they been contentious at all?

The CHAIRMAN: Nothing contentious.

Mr. OSBORNE: There is only one paragraph, with respect to which a submission has been made, and that is the definition of "trade mark" in (t). Mr. McRae has made a submission to the Senate Committee with respect to that. It can be summed up in this way. Mr. McRae's suggestion with respect to paragraph (t), the definition of "trade mark", is that it is not sufficient to define a trade mark in terms of the function of the mark, the purpose of which it is used, and he would like to make two alterations. One is that in the definition of section 2, (t) as it presently stands he would like to add some words descriptive of the mark, such as "symbol, letters, numerals, and so on." It is the feeling of our committee that the word "mark" is sufficiently clear in itself. What we propose to cover by that word is any kind of mark which can be placed on wares or used in advertisements in association with services.

It would really add nothing to the significance of the Act to go on and enumerate the various types of mark that might be employed. The other suggestion that Mr. McRae has made is that there be a clause inserted some place in section 2 which would settle the rules used to determine when one mark is distinguishable from another for the purposes of registration. I think he limits it to the question of deciding when one mark would be registrable over another. With great respect to the submission that has been made, I think that perhaps Mr. McRae has overlooked the fact that all we define in section 2 (t) is "trade mark" in terms of the purposes for which it is used. In section 6 we define what is meant by "confusing"; and in section 6, subsection (5) we set out the series of tests that would be used, either by the Registrar of Trade Marks, in determining the registrability of one trade mark over another, or by a court in determining whether one trade mark infringes another. In that way we lay down with as much precision as we think possible, the tests that are to be applied in determining whether marks are confusingly similar. I do not think that the committee would like me to explain in detail what these tests are.

The section was agreed to.

On section 3—When trade mark deemed to be adopted.

The CHAIRMAN: Section 3 is "When trade mark deemed to be adopted"; and again, is there any change in substance, Mr. Robinson?

Mr. ROBINSON: No. The section is a new one, but it simply expresses what has been taken as being the position of the existing statute.

The section was agreed to.

On section 4—When trade mark deemed to be used.

The CHAIRMAN: Any change in substance there, Mr. Robinson?

Mr. ROBINSON: Not in subsection (1), but subsection (2) is new, because it is directed to services, which is a new concept; and subsection (3) is new. It is dealing with the problem of a man who is in the export trade from Canada and wants to be able to register his trade mark in Canada. Under the present statute the definition of "use" is such that if you apply your trade mark only to wares which are exported from Canada, rather than sold in Canada, you are not considered to have used your trade mark in Canada; you therefore cannot register in Canada; and because you cannot register in Canada there are many foreign countries in which you cannot register, because the laws of many foreign countries require you to have the home registration first. Therefore the purpose of subsection (3) is that the man who uses his trade mark only in export will be considered to have used it, for the purposes of this act, in Canada.

The section was agreed to.

On section 5—When trade mark deemed to be made known in Canada.

The CHAIRMAN: Any change of substance?

Mr. ROBINSON: In the first place I should point out that this committee would recommend one minor alteration to that section as it stands. On line 2, page 4, we propose that the word "only" should be inserted after "person".

The CHAIRMAN: That is: "A trade mark is deemed to be made known in Canada by a person only if it is used by such person in a country of the Union, other than Canada, in association with wares or services", etc. That seems all right.

The section was agreed to.

Mr. ROBINSON: It has been our intention all along that the definition should be exclusive. We were advised that it would be so, but some people were prepared to argue the opposite.

The CHAIRMAN: Will you so move, Senator Wood?

Hon. Mr. WOOD: I so move.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Is there anything else to say with respect to the section, Mr. Robinson?

Mr. ROBINSON: The definition is essentially not new. The present definition is somewhat more restricted than the previous one in that it now requires that the advertisement of the trade mark in Canada should be such that it has become well-known to dealers rather than merely known. Beyond that there is no substantial change.

The CHAIRMAN: Shall section 5 carry?

Section 5 was agreed to.

On section 6—When mark or name confusing.

The CHAIRMAN: Is there any substantial change with respect to section 6, Mr. Robinson?

Mr. ROBINSON: No, not a change in substance. The purpose of the present wording of section 6 is to bring together into one section the various ways in which trade marks may be confusing with each other. Trade marks may be confusing either because two identical trade marks are used on goods that differ slightly, or you may have trade marks confusing because two trade marks that differ slightly are used on identical goods. The present statute deals in separate provisions with those two aspects of confusion. They deal with similar trade marks on the one hand, and similar wares on the other hand. That has led to some difficulty in interpretation, and what we have tried to do in section 6 is to bring these two concepts together into the single concept of confusingness.

Hon. Mr. HAIG: I suggest that the section carry, and this confusion be left to the judge of the court to decide.

The section was agreed to.

On section 7—Prohibitions.

The CHAIRMAN: Is there any change in this section?

Mr. OSBORNE: There is no fundamental change, but there are slight changes in each of the subsections. The Unfair Competition Act deals only with false statements and subsection (a) of the proposed legislation includes misleading statements. This covers those statements which, while not false in reality, are nevertheless misleading. In subsection (b) we suggest an amendment purely for the sake of being consistent with language used elsewhere in the statute. In line 2 of subsection (b) the word "create" appears twice. We have elsewhere used the word "cause" and in each case we would prefer to see the word "create" changed to the word "cause". So that the subsection would read:

"direct public attention to his wares, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his wares, services or business and the wares, services or business of another;"

The CHAIRMAN: Would you so move?

Hon. Mr. HAIG: I so move.

Mr. OSBORNE: Subsection (c) was implicit in the old section 11 of the Unfair Competition Act, but we have provided, in terms, that there is a right to prevent the passing-off of wares or services, and the specific provision is new to this bill.

The CHAIRMAN: And, of course, the section is broadened because it now includes the word "services".

Mr. OSBORNE: That is correct. That is an observation which will run generally throughout the bill, and perhaps need not be mentioned apart from a general statement. Throughout the bill trademarks will now apply to services, and, of course, this section is consistent with that proposition.

Subsection (d) is included to cover certain situations presently covered by the Criminal Code that have to do with false marking. It is our understanding that some of the sections now in the Code will probably be deleted in the revision. We co-operated with the committee in charge of the revision of the Criminal Code and it was decided that these provisions should be inserted in the Unfair Competition Act.

There is no change in subsection (e) from section 11 of the Unfair Competition Act. By way of explanation, section 11 of the Unfair Competition Act and section 7 of this bill deal with unregistered trade marks. They are sections directed against acts of unfair competition.

The CHAIRMAN: Mr. Osborne, if under section 7 of the bill you are going to put the offence in this Act and take it out of the Criminal Code, what about the question of prosecution in those circumstances?

Mr. OSBORNE: In general, we felt that those are acts which should be prohibited, subject to civil sanctions rather than criminal sanctions.

The CHAIRMAN: We are not concerned in this bill, then, about the criminal end of it?

Mr. OSBORNE: Not at all.

The CHAIRMAN: If you prohibit an act and you make it an offence in that regard, then section 164 of the present Code would apply and I think there is a penalty of two years.

Mr. OSBORNE: Yes. There is a blanket prohibition in the Code.

The CHAIRMAN: There could be a criminal charge for a violation under section 7 because there is no penalty provided in the bill before us.

Mr. OSBORNE: There is a general penalty provision later on in the bill, senator. I am not prepared at the moment to go into it. Section 52 of the bill provides that where it is made to appear to a court of competent jurisdiction that any act has been done contrary to the provisions of this Act, the court may make any such order as the circumstances require including provision for relief by way of injunction and the recovery of damages or profits, and may give directions with respect to the disposition of any offending wares, packages, labels and advertising material and of any dies used in connection therewith.

The CHAIRMAN: These would appear to be civil remedies.

Mr. OSBORNE: These are civil remedies, senator, but they are penalties which would be applicable to a breach of this section as well as to others.

The CHAIRMAN: But there would be nothing to prevent the application of section 164 to a violation of section 7.

Mr. OSBORNE: I think not, senator.

Hon. Mr. WOOD: Would that apply to countries sending in goods here such as was the case prior to the second World War? I think the Germans, just before the war, had some goods labelled "Made in France". They had a plant in both places.

Mr. OSBORNE: Yes. That was also true of the Japanese. That is the type of thing which this prohibition would be directed against.

The CHAIRMAN: Shall section 7 as amended carry?
Section 7 as amended agreed to.

On section 8—Warranty of lawful use.

The CHAIRMAN: Is there any change in this section?

Mr. OSBORNE: There is no change there.

Section 8 was agreed to.

On section 9—Prohibited marks.

The CHAIRMAN: There may be some contention as to this section.

Hon. Mr. HAIG: I would suggest that we leave this and cover the rest of the sections and return to section 9 later.

Hon. Mr. WOOD: How can you do that?

The CHAIRMAN: Quite easily, because it does not tie into the other sections, and then we could hear the representations in connection with it and deal with it then. We would get through the rest of the bill faster that way.

Hon. Mr. WOOD: All right.

The CHAIRMAN: Section 9 will stand for the present moment.

On section 10—Further prohibitions.

Mr. OSBORNE: That is the old section 13 of the Unfair Competition Act.

The CHAIRMAN: Shall section 10 carry?

Section 10 was agreed to.

On section 11.

The CHAIRMAN: Is there any change here?

Mr. OSBORNE: It is consequential upon section 10 and it is inserted only to insure that where the adoption of a mark is permitted by section 9 or section 10, then it shall not continue to be used. At first blush one might think the section unnecessary, but a question might arise under sections 9 and 10 where a person adopted a mark contrary to those sections and later transferred it to another.

The CHAIRMAN: Shall section 11 carry?

Section 11 was agreed to.

On section 12—When trade mark registrable.

The CHAIRMAN: Is there any substantial change in section 12?

Mr. OSBORNE: There are some changes, particularly with respect to section 12 (1) (a). The present provisions of the Unfair Competition Act prohibit the registration of the name of a person, firm or corporation. Section 12 (1) (a) provides that a word that is primarily merely the name or the surname of an individual who is living or has died within the preceding thirty years is not to be registrable. We have in mind, in that section, restricting the prohibition to words either that are ordinarily a full name or a surname. The words "primarily merely" are intended to take care of this situation. There are many surnames which, in their ordinary signification, are also quite common words.

The average person would not normally think of a word such as "Swan" as a surname. So we want the qualifying words to make it clear that only words such as "Jones" or "Smith", being common surnames, would fall within the prohibition. We also thought there should be a limitation of the restriction against the registration of names of people and we have limited such restriction to names of those who are now living or who have died within a period of thirty years. There are many historical names, such as "Napoleon", "Julius Caesar", and so on, which are quite frequently used as trade-marks, and we see no reason why they should be barred. Common names will be barred continuously by the mere fact that they are common.

Hon. Mr. KINLEY: What about the Ford Hotel?

Mr. OSBORNE: As a surname?

Hon. Mr. KINLEY: Yes.

Mr. OSBORNE: It would be barred under the provisions of section 12 (1) (a) as it stands.

The position up to this time has been as follows. Under section 26 of the Unfair Competition Act, names of people and words descriptive of the char-

acter or quality of wares et cetera—are forbidden registration under the ordinary provisions of the Act, so that if an application is made to register them the registrar is bound to reject it. It is then necessary, in the case of a word which has acquired distinctiveness, by reason of long and extensive use to go to the Exchequer Court of Canada and request the court to declare that a secondary meaning has been achieved so that the word indicates the wares of a particular trader.

Now, we propose in this bill that jurisdiction with respect to establishing what is commonly called in trade-mark circles, "secondary meaning", should be available to an applicant in the Trade Marks Office. If, for example, an applicant is rejected by the registrar under section 12 (1) (a), he may establish that the trade-mark distinguishes his wares by reason of long and extensive use. The registrar will thereupon declare that he is entitled to registration. The registrar may, of course, hold that a trade mark has not been used long enough or widely enough to entitle the applicant to registration. It is provided in section 31 of the bill that when one seeks registration under the second subsection of section 12, you must file with the registrar, by way of affidavit or statutory declaration, the evidence of your use.

Hon. Mr. HAIG: There is a certain commodity advertised extensively in this country, and my firm in Winnipeg seems to have the same name. Could you give it a trade-mark?

Hon. Mr. WOOD: Haig and Haig.

Mr. OSBORNE: I would say yes, in the example you have given. The courts have been reluctant to grant registration to many words, particularly those that are highly descriptive. But surnames have always been recognized as being capable of acquiring a secondary meaning. A person or persons having the same name would not be able to prevent the registration of such name, assuming, of course, that one could establish—

Hon. Mr. WOOD: In other words, if Haig and Haig want to make whisky in Manitoba, they can make it under their own name.

Mr. OSBORNE: Yes; You must also realize that the bill confers no right of use upon them which they do not have under the present law. What it does is to enable them to register if they can satisfy the registrar of trade marks that the name is distinctive of their wares.

Hon. Mr. EULER: Supposing my name is Ford and I want to manufacture something else, not a motor car, I could not be prevented from registering my own name Ford?

The CHAIRMAN: You might, in the first instance.

Mr. OSBORNE: For some other commodity than motor cars?

Hon. Mr. EULER: Yes.

Mr. OSBORNE: No, the existence of the Ford registration would not prevent your using it on the other commodity, and you would be entitled to register it yourself.

Section 12 was agreed to.

On section 13—When distinguishing guises registrable.

The CHAIRMAN: Are there any substantial changes?

Mr. OSBORNE: One or two. In general, a distinguishing guise is a way of shaping wares or their containers. We propose, and this is as the result of representations made to us by industry, to put some limitations upon the right to register. What concerned industry was the possibility that some novel shaping or wrapping of wares, if registered, might confer an unfair monopoly on a single trader. So we have proposed in section 13 that distinguishing guises should only be registered if they have acquired a secondary meaning, and we have just explained what must be done to establish a

secondary meaning by way of filing affidavits with the registrar of trade marks. Secondly, it is provided that a distinguishing guise should only be registered by the registrar of trade marks if he is satisfied that the exclusive use of it by the applicant will not unreasonably limit the development of any art or industry. Moreover, the registration of a distinguishing guise does not confer any monopoly with respect to the utilitarian features embodied in it. Finally, if a registration is found to unreasonably restrict people in the legitimate pursuance of their business, it can be cancelled.

Those are the precautions which we have taken because of the fear expressed to us that the free and simple registration of distinguishing guises while desirable in some cases, might in others be unreasonable.

The CHAIRMAN: I suppose, under section 13, we are still talking about Haig & Haig, and the pinch bottle?

Mr. OSBORNE: Under the Unfair Competition Act that could, I venture to say, be registered without difficulty; but under this procedure it would be necessary to satisfy the Registrar of Trade Marks that it is in fact distinctive of Haig & Haig and the utilitarian features, if any, of the bottle, could not be appropriated by the Haig & Haig people.

Hon. Mr. HAIG: I think my law firm should still carry on.

Section 13 was agreed to.

The CHAIRMAN: We now come to Section 14. Is there any substantial change there?

Mr. OSBORNE: There are one or two matters. This section carries out the present provisions of section 28 (1) (d) of the Unfair Competition Act which permit certain advantages to be obtained if a corresponding trade mark is registered abroad.

If I have a mark which is highly suggestive of the character or quality of my wares, I would today very likely be barred from registration under the ordinary provisions of the Unfair Competition Act because the Registrar would say that it is a descriptive trade mark.

Again speaking of the present law, all I would be required to do is to produce a certificate of registration showing that I have registered the same mark in Great Britain, France, the United States or wherever it may be, and that would overcome any objection of that kind.

The present section 28 (1) (d) contains certain provisos, since obviously one cannot go too far in accepting here whatever might be accepted in one of the Convention countries. Certain of those provisos we have written into section 14.

There is this distinction. Under section 28 (1)(d) the Registrar may refuse registration, notwithstanding registration in a Union country, if the mark is wholly without distinctive character. There is some question as to where the mark must be held to be wholly without distinctive character. For example, if the mark is distinctive in the United States, but not in Canada, does the proviso apply? We have made the proposed position clear by providing for registration if, in Canada, the mark is not without distinctive character having regard to all the circumstances of the case, including the length of time during which it has been used in any country. If a mark prosecuted under the provisions of Section 14, is objected to on the basis of descriptiveness, the objection must be overcome by showing registration in the country of origin, and that the mark is distinctive in this country as well. If it is not distinctive here, then the Registrar would be free to maintain an objection to it.

The CHAIRMAN: If it were shown that the mark was registered in a foreign country, while descriptive, but had been used in association with goods for a

sufficient length of time to become distinctive in relation to those goods,—it would have a secondary meaning.

Mr. OSBORNE: Yes. If it became distinctive in Canada, the Registrar here would have no right to maintain an objection under the provisos.

Under section 28 (1) (d), the advantage to be gained is limited to word marks. Under section 14 of the bill it will apply to word marks, design marks or combination marks, as the case may be.

Section 14 was agreed to.

The CHAIRMAN: Section 15?

Mr. OSBORNE: No change.

Section 15 was agreed to.

The CHAIRMAN: Section 16. Is there any substantial change there, Mr. Robinson?

Mr. ROBINSON: Yes, Mr. Chairman. This section is wholly new and deals with a subject dealt with in the present statute, but deals with it in quite a different fashion. The Unfair Competition Act deals with the question of who is entitled to register in section 4. That section has given rise to a great deal of difficulty of interpretation, and the results of those difficulties have been the decisions which have led to very peculiar results from a trade mark point of view.

For example, it has been held under the Unfair Competition Act that if A began to use a trade mark, and B subsequently began to use the same mark for the same goods, but it could not be shown that he knew of A's use, and B then registered, A could not then register. B, who is the subsequent user cannot stop A; A can go on using the mark freely but what B's position is, as against some third party, is not known, because, unfortunately, that has not come up.

In section 16 we have tried to lay down a logical arrangement as to persons entitled to register—one which we think hangs together, and one in which the various provisions dealing with different circumstances, so far as we can see, do not overlap with each other, as they do in the Unfair Competitions Act.

Subsection 1 of section 16 deals with the situation where a trade mark has been used or has been made known in Canada. The person who first used it, or first made it known in Canada, is the person who is entitled to registration. Under subsection 2, if no one has used the trade mark in Canada and no one has made it known here, a person who applies for its registration based on a foreign registration is the person who is entitled to registration.

Subsection 3 has to do with a special situation, what we call a proposed trade mark. Under the present statute one cannot apply for registration of a trade mark until he has used it. There has been a good deal of difficulty over many trade marks because the mark must be put into use before application for registration can be made; but even after it has been put into use, the applicant does not know whether he will ultimately get registration. The result is that he sometimes goes to considerable expense in labelling and in promoting his trade mark, and then later finds that he cannot get it registered. By section 3 we have in effect said to a man, if you propose to use a trade mark, and provided nobody else has used it or made it known in Canada, you may apply for registration, and if you are the first to apply you will be entitled to registration.

In each of the subsections the qualifications of who are the persons entitled to registration are set out in exactly the same terms. The difference between the subsections is simply the difference in the critical date. In the first subsection the critical date is the date first use is made of the trade mark or when it is made known, and the second is the date of application.

Subsections 4 and 5 deal with validity which is not dealt with by the present statute. The question is, what happens if A has at one time used a trade mark—perhaps many years ago—and subsequently he abandons that trade mark? The present statute does not deal with that problem. The difficulty is that this question arises: A has used a trade mark many years ago and abandoned it, and B subsequently comes into the field and begins to use it, is B to be regarded as the first user or not? For practical purposes he obviously is. Under the provisions of subsections 4 and 5, for statutory purposes the practical situation will prevail. That is, a man who used the trade mark many years ago and abandoned it—

Hon. Mr. KINLEY: What do you mean by “abandoned it”?

Hon. Mr. WOOD: Discontinued using it.

Hon. Mr. KINLEY: It means more than that.

Mr. ROBINSON: For example, a man has been in business using a particular trade mark, and he goes out of business. He has dropped his trade mark. Alternatively, a man starts in business with “Ajax”. For some reason or other he finds that “Ajax” is not satisfactory, and he adopts another trade mark, let us say “Regent”, and drops “Ajax”. “Ajax” is abandoned.

Hon. Mr. KINLEY: Does he drop his registration?

The CHAIRMAN: He may not drop his registration.

Hon. Mr. KINLEY: If it is still on the books: he has fifteen years for that trade mark. There is no question about it in that fifteen years and he has the right to renew it if he wants to.

Mr. ROBINSON: If a man has, in fact, dropped his trade mark, he should not be a “dog in the manger” by keeping it on the register, and there is a provision in section 45 which allows the registrar, three years after the date of registration, to send out a notice inquiring “Are you using this trade mark?” and if the man’s reply shows he is, it stays on, but if he has dropped it the registration is cancelled.

Hon. Mr. KINLEY: Conversely, if he has omitted to renew, and still uses it, what is his position?

Mr. ROBINSON: If he has omitted to renew and still uses it he may reapply and get a new registration.

Hon. Mr. KINLEY: With preference?

Mr. ROBINSON: Yes, because he will still be the first user.

The section was agreed to.

On section 17—Effect of registration in relation to previous use, etc. of confusing marks.

Mr. ROBINSON: Section 17 provides in effect this, that if the registration of a trade mark is attacked on the ground that someone other than the registrant was the first user of that trade mark, the section says that the attack can be made only by the person who alleges he is the first user. It also provides that the burden is on that person to show that he did not abandon his trade mark. The reason for the first point, namely that it is only the alleged first user who can make that attack, is that we felt that if any third party were able to take advantage of some alleged prior user, it would in effect promote litigation. A man might use a trade mark in Victoria. Another man later, never having heard of it, adopts it in Quebec. He starts a good-sized business, which gradually expands, and he has a very substantial business throughout the whole of Eastern Canada. Then at that stage somebody starts up, we will say in Montreal, with the same trade mark, and is really trying to get in on that

second man's business. When he is attacked he might find out about the man in Victoria and say "Ah, I will use this as an attack against the eastern man's registration." We do not think that is right. If anyone should attack, it is the man who was the first user.

The CHAIRMAN: You do not permit any vicarious enlargement of the right?

Mr. ROBINSON: Exactly.

Hon. Mr. KINLEY: Suppose I have a trade mark, the word "Atlantic" on my goods, and another man starts business and calls his company "The Atlantic Company"—which is confusing—do I have any rights as against that corporation?

Mr. ROBINSON: Well, in the order in which you put the events, that is not a matter with which these sections of this bill can deal, because the question will arise perhaps in the Companies' Branch of the appropriate province where the man is trying to get his Atlantic Company incorporated. But if I were to put the converse of that situation, which is dealt with by the bill, that is a case where you have been carrying on business under the name of, we will say, "Atlantic Fishing Company", and some man later, whose name may be "The Jones Fishing Company", chooses to adopt "Atlantic" as a trade mark, the fact that you have previously been carrying on a fishing business under the name "Atlantic Fishing Company" would be a bar to his registration of "Atlantic".

Hon. Mr. WOOD: Just for fishing.

Hon. Mr. KINLEY: But suppose he comes in afterwards. Supposing you have the product and the trade mark on it, and the other man calls his company after your trade mark, then what?

Mr. ROBINSON: Then you can deal with him under section 7 of the bill. Under section 7 of the bill it is prohibited for him to direct attention to his business in such a way as to create confusion between his business and your business.

The section was agreed to.

On section 18—When registration invalid.

Hon. Mr. WOOD: I think we have dealt with most of this before.

Hon. Mr. HAIG: Any marked change is all we want.

The CHAIRMAN: We went over this the other day, so we do not want the same detail now. Is there any marked change?

Mr. ROBINSON: Section 18 is really expressing what has been the law before.

The CHAIRMAN: There is an amendment for section 18, a re-draft of subsection (1)?

Mr. ROBINSON: It is really exactly the same material, but putting it in a somewhat different order, because the introductory words, "Subject to section 17" really apply only to sub-paragraph [b], and the re-draft is for the purpose of making it clear that they do so apply.

The CHAIRMAN: The amendment here makes that change, you say.

Subsection (1) is carried. Under subsection (2)—?

Mr. ROBINSON: The word "generally" on the third line was left in simply by mistake. It had been in the previous draft in other places but had been cut out, but we forgot to take it out there.

The CHAIRMAN: Just so. Is that amended?

Hon. Mr. HAIG: I so move.

The CHAIRMAN: Carried. Any other change?

Mr. ROBINSON: No.

The section as amended was agreed to.

On section 21—Concurrent use of confusing marks.

Mr. ROBINSON: This section does not exist in the Unfair Competition Act, but is a section which is really consequential upon the previous sections which I have discussed.

The CHAIRMAN: Is there any special feature to which you should call our attention, Mr. Robinson?

Mr. ROBINSON: Perhaps this, Mr. Chairman. It provides that in certain circumstances if someone has a registration for a trade mark and that registration has been subsisting for over five years, then if after that period it turns out that before the registrant began using his mark, somebody had been using the trade mark, perhaps in some small area in Canada, and no one had heard of him before, that person will not be allowed, because of his earlier use, to say "Now, this looks like a good thing and I am going to expand by business all over the country and get the benefit of this other man's work". It will be restricted by the court to the area in which he was previously doing business, and he will have to use some appropriate or adequate specified distinction from the registered trade mark.

Section 21 was agreed to.

On section 22—Depreciation of goodwill.

The CHAIRMAN: Have you anything to say on this, Mr. Robinson?

Mr. ROBINSON: Section 22 is new. It deals with a specific type of problem, and an illustration of this sort of problem is this. Supposing a man puts out shoddy goods of a type which are not necessarily confusing with the goods put out by the holder of a registered trade mark, but which by reason of their shoddiness may reflect adversely on the high reputation that the trade mark has built up for itself. Supposing, for instance, somebody starts putting out some extremely shoddy goods under the trade mark "Cadillac". They are not motor cars and perhaps people would not connect them with motor cars, but nevertheless if such shoddy goods were put out under that trade mark, it would begin to undermine the general repute of that trade mark which the owners have tried to build up at a thing of distinction. In that case they would be able to stop that man. You will observe in subsection (2) of section 22 that we have been careful to provide that because of the special nature of the right, the court may, although it will stop the man putting out the shoddy goods, decline to order any damages and allow him to sell off whatever stock he already has.

The CHAIRMAN: Shall section 22 carry?

Section 22 was agreed to.

On section 23—Registration of certification marks.

The CHAIRMAN: Mr. Osborne, is there anything outstanding in that section?

Mr. OSBORNE: There is a change of wording. This covers trade marks known under the Unfair Competition Act as standardization trade marks. They are used for the purpose of designating the quality of wares. In the United Kingdom and in the United States such trade marks are known as certification marks, and for the sake of uniformity in all three countries we have adopted the words "certification marks".

The CHAIRMAN: These are marks illustrative of quality or standard. I suppose associations might set them.

Mr. OSBORNE: Yes. For instance, an agricultural association may fix the standard of products sold by its members.

Hon. Mr. GOVIN: Might this be true in the case of cheese?

Mr. OSBORNE: Yes. One standardization mark widely used in the electric light industry is or was "Mazda".

Hon. Mr. VAILLANCOURT: There is a food manufacturing company in Quebec which uses on its label the words "old type syrup". At the bottom of the label is the name of the company, "The Quebec Maple Products Limited". This product is simply made from cane sugar, but people, when they look at the label, think that it is a special product, and they associate it with the word "maple" in the name of the company which appears on the same label.

Mr. OSBORNE: This bill does not attempt to control what may be sold properly as a food, which I think probably comes under the Food and Drug administration. This, I think, would be a subject in which they might interest themselves. The situation with which we would be interested in this bill would be one in which an association of, say, maple syrup producers were desirous of insuring that their member companies marketed a maple syrup of a certain quality, let us assume, made from natural substances and authorized the use of some designating symbol which would indicate to the public that this was a real genuine maple syrup product. Such a mark would be registered by the association.

Hon. Mr. VAILLANCOURT: The trouble is that the producer of this syrup has his name registered.

Mr. OSBORNE: I am not quite sure if I understand what you mean. Do you mean that the name of this producer is registered in the Companies Branch or in the Trade Marks Office?

Hon. Mr. VAILLANCOURT: Probably in the Companies Branch.

Mr. OSBORNE: I would think so, because one would scarcely expect to find the word "Quebec" registered as a trade mark.

Hon. Mr. VAILLANCOURT: It is registered here in Ottawa.

The CHAIRMAN: It is incorporated as a limited company in the Companies Branch, but that has nothing to do with the trade mark legislation.

Mr. OSBORNE: I think not.

Section 23 was agreed to.

On section 24—Registration of trade mark confusing with certification mark.

The CHAIRMAN: Is there any change there?

Mr. OSBORNE: There is no change there, Mr. Chairman.

Section 24 was agreed to.

On section 25—Descriptive certification mark.

The CHAIRMAN: Is there any change in section 25?

Mr. OSBORNE: No change.

Section 25 was agreed to.

On Section 26—Register.

The CHAIRMAN: Section 26 deals with maintaining a register of trade marks.

Mr. OSBORNE: There is no change in the substance of this section, but there are some slight changes to improve administration. There are some amendments which we would like to put forward with respect to subsection (4). I am not sure that you are concerned with the marginal notes. In the marginal note at the top of page 14 replace the word "under" by the word "before". Then at the end of line 19, at the end of subparagraph (i) of paragraph (c), add the word "and". Then in line 20 replace the word "constitute" by the word "be". This will make it conform with the preceding subsection. The amendment is purely for the sake of uniformity.

Hon. Mr. HAIG: I so move.

The CHAIRMAN: As to the marginal changes, we do not need any resolution with respect to them.

The section as amended was agreed to.

On section 27—Indexes.

Mr. OSBORNE: There is no material change here.

Section 27 was agreed to.

On section 28—Register open to inspection.

The CHAIRMAN: Is there any change here?

Mr. OSBORNE: No, Mr. Chairman, there is no change.

Section 28 was agreed to.

On Section 29—Contents of application.

The CHAIRMAN: This section deals with the procedure in connection with applications for registration of trade marks.

Mr. OSBORNE: There is no fundamental change in section 29. We should like to propose an amendment to subsection (c). The present subsection (c) reads:

(c) in the case of a trade mark that has not been used in Canada but is made known in Canada, the names of the countries of the Union in which it has been used by the applicant or his named predecessors in title, if any, and the date from and the manner in which the applicant or such predecessors have made it known in Canada in association with each of the general classes of wares or services described in the application.

We see on reflection and in the light of representations made to us, no reason for an applicant who has perhaps used a trade mark in half a dozen countries in the Union setting out each of those countries, and suggest, therefore, in line 20 that the word "names" be changed to "name". In line 21 it will read "a country of the union", so that it will be "the name of a country of the union."

Section 29 was agreed to.

On section 30—Applications based on registration abroad.

The CHAIRMAN: Any fundamental change in section 30?

Mr. OSBORNE: In subsection 2 you find a provision enabling the registrar of trade marks to require evidence of distinctiveness of a trade mark which is to be registered under the provisions of section 14. That is, one of those marks I was speaking of, where you file a certified copy of a registration in a country of the union, and the registrar would be entitled to object if it is not distinctive in Canada.

Section 30 was agreed to.

On section 31—Further information in certain cases.

The CHAIRMAN: Section 31?

Mr. OSBORNE: Section 31 is new and directly related to subsection 2 of section 12. If a surname is presented for registration it shall only be registered on proof of distinctiveness. Similarly, if a descriptive word is presented for registration it shall only be registered on proof of distinctiveness. Subsection 1 of section 31 sets up a procedure whereby the registrar must in this case receive affidavits and thereupon grant or withhold a ruling that the trade mark is entitled to registration.

An Hon. SENATOR: With respect to section 31, is there any appeal from the registrar?

Mr. OSBORNE: Yes, there is an appeal against all decisions of the registrar, which is provided for in section 55. There is no case in which the administrative affairs make a decision. That is not subject to appeal.

Section 31 was agreed to.

On section 32—Applications by trade unions, etc.

The CHAIRMAN: Any substantial changes?

Mr. OSBORNE: No.

Section 32 was agreed to.

On section 33—Date of application abroad deemed date of application in Canada.

The CHAIRMAN: Section 33?

Mr. OSBORNE: It is the old section 40, and is substantially the same as the present law. This section is designed to give priority with respect to the date of filing in Canada. If I file a corresponding application in a country of the Union and apply in Canada I am entitled to the filing date in the country of the union where I first filed, and that is the provision of the present law.

We would like to suggest an amendment to section 33, at the end of subparagraph (a). That will be line 27—"filed within six months from that date". We would like to add the words "which period shall not be extended". There is a general provision which enables the registrar to extend the time within which things may be done, and I am afraid if we left out the words which I am now proposing to have inserted one might claim a priority date beyond the six months period which is specified by the bill.

Section 33, as amended, was agreed to.

On section 34—Disclaimer.

The CHAIRMAN: Section 34?

Mr. OSBORNE: This does not alter the present law. There is no definite provision in the Unfair Competition Act authorizing the entry of a disclaimer, but as a matter of practice, disclaimers have been allowed. It sometimes happens that one uses a trade mark which contains a distinctive word together with a word which all the world is free to use. For example, I might use on maple syrup the words "Ajax Brand". If I submit that combination, "Ajax Brand", to the registrar today, as a matter of practice he will require me to disclaim the word "Brand". The same applies to, say "Miracle Hats". It would be proper for me to apply for registration in that form but I must disclaim "Hats". The result of a disclaimer is this: it leaves me with a registration for my "Ajax Brand" or my "Miracle Hats", but I cannot assert that registration against any person who wishes to use the word "Brand" or the word "Hats". We have inserted in the bill a provision which enables the registrar to call for any disclaimer he considers proper and have changed what is now practice to a statutory provision.

Section 34 was agreed to.

On section 35—Abandonment.

The CHAIRMAN: Now section 35?

Mr. OSBORNE: Section 35 gives an administrative power to the registrar, which is very useful. As the matter stands it is somewhat difficult to get rid of an application which has been filed and has been made subject to an objection. The practice of the registrar, naturally, is to write to the applicant telling him what the objection is and to await his response. It sometimes happens that the applicant does not respond, and the application remains

pending in the Trade Marks Office. There is no power in the Unfair Competition Act to compel an applicant to prosecute his application or to withdraw or abandon his application. Section 35 is designed to permit the registrar to dispose of an application in default of prosecution.

Section 35 was agreed to.

On section 36—When application to be refused.

Mr. OSBORNE: Section 36 sets out the grounds on which the registrar may object to an application for registration in the initial stages. The procedure is this: I will file an application for registration and it will be given a preliminary examination by the registrar who, on the grounds set out in section 36, may object. There are three grounds: he may say that the application does not comply with the requirements of section 29, which are formal requirements as to the information which the applicant must set out.

The CHAIRMAN: That is procedural.

Mr. OSBORNE: That is correct.

He may object that the trade mark is not registerable under section 12; he may object on the ground that the applicant is not the person entitled to register by reason of the fact that there is a co-pending application. If the Registrar has before him a co-pending application for the same trade mark or a confusing trade mark he may decide between the two applicants, and object on that ground. If he does not refuse the application he then advertises for opposition, and that is where section 37 comes in.

Section 36 was agreed to.

The CHAIRMAN: Section 37 deals with statements of opposition, and the grounds which must be set out.

Hon. Mr. WOOD: Mr. Chairman, if we are to get through with this bill this afternoon, we must have briefer explanations.

The CHAIRMAN: I think we are doing pretty well.

Hon. Mr. WOOD: But it is now 5.25.

The CHAIRMAN: If we do not finish by six, we will adjourn until eight o'clock.

Hon. Mr. KINLEY: It provides that any person may upon payment of the prescribed fee file a statement of opposition.

Mr. OSBORNE: Yes, sir.

Hon. Mr. KINLEY: What about the fee?

Mr. OSBORNE: The amount of the fee we contemplate will be fixed by regulation, Senator. It is \$25 in the United States and we would imagine it would be so in Canada. It is important, I think, that there be some fee required if for no other reason than to prevent people from filing frivolous objections and thereby holding up an application.

Section 37 was agreed to.

The CHAIRMAN: Section 38 tells us when an application is to be allowed.

Mr. OSBORNE: That is new, because the whole procedure is new; but if there is no opposition, the application is allowed.

Section 38 was agreed to.

The CHAIRMAN: Section 39 deals with registration of trade marks.

Mr. OSBORNE: There is perhaps only one point that need be referred to, namely, the case of a proposed trade mark. An application for such a proposed

trade mark may be allowed, and the applicant is required to give within six months proof that the mark has been used. It is registered only on such proof being forthcoming.

Section 39 was agreed to.

The CHAIRMAN: Section 40? This deals with the amendment of the register.

Mr. ROBINSON: Section 40(1) contains really the same provisions as we have in the present act; but we do propose an amendment in the section which consists of the cancellation of subsections 2 and 3, and the substitution of a single subsection, which will really deal with an application to extend the wares or services. It will require that such an application is to be treated in the same way as an application for original registration.

The CHAIRMAN: It is an amendment replacing the present subsections 2 and 3.

The new subsection reads: "An application to extend the statement of wares or services in respect of which a trade mark is registered has the effect of an application for registration of the trade mark in respect of the wares or services specified in the application for amendment."

Section 40, as amended, was agreed to.

The CHAIRMAN: Section 41?

Mr. ROBINSON: Section 41 does not appear in the present statute, but simply provides for a foreign registrant to have a representative for service and if the representative for service dies and—

The CHAIRMAN: That is procedural.

Section 41 was agreed to.

The CHAIRMAN: Section 42?

Mr. ROBINSON: No change.

Section 42 was agreed to.

Mr. ROBINSON: Section 43 is essentially the same as provided by the present statute.

The CHAIRMAN: It makes available information. . . .?

Mr. ROBINSON: It provides in connection with an old registration the information which could be required if you were to apply for registration of that trade mark under the new statute. The only real change is in subsection 2, which provides that the Registrar may, in the light of information supplied, actually amend the register. There is no such power in the present statute.

Section 43 was agreed to.

Mr. ROBINSON: As to section 44, we have a change proposed in the opening wording, but I might deal with the section generally. It is in effect a new section providing that a trade mark which has been on the register, but which has ceased to be used, may be cancelled, if no information as to its use is provided. It allows the Registrar within a certain period of time, to require the registrant to supply information as to whether or not the trade mark is in use.

Hon. Mr. WOOD: Regardless of whether someone else wants it or not?

Mr. ROBINSON: Yes, sir.

Hon. Mr. BAIRD: In other words, at the present time you have many such marks registered on your books?

Mr. ROBINSON: Yes, and they are dead wood.

The CHAIRMAN: The amendment as suggested by the department reads:

The Registrar may at any time and, at the written request made after three years from the date of the registration by any person who pays the prescribed fee, shall, unless. . . .

Then it carries on after the third line.

Section 44, as amended, was agreed to.

The CHAIRMAN: Section 45 deals with renewal of registrations.

Mr. ROBINSON: It is essentially the same as is contained in the present statute. It clears up some difficulties which have arisen by reason of the language contained in the present statute.

Section 45 was agreed to.

The CHAIRMAN: Section 46 has to do with extensions of time.

Mr. ROBINSON: That is simply a blanket provision dealing with all extensions of time. The present statute which deals in separate sections with extensions in various cases.

Section 46 was agreed to.

The CHAIRMAN: Section 47 has to do with transfer of trade marks. Mr. Osborne?

Mr. OSBORNE: This is a new section. We discussed this and the next four or five sections in some detail the other day.

The CHAIRMAN: You will recall we had quite a lengthy explanation the other day as to assignments?

Mr. OSBORNE: Yes. Sections 47, 48, 49 and 50 are the ones we dealt with at some length the other day. I should perhaps draw the attention of the committee now to subsection 2 of section 47.

Since that time, the Toronto Board of Trade has queried the exact meaning of subsection 2. Perhaps I should explain that it is intended to cover this situation: Normally, when I assign a trade mark I get rid of it, and there is no problem; but in view of the fact that we may now assign trade marks—if this bill is passed—without transferring the goodwill of the business, a difficulty could arise. I might use the mark "Ajax" for the purpose of identifying my cigarettes and my cigars. I could assign it with respect to cigarettes, and retain it with respect to cigars. The result would be that I would use it on cigars, and the assignee would use it on cigarettes so that the public might be confused.

We have set up in subsection 2 what might be described as a warning sign. If a situation of that kind arises, and the distinctiveness of the mark is lost as a result of reconcurrent use by two people of a similar trade mark on similar wares nothing is to prevent the court holding that the trade mark has lost its significance and is no longer valid.

Section 47 was agreed to.

The CHAIRMAN: Section 48 contains an amendment.

Mr. OSBORNE: As to section 48, the Toronto Board of Trade asks what its significance is. It is designed to overcome a very technical rule which has given us some reason for concern. Under the law as it exists, if I adopt a trade mark to indicate that I have manufactured wares, and then I transfer that trade mark to an assignee who does not manufacture the wares but who sells them, it will become in his hands a seller's trade mark. Under the technical rule I have mentioned, this change in significance may invalidate the trade mark. We in this country are particularly vulnerable to the situation, because many marks are originally adopted as manufacturers' marks in the United States. The United States company sets up a Canadian subsidiary, which is only, or

partially, a distributor, and it transfers its marks to such subsidiary, and thereby to some extent changes the significance of remarks. All that section 48 is designed to do is to insure that trade marks shall not be held invalid merely on the ground that there has been a change in the significance attaching to them. We propose, for the sake of what we believe to be clarity, to insert, on the second line of section 48, after the word "purposes" "or in any of the manners", and after the word "purposes", at line 20, "or in any other of the said manners". The result will be that the section will read: "If a mark is used by a person as a trade mark for any of the purposes or in any of the manners mentioned in paragraph (a) or (t) of section 2, it shall not be held invalid merely on the ground that he or a predecessor in title uses it or has used it for any other of the said purposes or in any other of the said manners."

The CHAIRMAN: That section as amended is approved.

Section as amended agreed to.

On section 49—Registration as user.

The CHAIRMAN: We had a full discussion on that the other day. Shall 49 carry?

Hon. SENATORS: Carried.

The section was agreed to.

On section 50—When trade mark not to be held invalid.

The CHAIRMAN: We had a full discussion of that the other day.

The section was agreed to.

On section 51—Custody of offending wares.

The CHAIRMAN: Section 51 deals with legal proceedings. Mr. Robinson, is there anything we should know in particular there?

Mr. ROBINSON: I think, perhaps, subsection (4). That is a new section, dealing with the question of a court order to prohibit importation of wares which, if they were imported and were distributed in Canada, would be contrary to this act. Thus, for example, if "Ford" is registered for motor-cars in Canada, and someone is proposing to import cars not made by Ford, but named "Ford", obviously the distribution of those motor-cars in Canada under the trade mark "Ford" would be improper. This section is designed to enable a person who would be injured by such importation to go to the Court and, on presentation of the facts, get a court order. The result will be to ban the importation.

The CHAIRMAN: One is on importation, and the other is, likely to be imported. That is quite broad,—"likely to be imported".

Mr. ROBINSON: The point there is this, that it may be that the goods have not actually been imported; and what we were after was that we could enable a person who would be injured to lock the stable before the horse got out, rather than lock it after the horse got out.

The CHAIRMAN: He could still lock it after the horse got in here and before he got out of the stable.

Mr. ROBINSON: Yes. Under subsection (1) he could get an order for custody. But what we were concerned about was that if it came to his attention that there was a proposal to import these wares, it would be really more satisfactory from all points of view that on presentation of the facts to a court he should be able to get an order which would prevent wares coming in, rather than let them in here and get them in custody and then deal with them.

The CHAIRMAN: You notice the orders can be made ex parte, so it is quite a broad power you are giving to the person in Canada to shut out goods that have not come into Canada.

Mr. ROBINSON: That is true, but our feeling on that is this; no court will grant an ex parte order except under circumstances where the normal type of order cannot be granted; and we thought it was perhaps proper to rely on the way in which the Court would proceed. If it did grant an ex parte order for special reasons, it would make that order of limited duration.

Hon. Mr. BURCHILL: Have there been any cases which would justify legislation like that?

Mr. ROBINSON: Yes, sir, because there may be circumstances in which the owner is out of the jurisdiction and the consignee may not be exactly known at that stage.

The CHAIRMAN: But you can always know the goods. You could get an order for the custody of the goods.

Mr. ROBINSON: Yes, sir. They would have come into the country.

The CHAIRMAN: Why should you have that broader power of being able to get an ex parte order from a judge here in Canada against the importation of goods which have not yet appeared on our borders?

Mr. ROBINSON: As I say, I believe our thinking on that was that it would be better to stop these goods before they came in rather than let them come in and then get them into custody. If it turns out they should not be distributed, what happens to them?

The CHAIRMAN: You can deal with that in a variety of ways. It is up to the Court to determine. I suppose you can return them.

Hon. Mr. BAIRD: How would you know whether the goods—

Mr. ROBINSON: Perhaps there is one other problem. Let us say that you have had a case of importation; you have had an order for custody; and you have ultimately succeeded. You are still visited with the problem of preventing further importation, the original instance of which has been held to be improper.

The CHAIRMAN: If your subsection (4) were drawn in such a way that, once goods had been imported and there was an order for custody, the Court then had the power ex parte to issue an order against any further importation, I could agree with that thinking. But simply ex parte to get an order from a judge if you are fearful that some goods are going to come in here, without their having appeared yet, is, it seems to me, too broad.

Hon. Mr. ASELTINE: Strike it out.

Mr. ROBINSON: I think there is a good point in that, sir. I don't know whether it would be convenient for the committee to stand this section over.

The CHAIRMAN: We can let it stand until this evening, and maybe you will get your thinking-cap on. Subsection (4) of section 51 stands over. Shall the other subsections carry?

The section, apart from subsection (4), was agreed to.

On section 52—Power of Court to grant relief.

Mr. ROBINSON: That is essentially the same as the present section.

The section was agreed to.

On section 53—Evidence.

Mr. ROBINSON: It differs in language from the present statute, because the whole basis is in many ways different from that of the Unfair Competition Act; but it is the same principle.

The section was agreed to.

On section 54—Jurisdiction of Exchequer Courts.

The CHAIRMAN: Without change.

The section was agreed to.

On section 55—Appeal.

The CHAIRMAN: Dealing with an appeal to the Exchequer Court from any decision of the registrar.

Mr. ROBINSON: The only subsection which may require any comment is subsection (5), which specifically provides that the Court of Appeal may exercise any discretion vested in the present registrar. That is new.

The section was agreed to.

On section 56—Exclusive jurisdiction of Exchequer Court.

Mr. ROBINSON: There is no change, sir.

The section was agreed to.

On section 57—How proceedings instituted.

Mr. ROBINSON: Section 57 broadens the ways in which an application under section 56 can be made. An application under section 56 shall be made either by the filing of an originating notice of motion, by counter claim in an action for the infringement of the trade mark, or by statement of claim in an action claiming additional relief under the Act.

Section 57 was agreed to.

On section 58—Notice to set forth grounds.

Mr. ROBINSON: This is procedural and does not really differ from the practice as it has grown up under the present statute.

Some Hon. SENATORS: Carried.

The section was agreed to.

On section 59—Registrar to transmit documents.

The CHAIRMAN: Is there any change here?

Mr. ROBINSON: There is no change.

Section 59 carried.

On section 60—Appeal to Supreme Court.

The CHAIRMAN: This simply provides for an appeal to the Supreme Court.

Mr. ROBINSON: There is no change in this section.

The section was agreed to.

On section 61—Judgments to be filed.

The CHAIRMAN: Is there any change here?

Mr. ROBINSON: This section is new, and simply provides some way of getting to the Registrar of Trade Marks copies of judgments which are made relating to registered trade marks.

The section was agreed to.

On section 62—Administration.

The CHAIRMAN: We now come to some general provisions, Mr. Osborne.

Mr. OSBORNE: I think it is fair to say that the remaining sections of the bill are all either administrative or procedural and do not alter the situation at all, with the exception of section 66.

The CHAIRMAN: Then let us pass sections 62, 63 and 64.

Sections 62, 63 and 64 were agreed to.

On section 65—Newfoundland.

The CHAIRMAN: I thought since we have a heading "Newfoundland" with respect to sections 65 and 66, and we have some senators from that province in attendance at this meeting, they might be interested in knowing what is being done to their law down there.

Hon. Mr. BAIRD: Our country, not our law.

Mr. OSBORNE: Section 65 is part of the present law because it is section 60 (A) of the Unfair Competition Act. According to section 65 the registration of a trade mark under the laws of Newfoundland prior to April 1, 1949, has the same effect in that province as if Newfoundland had not become part of Canada. In other words, all rights and privileges acquired under or by virtue thereof may continue to be exercised or enjoyed in Newfoundland as though that province had not become part of Canada. The status quo of Newfoundland with respect to trade marks is preserved as was agreed upon at the time of union. Section 66 is only included to clear up a point which is the subject of some argument. It relates to the situation that arises with respect to a trade mark which had been used in Newfoundland prior to the date of union. It could be argued that such use was a use in Canada because Newfoundland is now part of Canada, or the converse could be argued. We decided, as I think was the original intention, that a use in Newfoundland prior to the date of the union is not to be deemed a use in Canada.

Sections 65 and 66 were agreed to.

On section 67—Coming into force.

The section was agreed to.

On Section 68—Repeal and transitional.

The section was agreed to.

The CHAIRMAN: We have set aside subsection (4) of section 51 in order to give these gentlemen from the Department an opportunity to reflect on the wording in view of the suggestion I have made. We also set aside section 9 in order that we may hear the Department's views with respect to the submission made this morning on behalf of the Blue Cross Hospital Organization. I do not think we have time between now and 6 o'clock to deal with this subject matter.

An Hon. SENATOR: Did we not cover that this morning?

The CHAIRMAN: We did not hear the departmental representatives this morning, and I understand they have considerable representations to make in respect to this question.

Hon. Mr. McDONALD: Is the Registrar here?

The CHAIRMAN: Yes.

Hon. Mr. McDONALD: He will be here this evening as well?

The CHAIRMAN: Yes. I suggest we adjourn to 8 o'clock.

The committee thereupon adjourned until 8 p.m.

The committee resumed at 8 p.m.

The CHAIRMAN: Gentlemen, we have a quorum, so we can come to order.

There is a redraft of subsection 4 of 51, that is being typed, and while it is being typed, possibly we can consider section 9 which we stood this afternoon.

Now, so far as the department is concerned, they have two amendments to suggest to section 9, and I think I should indicate those to you first. If you will look at line 17 on page 6, after the word "forces", they want to add after the word forces "and used by the Canadian Red Cross Society."

Then lines 40 and 41 on page 6, delete the words "or of any fraternal or charitable society".

There is a third one, which is consequential on that, which you will find at line 45. Delete the comma, and the word "society", after the word "university". That is a consequential change.

Those are the three changes which are suggested by the department in the bill as they presented it—if there are no objections to those amendments. Mr. Stein will explain the change.

Mr. STEIN: The amendment referring to the Canadian Red Cross Society, is a matter of clarification and convenience so that it will be clear which society or body is to be protected and give it consent. Without those suggested words being added, people would be in a quandry as to whom they would ask to get consent.

As to the suggested deletion of fraternal and charitable societies, we had, very recently, representations pointing out a number of objections, and more particularly the difficulty of construing the expression "charitable or fraternal". For instance, we had a brief submitted recently to us—I should say we circulated many drafts of this bill over the last year or so particularly, but nobody had objected to this until recently. They say:

For example, is the term "fraternal or charitable society" sufficiently precise? Does it include charitable corporation under Part II of The Dominion Companies Act? Does it include societies which may sell goods bearing trade marks as an incident to their charitable undertakings? Let us suppose that a fraternal society adopts a mark which is confusing with a trade mark registered by A. Presumably A could continue to use the mark as before and moreover could sue the society for infringement, notwithstanding publication by the registrar under S. 9 (1) (n). Or in such case would the registrar refuse to publish on the ground that nothing in S. 9 makes it mandatory for him to do so?

Let us suppose that a fraternal society, say the Young Communist League, adopts the mark "Freedom", perhaps to be used as the masthead of its weekly paper. Upon request, the registrar will publish under S. 9 (1) (n). Thereafter, if the Eastman Kodak Company wished to use the mark "Freedom" as applied to photographic films, it would be prohibited from doing so. But upon what principle?

Further problems:

(a) The society adopts as a mark the surname of its founder; e.g. BANTING—can future Bantings use their surname in connection with their business?

(b) The society ceases (temporarily or permanently) to be fraternal or charitable—is the prohibition lifted? If the society reverts to its original purpose must there be a republication by the registrar?

Well, those are indications of possible difficulties, and I should explain further that there has been a provision about fraternal societies since 1932 in the Unfair Competition Act. We added, when we drafted the bill, charitable societies. We felt that if fraternal societies should be protected, why not charitable societies, but we are impressed with the objections that have been made.

I think perhaps the most serious objection is the difficulty in deciding what are charitable and fraternal societies. It seems to us that probably the reason why "fraternal societies" were in the preceding and corresponding section 14 of the Unfair Competitions Act, is that up until now, under the present law, one could not register a trade mark for services. Under the bill, if it becomes law, one will be able to register a trade mark for services, and fraternal and charitable societies could get protection by service marks.

Hon. Mr. CRERAR: I understand the Institute for the Blind, for instance, which is now a Canadian-wide organization carries on certain manufacturing processes. My recollection is that they have a distinctive mark. Would this measure in any way interfere with them?

Mr. STEIN: They can register as a service mark.

The CHAIRMAN: Or if they have been using it for years, they have it now.

Mr. STEIN: Yes, sir.

Hon. Mr. HAWKINS: Could they not register as a mark on goods too?

Mr. STEIN: Yes, on wares that they sell.

Hon. Mr. HAWKINS: They do.

Mr. STEIN: Yes.

Hon. Mr. HOWDEN: Mr. Chairman, may I ask a question?

The CHAIRMAN: Yes.

Hon. Mr. HOWDEN: I have not been attending the committee, having been prevented from doing so by the sittings of the divorce committee in the mornings. I gather that it is the desire of the Blue Cross hospitalization plan to have a monopoly on the use of "Blue Cross". For my part I would say let them use Blue Cross in the name of their medical service, or in the name of any medical plan that may turn up, but I do not think that those who already enjoy the use of this label in other forms of enterprise, should be deprived of it, and that the medical association should be given full monopoly of it.

The CHAIRMAN: Thank you. So far as the amendments proposed by the department go, is it the wish of the committee that the bill be amended in that regard? When we have dealt with that matter, we can go to the question of Blue Cross. Are these several amendments concurred in by the committee?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Mr. Stein, this morning we had representations by Mr. Fleming on behalf of the Blue Cross organization, and also by Mr. Fraser Grant. Have you or your associates any statement to make to the committee now as to your view on their suggestion that Blue Cross should be included in the list of prohibitions in section 9?

Mr. STEIN: Yes, Mr. Chairman, if I may I would like to indicate briefly what my view is, and then my colleagues may elaborate on a couple of points. Probably Mr. Robinson and Mr. George will have something to say.

First I should like to say to the committee that we have every sympathy with the Blue Cross in their service and benefits to the public. I think Mr. Fleming agreed that we had given careful consideration to his representations. We recently had extensive correspondence with him, and yesterday we had a long conference with him and with his clients. After that we again considered the question.

I do not know whether you gentlemen will agree, but we have come to the conclusion, for the reasons which I shall mention, that the bill already provides sufficient protection for Blue Cross or any similar name or emblem used by any similar organization in that or any other field. We feel we would not be justified in including them in section 9, and thereby giving them this very special statutory protection which goes much further than the protection which they would get through registration.

As has been explained already, the bill gives protection, through the registration of service marks, which does not exist in the present law. That would protect the Blue Cross, as well as any other name or emblem, against confusion. I refer particularly to sections 19 and 20. There is also the matter of depreciation of goodwill attached to the trade mark, emblem or name. Mr. Robinson will elaborate on that point.

I would like to explain briefly what the provisions of section 9 do, and to categorize them. First of all, there are a group of provisions which you might say deal with governmental or quasi-governmental marks, emblems, and so on. The purpose of prohibition is to prevent the public from being erroneously led to believe that there is a connection between a certain trader and the government or the Royal Family or some branch of government, whether federal,

provincial or municipal, or a public body. That would take care of paragraphs (a) to (e) and also paragraph (n) (i). I refer to the following paragraphs:

- (a) The Royal Arms, Crest or Standard;
- (b) the arms or crest of any member of the Royal Family;
- (c) the standard, arms or crest of His Excellency the Governor General;
- (d) any word or symbol likely to lead to the belief that the wares or services in association with which it is used have received or are produced, sold or performed under royal, vice-regal or governmental patronage, approval or authority;
- (e) the arms, crest or flag adopted and used at any time by Canada or by any province or municipal corporation...
- (n) any badge, crest, emblem or mark
 - (i) adopted or used by any of Her Majesty's naval, army or air forces
 - (iii) adopted and used by any public authority in Canada as an official mark for wares or services
- (o) the name "Royal Canadian Mounted Police..."

The case of a university is not in quite the same category, although it might be included.

Then we have the provisions contained in paragraphs (f), (g), (h), (i) and (m) which have to do with fulfilling international obligations entered into by Canada. The first three paragraphs have to do with the Red Cross, the Red Crescent and the Red Lion and Sun.

Paragraph (i) is derived from the Convention for the Protection of Industrial Property. It is defined in the definitions section. Paragraph (m) has to do with the United Nations, and as Canada is a member of that organization, it is only fitting that a provision should be made prohibiting the use of its name.

The third group of provisions have to do with protection of the individual against invasion of his own privacy. Paragraph (k) deals with marks or emblems, and paragraph (l) would prevent the use of the portrait or signature of any individual who is living or has died within the preceding thirty years. Paragraph (j) prohibits the use of scandalous, obscene or immoral words or devices, on the ground of general public order.

It will be readily seen that the matters covered by the provisions of section 9 are in a different category from that propounded by the representatives of the Blue Cross. I should like to point out that if the provision that Mr. Fleming has suggested were put in, it would be difficult to know who it was intended to protect. He wants a provision which will protect the use of the name Blue Cross or its emblem. But would it be protecting his organization or the humane society or S.P.C.A.?

Hon. Mr. CRERAR: Paragraph (f) reads:

the heraldic emblem of the Red Cross on a white ground, formed by reversing the federal colours of Switzerland and retained by the Geneva Convention for the Protection of War Victims of 1949, as the emblem and distinctive sign of the Medical Service of armed forces; or the expression "Red Cross" or "Geneva Cross";

The Red Cross and Geneva Cross are distinctive; in that case, if someone tried to use these emblems in some way they would be faced with this prohibition?

Mr. STEIN: Yes.

Hon. M. CRERAR: It seems to me that you would have precisely the same problem to solve if the suggested application were granted. I do not see that one would be any more difficult than the other.

Mr. STEIN: Well, Senator, I suggest you bear in mind the fact that while it may or may not be strictly necessary, under the amendment we propose the question will be referred to the Canadian Red Cross Society. Here you have a society which can give consent under subsection 2.

Hon. Mr. CRERAR: Might you not as well have had paragraph (f) and then (f) (i), covering the Red Cross and Geneva Cross?

Mr. STEIN: No...

Hon. Mr. CRERAR: Maybe I am wrong, but I do not think they are related. I do not think the expression "Red Cross" or "Geneva Cross" has anything more to do with what precedes them in paragraph (f)—

The CHAIRMAN: Yes; paragraph (f) talks about two things. It mentions the Red Cross emblem and also the expression "Red Cross" or "Geneva Cross". We have the emblem and we have the words; and those are related in the subsection by virtue of reference to the Canadian Red Cross Society. One knows that under this section the use of that emblem and of those words is prohibited, unless under subsection 2 the consent of the Canadian Red Cross Society is secured.

Hon. Mr. HAIG: And if that consent is secured, they can be used?

The CHAIRMAN: They can be used. Therefore, it is not an absolute prohibition, provided you get the consent to use them.

Mr. STEIN: We were told by Mr. Fleming that the name or emblem has been used by a number of persons already over a number of years. We have been told, and we know that there are two or three cases in which the Blue Cross as a mark has been registered by traders for shoes and other things, and also for medical supplies. The S.P.C.A. has been using it; and the Blue Cross Medical Plan of course used it; veterinarians have also made use of it. I would also like to point out in that connection that as far back as 1944 we had a request by the Society for the Prevention of Cruelty to Animals in British Columbia, claiming the exclusive right to the use of the Blue Cross name and emblem. So there are conflicting claims there.

It has also been mentioned this morning that the parent organization in the United States has only got registration, it has not got statutory protection. They got registration in 1952 for the Blue Cross name and emblem. That is the parent organization, with which the Blue Cross Plan here is affiliated. Suppose you do amend section 9 to give protection not only to the Blue Cross and to Blue Cross Plans, but you extend it to all plans, similar insurance plans or all businesses in that field, well, I say, how do you justify doing it just for that type of business, namely hospital or hospital-medical or just medical insurance? What about co-operatives? Producers' and consumers' co-operatives?

Hon. Mr. CRERAR: Well, if I understood Mr. Fleming aright this morning, his point there was that this should not be extended any further.

The CHAIRMAN: But, senator, the thing that you should consider is that section 14 does not provide an absolute prohibition. Section 14 in subsection (1) provides a prohibition, but subsection (2) provides that with the consent of the person in whose favour the prohibition lies, you may use that particular word the use of which is prohibited. Now, if you are going to put in an amendment giving absolute or exclusive prohibition to Blue Cross, first, are you going to have the consent apply only to them? Consent from them alone would not be any good, because there are all the other users of Blue Cross. Where are you going to enumerate them all in order to give them consents? If you give an absolute right to them, their consent would not be enough for any person who is going to use it.

Hon. Mr. CRERAR: Let me give the illustration I used this morning. Some flour miller thinks, "Your Blue Cross is a recognized sign: it is known all over Canada; I can capitalize on that"; and he makes an application to have "Blue

Cross Flour" registered. How would that be dealt with? I take it that under the other section you referred to it would come within the power of the authorities to grant his request.

The CHAIRMAN: It might be.

Hon. Mr. CRERAR: Well, "it might be", but it is within their power, is it not? It is not a case of "might be".

The CHAIRMAN: That is, it may be registrable.

Hon. Mr. CRERAR: Sure. That is the point I am making; and he can make his application, he can put up his argument, and the Department may say, "Yes, that is all right, we will grant you that emblem, or whatever you like to call it."

The CHAIRMAN: What is wrong with that?

Hon. Mr. CRERAR: Just this, that it is capitalizing on the work that the Blue Cross have done.

The CHAIRMAN: The Blue Cross have never sold any flour.

Hon. Mr. CRERAR: That does not matter. He takes that term, and in people's minds they would not distinguish it.

The CHAIRMAN: You mean, if they saw a bag of flour with "Blue Cross" on it they would not distinguish between that and hospital medical services?

Hon. Mr. CRERAR: No, they would say, "Here, we are sympathetic and friendly; we have a great appreciation for the Blue Cross"; and that would affect them and their attitude to Blue Cross flour. That is the point I am making. And I do not think it should.

Mr. STEIN: I think Mr. Robinson will answer your question in just a moment, because it is part of the aspect he was going to deal with. I just wanted to say one word on the amendment deleting fraternal or charitable societies, with respect to a remark made by Mr. Fleming. We gave him some intimation yesterday that we were considering that.

Mr. ROBINSON: As Mr. Stein has intimated, I thought perhaps I could usefully deal with the question of what rights a person, for example a Blue Cross organization, could have by way of the other provisions of the bill; that is, assuming no amendment to be made. Now the Blue Cross organization is an organization rendering service, and in view of that, "Blue Cross" is a service mark, and the organization is in a position to apply for its registration as a service mark. The organization is concerned—I think that is the position—essentially with two things. It is concerned particularly with being in a position to prevent any use of "Blue Cross" which might lead to confusion. That is, it is concerned for its own purposes and for the purpose of protecting the public, to prevent any use of the words "Blue Cross" or the Blue Cross emblem which might lead to an assumption on the part of the public of a connection, which is in fact non-existent, between goods bearing "Blue Cross" and the Blue Cross Medical Association. Now, the second concern of any such organization is to prevent confusing trade-mark registrations. As to the first part, the Blue Cross organization having obtained registration of "Blue Cross" as a service mark, is then the owner of a registered trade mark, namely "Blue Cross" for medical insurance plans. Under the bill, section 20, it is in a position to prevent the infringement of its Trade Mark by sale or advertisement. That is, it may prevent anyone from selling or advertising goods or services under any trade mark which is confusing with "Blue Cross".

Hon. Mr. CRERAR: Just there: take the case of the incident I cited. Some farmer comes to you and he asks to register "Blue Cross Flour". There is nothing in the law that would prevent you from granting his request?

Mr. ROBINSON: I think perhaps there is just this. Let us assume that "Blue Cross" is already registered for medical insurance plans as a service mark. Someone comes along and applies to register "Blue Cross" for flour. In

the first instance that application is considered by the registrar. Now the registrar is, under the bill, directed to refuse any application if that application is for registration of a trade mark which is confusing with a trade mark already on the register. Therefore the registrar is then directed, by section 6 of the bill, which defines "confusing", and the effect is this, that he is directed to refuse that application if in his view there is a likelihood that people who see "Blue Cross Flour" will assume that there is some connection between Blue Cross Flour and the medical organization. He may come to the conclusion there is such a possibility, in which case he will refuse the application, and that will be the end of it; on the other hand, he may come to the conclusion there is no such possibility.

Hon. Mr. CRERAR: And he will grant it?

Mr. ROBINSON: Well, there are additional steps. The registrar advertises the application for opposition under the bill. Once an application for registration of a trade mark has been advertised for opposition, anyone may enter an opposition to that application. The application for registration having been advertised, the Blue Cross medical insurance organization sees it and they may say "There is a possibility that the public will assume that the flour is connected with us." They therefore file an opposition. That opposition is heard in the first instance by the registrar. Now, at that stage the registrar gets the assistance of the Blue Cross medical insurance organization. They put their side of the case. Up until that time the registrar has only heard the other side of the case. As I say, both parties place their cases before the registrar, and the registrar comes to one of two conclusions: Either that there is a likelihood of confusion, in which case he refuses the application, or there is not. If he concludes there is no likelihood of confusion, he allows the application. If the Blue Cross medical insurance organization feels that the registrar has given a wrong decision, they may then appeal to the Exchequer Court, and the case is heard by that court. I might say that there is an appeal from every decision of the registrar to the court. So that is the position in the case of an application for registration. The other aspect of the situation is. Let us say that a man who is starting to use Blue Cross in connection with flour does not apply to the registrar at all. Let us assume that he says, "I am not going to register this mark but I will simply use it." Let us say that he goes ahead and uses it for some time. The medical insurance Blue Cross organization hears about this and they consider it and they come to the conclusion that there is a possibility that people are going to think that the flour has some connection with their organization. If they come to that conclusion they have their rights as owners of a registered trade mark. They can bring an action in an appropriate court for a holding that the use of Blue Cross for flour infringes upon their right as owners of the service mark of Blue Cross for a medical insurance plan. If they satisfy a court that there is a likelihood that people will think that the flour has a connection with their medical insurance organization, they will be entitled to get from the court an injunction which will prevent the further use of Blue Cross for flour. If they fail, they can go to the Court of Appeal, and they may ultimately fail or succeed. The point in our mind is this. By registering as a service mark the words "Blue Cross", the medical organization has the possibility of protecting itself and protecting the public against all uses of Blue Cross which would really lead to some confusion in the public mind. However, we feel that to include Blue Cross in the absolute prohibitions of section 9 is going much further than necessary for the purposes of giving the Blue Cross medical insurance organization and the public the protection they need against confusion. We feel that the Blue Cross medical insurance organization, having registered Blue Cross as a service mark, is in a position to prevent any use of Blue Cross by anyone else if that use is likely to cause confusion, but not if it is not. On the other hand, if it is put into

section 9 they are entitled to prevent any use whether it causes confusion or not. That is really, I think, the nub of our feeling about it, and that is why we have not felt in a position to agree with the suggestion that the Blue Cross should be included specifically in the section. Have I answered your question, sir?

Hon. Mr. CRERAR: Quite. In order to get redress or protection they might be involved in considerable expense in appealing to the courts, and one thing and another before the matter is finally settled.

Mr. ROBINSON: That is true, sir, but our feeling is that that is part of the expense of running an organization like this. The Blue Cross medical insurance organization may well feel "It is not going to hurt our organization and it is not going to really affect the public who are concerned with getting medical insurance whether somebody uses Blue Cross on flour or not." If they come to that conclusion they can let it go on, but they may feel there is some difficulty from their point of view, then our feeling is that they should be in the position of going before a court and establishing their case. If they establish their case, then they stop the competitor, otherwise they do not. We feel it is somewhat dangerous in principle to abstract some symbols and words from the collection of symbols and words available for general adoption, unless the situation is such that there is no other adequate way of giving protection.

Hon. Mr. CRERAR: I am not particularly impressed myself, I must say, with that argument. I think there is merit in the argument of Mr. Fleming, and if it came to the authorities I think you would recognize merit in the case.

Mr. ROBINSON: I hasten to say, sir, that I am not a departmental official, but I happen to be on this committee.

Hon. Mr. CRERAR: I do not see the necessity for putting someone to these legal costs if we agree that the request Mr. Fleming made this morning is a reasonable request, and I think it is. Why not add what he wants and prevent the additional expense that may be involved later on?

The CHAIRMAN: Senator Crerar is suggesting a course of action which would create an absolute right in the Blue Cross. It seems a bit strange as an argument because your view and my view too does not lean usually towards creating absolute rights in anybody.

Hon. Mr. CRERAR: That is precisely the point, because of the nature of the Blue Cross.

The CHAIRMAN: What is the distinguishing nature that forces that conclusion?

Hon. Mr. CRERAR: Oh, I think that is pretty clear.

The CHAIRMAN: The whole argument this morning was on the question of confusion, either confusion or depreciation of the value of the mark. In either of those cases there is ample protection under the Act to deal with it. What more do they want?

Hon. Mr. CRERAR: I cannot follow that.

Hon. Mrs. FALLIS: May I say a word from a woman's viewpoint? The Blue Cross medical insurance organization has built up over the years throughout this country a great admiration in the minds of the people. They have a great following and have done a splendid service. We all know personally of many, many cases that would have had a sad ending had it not been for the work of the Blue Cross people among them. I am one of those three million who feel that the Blue Cross is not just an ordinary organization. It has been compared here with business enterprises and all kinds of things. We think it stands in a class by itself. It is a non-profit organization doing a great work throughout the country. We have heard a good deal of talk as to why this concession will not be granted. I am like Senator Crerar. To me, the arguments have not been at all convincing, and I cannot understand

the opposition to this—not from the members of the Department particularly but from members of the committee. They seem to be very strongly opposed to granting this concession to the Blue Cross medical insurance organization. I should like to ask Mr. Robinson what harm could be done if this amendment were included in the bill?

I would like to know what damage it is going to do to the country. We know what good it can do, and I would like to know what damage it could do.

Mr. GEORGE: Mr. Chairman and gentlemen. I am quite a lay member of this Trade Mark Law Revision Committee, and as such I am interested in the practical effects of these legislative changes in this bill as distinct from the Unfair Competition Act which preceded it.

In connection with this Blue Cross application I would like you to think back to The Trade Mark and Design Act which was the immediate predecessor in the trade mark field of the Unfair Competition Act which operates now. It provided for two types of trade marks, a specific trade mark, which is the same as any trade mark that we have, now granted under the Unfair Competition Act. We also had at that time what was called a general trade mark. A general trade mark covered everything and endured forever. If we had a general trade mark provision in this Act—and perish the thought—

Hon. Mr. KINLEY: What do you mean by a general trade mark?

Mr. GEORGE: A general trade mark under the old Trade Mark and Design Act covered everything and endured forever.

The CHAIRMAN: You could apply it to any goods and wares?

Mr. GEORGE: Any goods and wares.

Hon. Mr. KINLEY: I still do not understand.

The CHAIRMAN: Well, if you had the word “beaver”, for instance, you could apply it to any merchandise.

Mr. GEORGE: In all the representations that this committee has received during the five years it has been in operation, we have not had a single suggestion that we retreat to general trade-marks. They were dealt out in the Unfair Competition Act. The fact is that there are now registered in Canada the almost unbelievable number of something in excess of 200,000 trade marks. It is reaching a point now where it is beginning to get a little difficult to devise a mark which has not already been covered for some wares or services, and, in a great many cases, for the identical wares or services for which registration is sought. When we consider Blue Cross, we must consider the whole field of heraldic emblems. We have crosses, and crowns, and coronets, and barsinisters, and so on, which were, in effect, the original trade marks away back hundreds of years ago. We feel that crosses have a proper place in the trade mark field. Many are registered for a wide variety of things, in some cases registered in a series—a green cross indicating a certain type or range of product, a blue cross, a yellow cross, and so on, to indicate the same range of goods, but all different qualities, different sizes and different features, but all in the same class. That is the case in connection with the shoe registrations to which our attention was called before. To say that a manufacturer is trying to trade on the reputation of the Blue Cross when he adopts a Blue Cross as an emblem for his wares, is simply a matter of opinion. I would not subscribe to the thought that Blue Cross as applied to flour made people think that the flour bearing the Blue Cross was in fact controlled in some way by the Blue Cross Association.

Hon. Mr. CRERAR: That is not the point. The fact is, as I see it, the Blue Cross emblem was widely known. People talked about it; and you have, for instance, Blue Cross flour. That very fact predisposes the public favourably to Blue Cross flour as against other flour.

Hon. Mr. WOOD: Until today I had not heard of the Blue Cross, honourable senators. I know a drug store that is called Blue Cross, and now there is a White Cross; but it is not as generally known as you think.

Mr. GEORGE: We see the oddest things happen with trade-marks, and I do not think it is generally believed that the first person who uses a trade-mark for a definite article should, as a matter of right, retain control over that trade-mark for all goods. You may recall the opening of King Tut's tomb many years ago. A regular rash of applications for King Tut—Tutenkhamon and so on, broke out. They had scores of them in the trade-mark office. These things come in cycles. Any world event involves a rash of trade-marks that are related to that event. The committee feels that it is not in the public interest to restrict the application of trade-marks to a single user. By that, I mean that the trade-marks that are left now for adoption must be limited to the wares to which those trade-marks are applied. We cannot, for the life of us, think that anybody would be adversely affected, deceived, by the application of Blue Cross to, say, fishing nets. Why did the manufacturer select Blue Cross for fishing nets? He picked it out of the air. Perhaps he had a dozen. We who practise before the trade-mark office usually find when somebody is seeking a trade-mark that he will submit perhaps half a dozen—"can I get any one of these", and we conduct our search accordingly. It is difficult these days to get a wholly novel trade-mark. We feel that this suggested legislative surgery is very much like cutting off the arm because the thumb is infected. We do believe that the Blue Cross people are entitled to consideration, and we would like to see them have exclusive monopoly of the emblem Blue Cross for their own type of service; they perform outstanding service, and are entitled to the best possible consideration. However, we feel the line must be drawn somewhere, and it has to be drawn clearly and distinctly, without overlapping on to other things with which the Blue Cross organization is not concerned.

As Mr. Fleming pointed out, the organization has 3 million subscribers and a yearly income of \$40 million. In view of that we feel that the expense of protecting their mark could not make a very serious impact upon the finances of the organization. Gentlemen, they are not a poor organization and please do not think that this committee is unfriendly towards them. I believe that most of them are members of the plan. We welcome the service they give, but from a legislative standpoint, we think they should not be given exclusive monopoly on their Blue Cross mark for wares with which they are not commercially concerned in any sense of the word.

Hon. Mr. CRERAR: May I ask a question? If my flour milling friends applied to register the trade-mark "R.C.M.P. flour", they could not do so?

Mr. GEORGE: That is right.

The CHAIRMAN: That is, without the consent of the R.C.M.P.

Hon. Mr. CRERAR: Of course, without the consent of the R.C.M.P. And you should not register "Blue Cross flour" without the consent of Blue Cross.

The CHAIRMAN: That would not be enough, because there are a lot of users of Blue Cross. One would have to go and find them all and there might be a hundred or two hundred.

Hon. Mr. BURCHILL: I do not think Senator Crerar is very far wrong. I want to place myself behind him 100 per cent, and also to support the views expressed by my friend, Mrs. Fallis. I feel that the Blue Cross is on a pedestal, as compared with these other things we have been talking about. I am sorry my friend Senator Wood has not heard about Blue Cross. Where I come from in the Maritime provinces—

Hon. Mr. WOOD: May I interject a word? Frankly, I have heard of Blue Cross but I heard many years before about medical hospital services.

Hon. Mr. BURCHILL: I want to say a word as benefactor of the Blue Cross, and to speak on behalf of my employees and those of a great many of my friends who bank on the Blue Cross. Down in our little part of the country, the people swear by it and what it has done for them. I know many men who have given of their time gratuitously day after day and month after month to build the organization up. It has done a wonderful thing for the people in that section of the country, and I am in favour of the suggestion made by Mr. Fleming and will vote for it.

Hon. Mr. HAIG: Mr. Chairman, I am in a somewhat difficult position. I come from the province in which this hospital service was started, long before it was heard of in the Maritimes or in Ontario. It started in Manitoba in 1938, and extended to the other provinces about 1943 or 1944. But I would point out that it did not start as the Blue Cross, but started as the Hospital Service. That is what it was sold as in Manitoba—the Manitoba Hospital Service Association. As a matter of fact, all the lawyers in that province belonged to the association; however, that does not alter the fact that the service has now been sold across Canada. But it has been only in the last two or three years that the question of Blue Cross has come up. The reason we are hearing about it now is that heretofore one could not register a trade-mark for services. The people who work for this associatin are well paid.

Hon. Mr. WOOD: And there is a good commission for selling.

Hon. Mr. HAIG: My friend, a former employee of the Great West Life, sitting over here, is now the manager of this organization, and he is well paid.

As I said, this service has been sold throughout Manitoba. In the province of Saskatchewan the government provides its people with a hospital service. But one has only to read the *Winnipeg Free Press* or the *Tribune* to see how they compare the hospital service of Manitoba with that of Saskatchewan, and how much more it costs to be covered by the Blue Cross.

My friend over here has said that the Saskatchewan government could not use it. Are you going to prevent the Saskatchewan government from using "Blue Cross"? They are doing a better job than anybody else: They do not charge enough and are going behind on it. When the Manitoba Hospital Service Association goes out to sell they will take only select applicants. If a member's family has had five or six days in hospital in a year, they are dropped from the service the next year. The government service in British Columbia has included everybody, and that is why it costs so much money. That is why, too, the Saskatchewan government plan lost, I believe, \$5 million last year.

Hon. Mr. WOOD: That is right.

Hon. Mr. HAIG: But in the case of the Blue Cross they take only select risks. It is a well managed organization in our province. Dr. Trainor has been head of it ever since it started; he is the chief superintendent of one of our large hospitals; Mr. Crossin is an executive director. But the staff is all well paid. My friend may not know where their office is. It is a new building, put up about two years ago, on Edmonton, near Broadway. I emphasize the service was sold in Manitoba as the Manitoba Hospital Service Association, and nothing else.

Hon. Mr. QUINN: But they now have adopted the name Blue Cross?

Hon. Mr. HAIG: Yes; they have adopted it, but they could not register it.

There is a real struggle in our province, because we are so close to Saskatchewan, where they have the government service on a much more extensive scale than Manitoba. One reason why the lawyers stay with the association is that very few support the C.C.F. policy. The hospital service is regulated as to how many days attention one can get and what the service will be in any particular circumstances.

Take a case which happened the other day. A woman who belonged to the Manitoba Hospital Service took sick in Manitoba. She was removed to the hospital and she ran up in about two weeks a bill of some \$250. The bill was sent back to Manitoba and they were asked to pay it. They said "Oh, no; all we will pay is so-and-so." I guess she quit at the end of the road. That is the system up there, and that is how this system was built up. It is against all good legislation, in my judgment, and as the Deputy Minister says, to put in special exemptions. The minute you do it you make this boot and shoe store in Toronto,—to quote an illustration,—a very valuable asset, and everybody else who was using Blue Cross is still in the running. This does not put them out. I do not like to pass such legislation. I do not always agree with the people whom the government appoints on commissions, but I have listened here with critical attention to the members of the commission,—except the doctor, who is not present, but who, I assume, is just as able,—and these men have demonstrated to me that they have studied every side of this problem thoroughly for the last five years. They themselves say, "This is the law that we recommend this committee to pass." We have the power to ask the government in another year, or two years, or five years to amend the situation if necessary. I think we should be very, very careful before voting out legislation which is not government legislation, except technically, but the committee's legislation, the work of a committee which has demonstrated to me—whether it has to anyone else—that it has given a very great service to Canada in making this kind of investigation. It is a long overdue requirement that trade marks be registered and registered in reference to a certain thing. The other day I argued in this committee that we should not give a charter to the Bank of Amsterdam. In that protest I was almost a lone wolf. My friends said "Let them all come. Why not competition?" But the same voices are raised today saying "We will prohibit competition with the Blue Cross. They do not have to worry." That is what is meant if you carry out what has been said by Senator Crerar and Senator Burchill. I feel we should go very carefully. We should not reject the legislation. In another two or five years, if it comes to our attention that the Blue Cross is affected by competition—I do not say it will, I do not understand how it can be, because in Winnipeg, where the big bulk of the members are, we do not know it as a Blue Cross organization, we know it as the Manitoba Hospitals—

Hon. Mr. BURCHILL: May I interrupt a moment. Down in the Maritimes it is always known as "The Blue Cross".

Hon. Mr. HAIG: I don't know about that. How long has it been in the Maritimes?

Mr. FLEMING: In Nova Scotia, since 1942; in New Brunswick, since 1943.

Hon. Mr. HAIG: They have been fifteen years in our province. They got the idea from Manitoba. So did Ontario. I am surprised that Ontario would copy Manitoba, but apparently they did.

The CHAIRMAN: We will take a good thing from any place!

Hon. Mr. HAIG: All I want to say in conclusion is that I feel we should go very carefully; and a good principle of legislation is not to make special exemptions for certain people. Some people say that is like a Liberal doctrine, not a Conservative doctrine. But I am a Liberal-Conservative. Therefore I feel that we should accept the recommendations of the committee, and pass the legislation.

The CHAIRMAN: Senators, may I point this out? We have had quite a discussion on the point. If there is going to be a change or an amendment of this section it would involve some very careful drafting in order to provide for the exception from the absolute prohibition in favour of these other uses of Blue Cross which are presently going on; and we could not hope to do that drafting

and have something for you this evening. So the suggestion I was going to make is this: let us decide first of all whether a majority of the committee wants to amend the section or to pass the section in the form it is. Therefore what I was proposing to do was to put the section in the form in which it is now to the committee. If a majority passes it, then we do not have to consider the question of an amendment. If a majority votes against it, we have got to consider the question of the amendment, and we will have to adjourn in order to phrase the amendment properly. So, if it meets with your approval, I will say, "Shall section 9 of the bill carry?" Those in favour of section 9, in the form in which it is now, will indicate by raising their hands.

Hon. Mr. McDONALD: Before the vote is taken may I ask this one question. Having in mind the great service the Blue Cross has given and is giving, and the large number of people who are in the Blue Cross, can the members of the committee suggest one or more other organizations that are rendering anything like the good and the service that is being rendered by the Blue Cross? You may have answered that. I may not have been here, or may not have heard it.

The CHAIRMAN: Mr. Stein will deal with that, senator.

Mr. STEIN: I have a list here of about 15 plans of the sort, and I know there are others, less important, more local and restricted. I do not know whether you want that list. Some are part of the "Blue Shield" group, and I have the Blue Cross included here; but apart from the Blue Cross I have the Blue Shield and others. There are some all over the country.

Hon. Mrs. FALLIS: Are these national in their scope?

Mr. STEIN: Well, as regards whether they are national in their scope, we are told that the Blue Cross is not in every province. If you mean, every province in the whole of Canada, I would say, no, not even Blue Cross.

Hon. Mr. QUINN: Blue Cross is in nine out of eleven.

The CHAIRMAN: Eight out of ten.

Mr. STEIN: And I could mention the civil service organizations, and others. Then you have the private insurance companies, which are also in the field; and you have the Continental Casualty, and there are a host of them. As I pointed out, sooner or later we would be asked to do the same thing for a lot of others, and not only the hospital-medical, but other co-operatives in every field.

Hon. Mr. BAIRD: Is your only bone of contention that you are afraid other people will make application and want the same consideration and treatment?

Mr. STEIN: Yes. It would be giving something every trader in the country would like to get.

Hon. Mr. BAIRD: The thing I am jealously guarding is to try and get away from the possibility of state medicine. I personally would like to see all these different kinds of organizations get somewhere, become something and do something, either bigger or better than the Blue Cross. For if you get several of these organizations built up, you won't have the same cry for state medicine. That is what I despise. It is very distasteful to think of that sore of thing coming into vogue.

Hon. Mr. WOOD: One way or another it is not going to change it.

Hon. Mrs. FALLIS: I should like to ask Mr. Stein whether the other organizations he mentioned are in the same class with the Blue Cross as far as being non-profit organizations is concerned?

Mr. STEIN: Yes.

Hon. Mrs. FALLIS: They are all non-profit?

Mr. STEIN: Yes.

Hon. Mrs. FALLIS: Do you call co-operatives non-profit?

Mr. STEIN: I suppose it is a matter of opinion. When speaking of co-operatives I was not thinking of this particular plan. I think quite a number of co-operatives are as much non-profit as is the Blue Cross medical insurance organization.

Hon. Mrs. FALLIS: Perhaps, but in our district they are all distributing profits every year.

Mr. STEIN: The Blue Cross in due course hopes to distribute benefits in the way of reduced rates. This is also true of the Civil Service plan. They all try to build up reserves and hope one day to increase the benefits or reduce the rates.

Hon. Mr. KINLEY: We have listened to this all afternoon with a great deal of interest. We all have a high regard for the work done by the Blue Cross medical insurance organization, but it has occurred to me that if anybody is entitled to a monopoly of the use of the symbol Blue Cross it would be the S.P.C.A., because they were in the field longer. They do a work that is totally of a non-profit nature. Theirs is strictly a welfare work. I may say that I have submissions from at least seven companies who want to put their services in our plant. We provide group insurance. One man in our plant turned up with a scheme proposed by the union only a few days ago. I also had a visit from the Blue Cross representative who is a paid servant of that organization. I was glad to hear what he had to say, and I have his submission in my desk. I regard all these companies as being commercial enterprises, no matter what clothes you put on them. They are there for the purpose of commercial benefit, whether it is profit or something else. Are we going to put this emblem, which has been built up in this country to have a certain value, in the hands of one company? The privileges for this company to use the emblem are perfectly secure under the legislation as it now stands, and I do not think we should grant any monopoly for the use of the words Blue Cross, to any organization.

Hon. Mr. McDONALD: Before I vote I want to know whether or not I am voting for something that is practical. I am sure all honourable senators do not want to support legislation that is not practical. I should like to ask Mr. Stein to read the other fifteen names he has suggested of organizations that could be considered at all comparable to the great service which is being rendered by the Blue Cross Hospital organization.

Mr. STEIN: First there is the Medical Services Association of British Columbia, which was incorporated under the Societies Act of British Columbia in 1940, to provide prepaid medical care to its members. It has a board of 8 directors, two of whom are physicians, elected by the medical members of the corporation, and so on. This plan is approved by the College of Physicians and Surgeons of the province, and the British Columbia Division of the Canadian Medical Association. It uses as an insignia an oval seal containing the corporate name with M.S.A. in bold letters.

Then there is the Medical Services of Alberta Incorporated which was chartered in 1948 to provide prepaid medical care to its members. It is sponsored and approved by the College of Physicians and Surgeons of Alberta. It uses as insignia a diamond seal containing the corporate name and the letters M.S.I.

Then there is the Medical Services of Saskatoon Incorporated, which was chartered under the Companies Act of Saskatchewan in 1946 to provide prepaid medical care to its members. It has a Board of twenty Directors, including ten physicians and ten laymen elected from the subscribers. It is sponsored by the Saskatoon and District Medical Society, and is approved by the Saskatchewan Division of the Canadian Medical Association. It uses as insignia a Staff of Aesculapius in a triangle bound by a double circle containing

the corporate name, and the words "Prepaid Medical Care" on the sides of the triangle. This is a Blue Shield plan.

Hon. Mr. ASELTINE: Is it Blue Shield in British Columbia, Alberta, Saskatchewan and Manitoba?

Mr. STEIN: I think in a general way the Blue Shield plans are for medical insurance and the Blue Cross for hospitalization. I think in some cases you have a combination.

Hon. Mr. McDONALD: It is a combination in the Maritimes.

Mr. STEIN: Then there is the Group Medical Services of Regina, formed in 1949 by a merger of Group Health Association and Medical Services Incorporated under the Saskatchewan Companies Act, to provide prepaid medical care to its members. It is approved by the Regina and District Medical Societies. It uses as insignia a Caduceus imposed on a red shield with the letters G.M.S. This is a Blue Shield plan. These are plans offering comprehensive medical care in the home, office and hospital, and certain auxiliary services. Then there is a second group of plans, offering both comprehensive and partial medical care contracts, and the latter are limited to surgical care and medical—non-surgical—care in hospital.

The Manitoba Medical Service was incorporated in 1944 to provide its members with prepaid medical care. It has a Board of twenty-one Trustees of whom fourteen are physicians who are members of the Manitoba Medical Association, by which the plan is sponsored. It uses as insignia a Staff of Aesculapius on a red shield containing the letters M.M.S. It is a Blue Shield plan.

Then there is the Physicians' Services Incorporated which was chartered in 1948 under the Companies Act of Ontario, to provide prepaid medical care to its subscribers. It has a Board of nine Governors of whom at least six must be members of the Ontario Medical Association, by which the plan is sponsored. It uses as insignia a modified circular seal containing the corporate name, with a central figure holding a lamp and a globe, above a scroll with the words "*salus populi suprema est lex*", the whole surmounted by laurel branches and a maple leaf. This is a Blue Shield plan.

Then there is the Windsor Medical Services Incorporated, which received its charter to provide prepaid medical care to its subscribers under the Companies Act of Ontario in 1937. It began operating in 1939. It has a Board of nine Directors at the present time, of whom five are doctors. It is sponsored by the Essex and Kent County Medical Societies and approved by the Ontario Medical Association. All participating doctors are medical members, and non-medical members are appointed to membership by the Board of Directors so that they can qualify for directorship. This plan has no insignia.

Then there is the Maritime Medical Care Incorporated, which received its charter from the Nova Scotia government in 1949, authorizing it to provide prepaid medical care to its members. This plan is organized, sponsored and approved by the Medical Society of Nova Scotia. It uses as insignia the monogram mM.C.

Then there is a society in Quebec known as Les Services de Santé du Québec, which is a co-operative society organized in 1946 under the co-operative syndicates law of Quebec, in order to provide prepaid medical and hospital care to the members of this co-operative. This would apparently be a co-operative, at least technically speaking, under the Quebec laws. It has a twelve-member administrative board, all of whom must be subscribers, including three doctors and one hospital representative. There is also an advisory Medical Board of Directors of ten or fifteen doctors representing the Quebec Medical Society. It uses as insignia a Caduceus flanked by two pine trees bound by a circle rimmed with the corporate name.

Then there are plans offering hospital care benefits and partial medical care. Here we have the Associated Medical Services Incorporated organized under the Companies Act of Ontario in 1937 to provide prepaid medical and hospital care to its subscribers. This scheme is approved by the Ontario Medical Association. It uses as insignia a Staff of Aesculapius as center support for the scales of justice, all inside a double circle containing the name of the corporation, with ribbon base bearing the inscription "Medical Care by Prepayment".

Then there is the co-operative Medical Services Federation which is a loose federation of thirty-five of the thirty-eight co-operative health care plans operating in Ontario, the first of which was established in 1943. The function of this federation is to co-ordinate the activities of the member co-operatives, and to give guidance to them in the provision of prepaid medical and hospital care to their members.

Then there is the Blue Cross Division of the Ontario Hospital Association, established in 1941. It is operated directly by the Ontario Hospital Association which has a thirty to thirty-five man Board of Directors. It is approved as a Blue Cross plan by the American Hospital Association, and has the right to use the Blue Cross insignia.

Then there is the Maritime Hospital Services Association incorporated in 1943 to provide hospital care to its subscribers, and in 1948 was permitted to provide medical care also. It is approved by the Prince Edward Island Medical Association, and has the right to use the Blue Cross and Blue Shield insignia.

Then I just have two more, which provide hospital care only. The Manitoba Hospital Services Association, incorporated in March, 1938. It has a Board of twenty-one trustees, of whom four are appointed by the Manitoba Hospital Association, three by the Manitoba Medical Society, and so on.

They have the right to the Blue Cross insignia. Then the Alberta Blue Cross Plan, under the auspices of Alberta followed in 1948, and uses the Blue Cross insignia. As I say, there are others.

The CHAIRMAN: Senator Vaillancourt?

Hon. Mr. VAILLANCOURT: We have the Service de Santé de Quebec for the care of the sick. I agree with the senator from Winnipeg. It is hard for us to agree to an exclusive right; and if the amendment is passed, we will move another asking for a Green Cross. You have no right to refuse me, if you give it to the others.

The CHAIRMAN: Honourable senators, may I state the question again? We have section 9 of the bill on which we are voting. Those who voted in favour of section 9 of the bill are voting against—putting the Blue Cross in the category of an absolute prohibition against any other use of that term. I want you to understand what you are voting for or against. If you vote for section 9, it is in the form that it is in the bill, and if you vote against, you want an amendment. Now, the question is, shall section 9 carry? Those in favour, please indicate by raising their hands.

The CLERK OF THE COMMITTEE: In favour, 9.

The CHAIRMAN: Against?

The CLERK OF THE COMMITTEE: Against, 10.

The CHAIRMAN: The negative carries. Now, that means that we have to do a job of drafting, which we cannot do tonight. We have before us, though, an amendment to section 51. If you remember, that stood before the dinner adjournment.

Hon. Mr. CRERAR: May I make a suggestion on the question of drafting, which I take it will be an addition to section 9? That might be done by the department and Mr. MacNeill.

The CHAIRMAN: They will have to work out their own mechanics, if they have it in time for 10.15 in the morning. We can consider it then.

Subsection 4 of section 51 stood before the dinner adjournment, so that there might be some revision to limit the right to issue an order against something that was likely to be imported, and now we find that involved redrawing section 51 entirely, and in so doing that subsection 4 reads in this fashion, and I think covers the point we were concerned about. This is a case where an action has been taken to get the custody of goods which have been imported into Canada against the right of a holder of a trade-mark in Canada. Having that in mind, here is what subsection 4 says:

“Where in such action the court finds that such importation is or such distribution would be contrary to this Act, it may make an order prohibiting the future importation of wares to which such trade-mark, trade-name or indication of origin has been so applied.”

Now, that is the meat of the amendment. I think the other changes that have been made would be consequential by reason of that. Would you indicate that section 51 in the form in which it now is, is satisfactory to this committee?

Section 51 was agreed to.

The CHAIRMAN: We are meeting at 10.15 in the morning, because we have this Merit Plan Insurance Company Bill to consider for a few minutes, and if the amendments are ready by that time we can deal with them then.

Whereupon the committee adjourned.

WEDNESDAY, March 25, 1953.

At 2 p.m. the meeting was resumed:

The CHAIRMAN: Gentlemen, this meeting is continuing from last night. At adjournment time a motion to carry section 9 had been moved and was defeated. Some of the members of the departmental staff and others were asked to get together and see if they could work out an amendment. At the moment, I understand Senator Robertson has something he would like to say.

Hon. Mr. ROBERTSON: Mr. Chairman and gentlemen, I was not present last evening nor was the minister. When the matter was drawn to my attention this morning I conferred with him, with the result that the government felt that I should explain its view in the matter. I shall do so, and as to what will be done after that is a matter for the committee to decide.

Last night the Committee decided that provision should be made to include in clause 9 of the bill the words "Blue Cross" and the Blue Cross emblem, among those marks, the adoption of which is prohibited by any person for any business purpose.

The Government has given careful consideration to this amendment but feels that it would be contrary to the whole purpose of the bill, and for this reason I hope that the Committee may reconsider the decision reached last night.

The Bill is essentially one for the protection of trade marks and trade names used in business, whether for services or on goods. The purpose of the protection given to trade marks and trade names is to prevent consumers from being deceived about the source of goods or services which they buy, and to protect traders from having others trade unfairly on the reputation that they have built up.

What the bill does essentially is to prevent the use by different people of trade marks or trade names which might lead the public to infer a connection between those people which does not really exist.

It is clear that it is desirable on general public grounds to keep certain sorts of marks so far as possible entirely out of the business field. For example, everyone will agree that it is undesirable to have such things as the Crown, pictures of the Royal Family, our Flag and other like things used by anybody to promote their private business. It is to prevent this that clause 9 is included in the bill. This clause takes out of the business field the marks which are listed in it. Of course, there may be special circumstances in which the use of some such marks might be proper for business purposes, and hence sub-clause (2) provides that they may be used with appropriate consent.

The inclusion in clause 9, among the listed marks, of Blue Cross, which is used for hospital and medical insurance services, would, you will see, be quite outside the purpose of the clause, because the effect of including this mark would not be to keep it out of the business field but would, rather, be to give a complete monopoly for it in the business field to one particular organization. This idea of giving a complete monopoly for a particular trade mark to a particular organization is quite foreign to the purpose, not only of clause 9 but of the whole bill. The bill is very careful to avoid giving any general monopolies for trade marks. What it does do is to give any trade mark owner the right to prevent other people from putting their goods or services before the public in such a way that the public may think they are the goods or services of the trade mark owner, but it does not go any further.

The bill as it stands gives perfectly adequate protection to the Blue Cross emblem and the words "Blue Cross". They can be registered as service marks

and the registered owner can prevent anyone else from using them in any way that would be likely to lead to public confusion. There would seem to be no reason why these marks should be singled out among all others used in the business field and in particular in the insurance field for special treatment. If they are now singled out, then there seem to be no reasonable grounds on which parliament could refuse to single out other marks. The inclusion of the Blue Cross mark in clause 9 would, I am advised, open the flood-gates to the giving of specific, complete monopoly rights to a whole variety of other marks whose cases could not logically and fairly be distinguished from the Blue Cross case.

In view of what I have said, honourable senators, I hope the committee may reconsider their decision to endeavour to frame an appropriate amendment to include the Blue Cross. Personally I would think it would not be very good legislation; and, indeed, there seems to be great difficulty in framing any such amendment. That, as I understand it, is the formal position; and in order to bring the matter to a head I would move that the matter be reconsidered.

Hon. Mr. HOWARD: I will second that motion.

The CHAIRMAN: We have a motion before us to reconsider—

Hon. Mr. CRERAR: Has the amendment been drafted?

The CHAIRMAN: If an amendment has been drafted, it has not come into my possession yet.

Hon. Mr. ROBERTSON: I think there was some difficulty in getting the amendment drafted.

Hon. Mr. CRERAR: We understood when we adjourned last night that an amendment would be drafted.

The CHAIRMAN: I understand that quite a number of drafts have been made in succession.

Hon. Mr. CRERAR: It does seem to me rather an extraordinary proceeding that a simple amendment of the kind mentioned yesterday cannot be drafted. I cannot see that the introduction of an amendment would be an earth-shaking process in so far as this bill is concerned. I cannot see where it would be contrary to the whole purpose of the bill. After all, it is a very simple amendment. It performs a distinct service to an organization which today is a very worthy organization. In this country today we have a great controversy arising as to whether or not we shall have a system of government health insurance and government hospitalization, with all that it means, or whether we are going to encourage private individuals to develop hospital services on an insurance plan, and if we can do anything to further that latter idea it is our plain duty to do so. I submit that the use of the emblem Blue Cross associated with this is just a step in the development of the whole scheme. It would also very definitely, and to the extent that it helps this work, shut off the demand for government health insurance and all that sort of thing which would run the country into millions of expenditure.

Hon. Mr. ROBERTSON: Cannot that be done by registering it under the act?

Hon. Mr. CRERAR: The information we had yesterday was that it would not close the door entirely; it might close the door partially but not entirely to the use of that emblem. I illustrated this with the instance of a flour mill that wanted to register "Blue Cross Flour" as a brand name.

Hon. Mr. ROBERTSON: It would not preclude any medical insurance company—

Hon. Mr. CRERAR: That is the very point I am making. The more common you make the use of that emblem "Blue Cross", the less its value to the hospital service. My judgment on that may be wrong, but I think that is a clear psychological case.

The CHAIRMAN: Senator Euler?

Hon. Mr. EULER: I should like to ask a question. I am not going to debate the merits of what the leader of the government in the Senate has said, but if his resolution or his motion carries for the reconsideration of section 9, that will not preclude the introduction of an amendment later on. It only reopens the question.

The CHAIRMAN: Yes. The next motion will be "Shall section 9 carry?" and you are right back to the consideration of the whole section.

Some Hon. SENATORS: Question.

Hon. Mr. CRERAR: I am not naive enough to imagine for a second that if this committee votes for a reconsideration of clause 9 it will not adopt clause 9 as it stands.

Hon. Mr. EULER: You have got to have some method for introducing your amendment. How else can you do it?

The CHAIRMAN: No amendment has been introduced yet.

Hon. Mr. EULER: I know. But if you do not adopt a motion to reconsider the section how can you bring in an amendment to that section?

Hon. Mr. CRERAR: You were not here last night?

Hon. Mr. EULER: No.

Hon. Mr. CRERAR: The vote was whether we should pass section 9 as it stood.

The CHAIRMAN: That is right.

Hon. Mr. CRERAR: Or alternatively to produce an amendment that would meet the point raised by Mr. Fleming.

The CHAIRMAN: Senator Crerar has not stated the point exactly. I was careful in putting the motion. It was "Shall section 9 carry?". I wanted the people voting to understand that if they wished to support the Blue Cross they would vote against the motion "Shall section 9 carry?". Then we stopped after section 9 was not carried. We stopped to permit study of an amendment, but no amendment has been presented to the committee. We have got to get back to that some time.

Hon. Mrs. FALLIS: The understanding was that an amendment was to be submitted. There is no question in the minds of anybody who was here last night. That was the distinct understanding when we adjourned, that an amendment would be submitted today.

The CHAIRMAN: We have a motion before us to reconsider section 9 and if and when we reconsider it somebody can move an amendment if they wish.

Hon. Mr. EULER: If section 9 is defeated then the whole section is wiped out and I imagine there are perhaps some things in it to which nobody is opposed.

The CHAIRMAN: Yes, there are many parts of the section to which nobody is opposed. The motion last night was "Shall section 9 carry?". It was voted down.

Hon. Mr. CRERAR: It was voted down for the reason the Chairman stated last night. He said that if you wanted an amendment that would include Blue Cross for the hospital service as a trade mark prohibited to others, then vote against section 9. That clearly carried the implication—and it was so stated by the Chairman—that an amendment would then be introduced.

Hon. Mr. GOVIN: That is what I understood.

Hon. Mr. BURCHILL: The Chairman stated before the motion was put that the amendment was not ready.

The CHAIRMAN: I said that we had two courses: We could either adjourn and wait until an amendment was drafted, or somebody could move an

amendment to the section when the section was put to a vote, or we could vote on the principle of section 9. If and when such an amendment is ready there will have to be a motion.

Hon. Mr. BURCHILL: The amendment was to be ready for this afternoon.

The CHAIRMAN: Yes, but we now have a motion to reconsider section 9, and you get right back to where you were last night. Are you ready for the question?

Hon. Mr. ROBERTSON: Let there be no misunderstanding as far as I am concerned. I was asked to ascertain the viewpoint of the government because it is government legislation.

Hon. Mr. BAIRD: This is the Senate, I understand.

Hon. Mr. ROBERTSON: All right, yes, but it is government legislation, and I am perfectly in order—

Hon. Mr. BAIRD: As far as I am concerned, it has absolutely no connection whatsoever. I understand this is an independent body.

Hon. Mr. ROBERTSON: Of course it is. I am only expressing the opinion of the government, and I am the only one here, and have a perfect right to do so.

Hon. Mr. BAIRD: At the same time, I am not accepting it.

Hon. Mr. ROBERTSON: I have a perfect right to express the opinion of the government who is sponsoring the legislation.

Hon. Mr. BAIRD: You are coming here and trying to intimidate us.

Hon. Mr. ROBERTSON: I have never intimidated anybody. I am only explaining the position. What the committee sees fit to do, is its own business. You are only talking through your hat.

Hon. Mr. CRERAR: Mr. Chairman, I would suggest that the motion should be to repeal the vote last night.

The CHAIRMAN: No, the motion is to reconsider it, and then the question will be put, shall section 9 pass.

Hon. Mr. CRERAR: We have not thrown clause 9 out the window?

The CHAIRMAN: You have so far.

Hon. Mr. CRERAR: No, not at all.

The CHAIRMAN: The motion before the committee will be, shall the committee reconsider its decision in regard to section 9, that was made last night. I so rule.

Hon. Mr. CRERAR: This motion does not clarify the situation.

The CHAIRMAN: Well, we can only take one step at a time.

Hon. Mr. CRERAR: Suppose we vote to reconsider clause 9, and then move the amendment.

The CHAIRMAN: Yes, there will be the motion to carry section 9. If you wish to move an amendment, you move an amendment.

Hon. Mr. CRERAR: We are supposed to be prepared.

Hon. Mr. ROBERTSON: So far as I know, frankly, I do not know that you have an amendment; but that does not prevent an amendment being moved. Any amendment can be moved in this committee.

Hon. Mr. CRERAR: Let me say frankly, it is not treating the committee with the courtesy it deserves, because it was understood last night, I think, by every member of the committee that an amendment would be presented here at the next meeting. I suggested myself that our legal advisor in the Senate, Mr. Fleming, and someone from the department get together and draft a suitable amendment that would cover the point.

Hon. Mr. HAIG: Let me ask you one question. If we vote on this motion now moved, then the clause will be opened up for consideration again?

The CHAIRMAN: That is right.

Hon. Mr. HAIG: Then somebody will have to move that the clause be adopted, someone will second that motion, and if I want to move an amendment I can then move an amendment.

The CHAIRMAN: That is right.

Hon. Mr. EULER: Ordinarily, I have no particular objection to reconsidering anything on its merits, but if you carry this motion to reconsider, the thing is open, and I personally am frank to say I want to vote for an amendment, but if there is no amendment ready the whole thing will be carried and we shall have no chance to vote on an amendment.

Hon. Mr. ROBERTSON: Let me make an observation on that, particularly in view of the remarks made by the honourable senator who just left the room. I have no intention of having it put through simply because there was not an amendment available. If there is no amendment available and somebody wants time to consider an amendment, let it stand over until the amendment is ready. I am expressing the viewpoint of the government, and I have a perfect right to do it, and I have the responsibility to do it.

The CHAIRMAN: The question is on the motion to reconsider the committee's action in relation to section 9. Those in favour of such reconsideration, raise their hands.

The CLERK OF THE COMMITTEE: Sixteen, including the Chairman.

The CHAIRMAN: And those opposed?

Hon. Mr. CRERAR: I am not going to vote against that.

The CLERK OF THE COMMITTEE: Ten.

The CHAIRMAN: The motion for reconsideration carries. Will Section 9 carry?

Hon. Mr. CRERAR: I wish to move an amendment, as follows:

That section 9 be amended by adding paragraph (p) to subsection (1): "The emblem of Blue Cross as adopted by the Canadian Council of Blue Cross plans and used by its affiliated organizations, and the expression "Blue Cross"; and by adding the following subsection; (3) Nothing in this section prevents the use of the emblem of Blue Cross by any society for the prevention of cruelty to animals, in connection with its activities, or by a veterinarian in the practise of his profession.

That new subsection is to cover the point raised by the second gentleman who spoke to us yesterday.

The CHAIRMAN: As I listened to the amendment, it is intended to cut out any other current user of the Blue Cross except S.P.C.A.

Hon. Mr. CRERAR: With that exception.

The CHAIRMAN: But there are a lot of other users of it at the present time.

Hon. Mr. CRERAR: No. This simply emphasizes, Mr. Chairman, the wisdom in the decision made last night, that this amendment should be studied and put in proper form. Certainly, it is not going to go by default, as far as I am concerned.

The CHAIRMAN: If it is still the wish of the committee to vote on this amendment, I shall put it to a vote.

Hon. Mr. DAVIES: I thought the word "adoption" came into the picture yesterday.

The CHAIRMAN: But this amendment would add a new subsection 3 which in effect says that nothing in this prohibition, or whatever it is, shall prevent S.P.C.A. from making use of this emblem. But what about all the other users?

Hon. Mr. EULER: Would they have a right to use it?

The CHAIRMAN: S.P.C.A. had used it years before.

Hon. Mr. EULER: It is understood—and I do not suppose this amendment vitiates it—those who are using the expression “Blue Cross” cannot be prevented from using it in the future.

The CHAIRMAN: They can be, unless we legislate in such a way as to prevent them.

The word “adoption” appeared there, and applies only to the future. However, the amendment has been moved. Do you second it, Senator Euler?

Hon. Mr. EULER: Yes. Frankly, Mr. Chairman, I do not like the way this thing is going. I would like to see it debated fairly; and I fancy the government—

The CHAIRMAN: You want an adjournment so that the amendment may be studied?

Hon. Mr. EULER: That is exactly what I was going to say.

Hon. Mr. ROBERTSON: I came here to express the viewpoint of the government I represent, but I have no intention and no desire to preclude any member of the committee from preparing a proper resolution and moving an amendment. As far as I am concerned I will be quite willing to have the matter stand.

Hon. Mr. EULER: Well, I take it—

The CHAIRMAN: Make a motion.

Hon. Mr. EULER: Adjourn till tomorrow, and give them a real opportunity.

Hon. Mr. HAIG: Adjourn until after the house rises.

The CHAIRMAN: There is a motion that we adjourn until after the Senate rises today.

Hon. Mr. PATERSON: Mr. Chairman, you will not be here. You are going away.

The CHAIRMAN: I may be.

Hon. Mr. BEAUBIEN: Why should not our legal counsel look the amendment over, and if an amendment can be prepared on the line suggested let us vote on it when it is properly prepared.

The CHAIRMAN: If the Law Clerk wants to, he can look at it now.

Hon. Mr. ROBERTSON: I think there should be ample time to prepare the amendment, and if you are not ready with it by 4 o'clock we can adjourn till tomorrow morning. I have only expressed the opinion of the government of which I am a member, that they prefer not to have any particular organization singled out and given a monopoly. That is for the committee to decide.

Hon. Mr. EULER: Let us have the amendment so that we know exactly what it means. I do not think we do, now.

Hon. Mr. DAVIES: Could I ask the leader of the government if he has in mind that the Blue Cross organization could be protected by an amendment, without making it absolutely their property?

The CHAIRMAN: No; they would be protected under the bill.

Hon. Mr. ROBERTSON: I think they would be protected under the bill by being registered. That is my understanding, of trade marks. There are certain specific ones taken out. But when it comes in the other field there might be another Blue Cross or Green Cross or some other kind of insurance company which might be up, and if you give it to one you have got to start including it in legislation. On the point of the amendment, I think the right thing is to adjourn so that a proper motion can be prepared.

The CHAIRMAN: There is a motion to adjourn until the Senate rises today. That is not debatable.

Hon. Mr. EULER: I will amend it, by moving that we adjourn until tomorrow morning, to give an opportunity to prepare the amendment.

The CHAIRMAN: There is a motion to adjourn.

Hon. Mr. BEAUBIEN: There is no use trying to rush things here. Before we do adjourn should it not be understood that the people who are proposing this amendment confer with our legal officer with a view to the preparation of a proper amendment?

The CHAIRMAN: The statement has already been made that if they are not ready at 4 o'clock we will adjourn further. If they are ready we may as well deal with it. Those in favour? . . . Carried.

Hon. Mr. VAILLANCOURT: In Quebec we have what is known as the Service de Santé de Québec. It gives the same benefits as does the Blue Cross medical organization, and it serves communities throughout Quebec, the Maritime Provinces and even Ontario. As a matter of fact, I believe they were operating in Quebec before the Blue Cross.

The CHAIRMAN: You are referring to the Green Cross?

Hon. Mr. VAILLANCOURT: We are asking for the same rights as are the so-called Blue Cross medical people. The Red Cross organization is definitely a philanthropic body which serves all kinds of people: blacks, whites, yellows, poor people and rich people. But the Blue Cross medical organization is an organized company, just as is the Service de Santé de Québec. You cannot give the Blue Cross people a monopoly. Honourable senators are here to protect minorities and if this amendment is passed then we will ask for an amendment which will give the Service de Santé de Québec the sole right to use the Green Cross as its emblem. You will not be able to fairly refuse that request.

The CHAIRMAN: I would remind the honourable senator that we have already adjourned.

Hon. Mr. EULER: I think this argument should be made when the committee resumes sitting. A motion has already been made to adjourn.

The CHAIRMAN: I know. I was just sitting here as a matter of courtesy to the Honourable Senator Vaillancourt.

The committee thereupon adjourned until 4 p.m.

On resuming:

Hon. Mr. Bouffard in the chair.

The CHAIRMAN: Honourable senators, we have a quorum. If I understand the position at the present time, the committee voted this morning for the reconsideration of clause 9 of the bill, and I understand that this morning there was a proposal by the Chairman of the committee for the adoption of clause 9, and I understand that that proposition may be followed by an amendment.

Hon. Mr. BEAUBIEN: I move for the adoption of the clause, and then you can present the amendment.

Hon. Mr. CRERAR: Mr. Chairman, when we had reached the stage before the luncheon adjournment, I had moved an amendment. It was suggested that the amendment should be more carefully scrutinized. In the meantime that has been done. The counsel for the Senate has examined the amendment, and states that it is in order, but did not express any view on it, really, as to whether he was for or against it. We do not require that expression of opinion from him, but the amendment is now in order. With your permission, sir, I shall move that section 9 be amended by adding the following as subsection 1 (p): The emblem of the Blue Cross as adopted by the Canadian Council of

the Blue Cross Plans and used by its affiliated organizations, and the expression "Blue Cross"; and by adding the following subsection:

(3) nothing in this subsection prevents the use of the emblem of the Blue Cross or the expression 'Blue Cross' by any society for the prevention of cruelty to animals in connection with its activities, or by a veterinarian in the practise of his profession.

As I understand it, the addition of subsection (3) simply puts the seal of approval on what has been the existing practise. All the amendment proposes to do is add one more prohibition to those contained in section 9. I suppose we are now familiar enough with the bill to observe the prohibitions which exist to prevent any invasion by outside interests. This amendment simply provided one more; it does not in any way disturb the real purpose of the bill. Consequently, it is a fair subject for consideration and, I trust, the approval of the committee.

I have a few words to say in support of the amendment. The Blue Cross Hospital Associations that started a number of years ago have developed and expanded in a majority of the provinces; and as was natural in their development, they considered it useful and helpful to have an emblem associated with their activities. We had the figure given to the committee the other day of the number of people who are covered by this hospital service.

Hon. Mr. EULER: Three million.

Hon. Mr. CRERAR: I know in Manitoba almost half if not more of the population is covered by this plan. It is simple in its operation: The subscribers pay their annual premium, and they have the protection which the plan gives. In that respect it operates on the same principle as a fire insurance company, into which an individual may pay his annual premium for fire protection.

Hon. Mr. BEAUBIEN: Except this is a non-profit organization.

Hon. Mr. CRERAR: Yes; it is a non-profit organization.

Hon. Mr. EULER: That is important.

Hon. Mr. CRERAR: It is very important. This wholly non-profit organization may be said to be an illustration of the highest kind of co-operative endeavour among people in a very useful field. The administration is under the supervision of capable people. It is true that the organization requires an office staff and managerial services, but a great deal of the work is done voluntarily.

This emblem of the Blue Cross, which came into vogue not at the beginning of the hospital association but later, is simply a distinctive emblem that associates this kind of service in the minds of people generally. I can illustrate that by the fact that only a few months ago, when I was in Manitoba, a gentleman told me "I and my family have joined the Blue Cross as a separate organization." That is illustrative of the general application of this. I think it is a reasonable thing that the Blue Cross organizations are asking for,—that this emblem "Blue Cross" be reserved for them in the same way as the prohibitions that exist in section 9, which cover a very considerable number. This is the thing that appeals to me very powerfully in this matter. An agitation is constantly going on in certain places in this country for government hospital insurance and health plans, and that, to my mind, is about the most expensive way in the end that you can find to do it. What is the alternative to that? The alternative exists in the voluntary, co-operation organizations that have been established under the Blue Cross label. I think it is plainly in the public interest that this kind of thing should be encouraged in every legitimate way. One way of giving it definite encouragement is to put it in a peculiar position so far as this emblem is concerned; and that, Mr. Chairman, is all that this amendment seeks to do.

Hon. Mr. ROEBUCK: I second the motion.

Hon. Mr. HAIG: There is just one question I want to ask. It was raised last night. The statement was made, if I remember correctly, that outside of the humane society and the animal hospitals there are a number of other organizations which have the Blue Cross for some purpose or other, and have had it for years. Once this amendment passes they will all be out of business.

Hon. Mr. ROEBUCK: Oh, no.

Hon. Mr. HAIG: Oh, yes.

Hon. Mr. CRERAR: Will they? They can continue what they have got. They can continue using the labels they have at present.

Hon. Mr. HAIG: No.

Hon. Mr. CRERAR: The Law Clerk says "Yes".

Hon. Mrs. FALLIS: We understood in the explanation that the word "adopted" means anything done in the future.

Hon. Mr. HAIG: But "adopted" is not in that amendment.

Hon. Mr. ROEBUCK: The opening words of the section are "No person shall adopt in connection with a business, as a trade mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for", and then you jump to "(p) the emblem of the Blue Cross as adopted by the Canadian Council of Blue Cross Plans and used by its affiliated organizations, and the expression "Blue Cross";" then there is the saving clause as well. Nothing in this section prevents the use of the symbol Blue Cross by any society for the prevention of cruelty to animals in connection with its activities, or by a veterinarian in the practise of his profession. Subsection 3 may be the answer in view of the fact that these people have already adopted it. To make doubly sure, subsection 3 was enacted. But the prohibition is not against the use or the continued use of the words Blue Cross, but only against the adoption of it.

Some Hon. SENATORS: Question.

Hon. Mr. ROBERTSON: What about the point raised by Senator Vaillancourt as to similar organizations? Would it not be better to have legislation that would cover similar organizations rather than just one specific organization?

Hon. Mr. ROEBUCK: In some respects we have. For instance, section 9(1)(n)(ii) reads:

of any university or of any fraternal or charitable society . . .

Hon. Mr. HAIG: That has been taken out.

Hon. Mr. ROEBUCK: Has that been struck out?

Hon. Mr. HAIG: Yes.

Hon. Mr. ROEBUCK: Well, then, it was our own fault. We did not need to strike it out. If anybody else has any complaint to make or any proposal we would be glad to hear them. There is no reason why this should be the last. There is nothing wrong in giving an organization a distinguishing mark. We do it right along in trade. There is nothing wrong with trade marks, and we place no limitation on how many people shall use them as long as they conform to the general rules. If there are others who can do the good work which the Blue Cross is doing for 3 millions of people in providing hospital accommodation at small expense to themselves and at no expense to the public, let them come forward and I will give them the same welcome as I have given to the Blue Cross people. No harm has been done. I do not know of anybody who now wants to adopt the words Blue Cross for a tooth brush or a new soap or a pair of boots or a motor car. If they did I would not have very much hesitation in telling them that the words have already

been used in a much better connection than that in which they propose to use it. I would tell them to please get some other colour, if they wanted to use a cross. They could call it the Pink Cross if they liked. But they could call it something else that is not a cross. There are thousands of things. You just need a little bit of ingenuity. I do not see any harm in this, and I think the language expresses the object we are striving for, and it has been passed by council.

Some Hon. SENATORS: Question!

Hon. Mr. ROEBUCK: Question!

Hon. Mr. EULER: I realize there is much more to be said. I imagine most members have made up their minds as to how they are going to vote. My reason for supporting the amendment is this. In the first place, I think I am constitutionally opposed to prohibitions of any kind. That is not my reason for supporting the amendment, but we have so many prohibitions in the bill already—as a matter of fact, practically all laws are prohibitory in their nature—that perhaps I can make an exception at this time and go against my principle of being opposed to prohibitions. My reason for supporting the measure is this. The Blue Cross medical people, as Senator Roebuck has said, are now serving the needs of about 3 million people in Canada. This number, I think, proves what a tremendous organization this is. I have come in contact with its services in a moderate way. I am not a member myself, but I know it is doing a great deal of good.

Now, if anyone, a manufacturing business, if you like, whether producing boots and shoes, dog food, or anything else, wants to take the word Blue Cross as their emblem, I think it would be for only one reason, because the present Blue Cross Organization has established a great deal of goodwill, and people who see that emblem anywhere will associate it with the Blue Cross. The other reason is, I do not see where it can possibly do any harm to anyone. As Senator Roebuck has told us, it injures no one. The English language has hundreds and thousands of words from which they can select any two or three or four words for their own purpose.

Hon. Mr. ROEBUCK: And new ones can be invented.

The ACTING CHAIRMAN: I think Mr. Robinson will be willing to give the committee some explanation of the amendments, and I think it will be in order for him to do so.

Hon. Mr. ROBERTSON: What I had to suggest was that since a specific amendment has been proposed, and there have been arguments for it, some of the officials should give their view of it. I expressed an opinion this morning about the question of creating a monopoly.

Mr. ROBINSON: Mr. Chairman, the amendment as an amendment, I think is perfectly clear and it does get over some of the difficulties which the members of this Trade-Mark Committee had seen yesterday. But the point which, as trade-mark people, I feel that we ought to put before you is this, that the nature of the protection which would be given to Blue Cross by its inclusion in this section of the bill would be of a different kind from the nature of the protection that is given to any other trade-marks. Section 9 is a section the primary purpose of which is to keep certain words and symbols out of the realm of business at all. Now, obviously the section cannot stop people who are already using things, from going on using them, but its purpose is to keep, at least for the future, those things out of the realm of business altogether. The inclusion of Blue Cross strikes out on a different line, because by putting Blue Cross into the section a monopoly on Blue Cross is created for a particular organization, and no one can use Blue Cross any more for anything else. That is, no one can in future adopt Blue Cross. The other thing is that there are, one gathers, a number of organizations of as general a type as Blue Cross,

and if the Blue Cross is included then you may be faced with requests later to include other emblems of other organizations having similar functions.

Hon. Mr. EULER: Deal with them as they come.

Mr. ROBERTSON: Whereas under the trade-mark law the normal way of protecting a trade-mark is to register it, and then the general provisions of the law enable the man who holds the registration to prevent anyone from using that trade-mark in a way that would lead to confusion between his goods or his services and the goods or services of somebody else. The trade-mark law does not and never has, as a matter of principle, given monopolies on particular wares or particular marks. The principle of the trade-mark law has always been that if somebody has a mark he is entitled to protect that so far as is necessary to prevent public confusion, but no further; and that is why from the point of view of those of us who are members of the Trade-Mark Committee and are familiar with trade-marks, we see a change in direction by taking some particular mark, whether it be Blue Cross or something else. It is not a question of how deserving it is or how undeserving, but of taking a particular mark and giving a complete statutory monopoly of it instead of the sort of protection that is obtained by registration, which is of a limited though somewhat elastic extension.

Hon. Mr. ROEBUCK: You are in favour of a trade-mark as applied, say, to soap, are you not?

Mr. ROBINSON: Absolutely, sir.

Hon. Mr. ROEBUCK: And opposed to a distinctive mark as planned hospitals?

Mr. ROBINSON: Not at all, sir; not at all, sir.

Hon. Mr. CRERAR: The emblem of the Red Cross is prohibited now in this section, is it not?

Mr. ROBINSON: Yes.

Hon. Mr. CRERAR: So that when we ask for the prohibition of the Blue Cross we are asking for a similar thing that the Red Cross is enjoying in the section.

Mr. ROBINSON: Yes. We may be mistaken, but in our view the Red Cross was put in, I suppose, probably because of Canada's international obligations under the convention. That was our purpose, certainly, in including it in the section.

Hon. Mr. HOWDEN: I want to tell you, Mr. Chairman, why I am going to vote a certain way. Now, to me this Blue Cross is a label, and I think the organization that calls itself the Blue Cross Hospital Organization should have the sole right to the Blue Cross so far as hospitalization organizations are concerned, or health insurance organizations are concerned. I think they should have the sole right. We have Maple Leaf curling tongs, Maple Leaf Grocery Stores, and Maple Leaf all sorts of things, and it may be that some worthy enterprise might want to use the Blue Cross label that would not interfere in any way with the Blue Cross Organization. I do not see why such an enterprise should not have the right to use the Blue Cross label, if it does not interfere with this hospitalization plan.

Some Hon. SENATORS: Question.

The CHAIRMAN: Does the committee wish the amendment to be read a second time?

Hon. Mr. BEAUBIEN: It should be read again as some members were not here when it was moved.

The CHAIRMAN: It is moved:

That section 9 be amended by adding the following words to subsection (1)

(p) the emblem of the Blue Cross as adopted by the Canadian Council of Blue Cross plans and used by its affiliated organizations and the expression "Blue Cross";

and by adding the following subsection

(3) nothing in this section prevents the use of the emblem of the Blue Cross or the expression "Blue Cross" by any society for the prevention of cruelty to animals in connection with their activities, or by a veterinarian in the practise of his profession.

Hon. Mr. ROEBUCK: Then, Mr. Chairman, will you read the first lines of the section so that we will have the picture complete?

The CHAIRMAN:

9. (1) No person shall adopt in connection with a business, as a trade mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for—

The amendment would follow as paragraph (p).

Some Hon. SENATORS: Question.

The CHAIRMAN: Will honourable senators in favour of the amendment raise their hands?

The CLERK OF THE COMMITTEE: Fourteen.

The CHAIRMAN: Those honourable senators opposing the amendment?

The CLERK OF THE COMMITTEE: Seventeen.

The CHAIRMAN: The amendment is rejected.

Shall Section 9 pass?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill?

Some Hon. SENATORS: Carried.

The Committee adjourned.

