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CANADA. PARLIAMENT. SENATE.
STANDING COMMITTEE ON
BANKING AND COMMERCE.

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Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-6, intituled: "An Act to incorporate Bank of Western Canada".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, MARCH 18, 1964

No. 1

WITNESSES:

Mr. Clayton F. Elderkin, Inspector General of Banks; Mr. Sinclair M. Stevens, and Mr. James E. Coyne.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20529—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 12th, 1964:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Leonard, seconded by the Honourable Senator Inman, for second reading of the Bill S-6, intituled: "An Act to incorporate Bank of Western Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Inman, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20529—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, March 18, 1964.

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

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Blois, Brooks, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Crerar, Croll, Davies, Fergusson, Flynn, Gelinas, Gershaw, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, McLean, Monette, Pearson, Pouliot, Power, Reid, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), Vaillancourt and Woodrow.—37.

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

Bill S-6, intituled: "An Act to incorporate Bank of Western Canada", was read and considered.

On Motion of the Honourable Senator Leonard, it was RESOLVED to Report recommending that authority be granted for the printing of 1000 copies in English and 400 copies in French of the Committee's proceedings on the said Bill.

The following witnesses were heard:

Mr. Clayton F. Elderkin, Inspector General of Banks.

Mr. Sinclair M. Stevens.

Mr. James E. Coyne.

Further consideration of the Bill was adjourned.

The Committee adjourned at 12.55 p.m. to the call of the Chairman.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, WEDNESDAY, March 18, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-6, to incorporate the Bank of Western Canada, met this day at 9.30 a.m.

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

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

The committee agreed to report recommending authority be granted for the printing of 1,000 copies in English and 400 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Senator Leonard, you were the sponsor of this bill in the Senate. Have you any statement to make?

Senator LEONARD: Mr. Chairman and honourable senators, I would like to introduce to you the gentlemen who are appearing on behalf of the petitioners. I will ask them to come forward and take seats beside the chairman so that when they make their submissions they will be more readily heard.

Mr. Ross Tolmie, Q.C., well-known counsel of Ottawa, is counsel for the petitioners in this application. He has with him Mr. Maxwell Bruce, Q.C. of Toronto, who is also a counsel for the petitioners. Also appearing is Mr. James E. Coyne, who is well known to all members of this committee, and who is one of the provisional directors, as is Mr. Maxwell Bruce. Mr. Sinclair Stevens, another provisional director of the proposed bank, is also present.

Mr. C. F. Elderkin, the Inspector General of Banks, is present, and subject to the wishes of the committee my suggestion would be that we might hear Mr. Elderkin first. He can give us the story with respect to banks and the banking system, and the background against which this application is being made. I suggest that because when dealing with bills incorporating insurance companies we usually hear Mr. MacGregor, the Superintendent of Insurance.

The CHAIRMAN: Before calling on Mr. Elderkin I want to remind honourable senators that we are proposing to adjourn the sittings of the committee at about 10.20 for 15 minutes or so so that we may take part in the ceremony in the Speaker's chambers in connection with the unveiling of a portrait of Senator White, a former Speaker.

Before honourable senators start putting their questions I will ask Mr. Elderkin to give us a statement in connection with banking in Canada as he has seen it over the years he has occupied his position.

Mr. Clayton F. Elderkin, Inspector General of Banks: Thank you, Mr. Chairman and honourable senators. You might be interested in a very brief history of banking in Canada in respect of incorporations, mergers, failures, et cetera.

The first bank charter was granted in the old Province of Canada in 1822, and between that time and the time of Confederation some 80 banks were created in British North America, of which 35 charters were in effect on July 1, 1867. Five of those banks or their successors are in operation today.

The British North America Act of 1867, as you well know, placed under the exclusive legislative authority of the Parliament of Canada the power to make laws with regard to banking and the incorporation of banks. Since then 77 banks have obtained charters, of which three have survived. Of the 112 banks that were active on, or which have been incorporated since, July 1, 1867, 104 have ceased to exist. Of these 38 never commenced business, 28 failed, and 38 were taken over by or were amalgamated with other banks. It is probable that many of those merged in earlier years—that is, before the last three amalgamations—would have failed had they not been taken over by stronger institutions.

The total of losses to creditors through bank liquidations since Confederation has been about $15 million, of which over half resulted from the failure of the Home Bank of Canada. Losses to bank note holders included in that figure amount to about $250,000, all of which occurred prior to 1882.

This record of bank closing is unfortunately high. It must be borne in mind that it occurred during a period of enormous and violent economic changes in Canada and in the rest of the world.

The last bank failure in this country, namely, that of the Home Bank, occurred in 1923.

Coming across to somewhat more modern times, some 50 years ago Canada had 24 banks. Since then, two have failed—the Vancouver Bank and the Home Bank; two new banks have been incorporated and commenced operations, namely, Barclays and the Mercantile; 16 have merged or amalgamated; eight are active now.

In the same period, five were incorporated but never commenced business.

It might also be interesting to give you a little breakdown about periods. In the period 1913-23, there were six mergers; in 1923-34, there were seven mergers; in 1934-54, that is, in those 20 years, there were none; in 1954-64 there were three mergers; making a total of 16 mergers.

Those figures do not include The Sovereign Bank of Canada, which appears in the Bank Act, 1913, but which really ceased to operate in 1908. It was wound up in 1914. Its liabilities were taken over by other chartered banks.

It is also interesting to note that the British Bank of North America was not listed in the Bank Act 1913, as it was then operating under Royal charter and not under the Bank Act.

This, honourable senators, is just a brief history of the banking system, as to its mergers, amalgamations and failures since we started to have banks in Canada.

It might be of interest also to note the location of banks that have been created since Confederation and which have ceased to operate. In Nova Scotia there were four, three of which failed and one was merged; in New Brunswick there was one, which failed; in Prince Edward Island there was one, which was merged; in Quebec there were nine, of which two merged and the remainder failed; in Ontario there were 16, of which 10 were merged and the remainder failed; in Manitoba there were two, of which one failed and one was merged; in Saskatchewan there was one, which was merged; in British Columbia there were two, one of which failed and the other was merged.

The CHAIRMAN: Was there nothing in Alberta?

Mr. ELDERKIN: There was none in Alberta. There was one charter granted in Alberta, but it never commenced business. The charter was issued and not used.

As to those charters which were issued and not used, if it is of interest, they were as follows:

2 in Nova Scotia
2 in New Brunswick
10 in Quebec
13 in Ontario
7 in Manitoba
2 in Saskatchewan
1 in Alberta
1 in Yukon

making a total of 38 charters which were granted but never used.

Senator KINLEY: How many in Nova Scotia, did you say?

Mr. ELDERKIN: As to the banks which started in Nova Scotia after July 1 (1867) and have since ceased to operate, there were four, of which one was merged, namely, the Halifax Banking Company Bank, which was merged with the Bank of Commerce; and there were three which failed, namely, the Bank of Acadia and Liverpool; the Bank of Liverpool; and the Pictou Bank in Pictou.

Senator KINLEY: Did not the People's Bank amalgamate with the Montreal Bank; and the Merchants Bank of Halifax—

Mr. ELDERKIN: That was, I believe, before Confederation.

Senator KINLEY: No.

An HON. SENATOR: It was in 1906.

Senator KINLEY: In my time, it was.

Mr. ELDERKIN: Was that in Nova Scotia?

Senator KINLEY: It was the Merchants Bank of Halifax, which went to the Royal.

Mr. ELDERKIN: The Merchants Bank became the Royal.

Senator KINLEY: And the People's Bank of Halifax went to the Montreal; and the Canadian Bank of Commerce absorbed the Halifax Banking Company.

Mr. ELDERKIN: The Halifax Bank went to the Commerce. The People's Bank of—

Senator KINLEY: To the Montreal.

Mr. ELDERKIN: In 1905. It was an 1864 charter. I was giving you those which were created after Confederation.

Senator KINLEY: Created? Oh, yes. But, since then?

Mr. ELDERKIN: Those created since Confederation. The People's Bank was created before Confederation.

Senator REID: Can you say, of the banks that failed, were the depositors paid?

Mr. ELDERKIN: In regard to the banks that failed, since Confederation, most of them paid off their note holders in full. A few did not, namely, the Bank of Acadia, the Mechanics Bank of Montreal, the Bank of Prince Edward Island; the remainder paid their note holders in full. The payments to depositors ranged from full payments to none.

Senator ROEBUCK: What happened to the Bank of Upper Canada? It was incorporated at Confederation, or just before Confederation.

Mr. ELDERKIN: There were two, were there not? One was the so-called "Pretended" Bank.

Senator ROEBUCK: I am thinking of the regular banks.

Mr. ELDERKIN: It closed in 1866, the Bank of Upper Canada.

Senator ROEBUCK: Do you know anything more about it? 1866?

Mr. ELDERKIN: Yes, it was chartered in 1821 under the Province of Canada, and closed in 1866.

Senator ROEBUCK: Did it fail?

Mr. ELDERKIN: Yes. It suspended payment on the 18th September 1866 and, after going through a certain period of liquidation by the trustees, the estate was transferred to the Crown by an act passed in 1870. Various claims were disposed of by the Crown and those which were not filed lapsed at that time. It amounts to prescription, I suppose. The bank was indebted to the old Province of Canada for over $1 million and when the federal Government took over they wrote the claim off for the benefit of the depositors.

Senator ROEBUCK: Thank you.

The CHAIRMAN: Have you any figure in dollars as to what depositors have lost over the years through bank failures?

Mr. ELDERKIN: Not prior to Confederation, but, since Confederation, approximately one and a half million dollars. We have quite a record of failure prior to Confederation but not too much of the detail of the amounts involved.

Senator BROOKS: What happened to the banks that were in existence at the time of Confederation? There must have been quite a number in the provinces?

Mr. ELDERKIN: Of those in existence at the time of Confederation, as I said a few moments ago, we still have five, namely, the Bank of Montreal, chartered in 1822; the Bank of Nova Scotia, chartered in 1832; the Toronto Dominion, of which the Toronto was chartered in 1855; La Banque Provinciale du Canada, which was chartered in 1861; the Canadian Imperial Bank of Commerce, of which the Canadian Bank of Commerce was chartered in 1867.

Senator MCLEAN: When was the bank in New Brunswick started?

Mr. ELDERKIN: The Bank of New Brunswick was, if I remember rightly, the second bank to be chartered. That was prior to Confederation, of course. It was merged with the Bank of Nova Scotia. It was chartered in 1820 and merged in 1913.

Senator KINLEY: What happened to the Bank of Liverpool, the Bank of Yarmouth and the Bank of Windsor. All of them were before Confederation, in Nova Scotia.

Mr. ELDERKIN: The Bank of Liverpool was chartered in 1871. It first failed in 1873. In 1878 it received some new capital and was revived. However, it only managed to survive until 1879. The Bank of Nova Scotia bought its assets and paid off its note issue, but not all of its depositors.

Senator KINLEY: How about the Bank of Yarmouth?

Mr. ELDERKIN: The Bank of Yarmouth? I do not think it had a very good reputation, if I remember rightly.

When the bank failed, it was found that its capital had been wiped out for years, but its dividends continued. There were false and deceptive statements filed with the Government, in regard to one of which a charge of fraud was brought against the cashier, the president and vice-president. The cashier was convicted. The president and vice-president pleaded ignorance and pleaded their implicit confidence in the cashier, and the charges in respect to them were dismissed. The directors were held jointly and severally liable for the dividends paid out of capital.

Senator KINLEY: What about the Windsor Bank?

The CHAIRMAN: We might as well have it complete.

Senator ROEBUCK: It is a very interesting history.

Mr. ELDERKIN: Was that Windsor, Nova Scotia?

Senator KINLEY: Windsor, Nova Scotia, yes?

Mr. ELDERKIN: It must have been before Confederation.

Senator KINLEY: It was.

Mr. ELDERKIN: The Commercial Bank of Windsor. It was chartered in 1865. It merged with the Royal Bank of Canada in 1902.

Senator ROEBUCK: They will never plead ignorance in Nova Scotia now.

Senator LAMBERT: I was wondering, Mr. Chairman, if it is possible for the witness to tell us something about capitalization of the banks, in 1914, after World War I in 1920, in 1940, in 1950 and in 1964. If he has those figures conveniently at hand, it would be interesting to know the capitalization.

The CHAIRMAN: Do you mean the sum total, or the capitalization for each bank?

Senator LAMBERT: Collectively, not for each bank.

Mr. ELDERKIN: I am afraid I have not those figures available. I can obtain them for the committee. You are selecting years relative to the revision of the Bank Act, are you senator?

Senator LAMBERT: Largely in connection with the pre-war figure 1914, and the same with regard to the others.

Mr. ELDERKIN: I have not those figures in front of me, but I can obtain them for you, if there is another hearing of the committee. Of course, I can give you the figure for 1964. At the present time the shareholders equity, paid up capital, the rest, and undivided profits, amount to approximately $1,150,000,000.

Senator LAMBERT: What is the number of banks represented?

Mr. ELDERKIN: Eight banks now.

Senator CRERAR: I should like to ask the witness if he has any views he can give us about these mergers, and what occasioned them. In a few instances, quite clearly it was a case of bad management resulting from failure. It would be interesting if you have any theory as to why banks merge.

Mr. ELDERKIN: As you know, we have had three amalgamations, which are different in some respects but much the same as mergers, since 1954, but prior to that time there had not been any for a considerable period of time. I cannot give you any particular reasons for the former ones. In some cases, without doubt, it was definite weakness. I do not think I should mention names, but the last two that took place, prior to 1954, were occasions of which a really substantial loss had occurred in the absorbed bank. The Nationale, for instance, is public information. It was almost bankrupt when taken over by the Bank of Hochelaga. The Merchants Bank of Canada was taken over by the Bank of Montreal. You will remember, probably, there was a government investigation of that particular one which was carried out by Mr. Edwards of Edwards Morgan, on behalf of the Minister of Finance, and following that particular one, in which the difficulty arose through bad lending in two or three substantial accounts—and this was the case with the Nationale too, incidentally—the Government brought in a revision to the Bank Act in 1924, which created the office I now occupy. In some cases one could say general economic conditions, particularly in some parts of the country, caused the losses. The ones that are more recent, and perhaps about

which we have more detail—I am not speaking of the last three—I think were caused by bad credit policies, lending in many cases far beyond the capacity of the bank.

The CHAIRMAN: And the borrower too.

Mr. ELDERKIN: The borrower eventually went into liquidation, I think in most cases.

Senator CROLL: May I ask a question. The last bank failure we had was 41 years ago?

Mr. ELDERKIN: 1923, yes.

Senator CROLL: Who lost in that bank, have you a run down?

Mr. ELDERKIN: That was the Home Bank of Canada.

Senator CROLL: Yes.

Mr. ELDERKIN: I am sure Senator Crerar could tell you about the early history of the Home Bank, before he resigned as a director. This was sometime before they wound up.

The CHAIRMAN: I think the Chairman could tell you something about it, too. He cut his teeth in law in that prosecution.

Mr. ELDERKIN: The Home Bank was incorporated in 1903, and failed in 1923. There was an interim dividend of 25 per cent paid by the liquidator in December 1923 to the depositors. Following the failure, there was a commission appointed—

Senator CROLL: Stop at that moment. You say "to the depositors." Were there some depositors who were paid in full?

Mr. ELDERKIN: I could go on to say that following the commission report the Government granted relief to the extent of 35 per cent of the claims of those individuals where the claim was less than $500, or those with claims of less than $500 got, in other words, paid off at the rate of 60 per cent.

Senator CROLL: I got all my money, if I recall correctly. I was a depositor, at school at the time, and they cashed my cheque.

Mr. ELDERKIN: You were lucky.

Senator CROLL: It was only a couple of hundred dollars.

The CHAIRMAN: It is too late to do anything about it now.

Senator CROLL: I wondered if the small depositors were not paid.

Mr. ELDERKIN: Not according to the records. According to the liquidators records they paid 25 cents, and then 35 cents.

Senator CROLL: Another question, on the revision of the Bank Act. When did the decennial revision first commence?

Mr. ELDERKIN: In 1867, the time of Confederation, the relevant act simply extended the provincial charters of the banks, and in 1871 really the first Bank Act was passed. At that time, according to history, the government discussed with the banks the question of whether they should have perpetual charters or should have charters subject to revision, and in view of the rather disturbed economic situation at the time and the forecast for the future they thought the Bank Act should come up for revision at regular periods, and it was decided to have decennial revisions. These occurred, and have occurred, with the exception of three times, that is, in 1911, 1912 and in 1933. In 1911 and 1912 revisions did not occur for government reasons at that time, I believe; and in 1933 one was waiting for the report of the Macmillan Royal Commission on Banking and Finance.

Senator CROLL: Did it take place subsequently?

Mr. ELDERKIN: In 1934; and then of course we have had a revision in 1944 and in 1954, and normally there would be one in 1964, but I think the minister mentioned in the house the other day that he was asking Parliament to extend the bank charters until 1965, awaiting the report of the royal commission now sitting.

Senator CROLL: Can you now or subsequently trace the powers the banks possess, starting at a reasonable time? I do not care when, say from Confederation; and bring it up to date, if you haven't that already before you.

Mr. ELDERKIN: I can do it generally for you, senator. There have not been too many changes in the powers, except in the class of securities on which the banks could loan. One major change on the other side of the balance sheet would be the revision in 1944 of the par value of capital stock, when the par value was changed from $100 to $10 per share. On the powers that have been extended, one of the major ones was placing the banks in a position to lend under the National Housing Act for mortgages and also to take mortgage securities on certain other types of Government guaranteed loans such as the Farm Improvement Loans, Small Businesses Loans and Fisheries Improvement Loans.

Senator CROLL: Could you give us some of the years, please? That is not quite clear.

The CHAIRMAN: The National Housing, where the banks could loan on insured mortgages, was in 1954.

Mr. ELDERKIN: Yes, 1954.

Senator CROLL: What about since?

Mr. ELDERKIN: Nothing since 1954—except, the only one that has happened is the Small Businesses Loans which permits Government guaranteed loans to small businesses. I am not quite sure of the date of that. I think it was about three years ago.

Senator DAVIES: I would like to ask, why was the Imperial taken over by Commerce and the Dominion taken over by Toronto? Was it a financial weakness on the part of these banks, or was it just a commercial merger?

Mr. ELDERKIN: There have been three. The first was Barclays with Imperial—no, I am sorry, Toronto-Dominion. The reason given in making the application for approval by the minister for sending out the notice to the shareholders was that both banks had concentrated their operations very generally in the province of Ontario, that with an amalgamated bank their need for further branching in the province of Ontario would be greatly reduced and they could devote their resources for expansion to the remainder of the country and become more a national bank than either one of them was at that time. I think this was the main reason given in approaching that amalgamation.

In the Barclays-Imperial, I think one could say Barclays had decided they were not going to make further investment, if you will, at that stage in the bank side in Canada, and that under the circumstances they would much rather have an interest in a larger and nation-wide bank than a small one which had only four branches at that time.

In the last one the reason given for obtaining the approval of the minister was that the two banks' branches were reasonably complementary, that no branches would be closed at least for two years, and that they could offer a better service as a combined or amalgamated bank than they could as two separate ones. There was no financial weakness in any of the situations.

Senator ROEBUCK: May I ask this, is Barclays Bank included in the eight you have enumerated?

Mr. ELDERKIN: No, it no longer exists in Canada; it amalgamated with Imperial; and they amalgamated Imperial and Barclays with Commerce.

Senator ROEBUCK: What about the English banks, such as the Williams Deacon's Bank? Does it do any business in Canada?

Mr. ELDERKIN: No bank can do business in Canada under its own name unless Parliament gives it the right to use the word "bank".

Senator BAIRD: What about double liability?

Mr. ELDERKIN: It started to pass out, or passed out as such in 1944, when the Bank Act prohibited the banks from issuing notes. This gradually diminished until January, 1951, at which time the banks were required to pass over to the Bank of Canada or pay to the Bank of Canada, rather, an amount equivalent to the outstanding note liability on their books. At that time all additional liability of any kind on the banks' shares ceased to exist.

Senator ROEBUCK: Why do not foreign banks do business here just as the insurance companies do?

Mr. ELDERKIN: Because the Bank Act provides they would have to get a charter from Parliament to do so.

Senator ROEBUCK: Have they applied?

Mr. ELDERKIN: Barclays was the only British bank that applied for a charter and obtained it in 1929. Then you had the Mercantile, which was formerly owned by the Handelsbank of Amsterdam, which applied for and received a charter in 1953. No other foreign interests have applied in the meantime.

Senator ROEBUCK: No American bank?

Mr. ELDERKIN: No American bank has applied, but the National City Bank of New York purchased from Handelsbank a 50 per cent interest in the Mercantile Bank of Canada.

Senator MCLEAN: Of the number of banks incorporated since Confederation, I wonder if the witness could tell us the percentage of banks that failed, losing the money of their shareholders, noteholders or depositors? I know that in the case of some banks the depositors were looked after, but I think the shareholders lost a lot of money. There has been a large percentage that have failed.

Mr. ELDERKIN: There are 26 banks that have failed or wound up since Confederation. Of these, up until 1895 there was some loss in a couple of cases to noteholders. The loss occurred in the Bank of Acadia, where the noteholders received nothing; in the Mechanics Bank of Montreal, where they received 57½ per cent; and in the Bank of Prince Edward Island, where they received 59½ per cent. In other words, three banks only in that period did not pay in full to noteholders.

Senator MCCUTCHEON: That would imply they lost all their capital.

The CHAIRMAN: That would imply everybody else did not get anything.

Mr. ELDERKIN: Nothing in the case of the Bank of Acadia. It was a pretty horrible failure. It was in existence only three months and twenty nine days.

Senator MCLEAN: What about the Maritime Bank?

Mr. ELDERKIN: The Maritime Bank paid off its noteholders in full, and the depositors were paid 10½ cents on the dollar.

May I explain the Government brought in legislation in 1880 whereby they created a bank circulation redemption fund, and all noteholders of banks placed in liquidation between 1881 and 1890 were paid in full in respect of claims duly filed and allowed in liquidation proceedings. There are still some notes outstanding of course, but that money has been deposited, first with

the Receiver General and then, on claim, with the Bank of Canada. But the bank circulation redemption fund was a fund created by legislation which required all banks to contribute to the fund, and if I remember rightly, I think it was 1 per cent of their note circulation outstanding. This fund was used to pay off, if necessary, the notes of a bank that went into liquidation. If the fund was not sufficient for it, the banks could again be taxed for sufficient to pay off. That is one reason why every bank that has failed since 1880, up to 1891, and on, has paid off in full, whether they paid their depositors anything or not.

Senator McLEAN: Some of the directors had to pay up to the fund.

Mr. ELDERKIN: I mentioned one a minute ago, but there have been more than one.

Senator McLEAN: Coming back to amalgamations, was not one of the chief reasons for the amalgamations of banks a shortage of top executives?

Mr. ELDERKIN: I would not care to express an opinion on that. Quite frankly, it would be a matter of opinion. I do not know that is necessarily the case. It might be they felt that with the two banks combined they had a wider range to pick from as far as top executives are concerned. However, I have never heard it publicly expressed that way.

Senator McLEAN: Would you agree we are short of top executives at the present?

Mr. ELDERKIN: I do not think that is a question I would like to try to answer.

Senator LEONARD: Mr. Elderkin, in 1924, when the Bank Act was revised, it provided for the appointment of an Inspector General of Banks.

Mr. ELDERKIN: Yes.

Senator LEONARD: Up to that time there had been no Inspector General of Banks?

Mr. ELDERKIN: That is right.

Senator LEONARD: And that is the position you now hold?

Mr. ELDERKIN: Yes, that is what I am.

Senator LEONARD: Your duties are laid down in Section 63 of the Bank Act?

Mr. ELDERKIN: Yes.

Senator LEONARD: And, broadly speaking, under it you are to satisfy yourself that the provisions of the Bank Act for the safety of creditors and shareholders are being observed?

Mr. ELDERKIN: That, I think, is being spelled out. In section 63, subsection 1, it says:

> "The Inspector, from time to time, but not less frequently than once in each calendar year, shall make or cause to be made, such examination and inquiry into the affairs or business of each bank as he may deem to be necessary or expedient, and for such purposes take charge on the premises of the assets of the bank or any portion thereof, if the need should arise, for the purposes of satisfying himself that the provisions of this Act having reference to the safety of the creditors and shareholders of the bank are being duly observed and that the bank is in a sound financial condition, . . ."

Senator LEONARD: I think that may be taken as a tribute to you and to your predecessor, because there has been no bank failure since the Inspector General has been appointed.

Mr. ELDERKIN: There has been none since that time. I like to take as much credit as I can, but it is also by virtue of the fact that the auditing provisions of the act were revised in 1924, and since that time we have had as auditors of all chartered banks very competent well-trained public accountants. And there is an interesting provision in the Bank Act which has been used rarely but which permits the minister to expand the audit procedure, or the procedure of the auditors as he sees fit on my recommendation. We have done that on a couple of occasions. We have never reduced it but we have asked the auditors to carry out a more detailed examination.

Senator CROLL: Are these your own auditors?

Mr. ELDERKIN: No, they are appointed by the shareholders under the Bank Act but the minister has the power, which flows to me, of expanding their power and obtaining information from them.

Senator CROLL: But you rely on the shareholders' auditors?

Mr. ELDERKIN: No, only for certain things like physical examination of securities, and for certain branch returns to see that they are properly compiled and made in a proper way. We don't rely on shareholders' auditors for all the work.

Senator LEONARD: In fact you have complete rights to call for any books and inspections you like.

Mr. ELDERKIN: I also have the right to ask the auditors to do that work for me.

Senator LEONARD: Since 1924 there are now very strict safeguards with respect to the operation of banks.

Mr. ELDERKIN: Yes, to a very great extent, the procedure now has been formalized and is standard.

Senator CROLL: How big a staff have you?

Mr. ELDERKIN: Four, including myself.

The CHAIRMAN: Senator Aseltine?

Senator ASELTINE: Mr. Chairman, I would like to ask a question. We used to have a bank in western Canada with the head office in Winnipeg, the Union Bank of Canada. It carried on business for so long, and then it was taken over by the Royal Bank of Canada. Can you give me the details in connection with this bank?

Mr. ELDERKIN: It was incorporated in 1865, and merged with the Royal Bank in 1925.

Senator ASELTINE: That was a merger?

Mr. ELDERKIN: That was a merger. I am afraid I haven't any further information on that one. There was no question of failure; it was a merger.

Senator ASELTINE: I would like to ask why it was taken over and why it didn't continue. I understood it couldn't make a go of it because it was only a western bank and didn't have branches throughout Canada. I think that is very important when we are considering another bank in western Canada.

The CHAIRMAN: I think we will give Mr. Elderkin some time to look up these matters while we attend the ceremony in the Speaker's chamber. We will come back here at about 20 minutes to eleven.

—A short recess.

—Upon resuming.

The CHAIRMAN: I call the meeting to order.

Senator CHOQUETTE: Mr. Chairman, I would like to ask a question.

The CHAIRMAN: Senator Aseltine had not finished, and I think also that Senator Pouliot wants to ask a question. I will call on him next, and then upon you.

Senator ASELTINE: When we adjourned I was asking a question with respect to the Union Bank of Canada which had its head office in Winnipeg and which was unable to make a success of its business. It was taken over by the Royal Bank of Canada. Now, if this bill that we are considering is passed we are going to have another bank in western Canada called the Bank of Western Canada. I would like to have more information as to how it came about that the Union Bank of Canada, which was in on the ground floor and which had branches all over the Prairie provinces, was unable to carry on successfully and had to be taken over by another bank. I would like to have those questions answered very fully before I can make up my mind as to whether or not I am going to support this bill.

The CHAIRMAN: Mr. Elderkin, are you ready to take on that job?

Mr. ELDERKIN: My explanation is not going to be a very full one because I have not had an opportunity of getting as much information as would be available upon further research. Before the Union Bank of Canada merged with the Royal it had shown some signs of being in difficulty to some extent. It had cut its dividend, and in doing so it had announced that there had been a substantial contraction in loans, that the rate of interest obtainable upon its investments had decreased, and that it had made quite large foreign exchange losses which, possibly, is rather exceptional—at least, it would be normally exceptional for it. Apparently they were dealing in foreign exchange futures, possibly in the grain business, although I do not know, and had sustained quite heavy losses, and in some of their more important lending accounts. That is about as far as I can give it to you on such short notice. I would be pleased—

Senator ASELTINE: Would you be able to get further information? Surely there were some representations made when the merger was being put through.

Mr. ELDERKIN: The merger went through, but whether the Union approached the Royal, or whether the Royal approached the Union, I cannot tell you at the present time. What did happen in the final merger was that the Royal issued one share of its stock for every two shares of Union stock. There was no loss to depositors or to creditors.

Senator ASELTINE: Was not the merger approved by the Minister of Finance?

The CHAIRMAN: It would have to be.

Mr. ELDERKIN: It would have to be approved by the Governor in Council.

Senator ASELTINE: So there must be a record of what happened?

Mr. ELDERKIN: The petition to the Governor in Council is very brief, and does not necessarily carry any detail whatsoever.

Senator LEONARD: In what year was this?

Mr. ELDERKIN: 1925.

Senator ROEBUCK: That bank had business outside of the west. I dealt with it for ten years in northern Ontario. Perhaps it was the loss of my loan that caused its difficulties.

The CHAIRMAN: Or the withdrawal of your deposit.

Senator ROEBUCK: No, it was a very small deposit but a very big loan.

Mr. ELDERKIN: I will try to develop more information, but that is all that I could get over the telephone from the file. Normally there would be nothing in the petition to the Governor in Council on this.

The CHAIRMAN: Senator Pouliot?

Senator POULIOT: I have a very short question to ask you, Sir. Did the Department of Finance receive any complaints about the insufficiency of the number of branches of banks in Canada?

Mr. ELDERKIN: Not that I have heard of, Senator. At the present time there are almost 5,500 branches of banks in Canada. This is almost double the number there was at the end of the last war. This is roughly one branch office for every 3,300 persons in the country, and is far greater than the corresponding figure for either the United States or the United Kingdom.

The CHAIRMAN: Senator Choquette?

Senator CHOQUETTE: This might not be provided for in the Bank Act, but the point I am going to raise is this: Have there not been in the last 15 or 20 years statements made by our Prime Ministers or Ministers of Finance that there could never be a repetition of the failure of the Home Bank because the Government would step in and take over the liabilities and be good for the losses?

Mr. ELDERKIN: No, Senator. In my experience, which is a matter of almost 20 years, I have never had any declaration to that effect whatsoever. The Government has no responsibility. The Government does not guarantee. As a matter of fact, the Bank Act expressly states in respect of my duties that the Government still does not assume any responsibility for any losses which the banks may incur.

Senator CHOQUETTE: I was just referring to an editorial appearing in the Saskatoon *Star-Phoenix* where this is being discussed. The article, in part, reads:

> On this point, Professor C. A. Curtis of Queen's University wrote: "It is doubtful if any Canadian bank would be allowed to fail, even though public funds were needed to clear its liabilities.
>
> A condition of affairs has developed in Canada that seems to make for the safety of the depositors' funds."

Mr. ELDERKIN: I think I would agree that, in view of the fact that the Government now has inspection procedure under my office, they would know well in advance if a bank were getting into difficulties. This did not—

Senator BAIRD: How could you stop it?

Mr. ELDERKIN: There are various ways. The Bank Act provides that a curator may be appointed for a bank. The Inspector General could put in a curator.

The CHAIRMAN: At that stage they are really hanging out the red flag.

Senator LAMBERT: Just bearing on the question which Senator Aseltine asked, I wonder if Mr. Elderkin has any recollection or record of the experience of the Park Bank, a foreign branch of the Union Bank established in China after the first Great War.

I think the unsuccessful banks in that field did exchange banking. If I remember correctly, that was quite a factor in the decline.

Mr. ELDERKIN: This is what the note says in the file: the major losses were in the foreign exchange field.

Senator LAMBERT: It really closed up?

Mr. ELDERKIN: They made substantial losses in foreign exchange.

Senator LEONARD: In your capacity as Inspector General of Banks, and having in mind your responsibilities and duties, have you any objection to the incorporation of another chartered bank in Canada?

The CHAIRMAN: Just a minute.

Senator ROEBUCK: That is not a fair question. That is for us to decide.

Senator LEONARD: In view of his duties and responsibilities, and his great experience—it is true it is our decision here, but we would all be greatly helped to have his view. I do not want to make a point of it, but I would like to know.

The CHAIRMAN: Do not answer for a moment.

Senator KINLEY: It is a question of policy.

The CHAIRMAN: What we have to decide here is how we are going to report this bill out of committee, having heard all the evidence. I think the opinion we have to form, in order to report the bill favourably, is one that, having regard to its makeup, its personnel, the economic situation in Canada, all those are factors which would justify having another bank.

In that regard, personally, as chairman—the committee can always overrule me—I am not prepared, nor do I think I want Mr. Elderkin's opinion as to whether he thinks there should be or not.

His job is that of Inspector General and he is telling us what he finds. With all due respect I am not interested in his opinion.

That is the Chairman speaking, and the committee can always say whether it agrees or not.

I am ruling it out.

Senator LAMBERT: I am interested and I would suggest that most of the committee would be interested. Mr. Elderkin has duties under the Bank Act which he will have to perform if there is to be another chartered bank. It is easy for him to say whether he can see that there is difficulty or objection to that, or whether there is not.

Senator MCCUTCHEON: Mr. Elderkin cannot confess that he could not look after another chartered bank.

Senator LEONARD: I am asking, in the light of his duties and responsibilities—it is quite easy for him to say.

Senator BURCHILL: I think it is an unfair question.

Senator ROEBUCK: It is a matter of policy.

The CHAIRMAN: I am sorry, Senator Leonard. The Chair has ruled.

Senator LEONARD: I will not put it to appeal, but I still think it is a fair question.

Senator VAILLANCOURT: Before we close the story of the bank system in Canada, before Confederation there was a co-operative bank, which was known as the Farmers Bank of Rustico, I think. Can you say a few words, Mr. Elderkin, on this organization?

Mr. ELDERKIN: As you say, senator, it was started out as a co-operative bank. It came under an act of incorporation in Prince Edward Island in 1862. It actually carried on under provincial legislation. It was not included in the banks which came under the Bank Act of 1871. It continued as a co-operative. The difficulties became apparent in the late 1880s and the bank went into liquidation in 1892.

As I have said, it never came under the operation of the federal Bank Act. In 1891, just before it went into liquidation, it was granted power to amalgamate with a loan company, but we have no record that this actually happened.

I have an answer here to a question which was asked by, I think, Senator Lambert.

As to the number of chartered banks and the amount of shareholders funds at various dates, as of December 31, the figures are as follows:

	Shareholders funds
In 1914, 22 banks	$227 million
In 1920, 19 banks	261 million
In 1940, 10 banks	277 million
In 1950, 10 banks	343 million
In 1963, 8 banks	1,150 million

Senator LAMBERT: Thank you.

Senator DAVIES: In connection with the amalgamation of the Bank of Commerce and the Dominion Bank of Toronto, did any of the shareholders lose any money?

Mr. ELDERKIN: No. It was a straight exchange. All of the three amalgamations were on an exchange of shares in a new continuing bank. The act was changed in 1954 to permit amalgamations by the continuation of the amalgamating banks under another or the same name, and they each received shares in the new bank.

Senator MCCUTCHEON: In referring to the three mergers since 1954, and referring to one of them at least, I think it was the Toronto Dominion Bank, Mr. Elderkin indicated that one of the reasons advanced was that they concentrated their operations in the same area.

Earlier, when he was dealing with some of the history, he said, as I noted it here, that some of the mergers and some of the failures, no doubt, arose by economic conditions in the area in which they operated. I wonder if Mr. Elderkin would care to expand particularly on that last statement.

Mr. ELDERKIN: Prior to the last three amalgamations, the one before that was the Weyburn and Security Bank. It did not fail, as you know; it merged with the Imperial Bank of Canada. Possibly economic conditions in the middle west had something to do with that one, because the merger took place in 1931 when conditions on the Prairies were not very good. In fact, conditions everywhere were not too good. That probably had some effect on the Weyburn asking to be merged and taken over, as they did.

Prior to that, it is a little difficult to tell, senator.

The Standard Bank of Canada was the one prior to that in 1928. I think that the Standard had concentrated in certain types of loans and in primary producers' loans, for instance, and primary manufacturers' loans, and these became in rather poor shape prior to 1928. This may have had some effect. It is difficult to go back to the present time. I have spoken about the Union Bank of Canada, and what happened in that case. It would appear that a large part of their difficulty was in dealing with foreign exchange transactions, which was rather an exceptional one.

Going back to 1925, the Molsons Bank, which merged with the Bank of Montreal, was an exceptionally strong bank. It was certainly in no financial difficulties in any manner whatever. Although it was a publicly owned bank, it had very large family interests, etcetera, and that might have had some effect in bringing the two banks together.

I am afraid I cannot go too far back, but one would naturally conclude that during the period in the early twenties, and certainly in the thirties, there were considerable difficulties incurred by some of the banks. In some other cases, I think it was just a desire to be big or bigger.

Senator McCUTCHEON: The result of all these mergers, from this whole history you have given us, is that today we have eight banks in Canada, two of which for special reasons possibly their operations have become limited recently in probably three or four provinces; but five of the six others—the Mercantile is a special case—are giving a general banking service from Halifax to St. Johns to Victoria, and are not providing the public with every type of service and are not concentrating in any particular field, either geographically or commercially. Is it fair to say that it is a natural and inevitable development, as you see it?

Mr. ELDERKIN: I think, Senator McCutcheon, this would depend very much on the viewpoint of the administration.

Senator McCUTCHEON: What do you mean, "administration"?

Mr. ELDERKIN: Administration of the bank, or management. There would be certain advantages to a bank to have a national branch network in dealing with the larger customer, etcetera. There may be certain advantages in having a closer network in operating in a concentrated or fairly concentrated region, which is well known to bank management. You get this situation such as you mention, where you have the two banks which are incorporated under a French name, which operate for the most part in the province of Quebec. Although one of them does a fair amount of business in Manitoba, and the other through New Brunswick now, their tendency is actually at the present time to branch out more than they did in the past. If a bank wished to concentrate entirely in one area and conduct its banking services entirely in that area, it would perhaps be limited in working on a national basis, but I do not think it would be inhibited to any extent from operating profitably if it were properly managed.

Senator ROEBUCK: You spoke of advantages in a national network. In view of the clearing facilities we have today, what are the advantages of a national network?

Mr. ELDERKIN: Well, for one thing, at the present time a national network bank can offer better clearing facilities throughout the country.

Senator ROEBUCK: What might the disadvantages be?

Mr. ELDERKIN: There would be an advantage in getting business, but maybe a disadvantage as far as earnings are concerned.

The CHAIRMAN: When you speak of advantage and disadvantage, is that from the point of view of the public, of the shareholder, or of whom?

Mr. ELDERKIN: From the point of view of the customer he may have some advantage if he is doing a nationwide business. If he is not doing a nationwide business he has not any particular advantage.

Senator ROEBUCK: What is the advantage from the standpoint of a bank?

Mr. ELDERKIN: To attract perhaps customers who are doing nationwide business, and normally these are very big ones; and there are many types of earnings, of course, from a large customer.

Senator McCUTCHEON: And also to attract deposits, I suppose?

Mr. ELDERKIN: And exchange business, and so on.

Senator KINLEY: In Mr. Elderkin's interesting discourse on the history of banking in Canada he did not mention the Bank of Canada and the Industrial Bank of Canada. Can he tell us how banking in Canada was influenced by those two banks? I think it is admitted that they have a control which has changed the whole method of the banks in Canada.

Mr. ELDERKIN: I do not think I should go too deeply into that, in the case of the Bank of Canada, because the question of monetary policy is involved, and that is not in my field, and I am far from being any kind of an expert.

Senator KINLEY: But in an issue of currency, the Bank of Canada took over from the local banks?

Mr. ELDERKIN: That is right, and it has the sole power. You will recall that prior to the creation of the Bank of Canada, the currency in the ones and twos was issued by the Government of Canada, and the banks only had power to issue currency in the higher denominations.

Senator KINLEY: And the Industrial Bank of Canada was created for the purpose of enabling people to get loans who were unable to get them from the banks?

Mr. ELDERKIN: The Industrial Development Bank—again, I can only speak generally on this—has far more powers than a chartered bank. It has no restrictions on the loan interest it may charge; it may take any form of security; it may invest in equities if it wishes to do so. So that at the present time at least, it has far more freedom in its operations than has a chartered bank.

Senator KINLEY: I believe we were told on second reading of this bill that the banks had to deposit with the Bank of Canada certain securities in order to improve the circulation, or to control the circulation, of their business, and that they receive no interest on that money. Is it to their advantage to deposit that security with the Bank of Canada?

Mr. ELDERKIN: They do not deposit securities for that purpose. They are required to maintain an 8 per cent reserve, consisting of currency—"till money" as it is called, and to deposit it with the Bank of Canada. On this amount of money they do not receive any interest. They do hold securities on deposit with the Bank of Canada, and they receive the income from those, but those deposits of securities are to cover loans, if they want to make them, and for this purpose only. The deposit of securities is just to save the movement of securities back and forth when a bank wants to make a loan.

The question depends entirely on the Bank of Canada and how they restrict it. They can shorten down deposits in the bank or extend them.

Senator KINLEY: Is there not quite a distinction as between the ability of a trust company and a bank?

Mr. ELDERKIN: Well, you mean as far as being able to—

Senator KINLEY: The trust company has to take more money off the shelf. The bank can lend ten to one.

Mr. ELDERKIN: If they will let them have the deposits, but this will depend upon the monetary policy at the time. Although this is really out of my field, the trust companies are able to pay more at the present time, speaking from the bank's viewpoint, because they can charge higher interest on their loans, and they also go in more for mortgage lending.

Senator KINLEY: Even that field is limited today, is it not?

Mr. ELDERKIN: Not on mortgage lending, no.

Senator KINLEY: But on automobiles and all that sort of thing?

Mr. ELDERKIN: Trust companies do not lend on that type of security.

Senator KINLEY: No, but the banks do.

Mr. ELDERKIN: Yes, but the trust companies do not.

Senator ROEBUCK: Witness, you said the notes of lower denominations are taken over now by the Government?

Mr. ELDERKIN: No, I said that before the Bank of Canada took over the issuing of notes the lower denominations were issued by the Government of Canada.

Senator ROEBUCK: Do the banks now have the privilege of issuing the notes of higher denomination?

Mr. ELDERKIN: No, not any longer. Since 1944 they have not been able to.

Senator ASELTINE: I would like to ask Mr. Elderkin another question. I understand that he is the Inspector General of Banks throughout Canada. I would like to know if he has any authority over, or any control over, credit unions or trust companies who are carrying on a general banking business in opposition to—

Senator LAMBERT: "in competition with".

Senator ASELTINE: —in competition with our chartered banks.

In the west we have a credit union in every town of any size. The trust companies in the cities of Saskatoon, Regina and other places are carrying on a banking business, accepting deposits and allowing people to cheque on those deposits, and all that kind of thing. Have you any control over those people at all?

Mr. ELDERKIN: None, senator. My control only covers the eight chartered banks and the two savings banks in the province of Quebec.

Senator ROEBUCK: So that when a bank becomes the owner of a trust company their real operations through the trust company are not under your control?

Mr. ELDERKIN: No.

The CHAIRMAN: Well, except—

Mr. ELDERKIN: Well, it depends on what you term "a real owner". Under the Bank Act, in the case of any company that is entirely controlled by a bank the Bank Act provides that the same auditors must be appointed. To the extent any investment of that type is in the bank's portfolio I have, of course, the authority to investigate it, but I have no authority to go into the trust company, for instance, and check their operations.

Senator KINLEY: A bank cannot own control of a trust company.

Mr. ELDERKIN: There is nothing to stop it.

Senator KINLEY: It must be 49 per cent though.

Mr. ELDERKIN: But if it owns complete control of a trust company it has to publish a statement along with its own statement.

Senator KINLEY: What does control mean—50 per cent?

The CHAIRMAN: In excess of 50 per cent.

Senator KINLEY: In excess of 50 per cent?

Mr. ELDERKIN: The only stipulation that is in here is that it has to publish its statement along with its own.

Senator KINLEY: For practical purposes I think it is assumed that 40 or 30 per cent will control an associated company.

The CHAIRMAN: You are talking about the practical situation, but we are talking about control in law.

Senator MCCUTCHEON: It is only when a bank owns all of the stock.

Mr. ELDERKIN: Yes, all the stock except the directors' voting shares.

Senator MCCUTCHEON: In other words, 90 per cent is still just a portfolio investment as far as you are concerned?

Mr. ELDERKIN: That is right.

Senator DAVIES: Who gives these credit unions and trust companies their charters, if the Bank Act does not do it?

Mr. ELDERKIN: The credit unions are entirely provincial creatures. Some of the trust companies have provincial charters and operate in other provinces by means of a licence. Some trust companies have federal charters.

Senator KINLEY: Where do they get those federal charters?

The CHAIRMAN: Here.

Mr. ELDERKIN: From the Secretary of State.

The CHAIRMAN: The Superintendent of Insurance.

Mr. ELDERKIN: They come under the Superintendent of Insurance. Any federal trust company comes under the Superintendent of Insurance.

Senator GERSHAW: What about the treasury branches in Alberta?

Mr. ELDERKIN: We have two provinces operating on this basis. The savings office of the Province of Ontario and the treasury office of the Province of Alberta are directly under provincial control.

Senator MCCUTCHEON: Would you like to tell us something about savings banks in the Province of Quebec, the type of business they operate and the restrictions, if any, imposed on them that differ from the general restrictions?

Mr. ELDERKIN: The two savings banks in the Province of Quebec are both very healthy. I think, if I remember rightly, their present deposits are up around $350 million. They are both over 100 years old. One was founded in 1846 and the other, I think, in 1848.

The CHAIRMAN: They have a special statute.

Mr. ELDERKIN: Yes, they have a special statute, the Quebec Savings Bank Act.

Senator MCCUTCHEON: They are not subject to your jurisdiction?

Mr. ELDERKIN: Yes, they are.

Senator MCCUTCHEON: Well, tell me about that.

Mr. ELDERKIN: The same provisions apply to them from the inspection point of view as apply to chartered banks. There are slight differences in the appointment of auditors. In the chartered banks two auditors cannot serve together for more than two years at a time. There is no such provision in the Savings Bank Act, where the same auditors may continue on indefinitely.

Senator MCCUTCHEON: Have they wider or narrower investment powers?

Mr. ELDERKIN: Narrower in some respects, but wider in one, where they can make conventional mortgage loans without any restriction on interest charges. They are narrower in the type of investment they can invest in or loan on.

Senator MCCUTCHEON: On what type of security?

Mr. ELDERKIN: They cannot take common stock. They can lend on chartered bank stock and accept it as security. They can lend on preferred stock providing the company has a certain standard of capitalization—if I remember rightly, $500,000 minimum—and provided it has been dividend earning for a period of years. The provisions in this respect follow very closely those of the Trust Companies Act; they are almost the same. They can lend on mortgages up to 60 per cent of appraised value. They have recently applied for and hope to get in the revision, when it comes along, an increase in this because it is a bit outdated, and their application will probably be looked upon favourably.

Senator DAVIES: Did I understand Mr. Elderkin to say he has only a staff of four in his office?

Mr. ELDERKIN: That is right.

Senator DAVIES: Do you think that is enough to handle all the banks in Canada?

Mr. ELDERKIN: I know this sounds a little bit modest—

Senator ROEBUCK: What do you do in your spare time?

Senator DAVIES: I thought you did the inspecting of all the banks.

Mr. ELDERKIN: Yes, but remember there are only ten—the eight chartered banks and the two savings banks in the province of Quebec.

Senator DAVIES: But you just inspect the head offices and never inspect the branches?

Mr. ELDERKIN: We never inspect the branches. You must realize that in the Canadian banking system as it is set up, the reports on everything flow through head office. This means that in head office on any one loan you will have the branch manager's report, the supervisor of the district's report, the credit officer's in head office—who may be anybody up to an assistant general manager, depending on the size of it—report, and there may be the board of directors' report as well. So that every loan, outside of a very small discretionary maximum that is given to the branch manager, will have a detailed report on it in head office. All securities, or almost all securities, with the exception of some local ones and foreign ones in the case of the foreign business, are carried at head office and are available there for inspection. This means that under the Canadian banking system you can obtain all the information, almost, on a loan, not only from one viewpoint but perhaps from three or four viewpoints, in your head office files.

Senator MCCUTCHEON: Is that a matter of law, or a matter of practice?

Mr. ELDERKIN: It is a matter of practice, but it is a matter, or could be a matter of enforcement if necessary, in this way, that under the Bank Act I have the power, as I mentioned earlier, to lay down the audit procedure for the shareholders' auditors. In turn, the shareholders' auditors can demand such information as they want, and one of the things they demand is that this information is available in head office, including inspection reports by the inspectors who inspect at least once a year on every branch.

Senator LANG: Probably Mr. Elderkin has answered this question already in reply to other questions, but as a matter of comparison would you mind repeating it? Could you relate, say, the dollar volume of banking business done in Canada in 1924 and the number of banks doing that business as compared to the dollar volume of banking business done in Canada today by the eight chartered banks?

Mr. ELDERKIN: I am afraid I have not those statistics in front of me, senator. The closest I can get to it is to—No, I do not think I would want to guess.

I told you a short time ago that since the last war we have more than doubled the branch expansion in Canada. I mentioned a few minutes ago the figures on shareholders' equities, but I do not have in front of me the relative figures of the assets of the banks during the period you have asked about. I can only tell you that they have enlarged enormously and they have more than doubled in the last 20 years.

Senator CHOQUETTE: The number of banks involved has declined very considerably in that time.

Mr. ELDERKIN: Not in the last 20 years, but in the last 50 years that is so.

Senator POULIOT: Do you make the inspection of the Bank of Canada?

Mr. ELDERKIN: No, it is inspected by two auditors appointed by the Minister of Finance under the Bank Act.

Senator ROEBUCK: You say the banks' assets have doubled since the war, does that mean the profits have been inordinate?

Mr. ELDERKIN: That is a matter of opinion. The doubling of assets does not mean doubling the profits. It depends upon how you regard this. For example for the fiscal years of 1963 the profits of Canadian banks as a whole were slightly over one-half of one per cent of assets after income tax.

Senator KINLEY: Don't you think we need a constant money in comparing business of other years with business of any one particular period. Don't you think we need to have a constant value for the dollar?

The CHAIRMAN: Everything is relative, Senator Kinley.

Mr. Elderkin, I would like to ask a question. Do you take any part or lay down any rules in connection with the percentage basis of the various fields of investment and loans in which a bank may engage?

Mr. ELDERKIN: There is no authority under the Bank Act to do so. There have been a couple of occasions in the past when we have discussed the fields of lending with the banks, or with a particular bank. We do get from the banks very detailed quarterly reports on all of their loans by classification. One of these reports is published in the Bank of Canada Statistical Summary. We watch this—I should say the compilation is published. The individual bank percentages are watched closely to see in what way they may be developing bank by bank. We have had a couple of instances in the past years where we have felt under the circumstances a bank was getting too heavily involved in a particular type of lending or in a particular industry. We have never suggested to a bank to call a loan, but we have suggested that they should not be extending their resources very much more in that particular field under the circumstances.

Senator MCCUTCHEON: What are the major classifications in this regard and what do you regard as appropriate percentages?

Mr. ELDERKIN: The appropriate percentages are related to the business of the bank. The classifications are broken down roughly into about twenty-five. You have municipal loans, provincial loans, religious and educational loans. You have a classification of brokers' and dealers' loans, day-to-day call, and those to dealers. Then you have personal classifications which are loans to stocks and bonds. You have others on the securities of chattels and some on an individuals. Here we have subclassifications of those based on marketable unsecured basis.

Senator CHOQUETTE: Guaranteed on farm implements?

Mr. ELDERKIN: No, this comes under farm improvement loans, guaranteed by the Government, and other farm loans which are not guaranteed. Then we get down to the main classification of commercial and industrial loans, and here the manufacturing industries and commercial trading loans come in. In this classification we are really watching our step a bit. Let us assume a bank has 10 per cent of the loans in Canada, and this is what we normally relate it to, the total percentage of loans, and we see that in one particular field of industry they are getting beyond 10 per cent, and by that I don't mean 12 or 15 per cent, but up to 20 or 25 of the total loans to that industry, then we would take a substantial interest in it because such things have done a lot of damage in the past. Banks in the past have at times been bankers for a particular industry when something has happened to that industry. This roughly is the way we look at the picture.

Senator MCCUTCHEON: In other words what you are looking for is a proper diversification of loans in the various categories which, in your opinion, will cushion the ups and downs. Do you go so far as to be concerned about regions of classification?

Mr. ELDERKIN: Classifications. I could give an example that happened a long time ago with regard to textile loans.

Senator MCCUTCHEON: Or pulp and paper loans?

Mr. ELDERKIN: Yes, pulp and paper loans. You see a bank getting loaded up with textile loans, and the market in those textiles, the world market, is bad, for instance the market for wool is falling off badly along that line,

and we think it is about time the bank should not be lending money for the acquisition of more wool. This is the way we look at it.

Senator McCUTCHEON: You are going to get diversification to protect the bank, the depositors, the shareholders and the public against violent ups and downs.

Mr. ELDERKIN: Under the present act I can only advise if I feel there is going to be trouble.

Senator LAMBERT: In the course of your inspections have you made any classifications of the banks with regard to their ownership of bank buildings and real property?

Mr. ELDERKIN: Of course the investment in realty companies under controlled companies comes in on the monthly statements of the banks every month. The statement appears in the *Canada Gazette*. In the annual inspection we break this down into various categories such as realty companies and controlled trust companies. The controlled trust companies—

Senator McCUTCHEON: By controlled you mean 100 per cent?

Mr. ELDERKIN: Yes. They control trust companies who act for example in the State of New York. As agencies they cannot do certain types of business, but as subsidiary companies they can do other things such as acting as registrar for Canadian securities and transfer agencies for Canadian securities. They also own trust companies in several places in the Caribbean now. These are fully controlled companies, realty and trust, and their financial statement must appear together with the financial statement of the bank which it sends to shareholders and the minister.

Senator LAMBERT: The head offices of the bank themselves and the branch property, is there a special capital in this, or are they incorporated under a different company altogether?

Mr. ELDERKIN: Both. What I mean by that is that most of the banks have a realty company which holds some of their properties, probably their main office properties. Some of their branches are owned directly or rented. The main reason, I would think, why the large head office buildings and land are in subsidiary realty companies is that the subsidiary company may then issue mortgage debentures on a long term basis.

Senator LAMBERT: Which would be included in the assets of the bank?

Mr. ELDERKIN: No, they do not take them. They are sold to the public. The result is that they can borrow money by way of mortgage, which a bank has no authority to do.

Senator LAMBERT: The ownership of these structures is still in the—

Mr. ELDERKIN: The stock will all be owned by the bank, but the debentures will be owned by the public.

Senator DAVIES: Mr. Chairman, could I ask a question? How are the banks looked upon in connection with taxation? Are they treated in the same way as other companies? Do they pay corporation tax?

Mr. ELDERKIN: The only exception is in the one provision whereby the Minister of Finance determines what is a fair amount of reserve for losses. The Bank Act provides, and the Income Tax Act provides, that the Minister of Finance may in effect establish a maximum for the banks, and if a bank should try to set up any amount over that the Minister of Finance is required to report that as taxable income.

The CHAIRMAN: It is in the Tax Papers.

Senator DAVIES: They are not treated as companies. They can still purchase automobiles, costing more than $5,000?

Mr. ELDERKIN: Anybody can, but it is a question of getting depreciation on them. They are treated the same as any other Canadian corporation in every respect except for the authority of the minister to evaluate their inner reserves, which normally is not—well, the only thing I can compare it to are the loan companies and trust companies which have a rate fixed by statute at 3 per cent.

Senator DAVIES: They do not pay corporation tax in Ontario, for instance?

Mr. ELDERKIN: Yes, they do, and in Quebec as well. They pay provincial tax in both Ontario and Quebec.

Senator DAVIES: And federal?

Mr. ELDERKIN: Yes, and federal. They are treated in exactly the same way as any other corporation.

The CHAIRMAN: What is the difference you make as to the reserves and the minister's authority? Is that so different from that applying to the ordinary company?

Mr. ELDERKIN: No. In one place it is left to the Minister of National Revenue, and in the other it is left to the Minister of Finance. That is all.

Senator ISNOR: When the classified return of loans was mentioned by Mr. Elderkin he did not mention loans to finance companies. The banks, I understand, advance fairly substantial amounts to the so-called finance or loan companies. If so, would he indicate the percentage of loans made by the banks to these loan companies?

Mr. ELDERKIN: While I did not mention it, it is one of the main categories in the report that we receive. I have not a copy of the report with me—well, perhaps I have. The fact is that this has been a reducing factor in bank loans. The reason for this is that in 1957, I think I am right in saying, when there was a period of tighter credit, the banks were asked to hold a certain level of loans; not to increase loans above a certain level in respect of the finance companies. The finance companies then started to employ to a greater extent than they ever had before what is called street paper; that is, putting out short term paper to the street market.

The result today is that some finance companies do not borrow anything from the banks at all, and these loans really have ceased to be of very great importance in bank lending, because the finance companies feel they have a more unrestricted credit market from the street than they have from the banks.

Senator MCCUTCHEON: The Governor of the Bank of Canada cannot advise the street as effectively as he can the banks?

Mr. ELDERKIN: That is right.

The CHAIRMAN: What approach do you take to the question of liquidity, and are there any rules?

Mr. ELDERKIN: Well, we have some pretty standard rules on liquidity as between the Bank of Canada, if you will, and the banks. First, of course, you have your 8 per cent cash reserve which I mentioned earlier. Then, by agreement between the Bank of Canada and the banks several years ago the banks agreed to maintain a further 7 per cent in cash assets, or in day to day loans or treasury bills. So, this builds them up to, say, 15 per cent in any case. Then, the banks themselves must protect their liquid position against loan demands, and to do this they retain what are commonly called more liquid assets, and which consist of Government of Canada securities.

The banks will, in establishing their portfolios of Government of Canada securities, endeavour to protect themselves further by having a maturity spread which will permit them in case of a sudden demand for loans to sell

at as little loss as possible. Therefore, they will have a spread which will involve—and you can see this from the monthly statement—a considerable amount of Government of Canada bonds with maturities of under two years, in respect of which the market will be very close to the call or the maturity price.

The total combined normally will run to something over 35 per cent, and sometimes very much higher. This will depend on the credit demand.

Senator LANG: Just to satisfy a long-standing curiosity of mine, why is it that the banks do not publish the amounts of these inner reserves in the financial statements that are given to the shareholders each year?

Mr. ELDERKIN: They are not required to, and their argument against it is that these may fluctuate very greatly from year to year, and because of losses which they may take in their loans and because of fluctuations in their annual earnings. There has been a growing tendency, I might say, in the United States to publish these figures. I think you will find that a great number of the larger banks in the United States today publish their inner reserves, and publish their loss experience on an annual basis. Maybe we will hear something about this from the Royal Commission.

The CHAIRMAN: Are there any other questions?

Senator ISNOR: Is it not a fact, Mr. Chairman, that some of the banks which do carry out what Senator Lang has mentioned show the dividends plus an extra dividend in their annual statement?

Mr. ELDERKIN: Yes, but this has nothing really to do, Senator, with what they might have in their inner reserves or provisions or reserve for loss. Most of them declare an extra dividend. It is becoming somewhat of a custom to have a regular dividend rate, and then to have an extra dividend declared near the close of the fiscal year.

The CHAIRMAN: I think you mentioned a one and a half per cent earning or interest net on assets. That is about the rate of earnings?

Mr. ELDERKIN: No, one-half of one per cent.

The CHAIRMAN: Then, the gross rate would be more than one per cent?

Mr. ELDERKIN: Oh, yes. I think I can give you the gross rate on that. The gross rate in 1963 was 5.2 per cent, as a matter of fact. The expenses other than income taxes were 4.2 per cent, leaving a net of one per cent. Income taxes amounted to approximately one half of one per cent.

Senator MCCUTCHEON: That would be after transfer from the general to the inner reserve?

Mr. ELDERKIN: Yes—no, I am sorry; perhaps I got that question wrong. No, the expenses do not include transfers to inner reserves.

Senator MCCUTCHEON: They are an expense.

Mr. ELDERKIN: They are, but in this figure I am quoting they are not. These are the actual published figures that you can get from Schedule Q which is published in the *Canada Gazette* annually so far as dollars are concerned. The figures I am quoting are on a percentage basis.

Senator KINLEY: Mr. Chairman, the Canadian banks have extensive operations in foreign countries. Is there any local control that they have to submit to in those countries, and it is all right for Canadians to own banks in foreign countries? I ask that question in the reverse as well; could an English company or an American company obtain approval in Canada if they applied for a bank charter?

Mr. ELDERKIN: There are several questions involved here, senator. First, a Canadian bank operating a branch or agency, operating in a foreign country, must abide by the laws of Canada—not only by the laws of the country but

by the Canadian laws as well, in effect. For example, in most countries, banks can lend on the security of mortgages; but, notwithstanding the fact that the bank is operating in a country where they do lend on the security of mortgages under the local law, it cannot do so under Canadian law, because there is an overriding prohibition, which says it cannot give additional powers.

Senator McCUTCHEON: It would not have them if it operated on an agency basis, but if it is a wholly owned subsidiary?

Mr. ELDERKIN: If it were a national bank of the country. For example, we have the Bank of Commerce which has a subsidiary in California and the adjoining states. There is also a subsidiary of the Bank of Montreal. Then, in Europe, in Paris, we have a branch or rather a subsidiary of the Banque Canadienne Nationale and a subsidiary of the Royal Bank of Canada. These subsidiaries operate entirely under the local law.

Senator KINLEY: What about the West Indies, and the Caribbean?

Mr. ELDERKIN: They are all branches down there. They operate entirely as branches and not as separately incorporated companies.

Senator KINLEY: Do you regard the conditions as being favourable to the operation of Canadian banks in foreign countries? Do they treat them liberally?

Mr. ELDERKIN: It is hard to generalize. The Royal Bank of Canada has just closed its branch in Montevideo in Uraguay, because the conditions were such that they could not continue and operate at a profit.

The CHAIRMAN: This is getting a little far afield, senator.

Senator KINLEY: It is all in the picture.

Senator REID: Keeping to the bill itself, on page 4, clause 5(9) says:

> This section shall have effect notwithstanding anything in the Bank Act but shall cease to have effect on and after July 1, 1965 unless otherwise provided by Parliament.

Mr. ELDERKIN: The reason for that was that the incorporators, or rather the proposers of this particular bill, wanted to assure Parliament that they were going to retain absolute control of this bank in Canada, if they got the charter. In fact, they would prohibit any ownership of more than 10 per cent by any foreign interest. But this is really a provision which overrides the present provision in the Bank Act, where there is no prohibition on the transfer of shares at the present time.

Therefore, this provision had to say "notwithstanding anything in the Bank Act", it would have effect; but it only takes effect up until the time the Bank Act is scheduled for revision on July 1, 1965. It expires at that date and the bank, if incorporated, will fall then under the provisions of the Bank Act as revised.

The CHAIRMAN: This provison in the bill disappears, even if a charter is issued, when the Bank Act is revised; and what will apply, if there is a similar or other provision in the Bank Act, is that provision.

Mr. ELDERKIN: That is right.

Senator ROEBUCK: I would like to know why it is that the foreign banks are not doing business in Canada. I remember hearing at one time that Lloyds of London was not allowed to do insurance business in Ontario. I went into that subject very fully as Attorney General in Ontario and advised that they be allowed to do so. They have been carrying on business ever since, and I think to the advantage both of the customer and of the institution.

Why is it that English banks are not doing business here, through branches or in any other way? Is there some material reason or is it a matter of law, or what?

Mr. ELDERKIN: It is the law as far as the branches are concerned, senator, yes.

Senator ROEBUCK: They had to be incorporated?

Mr. ELDERKIN: They have to be incorporated. They have not come to us and asked us for incorporation, as far as I know—with the exception of Barclays in 1929. They came and asked for incorporation, and it was granted.

Senator ROEBUCK: Why are others not doing business?

Mr. ELDERKIN: In many cases because they felt it was equally profitable, if not more so, to do business through correspondents, by agents, by working in with Canadian banks. This is done on a reciprocal basis. The Canadian banks feed them a fair amount of business and they in turn perhaps can feed business to Canada.

The CHAIRMAN: They avoid all the overhead.

Senator DAVIES: The Bank of Commerce and the Bank of Montreal have branches in Britain.

Mr. ELDERKIN: Five banks have branches in Britain. They all have, except the Banque Canadienne Nationale, Banque Provinciale and the Mercantile Bank.

Senator DAVIES: They must have special provisions?

Mr. ELDERKIN: No, they operate there as banks and wholly as such.

Senator KINLEY: It seems to me that Lloyds of London have exemptions under insurance laws that are advantageous in Canada, over and above what we have; and furthermore it has become a monopoly. No one in Canada is in the marine insurance business, practically; and Lloyds seem so efficient that they control the whole situation.

The CHAIRMAN: That is a question we could have discussed with more relevance when Mr. MacGregor was here earlier, on another bill.

Senator KINLEY: I am telling you now, and I think it is right to state this.

The CHAIRMAN: Are there any more questions to be put to Mr. Elderkin?

Senator LEONARD: No. I would like to call on the other two. I think everyone in this committee feels we should thank Mr. Elderkin for his very complete, interesting and informative statement; and I suppose he will be available if we want him further.

Senator ROEBUCK: Mr. Chairman, I would like to say how much we have been impressed by the evidence of this witness, by his very large general knowledge, and by the freedom with which he has imparted it to us.

I think I express the opinion of everyone here when I say that we are grateful to him.

The CHAIRMAN: The senator might add that that is only what we expect from Mr. Elderkin, having had him before us on other occasions.

Mr. ELDERKIN: Thank you very much, gentlemen.

Senator LEONARD: May I suggest now, subject to the wish of the committee, that we ask Mr. Tolmie to present, on behalf of the petitioners, any further evidence he would like to give.

Senator MCCUTCHEON: Mr. Chairman, how long are you proposing to continue?

The CHAIRMAN: Until 12.30.

Mr. J. R. Tolmie, Q.C., Counsel for Petitioners: If it is the wish of the committee, I would like to call both Mr. Stevens and Mr. Coyne. Each has a prepared statement. Those statements run in sequence. Mr. Stevens will

deal with the incorporation, the organization of the proposed bank and the raising of the capital. Mr. Coyne will carry on from there and discuss the method of operation of this proposed bank and how it will function.

The CHAIRMAN: Mr. Tolmie, you use your own judgment because you are the pilot as far as your presentation is concerned. We are going to sit only until 12.30. You use your own judgment as to the evidence you want to present in that time.

Mr. TOLMIE: If it is the wish of the committee, I would like to distribute to members of the committee these two statements; and then let each witness deal in sequence with them. That will probably take until 12.30 and that would make a convenient break.

The CHAIRMAN: Subject to what the committee may say, if Mr. Stevens or Mr. Coyne is going to put in the first statement, it may well be that when he has read that statement there will be some questions which we would like to put, rather than postpone those questions until we get the second statement.

Mr. TOLMIE: They do read in sequence.

The CHAIRMAN: Even so.

Senator MCCUTCHEON: Could we have the statements filed? I do not think the committee could possibly get through the questioning that it will wish on those statements?

The CHAIRMAN: Alternatively, what you are suggesting is that both statements be filed and that we adjourn?

Senator MCCUTCHEON: And hear the witnesses on another occasion.

Senator LEONARD: With all due respect, these witnesses have come from Toronto and are here now. We could sit certainly until 12.30 and we might as well get their evidence while they are here now. We could hear as much as possible and then perhaps sit after the Senate rises. They are here and I think we should carry on and let them get their case before this committee.

Senator ROEBUCK: Let us proceed.

The CHAIRMAN: We will proceed in the ordinary way.

An Hon. SENATOR: Can we have two statements in 20 minutes?

The CHAIRMAN: We will proceed in the ordinary way.

Senator ROEBUCK: Let us proceed.

The CHAIRMAN: We will proceed in the ordinary way, since there is a difference of opinion. If the witness has a statement we can distribute copies of it, and he can read it to the committee. Questions can follow. Then if it is felt you have not had time to digest it sufficiently, we can adjourn and continue the discussion at a later date. Mr. Stevens will be the next witness.

Mr. Sinclair McKnight Stevens: Mr. Chairman and honourable senators, I wish to thank you for giving Mr. Coyne and myself this opportunity to appear before you and outline our plans and purposes in applying for an Act of Parliament to incorporate the Bank of Western Canada.

We have prepared a submission in two parts. My part will be to tell you what steps have been taken by various institutions and individuals to prepare for organizing a new bank and to raise the necessary capital for it. Mr. Coyne will complete our opening statement by describing the kind of bank we hope to establish and how, as we see it, this bank will fit into the existing banking system in Canada. At the conclusion of Mr. Coyne's remarks we shall both be available to answer any questions that you may wish to put to us.

Senator ROEBUCK: May I ask a question now? Who are you?

Mr. STEVENS: My name is Stevens.

Senator ROEBUCK: What relationship have you to this bank?

Mr. STEVENS: I am one of the proposed provisional directors of the bank, and one of the petitioners in the bill itself.

The CHAIRMAN: And beyond that, what?

Mr. STEVENS: I would hope that I will be a permanent director of the bank, if the bank is chartered, and possibly have an executive position with the bank.

Senator ROEBUCK: Are you a solicitor?

Mr. STEVENS: I am a solicitor.

Senator KINLEY: Residing in Winnipeg?

Mr. STEVENS: No, in Toronto.

Senator ROEBUCK: What is your experience?

The CHAIRMAN: Would you care to go further and indicate your, shall we call them, extramural activities in relation to a bank. In other words, what is your background?

Mr. STEVENS: In the course of my prepared speech, Mr. Chairman, I have touched on this, with reference to what I am charged with, and other general information that I hope will be helpful to you on that point.

The CHAIRMAN: Very well.

Mr. STEVENS: To make one point clear at the outset, our application is for incorporation of a chartered bank under the Bank Act. Our bank, if chartered, will do a general banking business of the same nature as that carried on by the existing banks and will be subject to the same safeguards and regulations as existing banks, and it will be inspected and supervised by the Inspector General of Banks. Every bank, incidentally, which receives a charter under the Bank Act is automatically a member of the Canadian Bankers' Association and of the clearing houses maintained and operated at a number of points in Canada by that association.

A number of my associates and I have felt for several years that it was financially a feasible proposition, and desirable in the public interest, to organize a new bank in Canada We hope to show that a group of Canadians—and I would emphasize this—using only Canadian capital can form such a bank.

We feel that the best starting point for a new bank in Canada is in Western Canada, and we soon found, upon inquiry, that such a feeling was widespread among Western Canadians.

It is rather amazing, when you come to think of it, that we have in Canada the unique position of not having a head office of a banking institution from Bay Street west to the Pacific, a distance of approximately 2,100 miles. This is so in spite of the fact we have insurance companies, trust companies, finance companies, mutual funds and virtually every other type of financial institution in the West, but not the head office of a bank.

For years it seems to have been generally assumed in Canada that a bank charter could not be obtained: Various reasons have been given for this, in spite of the fact that the Bank Act so obviously provides for the incorporation of new banks. It is now 52 years since a group of Canadians has put a new bank in operation, and 36 years since any serious attempt was made to charter a bank—other than the two which have been referred to today, Barclays and the Mercantile.

Senator KINLEY: And the Alberta group, which came to us to apply for a bank within the past 30 years.

Mr. STEVENS: The general attitude was indicated in the remarks of the then Governor of the Bank of Canada, Graham F. Towers, at the Mercantile hearing before this committee in 1953, when he is reported in the *Globe and Mail* to have said he did not feel very happy that despite the growth which

already had taken place and would take place in Canada, there would never be another bank, and he did not think a little new blood in Canadian banking would do the public any harm. I understand he went on to say he did not see any possibility of there ever being another Canadian bank, Canadian in the sense of one which obtains capital from a number of individual stockholders in Canada and sets out to create a branch banking system.

Times have changed, even since 1953, and we are here to say we believe it can be done. It is not proposed that our operation would deviate from the sound banking principles that have so long been the backbone of the Canadian banking system. It has often been stated, and rightly stated, that Canada's banking system enjoys a world-wide reputation for soundness and stability. Surely, however, such soundness and stability does not depend on mergers and consolidation of the existing banks, or on the discouraging of the formation of new banks. Our life insurance industry also enjoys a world-wide reputation for solidity, yet the number of companies registered to write life insurance in Canada has risen from 41 in 1940 to 128 in 1962.

Would anyone suggest that this growth of life insurance companies has undermined the industry or caused a lack of public confidence in our life insurance companies? This growth has taken place in spite of the fact that it is probably much harder to start a profitable life insurance company than a bank.

With respect to our application, we feel there are interesting attributes which should be considered. In the first place, one hundred individuals have joined as petitioners in our application for incorporation who are resident in the provinces of Canada, where this bank will chiefly operate in the early years. These petitioners come generally from every walk of life, and while they include men of substance, they are not representative of particularly wealthy interests. Eighty-five per cent of the petitioners come from the four western provinces and 15 per cent from Ontario. About 60 per cent of the total are businessmen in these areas, but there are also 14 lawyers, five physicians, four chartered accountants, four university professors, farmers, engineers, journalists, pharmacists and other occupational groups. We feel it is a representative list and we look forward to working with this group. We are sure they will be a great help in organizing the bank. Directors of the bank will come from this list and other persons active in Canada's economic life. The majority of the directors will be resident in the west.

In the case of the Bank of Western Canada, we expect to be able to commence business with almost $13 million in capital and rest account, which will be the largest amount any Canadian chartered bank has had at its beginning. The Mercantile Bank of Canada started with $1.5 million and now has $5 million. In 1958, the Provincial Bank of Canada had $12 million in capital and rest account, its total assets were $326 million and it earned $1,650,000 that year.

In 1940, the capital and reserve of the Bank of Toronto totalled $15 million, and in 1945 the Dominion Bank had $14 million. On this point it is interesting to note that most of our largest banks started with a total capital of less than half a million dollars, and in 1900, The Royal Bank of Canada had only reached $2 million in capital and a reserve of $1.7 million.

Rather than merely indicate our intention to raise almost $13 million, we decided to raise such funds on a trusteed basis, pending the granting of a charter. Should a charter not be granted, the funds will be returned to the would-be subscribers. We are pleased to tell you today that our financial agents have advised us that the entire amount has been raised or is firmly committed for, and should a charter be granted, funds will be available to take down almost $13 million of stock.

Our financing has been as follows: By a prospectus dated February 11, 1964, The Wellington Financial Corporation, Limited, sold Trustee's Subscription Certificates for an aggregate amount of $3,750,000. Canadian Finance and Investments Limited is closing an underwriting today which will net its treasury $2,800,000. Of this amount, Canadian Finance and Investments Limited will designate $2,250,000 for investment in the proposed bank stock. York Trust and Savings Corporation has indicated its intention to subscribe for $495,000 worth of bank stock and each of the five proposed provisional directors of the Bank has subscribed for 500 bank shares. All shares in the bank will be sold for $15 each.

Monday and Tuesday of this week, a pre-incorporation offering of certificates evidencing subscriptions for 430,000 shares in the proposed bank were offered mainly in the west at $15 per share. We understand the issue was over-subscribed within hours. Some $6,450,000 will be raised through this distribution and it will result in virtually every Western Canadian financial institution and approximately 3,000 private investors in the west having an investment in the proposed bank, should a charter be granted. These institutions include: All Canadian Funds, Grouped Income Shares Limited and Seaboard Life Insurance, all of Vancouver. Alberta Fidelity Trust Company and First Investors Corporation of Edmonton. Great-West Life Assurance Co., Monarch Life Assurance Company, Sovereign Life Assurance Co. of Canada, all of Winnipeg; and Empire Life Insurance Co. of Kingston.

The CHAIRMAN: That is Ontario, is it?

Mr. STEVENS: That is right.

In total the above financings have raised $12,982,500 for investment in the proposed bank stock and we have an impressive future shareholders' list.

Wellington now has shareholders or certificate holders in excess of 2,500; Canadian Finance & Investments will have shareholders in excess of 2,500, and we have been assured by the financial agents handling the pre-incorporation offering that there will be at least 3,000 potential bank shareholders, resulting from that distribution. This will result in the bank having 8,000 shareholders directly or indirectly through Wellington and Canadian Finance. This list of shareholders compares favourably with shareholders in our existing banks. For example, the Banque Canadienne Nationale in 1962 had 4,806 shareholders and the Provincial Bank of Canada had 5,349 in 1963; the Bank of Nova Scotia had 13,122 in October, 1963. We have made stock available to mutual funds and other financial institutions in the west to ensure as wide an interest as possible in the bank.

We have not sought and will not accept any foreign participation in the formation of our bank. The pre-incorporation offering prospectus makes it clear that this offering may not be purchased by non-residents of Canada. We are requesting each subscriber to sign a statement which I would like to read to you.

1. The applicant understands that ownership of shares in the proposed bank by non-residents of Canada may be prohibited or restricted by provisions in the Act of Incorporation, and that the subscription certificates hereby applied for are not available for ownership by and cannot be transferred to a non-resident or any person acting as nominee, agent, trustee or otherwise directly or indirectly on behalf of a non-resident.

The application form goes on to say:

2. The applicant is:

(a) a natural person ordinarily resident in Canada, or

(*b*) a company incorporated under the laws of Canada or of a Province of Canada and has its principal place of business in Canada and is not by any means whatsoever under the control of non-residents of Canada.

3. (*a*) the applicant is subscribing for shares in his own right to be held by him as sole beneficial owner and is not acting as nominee, agent, trustee or otherwise on behalf of any other person, and has not made and no person has made for him any other application for shares or subscription certificates relating to shares in the proposed bank, or—as the case may be—

(*b*) The applicant is subscribing on behalf of another person, namely

Full Name .....

Address ..... Calling .....

(hereinafter called the "beneficiary"), who is a natural person ordinarily resident in Canada, who will be the sole beneficial owner and who is not acting as nominee, agent or trustee or otherwise on behalf of any other person, and neither such beneficiary nor any person acting for him has made any other application for shares or subscription certificates relating to shares in the proposed bank.

Gentlemen, prospectuses with respect to each of these issues are available.

It is sometimes mentioned that a new financial institution may have difficulty in attracting suitable staff. Any doubt we might have had on this point has certainly been dispelled. Since our announcement was made public in December, we have received dozens of inquiries and letters from persons in the banking community requesting positions and indicating their desire to become associated with a new institution such as the one we propose. These overtures have come to us from those employed at many different levels in these institutions.

We realize that it is proposed to revise the Bank Act, probably some time next year, and we would like to clarify that our plans are not based on the anticipation of the Bank Act provisions being liberalized in favour of the banks in Canada. We are quite satisfied to commence business under the existing Bank Act and to continue in business regardless of any revisions which may be in the act.

It is proposed that our bank will carry on a general banking business much the same as the presently existing banks.

Now about ourselves. As I have mentioned, The Wellington Financial Corporation, Limited, Canadian Finance and Investments Ltd., and York Trust and Savings Corporation intend to subscribe for stock in the proposed bank should a charter be granted. I am a director and president of these three companies, and Mr. Coyne is a director and chairman of C.F.I. and York Trust. Mr. Nesbitt—who is one of the proposed provisional directors, in addition to those already mentioned—is vice-president and a director of C.F.I., Mr. Bruce—who has been introduced to you today—is vice-president and a director of The Wellington Financial Corporation Limited, and Mr. Bodie is a director of C.F.I.

Wellington is a company incorporated under the laws of Canada in 1926. It has carried on business from Guelph, Ontario ever since and it came under our group control in 1961. It is now engaged primarily in the real property mortgage business, but upon the contemplated purchase of the bank stock, 75 per cent of its net worth will be in that one investment.

C.F.I. is a Manitoba company incorporated in 1926. It operates out of Winnipeg and is now engaged in the real property mortgage business. It intends

to invest in various financial institutions now operating or expected to operate in western Canada, including the proposed bank. Its bank commitment will represent 66 per cent of its net worth.

York Trust was formed in 1962 under the laws of Ontario and it has since grown into a $20-million organization with a net worth of $3.5 million, and almost 1,000 shareholders. Its investment in the proposed bank would be relatively small.

These companies are autonomous in their operation but they do co-operate among themselves where it is convenient. The Alberta Fidelity Trust Company is a 1912 Alberta company of which Mr. Bodie is now president. Mr. Bodie is another of the proposed provisional directors. This company plans to invest in the bank and it may also co-operate in the same way as the above companies.

While British International Finance (Canada) Limited does not plan to invest directly in the bank, I would point out that it holds approximately 60 per cent of the equity of Wellington, 40 per cent of York Trust and 20 per cent of C.F.I. I am a director and president of British International. Like all the other companies mentioned above, our shareholders are Canadian almost 100 per cent.

Gentlemen, by that I mean that I checked with our transfer agencies, and they have one or two non-resident shareholders holding 50 or 100 shares. We cannot say 100 per cent owned, but it is within a whisker.

The CHAIRMAN: "Owned" may not be the most apt word, because the shares register indicates who "holds".

Mr. STEVENS: I can go further: beneficiaries, either directly or indirectly. There is no non-resident ownership other than a minute registration, as I have said.

British International's name is sometimes confusing but as was pointed out in a recent article in the Executive Magazine, the company is "not really British, International or in the finance field."

The CHAIRMAN: It has a good name!

Mr. STEVENS: The name comes from a small company we own in Nassau called British International Finance Trust Limited.

British International, an Ontario company, was formed in 1960, by a group which included Mr. Nesbitt and myself, and became active in acquiring substantial interests in Canadian concerns, as in the case of Wellington or by starting new companies such as York Trust. Usually we have had public underwritings with respect to our undertakings and sometimes we have been partners with substantial interests such as in the case of Canadian First Mortgage Corporation where 20 per cent is held by Mid-Continent Investments Limited of Winnipeg which is associated with The Osler Corporation Limited of that city; the Toronto-Dominion Bank holds 20 per cent—that is, of the Canadian First Mortgage Corporation—and British International holds 20 per cent.

Our federation of companies has resulted in the combined group having a net worth of $10 million and should our bank proposal materialize, this net worth figure will rise to over $20 million.

British International owns certain smaller companies outright such as Scarboro Finance Corporation Limited and Simcoe Retail Acceptance Limited. Combined total assets of these companies is only a little over $100,000. They have been partly inactive and have only been servicing incidental business for several years.

It would not be our intention should we receive a charter to have other companies in our group borrow funds from the new bank. In fact, prior to announcing our intention to apply for a bank charter we spoke to each of the existing banks with which we deal and gave and received assurances from

them that in the event we received a charter, our groups' existing banking arrangements would be maintained.

We do hope, however, that our group of companies, including the bank, if incorporated, will co-operate wherever possible to ensure that the best possible and broadest service will be given to our customers. This is the present day trend in the financial field as is evidenced by moves made by our existing banks of which you are all aware, some of which Mr. Elderkin referred to in his remarks.

In summary then, we have no grievance with any of the existing banks in Canada. In fact, we have excellent banking arrangements with most of these banks with respect to the various companies in our group. We feel that our Canadian banks are providing an excellent service to the people of Canada, but we also feel that there is room for one more bank in Canada and more particularly, one having its head office in the centre of that vast area stretching from Bay Street to the Pacific Ocean.

Before making our intentions known with respect to our proposed bank, our group was most hesitant and cautious as to the outcome or repercussions which might result when our intentions were announced. In spite of these feelings, we finally determined to attempt to do what we had been assured was impossible, namely, to obtain a charter for a bank in Canada.

We have been assured by the response we have received from the investment community in Canada by the fact that some sixty investment dealers in Canada have been active in selling Trustee's Subscription Certificates of The Wellington Financial Corporation, Limited and/or stock in Canadian Finance & Investments Ltd., and/or the pre-incorporation offering of the bank stock which I referred to—the subscription certificates—and that these investment dealers include: A. E. Ames, Bell Gouinlock, Bongard, Burns Bros. & Denton, F. H. Deacon & Co., Dominion Securities, Gairdner & Co., Greenshields Inc., Houston, Willoughby & Co., McLeod, Young Weir, Midland-Osler Securities, Mills, Spence & Co., Nesbitt Thomson, Oldfield, Kirby & Gardner, Odlum, Brown, Pemberton Securities, W. C. Pitfield, Ross, Knowles & Co., Royal Securities, Sydie, Sutherland & Ritchie, Walwyn Stodgell, Wood Gundy, etc.

We have been encouraged by the petitioners who have joined us in our application to Parliament and by the many thousands of shareholders who have shown their confidence in their willingness to invest money in the new venture. Finally, we are delighted by the public response that has been evidenced throughout Canada and in particular throughout the area in which we hope to be most active initially.

This is the first opportunity that the Parliament of Canada has had for nearly fifty years to demonstrate that a Canadian group with Canadian money in hand can receive a charter for a bank in Canada. We sincerely hope that our charter will be granted and that this impression that has been prevalent for so long that it is impossible to receive a bank charter in Canada, will not prevail.

The CHAIRMAN: Gentlemen, it is now at least 12.30.

Senator LEONARD: Mr. Chairman, I think you all have before you the brief that Mr. Coyne was going to read.

The CHAIRMAN: It has not been distributed.

Senator LEONARD: It should not be distributed unless you are going to hear it now. Could we at least read it now and have the cross-examination at some other time? It really all goes into one statement, having regard to what Mr. Stevens has read, and I think the committee should hear it now.

The CHAIRMAN: You can file the statement, but that of course may not be the best way. On the other hand, we could adjourn now to the call of the Chair. I doubt if it will be possible to deal with it later today.

Senator LEONARD: I would ask the indulgence of the committee while Mr. Coyne reads the statement.

Senator KINLEY: I would like to hear Mr. Coyne.

Senator MCCUTCHEON: I had thought we would be through by twelve. I have to leave now, but I would be perfectly happy to have Mr. Coyne read or present the statement. I am sure the matter will not reach finality at this stage.

May I request that Mr. Stevens provide the members of the committee with copies of the prospectus to which he referred in his statement.

The CHAIRMAN: Then perhaps we should hear Mr. Coyne now and then adjourn.

Mr. James E. Coyne: Honourable senators, I thank you for giving us this opportunity to make known to you our plans, and the reason why we are applying for the incorporation of a chartered bank under the Bank Act. I may say that my part of the statement is only half as long as that of Mr. Stevens, so I won't detain you very long.

Mr. Stevens in his part of our opening statement has described the steps which have been taken, and will be taken, to organize the bank and raise the necessary capital for it. I shall complete the story by describing the kind of bank we hope to establish and how, as we see it, this bank will fit into the existing banking system in Canada.

A very important feature of our proposal is to make it in a real sense a bank of and for western Canada with its head office in Winnipeg. Aside from a securities trading office in Toronto, to facilitate dealings in treasury bills and other Government securities, it is expected that at first this bank will have branches only in the four western provinces.

Later, once a strong base has been established, branches will from time to time be opened in other provinces. It is intended to keep the executive offices and general management of the bank permanently in Winnipeg, and western Canada will always be the area of special interest and special strength for this bank.

In its origin, therefore, this will be to a large extent a regional bank. It should not be forgotten that all our chartered banks in Canada started as regional banks. Two of them still do 90 per cent of their business in a single province, Quebec,—one having 96 per cent of its branches in Quebec and the other, 88 per cent. On the other hand the five larger banks have less than 14 per cent of their branches in Quebec. One has 58 per cent of its branches in a single province, Ontario. Three of these five banks have collectively less than 5 per cent of their branches in the four Atlantic provinces, which have 10 per cent of the population of Canada. Another indication of the local character of much of our banking may be seen in the fact that there are 1,650 towns in Canada with only one bank, 330 with two banks and 300 with three, four, five, six, seven or eight banks represented.

There are other variations among the banks, even excluding the special case of The Mercantile Bank, which show that there is not just one stereotyped model to follow. There is clearly room for differences in outlook and methods and results. The number of branches in Canada varies from 364 for the smallest bank to 1,264 for the largest. The average amount of capital per branch varies from $70,000 to $285,000. Total capital and rest fund per bank varies from $26 million to $316 million.

Total deposits of the banks vary from over $5 billion to just under half a million. Canadian dollar deposits per branch average $3 million for all banks, but for individual banks average deposits per branch vary from $3.7 million to $1.3 million.

I mention parenthetically that York Trust and Savings Corporation with which I am connected already has average deposits and guaranteed certificates of $1.8 million per branch for the six branches opened in 1963.

A second major feature of our plans for the Bank of Western Canada is to have it become closely knit to the fabric of the communities where it operates. Mr. Stevens has described fully the broad base of stock ownership in the bank and in the institutions which are playing a special part in its initial financing. I shall emphasize the operating principle that we want the Bank of Western Canada to base itself on the deposits of the general public and on a great number of small and medium sized loans, not on the accounts of large corporations in Central Canada.

Instead of trying to start from the top down, with a handful of branches and a small number of large accounts—as in the case of the two non-Canadian banks that obtained charters from Parliament in the past 25 years—we are planning to build from the ground up and expand our number of branches in western Canada within the limit of our deposit-gathering capacity.

Our Board of Directors will be chosen so as to be broadly representative of all sectors of the community with which we have connections.

We hope that our managers and staff will in most cases stay in the communities where they establish our branches, and will have a closer and more continuous connection with their customers and with the whole community than is possible when there are frequent transfers of staff from one town to another. Our branches will be modest in size and appearance but will be spread through all parts of the community in locations designed to give the best service and hence attract the largest volume of business.

Our loans and investments will be made in the areas from which we draw our deposits. We shall publish figures showing for each region the volume of each kind of business that we do.

We do not quarrel at all with those institutions that operate differently. We feel, however, that there is plenty of room for an institution operating along the lines indicated to render valuable assistance to the public and to make profits for its shareholders.

At this point I should like to state as Mr. Stevens has done without qualification that we do not intend to use the funds of this bank to make loans to other institutions, such as York Trust, Wellington Financial, British International Finance, Canadian First Mortgage Corporation, or Simcoe Acceptance, with which some of the organizers of this bank are connected.

These companies all have established banking connections which they expect to maintain, and in any case the size of loan that could be made available by the Bank of Western Canada would be of no interest to them. Similarly as regards the financial institutions in Western Canada with which we are connected—in their case, they will no doubt do some of their regular banking business with the bank, but will not look to it as a source of funds to be used in their own operations.

The Canadian banking system today is very different from what it was 40 or 50 years ago, and is much larger than it was even so recently as the eve of World War II. In the 25 years from 1938 to 1963 the volume of Canadian deposits has multiplied 6½ times, and total deposits—including foreign deposits—8 times. There are three banks today, each of which is larger than by 50 per cent than the entire system in 1938. In the past ten years, total Canadian deposits have grown from $9 billion to $16 billion, an increase of $7 billion. Instead of an increase in the number of banking corporations, however, the number of banks declined from 11 to 8. During this ten-year period the published capital and reserves of the Canadian banks nearly tripled, rising from $413 million in 1953 to $1,144 million in 1963. Net operating earnings multiplied by five and dividends multiplied by seven in that ten-year period. The average

value of one share of stock in each of the banks has risen from about $15 in 1943 to about $35 in 1953 and to a high of about $70 in 1963. Dividends, as I have said, have multiplied seven-fold since 1943 and over three-fold in the past ten years.

The total number of branches has both grown and fluctuated in our banking history. From about 700 in 1900 the number rose to 4,676 by 1920, dropped by 900 in the next six years, rose 300 in the next four years, and dropped again by 1,000 over the next 13 years to a total of 3,084 in 1943, or less than two-thirds of what it was in 1920. In the ten years 1943 to 1953 the number of branches grew again by 1,000 and by a further 1,500 during 1953 to 1963 to a total of 5,626 at the end of last year, of which 5,447 were in Canada and 179 outside Canada.

Obviously not all of these branches were well chosen, and some were and are considerably more expensive or less profitable than others. The established banks have indicated to the Royal Commission that it takes from three to five years for a new branch to operate at a profit. We believe that in the case of the Bank of Western Canada we can shorten the period to an average of two years.

This brings me to the third main feature we expect in the Bank of Western Canada, namely economical operations based on low operating costs. We expect to operate, as I have said, in very modest premises, in locations suitable for a large volume of business but by no means the most expensive corners in town, and not necessarily corner locations at all. By using modern accounting machines and methods from the start, we believe we can operate with less staff and a lower overall expense ratio than some, at least, of the older institutions.

We shall put great emphasis on flexibility in methods to suit various local conditions and the requirements of our customers. By establishing in Western Canada a Bank of Western Canada, giving quick decisions from a head office in western Canada and from regional offices with real authority in each province, we expect to develop a greater volume of business per branch than some other institutions. The already demonstrated enthusiasm of western Canadians for our project is most encouraging.

On all these counts, we confidently expect unit operating costs—that is, costs per dollar of deposits or per dollar of loans—to be lower than other banks.

For all these reasons also, we believe we will be able to compete strongly and effectively with the other banks, without attempting to get too big or to take on business which we cannot handle. We will no doubt compete with them more effectively in some fields of business than in others, and perhaps not at all in the field of large national corporations. But there is going to be a great increase in the number of business enterprises with head offices in western Canada, and we expect to get a significant share of their business and to grow with them.

Needless to say, the other banks will, of course, continue to grow by billions of dollars as well.

Our planning has been based on the belief that there is room for more banks in Canada, and for more competition in banking in Canada, and for new ideas and new methods in banking in Canada. We believe there is room for small banks that keep a sense of proportion, and for new banks that respect the best traditions of Canadian banking but have some ideas of their own too.

As I have said, great changes have occurred in the 52 years that have passed since the last occasion on which a Canadian-owned bank obtained a charter and commenced operations. I have already mentioned statistical

changes and I wish now to refer to changes in methods and in environment, which may affect the ability of a new bank to operate successfully.

In 1911, as you have heard from the Inspector General of Banks, there was no provision for an outside audit of a bank—the so-called shareholders' audit. That only began in 1913 and the provisions in this regard were strengthened in 1923 as a result of experience when one bank was absorbed by another in 1922 after its affairs were shown to be precarious. The Home Bank failure later in 1923 led to the creation of the office of Inspector General of Banks in 1924. There have been no bank failures since, and it is difficult to see how there could be, with today's safeguards.

Another change has been the removal of the right of note issue by the chartered banks. With that went the removal of double liability of shareholders. This plus the reduction of the par value of bank shares from $100 to $10 made it possible for persons of relatively small means to become shareholders of Canadian banks. No bank owned by Canadians has started since these changes were made, but in the past 20 years the number of Canadian shareholders (including some duplications, no doubt) in the existing banks has risen from 36,000 to over 90,000.

Another great change in the banking situation resulted from the establishment of the Bank of Canada which began operations in 1935. The central bank lends strength to all the chartered banks both because it stands ready to lend money to them at a moment's notice, and because it participates in security markets and ensures that these will not be disorganized at a time when banks or others may wish to raise liquid funds by selling Government securities. The creation of a Treasury Bill market and further development of the money market by the Bank of Canada have also greatly improved the liquidity and the assurance of liquidity of all the banks. These matters are perhaps of particular importance to small banks and newly established banks.

On the side of investments and earnings, there have also been very important developments in recent years. In 1954 the banks were authorized to invest in government-insured housing loans. A new bank would be particularly interested in these loans with their high yield—6 per cent or better—and unquestioned safety, which are also very liquid and command a ready market.

Again, for some years, but especially since 1954, the banks have shown a rapid growth in personal loans in the nature of consumer credit loans, on which the return is usually ten per cent or twelve per cent on the funds actually employed. At the end of 1963 such loans amounted to $1,432 million or 20 per cent of total "general" loans of the banks. Total personal loans of all kinds—including consumer credit loans, loans secured by Government bonds and so on—were 33 per cent as great in dollar volume as total business loans. In the case of some individual banks these ratios were of course higher than the average. As I have said in the past—and as the presidents of several chartered banks have also emphasized—consumer credit loans should not be given priority over normal commercial loans, but subject to that, they offer a good outlet for a proportion of a bank's lendable funds.

The picture today is that the established banks are now in the mortgage business and the consumer credit business in a big way, and find these lines of business both safe and profitable. They also own important share positions in trust companies, mortgage companies, and instalment finance companies. The largest bank in Canada has recently started making conventional mortgage loans, which it cannot make by itself under the Bank Act, through all its branches, by acting as agent for a newly established mortgage company, which is partly owned by the bank. One of the mortgage companies in our own group, indeed, is 20 per cent owned by another chartered bank.

In combination, these developments have made banking in Canada much safer for depositors, easier for management, and more profitable for shareholders. Banks have spread out into many fields of financial business, competing there with institutions which previously had the field to themselves. The total size of the banks has multiplied many times, but their number has decreased. In our view, there are far better opportunities today than ever before in our history for new banks to establish themselves and to prosper.

If I may make just one reference to near-banks, I regard the expansion of the so-called near-banks is no real threat to the banking system. The near-banks should be regulated, to be sure, as a matter of public policy, but not for the purpose of protecting the chartered banks from competition. There are those who welcome competition rather than fear it or complain about it or try to restrict it. More competition from outside their present ranks, and an inflow of new blood into the banking system may indeed be in the best interests of the established banks themselves.

Mr. Chairman and Honourable Senators, these are the reasons why the petitioners in the present application respectfully request the Parliament of Canada to allow a broadly based group of Canadians with adequate capital, who are prepared to meet competition from any quarter, to organize a new bank in Canada, the Bank of Western Canada.

The CHAIRMAN: Gentlemen, the meeting is now adjourned.

Senator LEONARD: Mr. Chairman, are we adjourning to the call of the Chair?

The CHAIRMAN: Yes.

Senator LEONARD: And these witnesses will be available for examination?

The CHAIRMAN: Yes.

Senator ROEBUCK: Why do we not return after lunch, before three o'clock?

The CHAIRMAN: It is impossible.

Senator BLOIS: Are we likely to have a meeting later this afternoon? Quite a number of us have meetings already arranged for later this afternoon.

The CHAIRMAN: I would doubt it from looking at the Order Paper, but I will think about it. If the meeting adjourns to the call of the Chair I will see what I can do.

Senator LAMBERT: I have one suggestion to make in connection with plans for the future, if the Chair has not already made up its mind as to what the program is going to be. In view of the evidence we have had here this morning, I think it is very vital that, at a convenient time in the near future, the central Bank of Canada should be represented here by Mr. Rasminsky, to throw some light on the material submitted to us this morning by Mr. Elderkin. I think his evidence will be very much worthwhile.

The CHAIRMAN: We will adjourn, to resume at the call of the Chair.

The committee adjourned.

Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-6, intituled: "An Act to incorporate Bank of Western Canada".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, MAY 6, 1964

No. 2

WITNESSES:

Mr. J. Ross Tolmie, Parliamentary Agent; Mr. Sinclair M. Stevens, Mr. James E. Coyne.

APPENDIX "A"

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20531—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 12th, 1964:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Leonard, seconded by the Honourable Senator Inman, for second reading of the Bill S-6, intituled: "An Act to incorporate Bank of Western Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Inman, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20531—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, May 6th, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.45 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Blois, Bouffard, Brooks, Burchill, Connolly (*Ottawa West*), Cook, Crerar, Croll, Dessureault, Fergusson, Flynn, Gershaw, Hugessen, Irvine, Isnor, Kinley, Lang, Leonard, McCutcheon, McLean, Molson, Pearson, Pouliot, Power, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt, White and Woodrow. (35)

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

Consideration of Bill S-6, intituled: "An Act to incorporate Bank of Western Canada", was resumed.

The following witnesses were heard:

Mr. J. Ross Tolmie, Parliamentary Agent.

Mr. Sinclair M. Stevens.

Mr. James E. Coyne.

On Motion of the Honourable Senator McCutcheon it was RESOLVED to print the list of Shareholders and the financial statement of the British International Finance Company as an Appendix to this day's proceedings.

On motion of the Honourable Senator Leonard it was agreed to retain Bill S-6 on the agenda of the Committee.

On Motion of the Honourable Senator Power it was RESOLVED that the President of the Canadian Bankers' Association be notified of the Committee's consideration of this Bill.

At 12.05 p.m. the Committee adjourned to the call of the Chairman.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, May 6, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-6, to incorporate the Bank of Western Canada, met this day at 9.45 a.m. to give further consideration to the bill.

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

The CHAIRMAN: We are continuing the hearing which started some time ago in relation to Bill S-6.

Senator MCCUTCHEON: Mr. Chairman, before we proceed with the hearing, when I received my notice of this committee meeting and having talked it over with other honourable senators I found there was no indication as to what was to come before us. I endeavoured to ascertain by reference to the proceedings themselves and I found that there was a meeting of this committee called for 9.30 this morning to consider Bills S-12 and S-15. It was only late yesterday afternoon I learned that this matter of Bill S-6 was on the agenda. Is it possible for steps to be taken in future so that at least our notices will tell us what is coming before us?

The CHAIRMAN: Up until this year in the notices convening the committee it was stated what bills would be heard by the committee. And I understand it occurred during this year too. Why the practice has changed, I don't know. However, with your authority behind me I will see about having this corrected, and that the bills we are to consider will be stated in the notice.

Senator LEONARD: Mr. Chairman, am I right that at the meeting last week I raised this question of proceeding with this Bank of Western Canada bill today?

The CHAIRMAN: It was at the end of the meeting that this question was raised.

Senator MCCUTCHEON: I was not present at the meeting and those proceedings were not reported.

The CHAIRMAN: I will see to it that there is an identification in the notice of the bills to be considered.

When we adjourned last time after considering this bill we had heard statements by Mr. Stevens and Mr. Coyne. We deferred any questioning, and these two gentlemen are here today to submit to whatever questioning the committee wishes to subject them to. After that we will decide what our future course of action is going to be.

There is one question I should like to raise with the sponsor of this bill before hearing the witnesses. I notice on reading the bill that you propose incorporation—this is at the end of section 1—under the name of Bank of Western Canada, which is thereafter referred to as "the Bank". It is only in the schedule that you make reference to the French name. I was wondering whether you had given thought to, or whether the Law Clerk had been consulted with respect to, the omission of the French name in section 1.

Senator LEONARD: I speak subject to correction, but I think we are following the traditional pattern in which the name of any bank is set out in the schedule rather than in the act itself. Mr. J. R. Tolmie, counsel for the petitioners, is here, and before introducing Mr. James E. Coyne and Mr. Sinclair M. Stevens perhaps Mr. Tolmie might speak to that.

The CHAIRMAN: The reason I raise that point is that section 1 is a substantive section giving the name of the bank.

Senator LEONARD: The question is whether it should be amended to include the name in French, as we are doing in so many bills now?

The CHAIRMAN: That is right.

Senator LEONARD: In addition to your remarks, Mr. Chairman, perhaps I might say that when we adjourned to the call of the Chair we had not at that time received the report of the Royal Commission on Banking and Finance. I make the suggestion that it might be helpful to the committee if Mr. Coyne and Mr. Stevens added briefly to the statements they submitted to the last meeting, having in mind that the report of the Royal Commission is now available. We can then go ahead with the questioning.

The CHAIRMAN: I have some thoughts on that, but I have not consulted the members of the committee. May I state what they are? I am not in a position to indulge in any serious questioning arising out of what the Royal Commission said. There has not been time in which to study the report and thus be able to ask intelligent questions with respect to it. My own suggestion would be that we should have the examination of these witnesses now on the statements they have made. If it broadens out into something further than that, then that is fine. If the questioning does not broaden out sufficiently and the witnesses want to make a statement afterwards then they may do so. But, I doubt whether the members of the committee are ready to address themselves in any particular way to the report of the Royal Commission on Banking and Finance.

Senator LEONARD: I am not suggesting that we get into any detailed discussion of the report of the Royal Commission, but I think in fairness to these applicants they should have the opportunity now of saying, in so far as their application is concerned and in so far as this particular bill is concerned, whether there is anything in the report that causes them to make any changes or additions to their statements.

Senator CROLL: Mr. Chairman, it seems to me that Senator Leonard can very well lead us into that line of questioning. He can read parts of the report and ask the witnesses whether they agree or disagree. We can get it on the record in that way.

The CHAIRMAN: All I was suggesting was that these witnesses are in the same position as any witness. They can be asked any question which the committee wishes to put to them, and if, when the questioning is finished, they feel it has not been broad enough to deal with their views of this report they can make a statement. Mr. Stevens read his statement first so I take it he already commands the number one position.

Senator LEONARD: I think Mr. Coyne spoke first, and I suggest Mr. Tolmie should state how he would like to proceed.

The CHAIRMAN: Mr. Stevens spoke first the last time, and I was giving him the priority he had earned. You can settle among yourselves the order in which you wish to speak.

Mr. J. R. Tolmie, Q.C., Counsel for Petitioners: Honourable senators, with your permission we would like to carry on from the point where we left off at the last committee meeting on March 18. As you recall, the meeting adjourned at that time subject to the call of the Chair for the purpose of awaiting

the report of the Royal Commission on Banking and Finance. That report has now been published, and with your permission I would ask that Mr. Coyne carry on from the point where he left off, taking into account the report of the Royal Commission as you requested. Then we will have Mr. Stevens carry on with respect to the points he was dealing with last time. Without breaking the continuity I would ask Mr. Coyne to go first.

The CHAIRMAN: Just a minute, please. We have just discussed that, and I am not sure we adjourned the last time specifically to await the report of the Royal Commission. We adjourned because we ran out of time, otherwise we would have had the examination of the witnesses following the presentation of their evidence. The record shows that we ran out of time, but I am in the hands of the committee. If the committee wants to hear supplementary statements, then that is fine; if it wants to examine on the evidence that has been given, then that is fine.

Senator CROLL: Mr. Chairman, I think if they have any further statements to make we ought to hear them now.

The CHAIRMAN: Yes, very well. I must say it was not a question of not hearing them before. Mr. Coyne?

Mr. James E. Coyne: I should like first, sir, to make an arithmetical correction in the statement I gave to the committee on the last occasion, as it appears at the bottom of page 40 of the record of proceedings. I spoke of certain earnings of the banks having increased by a certain amount over a ten-year period; that should have been a 20-year period. That is the last line on page 40 of the record.

Mr. Chairman and honourable senators, there has been a new development since we were last before you. As honourable senators will recall, statements were made in the Senate to the effect that our bill should not be finally dealt with in this committee until after the report of the Royal Commission on Banking and Finance had been received.

Senator MCCUTCHEON: And until we had had an opportunity of considering it.

Mr. COYNE: Yes, and until honourable senators had had an opportunity of considering it. Of course, the applicants were glad to have an opportunity of considering it too.

The fact that the report has now been published means, I think, that the statements we gave you nearly three months ago are incomplete, and I very much welcome this opportunity to add briefly to what was said on that occasion, and particularly to bring it up to date by referring to what I consider those parts of the report of the Royal Commission which—

The CHAIRMAN: Three months ago?

Mr. COYNE: Two months ago. It was on March 18.

Mr. TOLMIE: We have copies of this to distribute, Mr. Chairman.

The CHAIRMAN: Very well.

Mr. COYNE: Honourable senators are aware that the report in its entirety is a very bulky document. It runs to 27 chapters and 566 pages, but the parts making recommendations regarding chartered banks, or possible changes in the Bank Act, are contained in just two chapters, namely, chapters 18 and 19, and also in the final summary of the general report in chapter 27. The first sentence of chapter 19 indicates the keynote of the commission's approach. At page 377 they say this:

> We have described the spirit of competitive freedom which we believe should underlie the Bank Act and the changes necessary to give it effect.

At page 367 the report speaks of:

> —the long run objective of developing a larger group of well-established banking institutions.

I suggest, sir, that the philosophy of the report is clearly favourable to more competition in the banking field in the public interest.

As regards the requirements for new chartered banks, the report deals with two points. First, there is the amount of capital required. The report approves the present provisions in the Bank Act, and says at page 385:

> We conclude, therefore, that the legislation regulating financial institutions . . . should set a relatively low statutory minimum for starting up a banking institution so as not to discourage the entry of smaller specialized companies, but at the same time it should give the Inspector General (of Banks) power—subject to appeal to the Treasury Board—to set such higher requirements as may be necessary to ensure the soundness of enterprises with more ambitious plans, and in particular to absorb the likely expenses of establishment and early operations. This, we understood is the actual position under the Bank Act at the moment.

The report then specifically approves the present requirement in the Bank Act, in these words, taken from page 385:

> The present Bank Act requirement that a new bank have paid up capital of at least $500,000 as a minimum legal requirement seems appropriate.

In this connection it may be noted that funds already received and committed for subscription to the proposed Bank of Western Canada amount to over 25 times as much as the required sum stipulated in the Bank Act and approved by the Royal Commission.

As to the other conditions on incorporation, the report says at page 385:

> Other qualifications for a charter...should be kept to a minimum although we feel the Act should require that applicants be of sound reputation and proven business experience.

Honourable senators will recall the Government policy on this matter was expressed by the Minister of Finance in the House of Commons on February 28 last when he said, as reported in unrevised *Hansard* at page 347:

> I have indicated publicly that the government is not opposed to further competition in the banking field providing that any new bank is adequately financed and is supported by financially responsible people.

We trust that anyone who reads over the list of 100 applicants for the charter of the Bank of Western Canada and of the important financial institutions and private investors who are backing this project with their investable funds, will be reassured that the applicants are of sound reputation and proven business experience and that this bank is adequately financed and is supported by financially responsible people.

The Minister of Finance added one more proviso, namely, "that provision be made for retaining control in Canada."

The Royal Commission expresses the opinion at page 374:

> We think a high degree of Canadian ownership of financial institutions is in itself healthy and desirable, and that the balance of advantage is against foreign control of Canadian banks.

The report does not suggest that non-residents of Canada be entirely prevented from owning stock in Canadian banks, but recommends at pages 374-5, that a non-resident bank should not be able to own stock in a Canadian bank without specific application to and approval by the Treasury Board at Ottawa.

Section 5 of Bill S-6 which is before you makes special provision to ensure that non-residents cannot obtain more than 10 per cent of the stock in the Bank. These provisions can be replaced by whatever general provisions Parliament chooses to enact at the time of the revision of the Bank Act, or it can continue to operate, if Parliament so decides.

Other provisions of the Royal Commission's report deal with how charter banks, other banking institutions and non-banking financial institutions, should operate, what changes should be made in their powers, and how they should be regulated by public authorities.

We consider that none of these recommendations poses any serious problem for the Bank of Western Canada and certainly not to any greater degree than for other chartered banks. Some of the proposals are regarded as favourable to the banks and this will apply in the case of new banks and old banks alike, such as the recommendation that the chartered banks should be allowed to enter into the field of conventional mortgage loans and should be free of any ceiling on interest rates except on personal loans up to $5,000.

On the other hand there are some proposals also at page 375 to encourage more competition in the banking field by giving full banking powers to those trust companies, mortgage companies and sales finance companies which take short term deposits.

Such proposals, if adopted, will not create any more competition for a new bank than for the existing banks, and the supporters of the Bank of Western Canada are quite prepared to meet that competition if necessary.

The proposals that agreements among banks on interest rates, service charges and so on should be prohibited unless approved by the Minister of Finance, are dealt with at page 370 of the report and that the special exchange charges on out of town cheques be prohibited, dealt with at page 394, would not work to the disadvantage of a new bank.

The same is true of proposals made by the Royal Commission to meet the argument, given at page 366:—

> If the present banks were in fact to increase significantly their share of financial business by expansion or by acquisition of existing companies, the financial system might become unduly concentrated and less competitive...

The report of the commission comes to the conclusion at page 371 that there is "need to ensure that competition is not reduced by existing institutions acquiring control over their competitors and reducing unnecessarily the number of independent companies serving the public." For this purpose, the report recommends, at page 371 that both chartered banks, and those savings banks, trust companies and other institutions which are given full banking powers under the commission's proposals, should not be allowed to hold stock in each other without Treasury Board approval.

The Bank of Western Canada will have much less difficulty than other banks in adjusting to this recommendation of the Royal Commission if it is implemented.

The Bank of Western Canada itself will not own stock in other institutions when it is incorporated, and its own stockholders will include at most two trust companies or other institutions of the kind in question, holding less than 5 per cent of its stock.

Moreover, the commission recommends certain exemptions, especially for smaller institutions where the combined assets of those concerned do not exceed "say $10 million or such higher figure as may be appropriate". That recommendation is given at page 371. The commission suggests also that "Treasury Board approval might be almost automatically forthcoming" in some cases of "the participation of banking institutions in new joint ventures with

other businesses or with other members of the financial community... provided that the institution concerned has less than a controlling interest."

The exact circumstances in which the Treasury Board might give its approval to some degree of stock ownership by, say, trust companies, in a bank are not spelled out in the report. Today all banks number trust companies among their shareholders and probably all trust companies have bank shares among their investments.

At any rate, whether the recommendations of the Royal Commission are implemented in their entirety, or in part, or not at all, the Bank of Western Canada can without difficulty abide by the provisions of the Bank Act as they may be from time to time.

Quite apart from the report of the Royal Commission, whatever changes, great or small, are made in the Bank Act in the 1965 revision or at any other time, the supporters of the Bank of Western Canada are confident of their ability to comply with the regulations and adjust their methods at least as readily as the other banks, and probably, because of smaller size, newness, and greater flexibility, to deal a good deal more readily. Thank you.

Mr. TOLMIE: Mr. Chairman, might I ask Mr. Stevens to continue with the evidence he was giving at the last meeting. I have some copies of his statement, if you wish to distribute them.

Senator CRERAR: Are we proceeding to consider this application irrespective of the recommendations of the report of the commission?

The CHAIRMAN: Earlier this morning, at the request of counsel for this proposed new bank, we agreed to hear further presentations by them, enlarging on their previous statements which they read at our last meeting, and dealing in the main with consideration of points in the report of the Royal Commission on Banking and Finance. What we decided to do was that when these statements were complete the witnesses would be subject to any examination the senators wished to make. What course of action we take after that is a matter for the committee to determine; but I would say we would have to sit down and resolve where are we going then.

Senator CRERAR: What I want to suggest is this, Mr. Chairman. Personally, I am in favour of this application; I am in favour of granting the application now, considering it, and on its merits letting the legislation go through. The suggestion has been made that all these applications for bank charters should await a revision of the Bank Act, which now will not take place until 1965. If we are not to put the cart before the horse, I think the committee should consider the question and decide whether or not we are going to proceed now or wait until after the revision of the Bank Act.

The CHAIRMAN: Sentor, I think right at the moment you are getting the cart ahead of the horse, because these witnesses have not given their presentation yet.

Senator CRERAR: No, I am not putting the cart before the horse, with due respect to you, Mr. Chairman, and I have a great deal of respect for you. I think the other matter is important. If the decision of the committee is that no charters will be reported in this committee until after a revision of the Bank Act, then this is simply an exercise in futility. If, on the other hand, we are going to consider these applications on their merits now and proceed with the legislation, irrespective of the revision of the Bank Act, then that is another matter. I am in favour of going ahead, but I do not want to spend two or three hours here listening to arguments from Mr. Coyne and these other gentlemen that this charter should be granted, and then find at the end we shall reach a decision that we will not consider any applications until after the revision of the Bank Act.

The CHAIRMAN: The committee has not made any decision on that point yet.

Senator CRERAR: I know, Mr. Chairman; but I submit to you, with all deference, is that not a point we should decide first?

The CHAIRMAN: In effect, you are suggesting that this committee dispense with further hearings, dismiss the witnesses, and go into a session to determine what policy is going to follow. Is that your suggestion?

Senator CRERAR: No. My suggestion is this, that supposing we hear the arguments, effective arguments for securing their charter, we should first of all go ahead on the assumption that at the end of the hearing we will not reach a decision and throw the whole matter aside for another year.

The CHAIRMAN: I do not think that would be the right way of proceeding. These witnesses have presented a bill to the Senate. It has got to the stage of committee, and they are entitled to a hearing, and afterwards it is up to us to make a decision.

Senator CRERAR: There is no question but that they are entitled to be heard; but it is an exercise in futility if we hear them, when we have already not decided the question of whether or not we grant the application.

The CHAIRMAN: I don't know that we have.

Senator LEONARD: Perhaps Senator Crerar might feel that he was better able to consider the larger question that he raises as and when we have had the evidence and we have heard some of the debate among the senators, and then proceed.

Senator CRERAR: I repeat that we are putting the cart before the horse. There is no sense spending hours hearing the applications and taking up the time of these gentlemen if, at the end, we are going to reach a decision that we will not grant these charters.

Senator LEONARD: I hope not.

Sinclair M. McKight Stevens: Mr. Chairman and honourable senators, I wish to thank you again for giving Mr. Coyne and myself this opportunity to reappear before you, so that we may endeavour to answer any questions that may be put to us with respect to our application for an Act of Parliament to incorporate the Bank of Western Canada.

As we indicated in our earlier appearance before you, our position is clear. The incorporation and organization of banks is dealt with in section 8 to 18 inclusive of the Bank Act. In applying for an act to incorporate our proposed bank, we have followed the procedure laid down in the act, and to the best of our knowledge there is no requirement which should have been met at this date which has not been met. In fact, the minimum amount of capital set out in the Bank Act which should be subscribed upon incorporation is $1 million, upon which $500,000 has been paid. In our case, almost $13 million has been raised and is now held in trust, to be used in subscribing for capital stock in the proposed bank should a charter be granted.

In this connection we have been asked as to why we have raised such funds in trust, and it may be helpful if I clarify our thinking. First, at the time of the Mercantile Bank of Canada incorporation hearing before this committee, one point that disturbed presidents of existing Canadian chartered banks who appeared before this committee, was the feeling that the proposed capital of the Mercantile Bank of Canada, some $1,500,000 was inadequate. For

example, Mr. Muir, then President of the Royal Bank of Canada, is quoted in the *Globe and Mail* of February 5, 1953 as saying:

> ...it would disturb the Canadian banking system if another were to come in with the proposition of starting branch banking with $1 million capital.

I understand he went on to say:

> You could not start a bank in Canada today with ten times a million dollars capital.

Again, Mr. H. L. Enman, then President of the Bank of Nova Scotia stated:

> It seemed wrong that a charter should be given "under horse and buggy rules" so that a bank with a capital of $1 million was allowed to buy into a system with resources of $10 billion.

Mr. Enman also questioned the wisdom of giving a charter to a bank the capital of which was held in a foreign country, and he was supported in this view by others appearing before this committee.

With this background, it was natural for us to feel that we must not only be willing to indicate our intention to raise substantial capital for the proposed bank, but also we should demonstrate that the money was available and that it could be raised in Canada from Canadians.

We were supported in this view by the Honourable Walter L. Gordon, Minister of Finance, who stated in the House of Commons on February 28, 1964, in reply to a question, that the Government was not opposed to further competition in the banking field, providing that any new bank is adequately financed and is supported by financially responsible people, and that provision is made for retaining control in Canada.

In that connection, I understand Mr. Gordon reiterated that statement recently in a speech in Vancouver.

There is precedent for the raising of funds on a trusteed basis prior to the incorporation of an institution such as a bank. In Ontario, it has become customary to raise funds prior to the incorporation of loan or trust cmpanies under the provisions of The Loan and Trust Corporations Act (Ontario). It is understood that those administering loan and trust corporations in the province of Ontario are unwilling to incorporate a new loan or trust company until funds have been raised, deposited with a trustee and the names of the proposed shareholders revealed.

Before such funds are raised, pre-incorporation offering circulars are filed under The Securities Act (Ontario) and it is generally felt that officials administering that act have indicated an unwillingness to accept a pre-incorporation offering circular if the certificates to be issued thereunder are non-transferable. They contend that a non-transferable certificate would result in individuals being locked-in to a trusteed arrangement for an indeterminate time while the charter application is pending.

In the past five years several loan and trust companies have been incorporated where pre-incorporation offerings were made and funds raised to be held in trust pending the chartering and licensing of the proposed institution. Such an arrangement existed or is pending, for example, with respect to The Metropolitan Trust Company, York Trust and Savings Corporation, District Trust Company, Kent Trust and Savings Corporation, Lincoln Trust and Savings Corporation and Hamilton Trust and Savings Corporation.

We proceeded therefore to have funds raised on a trusteed basis, to be held pending the granting of a charter for the incorporation of the Bank of Western Canada. We are pleased to tell you today that there are now some 6,000 Canadian residents holding trustee subscription certificates having a face

value of $6,450,000. A schedule is available showing the distribution of these 6,000 certificates as to province and size of holding.

Gentlemen, I have the schedules with me, but I do not know how many copies we have. I would like to mention, though, the distribution is broken down as follows:

Province of Manitoba	2,060 holders
Province of Saskatchewan	564 holders
Province of Alberta	1,261 holders
Province of British Columbia	1,981 holders
Province of Ontario	233 holders

That makes a total of 6,099 holders of these certificates. The distribution as to size of holding is heavily of the one to 100 share size. Again, as I say, these schedules are available if you would like to look at them in more detail.

Senator McCUTCHEON: Mr. Chairman, might I just ask a question at this point for clarification?

The CHAIRMAN: Yes.

Senator McCUTCHEON: You refer to certificates having a face value of $6,450,000. I take it those are certificates concerning which each $15 represents potentially one share in that bank?

Mr. STEVENS: That is correct.

Senator McCUTCHEON: So it represents some 400,000-odd shares?

Mr. STEVENS: Yes.

Senator BROOKS: Are these certificates changing hands at the present time?

Mr. STEVENS: Yes, they are transferable, and, as I mentioned in the earlier section, the transferability was almost insisted upon by the people administering the Securities Act in Ontario, in that they said they did not want a situation involving non-transferability, where people could not get their money out.

Senator McCUTCHEON: You did not have to go under the Ontario Securities Act if this is a western bank and you are looking for western shareholders.

Mr. STEVENS: I am not sure of the legal ramifications of that.

The CHAIRMAN: You went under the Ontario Securities Act with 233 holders in Ontario, and all the rest are from the four western provinces.

Mr. STEVENS: We are getting into a legal question.

Senator McCUTCHEON: There is no one better qualified than you to tackle such a question either.

Mr. STEVENS: Thank you. Apparently, the four western provinces wait until the Ontario Securities Commission clears issues. When they have been cleared in Ontario they are subsequently cleared through the four western provinces.

The CHAIRMAN: That is the practice if you are going to clear in Ontario, but if you do not—and you do not have to, because you are not seeking it from Ontario—then you have to make your way with the other commissions.

Mr. STEVENS: With ourselves being resident in Ontario, and talking to the solicitors, we thought it advisable.

Senator McCUTCHEON: What are these certificates trading at?

Mr. STEVENS: I think it is in the $16-range.

Senator BOUFFARD: Was the offer made all over Canada?

Mr. STEVENS: No, it was cleared in the province of Ontario and the four western provinces.

Senator BOUFFARD: Why not in Quebec and the Maritimes?

Mr. STEVENS: Largely because of Senator McCutcheon's point—it was essentially sold in the west because the total number of shareholders is 6,099, and of that number only 233 are not resident in the western provinces.

Senator MOLSON: Could we have an idea of what the face value of this distribution of certificates is?

The CHAIRMAN: Do you mean, among the provinces?

Senator MOLSON: Yes.

The CHAIRMAN: Yes.

Mr. STEVENS: This is shown here in units of $15. The number of units in Manitoba would be 158,580.

The CHAIRMAN: And multiply that by 15 to get dollars?

Mr. STEVENS: That is correct. In Saskatchewan, 28,050; in Alberta, 74,790; in British Columbia, 94,865; and in Ontario, 73,715.

The main holding in Ontario was the Empire Life holding, which I referred to at our earlier meeting. The Empire Life group has taken a block of stock, and that is the main holding that is shown as coming out of Ontario.

Another point I would stress in connection with the subscription certificates is that in the event a charter is not granted, the funds, together with such interest as is available less the cost of distribution, will be returned to the subscribers without any qualification. The prospectus that has been filed makes this very clear in several places. The trustee is the Canada Permanent Trust, who are acting mainly through their Winnipeg office in handling this.

If I may proceed, then: It is interesting to note that should our bank be incorporated and these 6,000 holders become shareholders in the Bank of Western Canada, we will be able to commence business with more shareholders than either of the Banque Canadienne Nationale or the Provincial Bank of Canada have now, and almost 50 per cent of the shareholders in the Bank of Nova Scotia.

In addition, and as outlined to you in our previous statement, The Wellington Financial Corporation, Limited sold trustee subscription certificates for an aggregate amount of $3,750,000. These certificates are held by over 2,000 holders.

Partly in answer to your question, Mr. Senator, these holders are resident in every province of Canada, from Newfoundland through to British Columbia.

Canadian Finance and Investments Ltd., a Winnipeg investment company having over 2,600 shoreholders, has reserved $2,250,000 of its capital funds for investment in the proposed bank. York Trust and Savings Corporation has indicated its intention to subscribe for $495,000-worth of bank stock, and this will result in York Trust's some one thousand shareholders having an indirect interest in the bank.

In total, should the bank be incorporated, over 10,000 Canadians will hold directly or indirectly, shares in the proposed bank. We feel this is a dramatic example of Canadians being willing to invest in Canadian institutions if given such an opportunity and negates trite comments that Canadians are unwilling to invest at home or in new ventures.

As Mr. Coyne has mentioned in his remarks, the report of the Royal Commission on Banking and Finance favours a more open and competitive banking system and nowhere gives any indication that further banks should not be chartered under the existing provisions of the Bank Act. Indeed, they have made many references to possible undue concentration in the banking and financial system and have made recommendations as to how this undue concentration may be prevented. In making such recommendations, however, they are careful to point out that smaller concerns should be an exception in any legislation or ruling designed to disassociate banking concerns.

While some of the companies in our group are finance companies or at least have the word "finance" in their names, it is important to note that none of the present companies in our group which will invest directly or indirectly in the proposed bank, with the exception of York Trust and Savings Corporation, would be considered banking institutions as that term is defined in chapter 19 of the report. As pointed out above, York Trust will have a small interest in the bank, and if any general legislation or ruling should be passed which would require the divesting of York Trust's interest in the proposed bank, we, of course, would readily so divest York Trust's interest or any other interest which one or more of our companies may hold which was felt to be in contravention of such future legislation or rulings.

Our one hundred petitioners are anxious to proceed with the proposed incorporation. We feel we have met any statutory requirements to date, and the report of the Royal Commission on Banking and Finance indicates no objection to our application being proceeded with, and in fact, time and time again, indicates the desirability of having more competition in the Canadian banking field. We therefore sincerely hope that you will decide favourably with respect to our application.

Gentlemen, I should like to let you know that Mr. Leslie Bodie of Edmonton, who is one of the provisional directors, is with us today and while I don't think he intends to make any statement I just wish to inform you that he is here.

Senator McLEAN: Mr. Chairman—

The CHAIRMAN: Just a moment, senator, please. Gentlemen, we have reached the stage where the committee is free to proceed with its examination of these witnesses. Senator McLean, you were first.

Senator McLEAN: I would like to ask the witness whether this proposed bank starts out with any reserves besides capital stock.

Mr. STEVENS: The par value for the stock is $10 per share. We propose that they should be sold on a $15 basis and the extra $5 would go into reserve.

Senator McLEAN: I notice there was a Western Bank of Canada before which was taken over by the Merchants Bank, which in turn was apparently taken over by another stronger bank. I suppose you have no knowldege of any losses in these transactions. I think in fact the Merchants Bank was taken over by the Standard Bank of Canada and that in turn was taken over by the Canadian Bank of Commerce.

Mr. STEVENS: I am sorry, Mr. Senator, while I have read the general history of banking, I don't know about that specific situation.

Senator McLEAN: I know of a case which has come before us before where the question of names was involved. When a bank takes over another bank it does not generally acquire the name of that bank. That was the case of a bank in New Brunswick. They didn't take over the Bank of New Brunswick, it was the New Brunswick Bank.

The CHAIRMAN: Senator McLean, I don't really think there is any question about that. I do not understand that, if this bill is otherwise acceptable, there is any contest about the name.

Senator McLEAN: Past history shows that banks taking over weaker banks are opposed to any other bank taking over the name. I don't think, for example, you could start a Bank of Hochelaga today.

The CHAIRMAN: That is something we shall have to consider when considering the bill section by section. We have not had any objections to the name filed with us.

Senator McCUTCHEON: Mr. Stevens, dealing first with your supplementary statement, you referred to the "companies in our group". What are those companies that are going to be shareholders in the bank?

Mr. STEVENS: The companies in our group—there are three, The Wellington Financial Corporation, Limited, Canadian Finance & Investments Ltd., and York Trust and Savings Corporation which I have referred to in the statement here.

Senator McCUTCHEON: Is there anything said there that only the York Trust and Savings Corporation would be considered a banking institution as defined in the Porter Commission Report? Is there anything in the charters of the other two to prevent their becoming banking institutions if they choose to? Are they in a position to take banking deposits if they choose to?

Mr. STEVENS: I cannot answer you directly with regard to Canadian Finance & Investments Ltd. With respect to The Wellington Financial Corporation, Limited they would be in a position to take short term deposits if they wished. I think I can say generally that any institution in Canada with some possible exceptions can take short term deposits. There is no restriction on it, including an industrial company.

Senator McCUTCHEON: You might find a situation arising where these three companies in your group all became banking institutions within the meaning of that term as defined in the Porter Report.

Mr. STEVEN: It could happen, yes.

Senator McCUTCHEON: If the plan proceeds as outlined, how many shares of the proposed bank will the York Trust company hold?

Mr. STEVENS: York will be subscribing for $495,000 worth, and that divided by 15 would give the number of shares.

Senator McCUTCHEON: My division makes it 33,000.

Mr. STEVENS: Yes.

Senator McCUTCHEON: And Canadian Finance?

Mr. STEVENS: Two million two hundred and fifty thousand dollars.

Senator McCUTCHEON: I make that 150,000 shares. And Wellington?

Mr. STEVENS: I think that would be $3,750,000.

Senator McCUTCHEON: I make that 250,000, and that adds up to a total of 433,000 shares, or 43 per cent of the capital of the new bank held by those three companies.

Senator BEAUBIEN (*Bedford*): Would those three companies have voting rights?

Mr. STEVENS: Yes.

Senator McCUTCHEON: Would that be right?

Mr. STEVENS: Yes.

Senator McCUTCHEON: I would like to turn to those companies for a moment. You told us when you were here some weeks ago something of British International Finance (Canada) Limited, and at that time I think you said at page 37 of the evidence that British International Finance (Canada) Limited held approximately 60 per cent of the equity of Wellington. Is that correct? Is Wellington a subsidiary of British International Finance?

Mr. STEVENS: Correct.

Senator McCUTCHEON: It is a subsidiary?

Mr. STEVENS: Yes.

Senator McCUTCHEON: There is a prospectus here which would indicate that it has to be a subsidiary.

Mr. STEVENS: Yes.

Senator McCUTCHEON: And if that financing is carried through, am I correct in understanding that British International, if I may shorten the term, will then hold 48 per cent of the equity of Wellington?

Mr. STEVENS: No, I think the eventual holding that British International Finance will have immediately after the incorporation and capitalization of the Bank of Western Canada will be 36.6 per cent of Wellington.

Senator McCUTCHEON: 36.6 per cent of Wellington?

Mr. STEVENS: Yes.

Senator McCUTCHEON: I may have to come back to that, because I think it was stated in one of these that it was 48 per cent, but at least it won't be less than 36.6?

Mr. STEVENS: That's right.

Senator McCUTCHEON: And you said 40 per cent of York Trust—now in the prospectus it says 45 per cent, which is correct—British International is quoted here as 40 per cent.

Mr. STEVENS: Yes.

Senator McCUTCHEON: You said approximately.

Mr. STEVENS: Yes, I think the exact figure is 43.4 per cent.

Senator McCUTCHEON: And Canadian Finance?

Mr. STEVENS: Yes.

Senator McCUTCHEON: What interest does British International have in that?

Mr. STEVENS: Again, immediately following the capitalization of the proposed bank British International would have 21.2 per cent of the equity of that company.

Senator McCUTCHEON: 21.2 per cent?

Mr. STEVENS: There are two classes of voting stock. There is one class that has 20 votes per share, and the other has one vote per share. As a result of British International's higher preponderance of common over class A shares the voting power is 28.9 per cent, and it is 21.2 per cent of the actual equity.

Senator McCUTCHEON: I have before me a prospectus of Canadian Finance and Investments Ltd. which was issued this year. I do not think there is actually a date on it. Paragraph 29 of the statutory information reads:

> There are no persons who, by reason of any agreement in writing, are in a position to or are entitled to elect or cause to be elected a majority of the directors of the Company. British International Finance (Canada) Limited, Stevens Securities Limited and James E. Coyne, by reason of beneficial ownership of securities of the Company, could, if voting together, elect or cause to be elected a majority of the directors of the Company.

That, I take it, is a correct statement.

Mr. STEVENS: Yes.

Senator McCUTCHEON: Could British International Finance (Canada) and Stevens Securities Limited voting together elect a majority of the directors?

Mr. STEVENS: Again, in fairness to your question, the time that British International and Stevens Securities could do that, if they could do it at all, would be immediately following the complete capitalization of C.F.I. as contemplated in the prospectus, because that is when British International takes down further shares.

Senator McCUTCHEON: That is right, but at that time British International and Stevens could elect a majority, and you would not need Mr. Coyne's help?

Mr. STEVENS: I know it is very close, but whether it is actually over 51 per cent or not I do not know. I think it is in the high forties.

Senator MCCUTCHEON: Let us say it is a high 40 per cent. Stevens Securities Limited is a holding company controlled by you?

Mr. STEVENS: It is a family holding company.

Senator MCCUTCHEON: Controlled by you?

Mr. STEVENS: No, it would be controlled by my family.

Senator MCCUTCHEON: But you would have some influence, I take it?

Mr. STEVENS: I hope so.

Senator MCCUTCHEON: All right. We have a picture of where British International Finance (Canada) Limited stands with respect to these companies. I want you to come to British International Finance (Canada) Limited. I am looking at the pro-forma balance sheet, and the actual consolidated balance sheet as at March 31, 1963. There is no difference in the shareholdings as between those two dates. It shows that there are 268,013 Class A shares issued and 64,236 common shares, the value attributed to the common shares being $194,564. What is the difference between those two classes of shares?

Mr. STEVENS: Solely voting, and the Class A are participating. They get an initial 20 cents per share dividend, and then when the common get an equal dividend they are equally participating. I say "solely voting" in the sense that the common have ten votes per share and the Class A one vote per share.

Senator MCCUTCHEON: So the company is controlled by the holders of 64,236 common shares?

Mr. STEVENS: That is right.

Senator BEAUBIEN (*Bedford*): Who owns those?

Mr. STEVENS: Those shares, directly or indirectly—I mean by that not in my own personal name, but indirectly they are controlled by me, and certainly myself and one or two other directors of British International would have the bulk of them.

Senator MCCUTCHEON: Is it not a fact that directly or indirectly through your family holding company or otherwise you and Mr. W. E. N. Bell control British International Finance (Canada) Limited?

Mr. STEVENS: I would say that that is true. I would like to emphasize the indirect nature of that, though. For example, I would have a 49 per cent interest in one company in which there would be, say, three other shareholders. I do not think in fairness I can say I control that company, but on the other hand if you group that company with the other companies your statement would be right.

Senator MCCUTCHEON: Forty-nine per cent is usually regarded as working control unless another person holds 51 per cent. I have had quite a bit of experience in this type of business.

Senator BEAUBIEN (*Bedford*): How many shares do you hold of the 64,000-odd in British International Finance?

Mr. STEVENS: I would say it is in the high 20,000 to 30,000 range. I would say 28,000 to 30,000.

Senator MCCUTCHEON: I just want to ask you one further question. You and Mr. Bell, and, let us say, this mythical third person you mentioned, might be interested—

Mr. TOLMIE: Why mythical?

Senator MCCUTCHEON: He has not named him. If you want to raise the point I will say Mr. Stevens told me in my office that he and Mr. Bell control

this company, and no other person was named. I will withdraw the word "mythical".

Mr. STEVENS: To save any misunderstanding there—I am trying to be correct in my statement—I will say that the next largest holder would be William J. Mollard. He appears in the prospectus. I am trying to be correct as to whether myself plus Bell plus Mollard control—those three certainly control.

Senator McCUTCHEON: Then I think the answer to my question follows from that, that you and Mr. Mollard and Mr. Bell are in a position to sell the control of British International Finance (Canada) Limited to any person you choose.

Mr. STEVENS: Yes.

Senator McCUTCHEON: Your answer is "yes"?

Mr. STEVENS: Yes.

Senator McCUTCHEON: In selling that control you would thereby transfer effective control of Wellington, effective control of York, and possibly effective control of C.F.I.

Mr. STEVENS: I think if you use the word "effective" it is generally true, yes.

Senator McCUTCHEON: And in doing that you would dispose of the effective control of 433,000 shares of the new bank?

Mr. STEVENS: Yes, if you follow your line of reasoning.

Senator McCUTCHEON: Yes, we are following it, and the answer is Yes or No.

Mr. STEVENS: Yes.

Senator McCUTCHEON: Would you consider that 43.3 per cent of the shares of a bank held by one group would constitute effective control of the bank?

Mr. STEVENS: Yes.

Senator McCUTCHEON: So that despite the provisions in your charter that prohibit foreign holdings you could convey effective control of the new bank to any foreign group you wanted to very readily?

Mr. STEVENS: Except that we will not, and we will give any agreement or assurance to that effect that is required. Any company holdings that we have set up have been deliberately set up by us to be able to show that there is control in firm hands. We will give any assurance that is required that that control will not go out of the country.

Senator McCUTCHEON: I suggest that you could only give that assurance with regard to yourself, and that having sold, as some people do sell, this assurance cannot pass on down the line.

Senator LEONARD: It could be put in the statute, if necessary. If there is any question then put it in the statute.

Senator McCUTCHEON: What would be put in the statute?

Senator LEONARD: Carry your line of ownership right on down through to make sure the same provisions that are in the bill would apply to these holdings.

Senator BEAUBIEN (*Bedford*): You cannot put in the statute a stop on the selling of shares of British International Investments.

Senator LEONARD: You could provide effectively that the control shall not directly or indirectly go outside of Canada, if that is what is worrying you.

Senator BEAUBIEN (*Bedford*): It would not be the shares of the bank that would be going out. It would be the shares of British International Finance that would be going out.

Senator LEONARD: Yes, and that would have the effect of changing the effective control of the bank.

The CHAIRMAN: Have you finished, Senator McCutcheon?

Senator MCCUTCHEON: Mr. Stevens has indicated, I think, his willingness to give certain assurances, but as the matter stands now he and Mr. Mollard and Mr. Bell could convey effective control of the new bank to any group they wanted to anywhere. Then, it follows that if the new bank is incorporated and the subcriptions that Canadian Finance and Investments Ltd. and the other companies in the group have indicated they are going to make are taken up, then effective control of the new bank will be in the hands of yourself and Mr. Bell and Mr. Mollard?

Mr. STEVENS: That is correct.

Senator MCCUTCHEON: I have nothing further at the moment, Mr. Chairman.

The CHAIRMAN: Are there any further questions?

Senator BOUFFARD: Mr. Stevens, even if there is a provision in the bill to stop the selling of that stock to anybody you wish, is it not true that effective control will be in the hands of companies which are either international finance companies or—

Senator MCCUTCHEON: I think Mr. Stevens has said "Yes" to that, Senator.

Mr. STEVENS: May I clarify it? I hope I have made the point clear that the distinction or the definition that I am referring to in the report of the Royal Commission is simply that they arbitrarily suggest that banking and finance be defined in accordance with the liabilities of a company, and if a company determines to go into short term money obligations they say arbitrarily that we must consider it a banking institution. I say with respect to that line of thinking that likewise arbitrarily you could say about our companies, because there are no restrictions with respect to going into short term money obligations, certainly so far as Wellington is concerned, that we might be considered a banking institution in that we, corporate wise, could issue short term obligations but so could any other corporation. It is all hypothetical. At present we have no short term obligations and we are not a banking institution as that is defined in the Royal Commission Report.

Senator BOUFFARD: You would be so considered?

Mr. STEVENS: In the same sense that virtually any company in existence in Canada could be considered as a bank institution.

Senator THORVALDSON: On page 5 of this statement, Mr. Stevens says that the Wellington Financial Corporation Limited sold trustee subscription certificates for an aggregate amount of $3,750,000. Does that mean that the Wellington Financial Corporation is not a beneficial owner or an owner?

Mr. STEVENS: At the present time technically they are not the owner. The funds are in trust and if a charter is granted, Wellington in effect subscribes for stock in the bank and then, as they have got the stock, those funds are moved from the trustee to Wellington; but it is a condition of the trust arrangement that the funds will not be given to Wellington, nor shares issued by Wellington, until Wellington can show that it has 250,000 shares in the bank.

The CHAIRMAN: There is a question arising out of that, and I should like to interject it. I understand that the offering was made of trustee subscription certificates by Wellington and there were certain provisions that if the bank charter was not granted the money would be returned, under certain conditions. If the bank charter was granted and Wellington subscribed for the shares, as Mr. Stevens said, and the shares were given to Wellington, do I also understand that it was printed in the prospectus that they would get the original shares of Wellington and not bank shares?

Mr. STEVENS: That is correct.

Senator THORVALDSON: There is a statement here following that, that these certificates are held by over 2,000 holders. What is meant by that?

Mr. STEVENS: In other words, just as the bank trustee certificates have been distributed to some 6,000 people, there are 2,000 people who hold the Wellington trustee certificates and they in turn will become shareholders of Wellington if the bank charter goes through.

Senator MCCUTCHEON: Wellington has an issue of notes. They are all secured by approved collateral, not less than 120 per cent...

I take it that these bank shares will certainly be subject to the floating charge and might be subject to the specific charge, if you chose to use that last collateral.

Mr. STEVENS: No, the trust deed has been amended and they may not be used—or at least there is no provision for them being used as a specific charge. The floating charge, if the shares become an asset of Wellington, would be covered by the floating charge you are referring to; but the trust indenture does not prohibit the shares to be pledged.

Senator MCCUTCHEON: It does not prohibit?

Mr. STEVENS: It does not allow.

Senator MCCUTCHEON: They are specifically exempted from this specific charge?

Mr. STEVENS: It is the reverse. There is no provision to allow them to be pledged. In other words, the pledgeable securities do not include stocks such as bank stocks.

Senator THORVALDSON: You say here that Canadian Finance and Investments Limited, a Winnipeg investment company having over 2,600 shareholders, has reserved. Would you give roughly the geographical distribution of those 2,600 shareholders? Are they Manitoba people, western Canadian or where are those shareholders? Where do they reside mainly?

Mr. STEVENS: The transfer agent of that company was unable, because of time, to give the actual distribution. I do have the shareholders list with me, which I will be pleased to show you. My rough guess would be that 80 per cent or 90 per cent are in the four western provinces. It is virtually an all-western Canadian finance institution. I can show you the list, but that is the general distribution.

Senator THORVALDSON: I just wanted that general indication.

Senator MCCUTCHEON: A great deal has been made of the fact that this is a bank of western Canada for the benefit of the people of western Canada, so that people residing in western Canada can become shareholders. We have established that effective control is in the hands of yourself, Mr. Bell and Mr. Mollard. You and Mr. Bell and Mr. Mollard all live in Toronto?

Mr. STEVENS: Yes.

Senator MCCUTCHEON: You are just masquerading as westerners?

Mr. STEVENS: I do not think that is fair, Mr. Senator. I do not think that we have ever pretended that we were westerners and certainly would have no reason to do so. As I mentioned in an earlier statement, the west seemed to be a very logical place to start a bank, as opposed to starting on Bay Street in Toronto.

Senator BROOKS: It has been suggested—I do not know whether by the promoters of this bank or not—that they are going to fill a certain vacancy in the needs for banking in this country that other banks are not now supplying. Is that a fact? Would you interpret it in that way?

Mr. STEVENS: I think the quickest answer and certainly the easiest answer to give you is the Royal Commission report. They dealt beautifully with this question and I think very ably pointed out time and time again that there should be, and they hoped that there will be, much more competition, to use their phrase "in the Canadian banking scene". They spent two and a half years studying the question and I think their final recommendations and conclusions on the Canadian banking scene speak far more loudly than any feeling I might have.

Senator BROOKS: What need do they suggest in their report? I must say I have not read it.

Mr. STEVENS: Their feeling is not so much on the question of need as the fact that there is no reason not to open up and have a more free flowing banking system in Canada. Again, I say, to use their words "a more competitive system".

The CHAIRMAN: Wasn't that why they suggested that finance companies and trust companies taking deposits should be put on the same level as banks, so that competition for deposits might be more competitive?

Mr. STEVENS: At least two paragraphs refer to the incorporation of new banks or alternatively, as the chairman has said, the possibility of licensing institutions which they define as banking institutions.

Senator BURCHILL: I understood Mr. Stevens to say that these three loan companies in Toronto—York, Wellington, and Canadian Finance—under the recommendations of the Royal Commission, if adopted, might become banks. Is that correct?

Senator MCCUTCHEON: Banking institutions.

Senator BURCHILL: As I understand the recommendation, if an institution accepts a cash deposit, it must make application to become a bank. Is that right?

Mr. STEVENS: That is right.

Senator BURCHILL: Then these institutions you speak of, will they accept deposits?

Mr. STEVEN: No. I am pleased you asked this, because I would like to clarify this point. My original statement was that the only institution in our group which does accept deposits and takes short term liabilities, in the sense referred to in the Royal Commission report, and which would require us to register or licence as a bank institution, is the York Trust and Savings Corporation. Other institutions do not meet that definition under the Porter Report, and there would be no need to register as a bank institution.

In answer to Senator McCutcheon, I said theoretically that virtually any company can take a short term obligation and if they did so and wish to carry on in that business, and if the Porter Report were implemented, it would mean they would have to register as a banking institution.

Senator BURCHILL: In the case of York Trust, it would have to make a decision.

Mr. STEVENS: Or become licensed as a banking institution, that is right.

Senator BOUFFARD: What about the other institutions that are carrying on as banks?

Mr. COYNE: That is on the question of the Porter Commission, which I was dealing with a few minutes ago, senator, and perhaps I should deal with that now. The Porter Commission report says that those institutions which in fact carry on like banks should come under the Bank Act; but there are thousands of corporations throughout Canada which theoretically have the power to take deposits. There are thousands of shareholders in corporations, owning shares in the Royal Bank, and the Bank of Nova Scotia, and so on, which could theoreti-

cally, and in accordance with the very hypothetical speculative suggestions mentioned by Senator McCutcheon, become deposit-taking institutions, but they actually have no intention whatever of going into the short term deposit business. There is certainly no intention whatsoever on the part of Canadian Finance and Investments Company in Winnipeg, nor as far as I know, of the Wellington Corporation in Toronto, to go into the short term deposit business.

The CHAIRMAN: You must realize, Mr. Coyne, that we cannot discuss this as a matter of intention. We accept it as a fact that you are making an application here to make money, or you would not be here. When we are asked to grant a charter, there are certain factual situations we must deal with, and we cannot accept as fact intentions which may only be speculative.

Mr. COYNE: Of course, the Inspector General of banks retains control over this. The Porter Commission report suggests that he in fact should have power to inquire into any stock holdings in any of the chartered banks, and all past mergers, indeed, in the public interest. For my part, I would not have any fear that in the case of the Bank of Western Canada there would be any greater danger to the public interest than with other banks as they exist today, in fact.

Senator MCCUTCHEON: I was merely trying to get facts, not an argument.

Senator THORVALDSON: Three names have been mentioned frequently this morning, but the name of Mr. Mollard has come up frequently. Who is he, where does he live, and what is his background?

Mr. STEVENS: Mr. William J. Mollard is one of the 11 directors of British International Finance (Canada) Limited; he lives in Toronto, is the son of William A. Mollard, an architect in Toronto, and is engaged in the construction business as a builder of industrial buildings.

There is another point I would like to mention in connection with the point raised by Senator McCutcheon. This is an inter-company question. As I mentioned in my statement earlier, if there should ever be any legislation or ruling requiring a divesting in any of our companies, we will divest. For example, if for some reason Wellington Corporation has to sell their proposed holdings in the bank, we will do so.

Senator BEAUBIEN (*Bedford*): In view of the fact that the British International Finance Company will have strong voting power, would it be in order to ask Mr. Stevens to give us a list of shareholders and a financial statement as of April 30, 1964? That company will virtually control the bank, as far as I can see and, if so, we should have more information on it.

Mr. STEVENS: Is there any significance in the date of April 30? I could give you one of March 31, 1964.

Senator BEAUBIEN (*Bedford*): That would be satisfactory.

Mr. STEVENS: I can give you a list of shareholders today, and a statement as of March 31, 1964. I can give the list of shareholders both with respect to common shares and class "A".

Senator MCCUTCHEON: Perhaps it could be incorporated in the record.

The CHAIRMAN: Yes, as an appendix. The statement you are talking about is a financial statement?

Mr. STEVENS: Yes.

The CHAIRMAN: And it would show authorized and issued shares?

See appendix "A" to today's proceedings.

Senator BOUFFARD: For the purpose of clarity, I should like to ask a question. This is a western bank. Eventually, it may be that you will want to do

business in Quebec and the Maritimes. Why, therefore, have you not made the same offer to Quebec and the Maritimes as you have to Ontario and the west? It is a Canadian bank, as is any other bank.

Mr. STEVENS: There was no precise reason why it was not offered, other than the fact that we felt it would be beneficial to the future of the bank to have the bulk of the shareholders in the west, and this has certainly taken place, either directly or indirectly, in the sense of buying shares of the C.F.I. so that 60 per cent of the bank is held in the four western provinces. Our reason for this is that if the bank proposes to do business initially in those provinces, we find as in York Trust, that having shareholders is beneficial in the general conduct of your operation and likewise having shareholders for the bank where it proposes to do business, will be beneficial in getting under way and into business. There was no reason other than that for not offering right across Canada, other than the fact that the demand for the certificates was very much more than we anticipated. I suppose the demand from the west was possibly twice what was actually sold. People were cut back who wanted to buy them, so to spread it across Canada would have made the problem even worse.

Senator BOUFFARD: Just the same, you wanted to do business in the west and in Ontario.

Mr. STEVENS: Well, as I mentioned, there were some technical reasons that the legal fraternity felt that we should clear in the west, because, some stock, including my own personally, and stock of petitioners in Ontario, could not be sold in Ontario unless there was a clearance there. At least the legal fraternity felt it would be unwise to do it without a securities commission clearance.

Senator BROOKS: Could it be that you would not consider competition necessary in Quebec and the Maritime provinces?

Mr. STEVENS: Perhaps you are right.

The CHAIRMAN: Do you mean, senator, that the areas needed to provide competition were in the west and Ontario?

Senator MCCUTCHEON: Could you tell us, Mr. Stevens, what executive position you anticipate holding in the new bank, and what executive position Mr. Coyne will be holding, and whether it will be full time or part time?

Mr. STEVENS: First of all, with respect to myself, I would hope to be a director of the bank. I would not be a whole time official of the bank, although I may hold some office, such as vice-president, or something of that nature, but I do not intend to be a whole time operating person. It would be our intention to hire—and we have received inquiries from many possible employees—full time bankers to run the bank.

Senator MCCUTCHEON: What about Mr. Coyne and his position?

Mr. STEVENS: Perhaps I should ask Mr. Coyne to speak for himself.

Mr. COYNE: I do not know. Perhaps it would come better from Mr. Stevens.

The CHAIRMAN: Or the board of directors.

Mr. COYNE: Very much so, Mr. Chairman. The board of directors are the people who have to make that decision.

Senator MCCUTCHEON: I always thought people who hold 43 per cent of the stock generally control the board of directors.

Mr. COYNE: A number of people suggested to me that they wished me to become associated with the bank as president, part-time if not full-time. I said if that was the desire I would do so. I think far too strong a case has been built up under a large number of "ifs" about this bank being controlled in

Toronto or by Mr. Stevens. I do not agree it is. I do agree it has been a very good thing in developing the project of the bank to have a strong financial institution and capable and reliable people like Mr. Stevens and his associates to put in a lot of money to back the bank. But it is not always true that a person who in one way or another, under certain circumstances can control 30 per cent does in fact control the bank. There is still the other 70 per cent to be heard from. I will have a holding myself, and a great many people, I am happy to say, have told me that they will follow such lead as I will give in that connection, and I will be very surprised indeed if any unfriendly parties by any means could acquire a sufficient interest in this bank to overcome the type of management I intend to see established in this bank, or exercise control over it.

Senator McCUTCHEON: The figures are 43/57 and not 30/70.

Mr. Chairman, I do not want to get into an argument here. I take it from Mr. Coyne's answer that he does not propose to be a full-time officer of the bank, though he would be prepared to be an officer of the bank.

Mr. COYNE: Yes. I have said I would give it whatever time it required, but not full-time. Of course, in the early stages it would mean a great deal of time.

Senator MOLSON: I would like to ask Mr. Stevens what the shareholders' equity in British International Finance is—the capital surplus, reserves, and so on.

Mr. STEVENS: I will see if I have the statement. The March 31, 1964 statement I was referring to shows the company having $2,026,000 of capital and retained earnings of $106,000. What is not reflected is approximately $1 million more of net value in the form of unrealized market appreciation. In other words, the net worth of the company is, approximately, something over $3 million.

Senator McCUTCHEON: What is the book value of the controlling shares, of the 64,000 shares?

Mr. STEVENS: $194,564.

The CHAIRMAN: We were given that figure $194,564.

Mr. STEVENS: I might mention there, Senator Molson, the combined net worth of the British International group, to which I have referred—at the present time is something over $10 million, and our gross assets are about $35 million. Of course, if the bank goes through, both those figures are increased by roughly $10 million.

Senator MOLSON: I am very impressed by your testimony here, and particularly by your frankness. You have approximately half the equity in the British International Finance.

Senator McCUTCHEON: Half the voting shares. The equity is distributed among a much larger number of shares.

Senator MOLSON: Well, that is true. In any case, it is a relatively small investment, if I may put it that way. I was wondering, does it worry you at all that this, in effect, carries with it, control of this new bank?

Senator BEAUBIEN (*Bedford*): "Worry" him?

Senator MOLSON: It sounds very much as though an investment of perhaps $100,000 or $50,000 is, in effect, going to give you voting control of 43 per cent, I think it is, or of that order. I am just wondering whether that does not strike you as a rather heavy responsibility, or whether it concerns you at all?

Mr. STEVENS: I think what we have tended to do is to concentrate on two or three elements. We are taking one picture at one time and another picture at another. Certainly, my net holdings are probably ten times the figures you

are referring to, because I hold individual holdings in all these other companies, in addition to the holding Senator McCutcheon has been referring to.

Senator MOLSON: I am worrying about "control". This is the one thing, really, in the whole presentation that occurred to me, and it seems to me it is a very heavy responsibility.

Mr. STEVENS: It is a responsibility, and it is one that I do not know that I could say worries me. I think it is a responsibility we can carry well, and that it will not create any problems.

The CHAIRMAN: It is a fortunate man who can say that in business, Mr. Stevens—that there will not be any problems.

Have you any more questions, Senator Molson?

Senator MOLSON: No.

The CHAIRMAN: Could I ask you a question, Mr. Stevens? Could you tell me how many individual shareholders there would be of this bank, as opposed to corporate shareholders? Let us assume the bank's charter were issued today.

Mr. STEVENS: There would be 6,000.

The CHAIRMAN: Six thousand?

Mr. STEVENS: Six thousand individual holders.

Senator MCCUTCHEON: Those are the persons who have subscribed for the trustee certificates?

The CHAIRMAN: No. Let me develop my point. You have told us that Wellington will be subscribing for $3,750,000-worth of stock?

Mr. STEVENS: Yes.

The CHAIRMAN: That would produce 250,000 shares of the bank?

Mr. STEVENS: Yes.

The CHAIRMAN: As I understand it, they will be held by Wellington?

Mr. STEVENS: Yes.

The CHAIRMAN: And the money used to subscribe for them is money which has been subscribed by the public in the purchase of trustee subscription certificates of Wellington?

Mr. STEVENS: Yes.

The CHAIRMAN: Wellington is not providing the money itself but has secured it by subscription, but Wellington will be the shareholder to the extent of 250,000 shares?

Mr. STEVENS: Yes.

The CHAIRMAN: And whoever controls Wellington is going to be the one who determines the voting of those shares?

Mr. STEVENS: Yes.

The CHAIRMAN: Canadian Finance is subscribing for $2,250,000, and it is getting 150,000 shares?

Mr. STEVENS: Yes.

The CHAIRMAN: I take it Canadian Finance has got that money as a result of the sale of subscription certificates of Canadian Finance?

Mr. STEVENS: No, that money is as a result of shares issued. There is no trustee arrangement with regard to that.

The CHAIRMAN: It is that pre-incorporation issue?

Mr. STEVENS: No, it is the non-restricted capital issue. The prospectus that Senator McCutcheon has there is with respect to shares in connection with Canadian Finance and Investments?

Senator McCUTCHEON: You sold shares in Canadian Finance and Investments, and you said if the bank is incorporated you propose to subscribe for so many shares?

Mr. STEVENS: Yes.

The CHAIRMAN: In selling shares in Canadian Finance the purpose that was represented was that this money would be used, if a bank charter were granted, to subscribe for shares of the bank?

Senator McCUTCHEON: Or, if not, then for general corporate purposes, I think is the way the prospectus reads.

Mr. STEVENS: Yes.

The CHAIRMAN: For the purposes of the record, you gave us some figures on holders in various provinces, and you gave a total of 6,099, and the reporter, Mr. Griffith, who is a better mathematician than I am, came up with a figure of 6,039. When I add it up that is what I get.

Mr. STEVENS: I think we have added apples and oranges, each.

The CHAIRMAN: And bananas too.

Mr. STEVENS: The individual holders in the bank number 6,099. That is in accordance with this schedule I have referred to, and it gives you the provincial breakdown.

The CHAIRMAN: The provincial breakdown, as I recorded it and as the reporter recorded it, totals 6,099.

Mr. STEVENS: If I may clarify this, the total amount of trustees subscriptions that have been sold—I am referring to the subscriptions which will eventually end up as shares in the bank—represent 430,000 of those bank shares. And they are held by 6,099 shareholders. Those shareholders would include the institutions that we have referred to such as Great-West Life, Empire Life and Sovereign and people like that. But assuming that there would not be more than 99 of those, I am saying there are 6,000 individual holders, and in addition to that there are 2,000 holders of Wellington trustee certificates. That is in addition to the 6,000. In addition to those again there are 2,600 C.F.I. shareholders.

Senator BEAUBIEN (*Bedford*): They won't have any vote in the bank?

Mr. STEVENS: I am trying to clarify the point. While I say there are 6,000 individual holders, directly or indirectly there would be 10,000 who would have some interest in the bank.

Senator THORVALDSON: Have Canadian Finance & Investments any other assets other than these investments sold in connection with the bank?

Mr. STEVENS: Yes, it has mortgages which are all in Metropolitan Winnipeg. It has been carrying on a mortgage business there, managed by Crabb and Company in the area, Rex Nesbitts' company.

Senator THORVALDSON: You referred to the Great-West Life Assurance Company and some of the other large companies, would they come in directly holding certificates or because they are holding shares in Canadian Finance & Investments?

Mr. STEVENS: They come in directly. They will be bank shareholders. I think in our earlier statement we actually gave a whole list of names of those who were supposed to buy shares in the bank.

Senator McCUTCHEON: They are not the persons who subscribed for the 230,000 trustee certificates which were not offered in the prospectus?

Mr. STEVENS: Well, they were covered by a prospectus.

Senator McCUTCHEON: But not offered to the general public?

Mr. STEVENS: Yes.

Senator MCCUTCHEON: Their combined holding is 230,000 shares?

Mr. STEVENS: The combined holding of institutions and petitioners in that regard would be 230,000.

The CHAIRMAN: Any other questions of Mr. Stevens?

Mr. COYNE: I wonder if I could say something in respect to the point raised by Senator Molson. This is something I gave a lot of thought to in the planning of this project. Senator Molson asked whether a high degree of stock ownership would be closely held. Well, opinions differ on this, but I think it is 30 per cent. I would like to say there was an alternative to which we gave some thought and that would be to have the stock in the proposed bank, or in the bank itself after incorporation, sold entirely to the general public in relatively small amounts, if that were possible. It was a very big question whether you could raise enough capital that way. We had to work this step by step as the project developed, but there was also the danger that if all the stock in a new institution were widely scattered, some other large and powerful group could come along and sweep up that stock in the market and it probably would not be a very hard thing to do. Somebody who wished to take control of such an institution might well pay a profit of 50 per cent to small shareholders and buy them out. I thought that was a greater danger, and a more unknown danger than anything else. I thought that there was real value to our bank, to our community and to the interests of Canada in making sure that a sufficient volume of stock was closely held in strong hands of people experienced in the financial world, who had made a success of their own businesses, and who were strongly pro-Canadian.

There is also the question of foreign control which will come up everywhere and in all fields. It is still possible today for large foreign interests, if they were determined enough, to acquire control of one of the existing Canadian banks by purchasing stock on the market. I think this is a danger which the Government and the Royal Commission pointed to, and I personally hope something will be done about it by general legislation. But in my opinion, for what it is worth, we in this project took the best possible line to ensure control would not get into the hands of other large financial institutions or into the hands of foreigners.

The CHAIRMAN: Senator McCutcheon, you wanted to raise a question?

Senator MCCUTCHEON: Mr. Coyne has raised the question of 30 per cent. Is he quarrelling with Mr. Stevens' figure of 43.3 per cent?

Mr. COYNE: I didn't quite follow that. The situation could arise where a minority interest could control a company. I want to say that any company of which I am president will never be controlled by a minority interest in the way Senator McCutcheon has in mind.

Senator LEONARD: The question put by Senator Molson was on the question of heavy responsibility. I would like to put it to Mr. Coyne. What do you say as to the heavy responsibility on you yourself and on Mr. Stevens and those associated with you in embarking on this?

Mr. COYNE: I agree there is a heavy responsibility upon us, sir. I think there will be a heavy responsibility put on anyone coming to Parliament and asking for the incorporation of a bank or even a mortgage company or trust company. I hope we have in Canada people who are willing to accept heavy responsibility. I don't know how else one could get new and large enterprises started and carried on. I hope there will be people in Canada willing to put their money into new enterprises, and to some extent they will be influenced in those decisions by the kind of people who invite them to do so, and whether

those people are prepared to carry a heavy responsibility or not. I have been overwhelmed personally by the response, much greater than we ever thought was possible, from the general public—particularly in western Canada—people who want to see this bank established, and who want to do business with this bank and who want to be shareholders in this bank, even knowing that James Coyne and Sinclair Stevens are to be prominently identified with it. People have been good enough to tell us that that is why they have put their money into it and wish to be associated with it. It is indeed a heavy responsibility, but I am prepared to shoulder it.

Senator BEAUBIEN (*Bedford*): A question to Mr. Stevens. On the board of British International Finance, are there any other directors who would have shares in the proposed bank other than the shares controlled by British International, that is to say in their own right? Would there be any of them who would have shares in the bank?

Mr. STEVENS: I would say on that that I think all of them do. I had better look over the list and make sure. All of them would, yes.

Senator BEAUBIEN (*Bedford*): There is a prospectus showing the directors of British International?

Mr. STEVENS: Yes. I think Senator McCutcheon has one. Actually the directors—if you would like me to read them out—

Senator Beaubien (*Bedford*): What I want to know is with regard to the directors personally. The directors of British International Finance, how many shares would they control personally?

Mr. STEVENS: We put restrictions on them in order to get distribution, and generally speaking people have not bought more than 200 or 250 or so certificates for shares in the bank.

Senator BEAUBIEN (*Bedford*): If it is not a large amount, it would not matter. There is no large amount to be controlled by the directors of your bank?

Mr. STEVENS: No, It is mainly what you would call nominal holdings to indicates their interest and enthusiasm. On this point I have offered to show you the two shareholders' lists with regard to British International, the class A and the common. When I take a quick look at the common shareholdings it makes me think that perhaps I had better explain some of the names that appear on the list, because obviously they will not mean too much to you.

The first name is Bansco and Company, which I should mention is a nominee name for the Bank of Nova Scotia.

W. E. N. Bell is the next name, with 5,000 common shares. He is a life insurance C.L.U. man with the Manufacturers Life.

Maxwell Bruce is with us today, and he has a substantial holding. I do not think it is fair to put some of these in the public record.

Senator MCCUTCHEON: This list is going in the public record.

Mr. STEVENS: With the actual share numbers?

Senator MCCUTCHEON: Yes.

Mr. STEVENS: Mr. Maxwell Bruce has 750 shares. Then we come to a group of names all with the surname Charlebois. These are my in-laws, my wife's people. They in the aggregate have probably 5,000 or 6,000 of the common shares which is a fair holding in the voting strength. They, incidentally, are all in Penetang, Ontario, which is not Quebec.

Senator BOUFFARD: Eventually it will be in Quebec.

Senator LEONARD: Do you get along all right with your in-laws?

Mr. STEVENS: Yes, and they assure me they have been in Canada since 1680, so I take it they are Canadians. Then there is Gill Construction Limited

which is a company with three main shareholders who are Mr. Mollard to whom I have referred, my partner in law, Richard Hassard, and myself. Then there is Inverness Investments Limited—

Senator BEAUBIEN (*Bedford*): How many shares do they hold?

Mr. STEVENS: 2,200 shares. Inverness Investments is shown with 9,000-old shares. That is a three way split. I think it is exactly one-third each way; one-third to myself; one-third to Philip MacDonald, who is an executive vice-president and a director of British International. Unfortunately he has not appeared before you, but I think it would have been a good idea so that you could have met him. He is one of the liveliest executives we have in our organization. Part of his holding is through Inverness Investments. The other third is held by Jeffrey K. Smith, a lawyer of the firm of Day, Wilson, Kelly. He is secretary of British International.

Jamelynn Holdings Limited is again in the law firm of Day, Wilson, Kellly —that is their address. I am not sure of the holders of that company, but it has 7,500 shares. The reason I say I am not sure of the holdings is that it was associated with Bill Bell, and I am not just sure of the registration.

Maurice Jennings has 750 shares. He is an executive of British International and is also in the Export Finance Corporation which is a joint corporation that has been brought about by the chartered banks of Canada. It is owned—I am not sure percentage-wise by how much—by each of the chartered banks in Canada.

Macron Holdings Limited is a company which again is a 49 per cent situation with regard to my holding, the other main holders being William Mollard and Andrew Wofford who is with the BA Oil Company and who is resident in Edmonton. He is a petitioner.

Senator BEAUBIEN (*Bedford*): What do they hold?

Mr. STEVENS: Macron holds 9,300-odd shares. Mollard is shown again with 750 shares. My wife has 5,250. Perhaps that is where the control is.

The CHAIRMAN: You can be sure it is.

Mr. STEVENS: My father has 800 shares and I am shown with 900. Stevens Securities, which is essentially a family company with my father and mother's estate and the family like that, has 11,000-odd.

I think I should explain that my own feeling is that when you run over this list you will see that while technically I am probably right in the statement I gave to Senator McCutcheon concerning my holding and Bill Bell's and Mollard's, it is much more diversified when you see the actual ownership of some of the smaller companies which are B.I.F. shareholders. I think it is interesting to note that basically all the big shareholders of B.I.F. are the executives of B.I.F., and the fairest thing to say about it is that it is controlled by the executives and directors of B.I.F.

Senator BAIRD: I can appreciate the fact of your wanting to control the company. It is probably like many other companies, the directors of which would not want to see their stock on the market to be picked up by anybody. It is in that way that I presume you have the idea of control?

Mr. STEVENS: That is right. As I said at the beginning we are willing to make any agreement that would be required, or any other arrangement, to ensure that these shares will not get into foreign hands. We are quite willing to do that because it is absolutely not our intention to sell to a foreign interest or group.

The CHAIRMAN: Thank you, Mr. Stevens. We have been sort of moving Mr. Coyne in and out of Mr. Stevens' evidence. Are there any questions the committee would like to ask Mr. Coyne based on his original statement at the first hearing as well on the statements he gave today?

Senator HORNER: Mr. Chairman, I would like to say that I think this proposed bank should be called the Bank of Toronto. The Bank of Western Canada is an entirely wrong name.

Senator MCCUTCHEON: That name is pre-empted.

The CHAIRMAN: We have not got to the stage of dealing with the name and, secondly, this proposed bank could not be called the Bank of Toronto because that name is occupied already.

Mr. COYNE: May I say that we cleared the name with the Inspector General of Banks. He looked up the past records. The bank which Senator McLean referred to did not have the same name. That was the Western Bank of Canada and not the Bank of Western Canada, and it disappeared a long time ago. He thought there was no conflict there.

Before Confederation, curiously enough, there was a Bank of Western Canada whose sole office was in Niagara Falls, Ontario, which was known as western Canada in those days. It disappeared before Confederation, and both the Inspector General and the Bank of Canada told us they thought the name was all right.

Some question did arise as to the French translation of the name. One of the banks which operate chiefly in the Province of Quebec asked that it be changed slightly, and we did that to their satisfaction. So far as we know both the English name and the French name have been cleared, and are satisfactory.

The CHAIRMAN: There are no questions, Mr. Coyne. Thank you.

We have now arrived at the stage where we have to consider what we are going to do next.

Senator LEONARD: Mr. Chairman, may I make a suggestion?

The CHAIRMAN: Yes.

Senator LEONARD: I think we have had very full evidence and, as Senator Molson said, very frank evidence from those who are mainly instrumental in bringing this application before Parliament. It is now something over two months since I moved second reading, and I believed it was only right that the bill be held in committee until the report of the Royal Commission on Banking and Finance was received and given consideration. That report is now published, and we have had time to consider it—

The CHAIRMAN: I do not agree with you. I have not had time to consider it.

Senator MCCUTCHEON: I certainly have not.

Senator LEONARD: Let me put it this way. I have had time to consider it. I think we have had time, at any rate, to put it in its proper perspective in relation to this application. As our first order of business today we dealt with the bill to incorporate New Scotland Savings and Mortgage Company, and we reported that bill without amendment, except for the change of name. Actually, that company is more likely to be affected by the recommendations of the Porter Royal Commission than is the proposed Bank of Western Canada.

The Commission's report covers the whole field of Canadian banking and finance. It deals with loan companies, trust companies, investment dealers, finance companies, life insurance companies as well as banks. When we came to consider the New Scotland Savings and Mortgage Company, or the Evangeline Savings and Mortgage Company as it is now to be called, we had Mr. MacGregor before us, and he explained the bill was quite in order.

Now, the Loan Companies Act sets up the provisions relating to the administration of a loan company, it sets up the conditions under which the loan company may be incorporated, it sets up the requirements. Our duty and responsibility is, when such an application comes before us, to see whether this

application is in accordance with what Parliament has laid down as the conditions for the incorporation of loan companies.

The same thing is true of a trust company under the Trust Companies Act and all trust companies now incorporated and that will be incorporated are under the possibility of the recommendations of the Porter Commission affecting their business and affecting it considerably.

I do not think that we could, for example, hold up an application for a loan company, a trust company or an insurance company, any more than we did this morning with the application of the New Scotland Savings and Mortgage Company, merely because of the fact that the Porter Commission report is out now.

In so far as the Bank Act is concerned, it also prescribes the conditions under which a bank may operate and may be incorporated, and prescribes in the schedule for an act of incorporation. That is the law of the land now, that is what Parliament has said we are to look at, if we are to pass upon an application for an incorporation of a loan company, a trust company or a bank.

It seems to me that the position we are in here as legislators is that.

We must deal with these applications, whether for a loan company, a trust company, an insurance company or a bank, on the basis of the law as it is now. It is not relevant for us to consider whether or not the Porter Commission report may be implemented in whole, in part, or not at all.

We have these applicants, coming before us and say they want to proceed with this application on the basis of the law as it is now, but should Parliament decide that there are any provisions of the Porter report recommendations which are to be brought into the law, in whole or in part, these applicants will abide by those changes in the law in the same way as other banks will have to abide by them.

In so far as the Porter Commission report itself is concerned, no one has pointed out anything in the report that is adverse to the incorporation of this bank. In fact, the stress of the Porter Commission report is on the desirability of competition in the banking business in Canada. To that extent it may be said that the Porter Commission report indirectly favours such an application as this.

As I have said, I think that there has been time to consider. It feel that I can say that in so far as my undertaking is concerned, it should be ended. At the same time, if there are others, and I gather there are, who have not had an opportunity of doing so, that having heard the evidence, I quite recognize that it should not be pressed upon them, so that they will not have further time to consider both the report and the evidence that they have before them—with all due respect to these applicants, it seems to me that, after two months, having in mind these other applications, we should adjourn the hearing today for one week, but within that week we should be ready to deal with this application.

The CHAIRMAN: We had our first hearing on March 18.

Senator LEONARD: I know, as far as this committee is concerned, but the matter was debated in the Senate.

Senator KINLEY: Has there been any bid indication that the other charter banks in Canada want to oppose this bill?

The CHAIRMAN: It has not been mentioned.

Senator BAIRD: One of them is here now.

Senator KINLEY: I think that if they feel that they are being invaded, they should come in and say so.

The CHAIRMAN: Some senator has mentioned that there are directors of banks here. Certainly there are. I am a director of a bank and I have tried

to go down the centre road in these hearings. If at any moment in this committee there is a feeling that I am departing from the centre of the road, I should be told immediately and you will have a new chairman.

Senator BAIRD: There must be four or five of them here.

The CHAIRMAN: We do not belong as second class citizens.

Senator BAIRD: You may be blessed that way.

Senator CAMERON: I am intending that when the second reading of the Laurentide Bank application is completed I would propose to refer it to this committee so there would be the same procedure in the next application.

Senator BLOIS: I wonder if you would take into consideration a statement supposed to be made the other day by the Minister of Finance Mr. Gordon, it is reported in the Montreal *Gazette* this morning and I should like to be allowed to read it. It says:

> New Bank Charters in Fall—Gordon
>
> Finance Minister Gordon has indicated that three proposed banks must wait until fall for their federal charters. He said in an interview the government hopes to amend the Bank Act in the fall after studying the recently-released report of the Royal Commission on Banking.
>
> Charter applications have been made for the Bank of Western Canada, the Bank of British Columbia and Laurentide Bank.

On the strength of that, if they are going to hold this bill up in the other place, would it not be wise for this committee, instead of holding this bill here, until we have had more opportunity of studying this report?

The CHAIRMAN: There are two questions there, Senator Blois. One is holding the bill up until the Government announces policy. The second is holding this bill in committee until we are fully satisfied with all the evidence available. I do not think there can be any doubt but that we should not deal with the bill finally until we are satisfied that we have heard all the relevant evidence. Certainly, as far as I am concerned, I have not had an opportunity of reading the report of the Royal Commission on Banking and Finance and I would like to read it. Mr. Coyne makes some reference to the philosophy of the report in relation to competition and of course we have an area of disagreement as to whether the report is pro or against that situation. In any event, I want to study it for myself. That is only talking personally and not as chairman. Whatever the committee wishes to do—whether we are going to seek further evidence or not, or study further the banking situation in western Canada to see if this bank is to operate in western Canada and how many branches or if there is any great virtue in having the head office in Winnipeg instead of in Bay Street, when there is almost instantaneous communication now between places for decisions.

The real purpose of that, talking personally, is the need for another bank and the fact that it can make money. As I said to Mr. Coyne earlier, I would not expect them to be here if they did not feel that the bank could make money, because they are sensible businessmen. We assume that. They do not have to adduce evidence as to whether they can make money. The question is the need. I would like to hear all available evidence on that.

Senator BAIRD: Has the need anything to do with our granting the application, if they comply with all the rules and regulations, what authority have we to turn it down?

The CHAIRMAN: If need has not something to do with it, we get into the position of being a rubber stamp—and I am ready very quickly to accept that classification.

Senator LEONARD: With all due respect, I am director of a mortgage corporation but if a mortgage corporation application comes along, I cannot properly oppose it because I would prefer not to have another competitor. There is nothing in the Loan Companies Establishment Act that says you must establish a need for another charter. There is nothing in the Bank Act that says that. There is nothing that enshrines the present number of charter banks as eight or 10 or 11 or 12.

With all due respect, I suggest that if we embark on the question of need for the incorporation of this institution—and after all, important and all as banks are, so are life insurance companies—with all due respect I think it is quite irrelevant.

The CHAIRMAN: What I have said is my own personal view and notwithstanding what might be a subtle inference in what you have said by referring to yourself as in a mortgage corporation, I have not been influenced in presenting my viewpoint by the fact that I might be a director of a bank.

Senator LEONARD: There was no inference in my remarks.

The CHAIRMAN: It hit me that way.

Senator BAIRD: A guilty conscience?

The CHAIRMAN: Who is there who cannot say *mea culpa*?

Senator LEONARD: There is no inference in my remarks.

The CHAIRMAN: Well, it struck me that way.

Senator THORVALDSON: Mr. Chairman, a moment ago you made some remarks as to what should be the procedure of the committee, and you wondered whether the committee should go out and seek people to make presentations to it, such as, for instance, the chartered banks. I want to give my view that if the chartered banks want to be heard, whether in opposition or not, they should come here themselves and ask to be heard. However, I understand they have not, nor has anybody else, so far as I know.

The CHAIRMAN: From your experience on this committee and other committees in the past, senator, you know that when a bill comes to us that is of concern to various classes of business, etc., we do not usually notify them, and we have not done so here. Many are so eager that they ask to be heard.

Senator THORVALDSON: That is really my point.

The CHAIRMAN: We have had no requests to be heard. What I put to this committee originally was that, having heard evidence, I thought the committee should consider what steps it should take, if any, what further evidence it needs, if any, before considering the bill section by section.

Senator CRERAR: Mr. Chairman, we have before us this application, and we have had pretty full explanations from the witnesses. If we have any more representations to be made to the committee, then I think we should wait for them; but if we have not, then I think we should proceed to deal with this application.

Now, so far as I am concerned, the Porter Commission and its recommendations have no bearing on this present application at all. We know that the revision of the Bank Act is postponed for another year to give an opportunity to fully digest the Porter Commission's recommendations. We also know that whatever changes may be made in the Bank Act as a result of the commission's work will apply equally to all banks. We do not know, but it may be quite possible that the revision of the Bank Act may be postponed a further year. That is a possibility. It may be that all the recommendations of the Porter Commission will be accepted, but they will have to apply to all banks. It may be that none of the recommendations of the Porter Commission will be accepted.

In the present case, we have petitioners who have come here, and I think they demonstrated their good faith and their capacity. They have secured $10 million in stock subscriptions, which I venture to say is a larger subscription for a new bank starting than that of any existing banks when they started decades ago. Therefore, we should consider this application in the light of the provisions of the Bank Act as they exist now, not what they will be a year from now or perhaps two years from now when the revision of the Bank Act may take place. If this charter is granted now, whatever changes are made when the revision of the Bank Act finally comes along a year or two years from now will, of course, apply to this bank as to any other bank; and therefore there is no logical reason why this petition should not be dealt with now, why this application and bill should not be considered, amended or rejected, and find its way through Parliament.

Mr. Chairman, I make no bones about my position in respect to these charters. If a group of people come along and petition to be incorporated as a bank, even with the capital provisions at present in the Bank Act—which I think are altogether too low, and will be remedied at the time of the revision—we should not refuse them. Here a bank comes along with $10 million subscribed capital and, I understand, several millions of dollars in reserve. By that very act they have demonstrated their capacity and good faith. Simply to refuse this application now because of some extraneous reasons altogether, I think would be a complete abnegation of the responsibility of the Senate. Therefore, I am in favour of proceeding with this bill, examining it, hearing further witnesses or further evidence, if any person wishes to present it to the committee; but we should not delay it unduly by waiting for someone to come here and talk to us about it; and we certainly should not delay it because of anything in the Porter Commission, or anything else. The bill should be considered now and dealt with on its merits. That is my position on this committee, Mr. Chairman.

The CHAIRMAN: Thank you, senator.

Senator MCCUTCHEON: Mr. Chairman, I am sorry I cannot agree with Senator Crerar; I usually do agree with him. The very fact that Mr. Coyne spent a considerable amount of time this morning giving his view as to what the philosophy and recommendations of the Porter Commission were, indicates that in the minds of the applicants it has some relevance. I feel that it has relevance, and that as far as I personally am concerned, I need more time to consider the report and reach my own conclusions on it.

Of course, there is the other fact, that I do not think the evidence given this morning was relevant either. Most of the members of the committee have not seen the financial statement Mr. Stevens has filed and that will be appended to the report of these proceedings. He has been very frank; but we would like to see the entire shoreholders' list ourselves. I also think some of the members of the committee, who may not have had access to the piece of paper which led to my questioning this morning, might like to look at the evidence before any further steps are taken. My view is that we should not proceed further at this time.

Senator LEONARD: I agree with what Senator Crerar has said; but having in mind what I said about my own undertaking, no matter how I might feel about it now being ended, if others feel differently, I do not want to press it. For that reason, and for the reason Senator McCutcheon has mentioned, that some people may want to consider the evidence given this morning, in the report of the proceedings, I would suggest that we adjourn consideration of this bill, keeping it on the agenda of the committee for the next meeting which normally would be a week today, when we might then resume.

The CHAIRMAN: There may be a meeting sooner than that, so you had better not put the word "next" in there.

Senator LEONARD: I will put the word "next" in there because it should be retained on the agenda, and then if there is a meeting of the committee tomorrow perhaps we could simply say that we will keep it on the agenda but will adjourn the matter. If it is agreeable to the committee, I suggest we adjourn consideration of this bill, keeping it on the agenda for the next meeting of this committee.

Senator CRERAR: I would support Senator Leonard's suggestion. By that time—

Senator MCCUTCHEON: I suggest this be adjourned at your call, Mr. Chairman.

The CHAIRMAN: Just a minute, we have several things here.

Senator CRERAR: I would support—have I the floor?

The CHAIRMAN: Yes, you have seconded the motion.

Senator CRERAR: I would support Senator Leonard's suggestion. By that time we should have the report of today's proceedings. We would then have had an opportunity to examine it and obtain whatever information we require.

Senator WOODROW: Don't you think we should notify the chartered banks and other institutions that might be interested that we would be glad to have them come before us?

The CHAIRMAN: We will send them a notice.

Senator POWER: Do I understand you to have said the chartered banks have not been asked to attend?

The CHAIRMAN: Not as yet.

Senator POWER: I move that the chairman of the chartered banks, or someone representing the chartered banks, whoever that might be, be invited to give evidence.

Senator LEONARD: The logical person is the president of the Canadian Bankers' Association, if they wish to do so.

Senator POWER: Let us invite them so that they will not be able to say they were not notified.

Senator LEONARD: If they do not wish to appear—

Senator POWER: That is their business.

Senator LEONARD: —that is quite all right.

The CHAIRMAN: That has been noted and that will be done.

We have a motion to adjourn. In view of what I know about the possibility of another meeting of this committee very soon, if I might suggest it, possibly the motion should be that this bill be retained on the agenda of the Standing Committee on Banking and Commerce for the next regular sitting of the committee.

Senator LEONARD: That is perfectly all right with me. I know what you have in mind, and I would certainly give it priority over the Bank of Western Canada bill.

Motion agreed to.

The committee adjourned.

APPENDIX "A"

List of Class "A" Shareholders

of

BRITISH INTERNATIONAL FINANCE (CANADA) LIMITED

Prepared by

YORK TRUST AND SAVINGS CORPN.

BRITISH INTERNATIONAL FINANCE (CANADA) LIMITED

CLASS "A" STOCK

Certified a correct list of Shareholders of
BRITISH INTERNATIONAL FINANCE (CANADA) LIMITED
as at the close of business, July 24, 1963.

Issued and outstanding shares: 268.013

.....
TRANSFER OFFICER

Toronto, Ontario
July 29th, 1963

Abel, Mrs. Lillian D., 81 Phair Ave., Wallaceburg, Ontario.	200	Allan, George A., 65 Castlefield Ave., Toronto 12, Ontario.	100
Adams, Mrs. Ada R., 93 Sterling St., Hamilton, Ontario.	100	Amos, J. Willim, 41 Skov Cres., Guelph, Ontario.	100
Adams, Albert J. Ralph A. Adams And Mrs. Constance R. Dalziel Trustees Estate of Albert A. Adams. 93 Sterling St., Hamilton, Ontario.	100	Anderson, D. Howard, c/o Canada Life Assurance Co., 2200 Young St., Toronto 7, Ontario.	100
Adamson, Raymond S., 3 Churchill Dr., Galt, Ontario.	100	Anderson, Miss Elizabeth, Apt. 225, 2755 Yonge St., Glencairn Apartments, Toronto 12, Ontario.	100
Addison, Miss Ialene, 57 Marion St. North, Hamilton, Ontario.	100	Anderson, John, R.R. No. 7, London, Ontario.	100
Agnew, Gilbert 16 Hillier Cresc., Brantford, Ontario.	100	Androwowski, John K., 150 Victoria Rd. N., Guelph, Ontario.	30
Aitken, William H., c/o Empire Life Insurance Co. Ltd., 243 King St. E., Kingston, Ontario.	150	Antill, James F., Box 211, Kingston, Ontario.	100
Alexander, Clifford A., 110 Mount Pleasant St., Brantford, Ontario.	300	Armstrong, Mrs. Constance, R.R. No. 3, Streetsville, Ontario.	100

Arrowsmith, Mr. L. Dennis In Trust 10
133 Woodington Ave.,
Toronto 6, Ontario.

Atkinson, Gordon, 500
R.R. 1,
Barrie, Ontario.

Avison, Mrs. Joan, 25
2 Admiral Rd.,
Brantford, Ontario.

Babcock, James L., 50
44 Hillcrest Dr.,
Galt, Ontario.

Bailes, Miss Ella Jean, 30
372 Huron St.,
Toronto, Ontario.

Bailey, Mrs. Eleanor B., 150
970 Eglinton Ave. E.,
Apt. 109,
Toronto, Ontario.

Bailey, F. Glen, 200
22 Colin Ave.,
Toronto, Ontario.

Baker, Albert A., 50
Room 1700,
4 King St. W.,
Toronto 1, Ontario.

Baker, Mrs. Elsie L., 500
44 Jackes Ave.,
Toronto 7, Ontario.

Bakker, Mrs. James, 150
R.R. No. 4,
London, Ontario.

Balkwill, Murray A., 200
271 Dawlish Ave.,
Toronto 12, Ontario.

Ballantyne, Herbert M. And 100
Mrs. Frederina Ballantyne
A.J.T.W.R.S. And not as
Tenants in common,
454 Ridout St. S.,
London, Ontario.

Barney, Herbert E., 100
89 Earlscourt Cres.,
Woodstock, Ontario.

Barnt, Mrs. M. Dorothy, 200
29 Edgevalley Dr.,
Islington, Ontario.

Barrett, Frank, 100
23 Prospect St.,
Port Dover, Ontario.

Bateman, Lawrence G., 100
18 Brule Gardens,
Toronto 3, Ontario.

Bateman, William E., 300
98 Guestville Ave.,
Toronto 9, Ontario.

Beamish, W. Frederick, 100
Bothwell, Ontario.

Bearden, Mrs. Irene, 50
410 Bay St.,
Orillia, Ontario.

Beatty Oil Limited, 100
Box 220 Bothwell, Ont.

Beaudoin, Remi G., 90
74 Chestermere Blvd.,
Scarborough, Ontario.

Beckett, Reid E. A., 300
R. R. 5,
St. Thomas, Ontario.

Bee, John W. and Mrs. 300
Mabel M. Bee,
584 Adelaide St.
Woodstock, Ontario.

Bennett, Alfred E., 300
251 Chaplin Crescent,
Toronto 7, Ontario.

Bennett, A. Kendall, 50
Box 97,
Aurora, Ontario.

Bentham, Dr. William H., 150
24 Bendale Ave.,
Scarborough, Ontario.

Bethune, William A., 100
202 Cecil St.,
Sarnia, Ont.

Birchard, Dr. James R., 100
216 McDonald Ave.,
Belleville, Ontario.

Bish, Robert P., 100
96 Greenbrook Dr.,
Kitchener, Ontario.

Blake, F. Gordon, 100
88 Bernard Ave.,
Toronto 5, Ontario.

Blois, Walter G., 150
36 Hartfield Rd.,
Islington, Ontario.

Bond, Mrs. Mabel, 100
358 Cartier Ave.,
Sudbury, Ontario.

Boone, Geoffrey L. Jr., 100
Box 2215,
London, Ontario.

Booty Harry G., 200
51 First Ave.,
Galt, Ontario.

Borins, Samuel D., 1,000
1765 Victoria Park, Suite A.,
Scarborough, Ontario.

Borins, Samuel D., 500
578 St. Clements Ave.,
Toronto 12, Ontario.

Born, Dr. Gunter, 200
121 St. Joseph Dr.,
Apt. 11,
Hamilton, Ontario.

Borrowman, Mr. Ronald J., 100
R. R. 2,
Wyoming, Ontario.

Bos, Hendrik, 100
c/o McLeod Young Weir & Co., Ltd.,
50 King St. W.,
Toronto, Ontario.

Bodkin, Kenneth N., 100
201 Farrand Street,
Port Arthur, Ontario.

Bowles, Neil L., 200
Box 249,
Acton, Ontario.

Boyce, J. L. Ralph, 500
2 Braid Place,
Guelph, Ontario.

Bradshaw, Robert W., 315
33 Abinger Cresc.,
Islington, Ontario.

Brazzell, Garry T., 5
503 Electric Railway Chambers,
Winnipeg 2, Manitoba.

Bridgman, John R., 100
15 Orchard Crest Rd.,
Toronto 9, Ontario.

Briggs, Mr. Gordon, 100
13645 Linnhurst,
Detroit 5, Mich., U.S.A.

Bringham, Royden, 100
717 Pape Ave.,
Toronto, Ontario.

Broadbent, Albert, 200
4 Duplex Cresc.,
Toronto, Ontario.

Broadfoot, Dr. T. William L., 100
237 Kent St. W.,
Lindsay, Ontario.

Brooksbank, Mr. Charles, 50
R. R. 1,
Wallaceburg, Ontario.

Brotherton, Ian D., 15
537 Donlands Ave.,
Toronto, Ontario.

Brown, Ernest V., 100
c/o Galt Paper Box Ltd.,
49 King St. W.,
Galt, Ontario.

Brown, Mrs. Helen C., 200
11 Elm Ave.,
Apt. 322,
Toronto 5, Ontario.

Brown, Kenneth C., 1,000
262 St. George St.,
Toronto, Ontario.

Brown, Mrs. Margaret Laura, 100
Apt. 4,
217 The Donway West.,
Don Mills, Ont.

Brown, Victor M., 257
440 Manor Rd. S.,
Toronto 7, Ontario.

Bruce, Maxwell, 750

Brunt, William R., Jr., 200
14 Emrick Ave.,
Fort Erie, Ontario.

Buchanan, John Y., 100
c/o Industrial Acceptance Corporation Limited,
1143 Bay St.,
Toronto 5, Ontario.

Buck, George A., 30
115 Dowling Ave.,
Apt. 303,
Toronto 3, Ontario.

Burgess, Mrs. Dorothy M., 100
14 Fitzgerald St.,
Toronto, Ontario.

Burgess, Miss Evelyn, 50
659 Huron St.,
Toronto 5, Ontario.

Burnett, Miss Agnes, 100
105 Arnold St.,
Richmond Hill,
Ontario.

Bush, Frank S., 500
100 Lyon Ave.,
Guelph, Ontario.

Bush, Mrs. Nancy E., 50
4 Hemford Cresc.,
Don Mills, Ontario.

Bush, Miss Sadie E., 500
450 Walmer Rd.,
Apt. 705,
Toronto 10, Ontario.

Butt, Mrs. Lilian G., 20
591 Glen Park Ave.,
Toronto, Ontario.

Byerlay, Mrs. Dorothy M., 100
Box 142,
Alliston, Ontario.

Cadman, Mrs. Marjorie, 50
Box 1428,
Clarkson, Ontario.

Cahill, Dr. Claude F., 100
286 Hunter St. W.,
Peterborough, Ontario.

Callander, Mrs. Isobel, 200
Box 33,
Petrolia, Ontario.

Campbell, Donald A., 50
28 Upper Canada Drive,
Apt. 112,
Willowdale, Ontario.

Campbell, Robert H., 1
20 Broadview Ave.,
Galt, Ontario.

The Canada Trust Company Re R-15 1,000
P.O. Box 100,
Guelph, Ontario.

The Canada Trust Company
Re N72-30 100
P.O. Box 2545 Terminal "A",
Main Branch,
London, Ontario.

Caradonna, Jack, 100
294 Eglinton Ave. W.,
Toronto 12, Ontario.

Carlson, Mr. John V., 100
427 Geneva St.,
St. Catharines, Ontario.

Carlton, Mrs. Margaret, 100
3461 Lakeshore Highway,
Burlington, Ontario.

Carr, Mrs. Eva, 125
178 Bartlett Ave.,
Toronto, Ontario.

Carr, Dr. Meyer, 1,000
452 Main St., E.,
Hamilton, Ontario.

Carscallen, Norman, 100
331 John St.,
Sudbury, Ontario.

Cartan, Mrs. Gretta, 100
15 Mallory Cresc.,
Apt. 308,
Toronto 17, Ontario.

Catania, Michael L., 100
47 Whitmore Ave.,
Toronto 10, Ontario.

Challis, Fred, 50
10 Redbud Dr.,
Chatham, Ontario.

Charest, Mrs. Esther D., 150
7 Purling Place,
Willowdale, Ontario.

Charest, Mr. Jean, 150
7 Purling Place,
Willowdale, Ontario.

Charlebois, Miss Eloise, 810
63 Robert St. W.,
Penetanguishene, Ontario.

Charlebois, Miss Mary A., 1,200
1460 Bayview Ave.,
Toronto 17, Ontario.

Charlebois, Mary Baere (Mrs), 630
63 Robert St. W.,
Penetanguishene, Ontario.

Charlebois, Peter A., 540
63 Robert St., W.,
Penetanguishene, Ontario.

Charlebois, Phil A., 970
63 Robert St. W.,
Penetanguishene, Ontario.

Chiappetta, Joseph A., 1,050
Suite 406,
12 Richmond St. E.,
Toronto, Ontario.

Chisholm, Mrs. Georgina, 300
1306 Lake Shore Rd. E.,
Oakville, Ontario.

Chong, Mr. Ying, 100
137 Colborne St.,
Oakville, Ontario.

Christie, David A. C.,
Box 222,
Newmarket, Ontario.

Ciaramella, Vincenzo, 200
385 Markham St.,
Toronto 4, Ontario.

Clair, Mrs. Catherine R., 200
1023 Royal York Road.,
Toronto 18, Ontario.

Clapp, Mr. Lloyd, 100
Eberts, Ontario.

Clarke, Roderick W., 100
300 Hatt St.,
Dundas, Ontario.

Clarke, Russell E., 100
97 Wimbleton Rd.,
Islington, Ontario.

Class, Carl A., 50
Fornt St.,
Strathroy, Ontario.

Clavir, William, 100
c/o Midcontinent Truck
Terminal Ltd.,
1608 The Queensway
Toronto 18, Ontario.

Clemes, Dr. Ian L., 50
37 Lynwood Dr.,
Guelph, Ontario.

Clifford, Tom, 100
305 Pape Ave.,
Toronto 8, Ontario.

Clifton, Mrs. Ethel, 100
218 Kempenfeldt Dr.,
Barrie, Ontario.

Cobean, Edward J. Sr., 100
Chesley, Ontario.

Cobean, Harry James, 100
Chesley, Ontario.

Cobean, Harry R., 200
Chesley, Ontario.

Coburn, John L., 100
Canada Permanent Mortgage Co.,
Main & James Sts.,
Hamilton, Ontario.

Cockshutt, Mrs. Ena M., 100
227 Dufferin Ave.,
Brantford, Ontario.

Cohen, Maurice, 1,000
c/o Canadian Imperial Bank,
of Commerce,
Yonge & Wellington,
49 Yonge St.,
Toronto 1, Ontario.

Collard, Frank A., 200
c/o Howell Forwarding & Co. Ltd.,
31 Scott St.,
Toronto 1, Ontario.

Colman, Jeremy M., 1,650
97 Post Rd.,
Don Mills, Ontario.

Conway, Mrs. Flora P., 100
335 Pine St.,
Collingwood, Ontario.

Cook, Dr. Walter F., 300
437 Sandra Blvd.,
Sudbury, Ontario.

Coomber, William, 100
9 Cathcart St.,
Willowdale, Ontario.

Cooper, Alexander J., 3
c/o Jamaica Tourist Board,
King Edward Hotel,
Toronto, Ontario.

Cooper, Frank E. Jr., 25
889 Kitchener St.,
Niagara Falls, Ontario.

Corakis, Nick, 100
68 London St.,
Toronto 4, Ontario.

Cornell, Henry E. C., 500
26 Lytton Blvd.,
Toronto 12, Ontario.

Cosford, Mrs. Ivy, 100
18 Blythdale Rd.,
Toronto 12, Ontario.

Cosway, Donald J., 150
6 Spruce Hill Rd.,
Toronto 13, Ontario.

Coulter, Mrs. Kathleen H., 100
95 Forest Ave.,
St. Thomas, Ontario.

Courtis, Glenn, 100
R.R. # 2,
Wallaceburg, Ontario.

Coutts, John Alexander, 200
5 Owen St.,
Barrie, Ontario.

Cowan, Mrs. Alice E., a75
31 Roehampton Ave.,
Toronto 12, Ontario.

Craig, Samuel J., 100
34 Wembley Drive,
Sudbury, Ontario.

Crampton, Ribton G., 200
c/o Toronto Dominion Bank,
16 Durham Street S.,
Sudbury, Ontario.

Dr. Crockford, Morley J., 100
24 Bowood Ave.,
Toronto 12, Ontario.

Grouch, Stanley A., 50
11 Treleaven Drive,
Brampton, Ontario.

Crown Trust Company, 700
302 Bay Street,
Toronto, Ontario.

Cudmore, Mrs. Eethel A., 100
148 Lothiam Ave.,
Toronto 18, Ontario.

Cummings James H., 200
132 Bendamere Ave.,
Hamilton, Ontario.

Cuthbertson, Mrs. Elsie, 1,575
981 Lillian Street,
Willowdale, Ontario.

Dafoe, Mrs. Alice G., 100
Box 40,
Napanee, Ontario.

Dario, Charles, 200
46 Chestnut Hills Pky.,
Islington, Ontario.

Davidson, Mildred G., 100
295 Quebec Ave.,
Toronto 9, Ontario.

Davis, Mrs. A., 105
22 Lawrence Cres.,
Toronto, Ontario.

Davis, William A., 195
22 Lawrence Cres.,
Toronto, Ontario.

Dawe, Harvey C., 100
84 Wellington Street,
Lindsay, Ontario.

Dawes, Frederick, W. H., 100
15 Macmillan Cres.,
Chatham, Ontario.

Dawson, Frederick, 100
1685 Kipling Ave., N.
Apt. 407,
Rexdale, Ontario.

Day, Frank, 100
1943 Miller Cres.,
Sudbury, Ontario.

Day, Mrs. Mabel A., 100
499 Prince Edward Dr.,
Toronto 18, Ontario.

Day, Miss Margaret A., 100
5 Mallory Gardens, Apt. 505,
Toronto 7, Ont.

Dayman, Gerald, 50
280 Kathleen Ave.,
Sarnia, Ont.

Dean, Mrs. Flora, 200
Box 836,
Petrolia, Ont.

Dean, Mrs. Rhoda, 200
262 Kenilworth North,
Hamilton, Ont.

De Lorme, Arthur F., 100
1039 James St. W.,
Wallaceburg, Ont.

Delzotto, Mrs. Celseste, 200
14 Spencely Court,
Weston, Ont.

Demers, Miss Annette, 50
664 Albert St.,
Wallaceburg, Ont.

Destefano, Mr. Angelo, 200
280 Willow St.,
Sudbury, Ont.

Dettman, Eldon C., 100
Regent St. no. 18,
Lindsay, Ont.

Dickie, Jack W., 50
5 Fleet St.,
Brantford, Ont.

Dickson, George, 500
Executive Vice President Canada
Packers & Co. Ltd.,
2200 St. Clair Ave., W.,
Toronto 9, Ont.

Dingsdale, Hugh F., 615
25 Eccleston Dr.,
Toronto, Ont.

Doerr, Harold, 25
11 Armour Dr.,
Welland, Ont.

Doherty, James A., 100
49 Glenwood Ave.,
Toronto 9, Ont.

Doman, Mrs. Sara J., 100
Box 554,
Petrolia, Ont.

Dorner, Frank H. C. 200
97 Salisbury Ave.,
Galt, Ont.

Dougals, Mrs. Mildred E. 100
Box 509
Napanee, Ont.

Douglas, Miss Nellie L. 200
591 Water Street
Peterborough, Ont.

Downie, Andrew R. 25
c/o Carling Breweries
1047 Yonge St.,
Toronto 5, Ont.

Doyle, William R. 100
265 Front St.,
Belleville, Ont.

Duggan, Mrs. Jessie S. 400
R.R. No. 2,
Caledon East, Ont.

Duncan, Mrs. Emily F. 425
Box 747
Petrolia, Ont.

Duncan, Miss Florence Evelyn Marion 567
Mount Forest, Ont.

Duncon, George H. 600
R.R. No. 1,
Conn, Ont.

Duncon, Gordon J. 100
109 Durham St. S.
Sudbury, Ont.

Duncan, John Ford 100
969 London Rd.,
Sarnia, Ont.

Duncan, Mrs. Margaret Jane 600
Mount Forest, Ont.

Duncanson, K. John 100
199 Berry Rd.,
Toronto 18, Ont.

Dunn, J. Newton 200
1 Aylesbury Road,
Toronto, Ont.

Dunsdon, Leslie 500
18 Hamilton Ave.,
Brantford, Ont.

Durbin, Nathan 100
273 Yonge St.,
Toronto 1, Ont.

Durnan, William A. 200
34 Omaha Ave., Algonquin Island
Toronto 2, Ont.

Dyer, Mrs. Kathleen
c/o Dyers Furniture
30 Main St.,
Newmarket, Ont. 150

Dyer, William
c/o Dyers Furniture
30 Main St.,
Newmarket, Ont. 150

Dyke, Mr. Charles
175 Easson St.,
Stratford, Ont. 200

Edwards, Mrs. Laura May
R.R. No. 2,
Grand Valley, Ont. 300

Elliott, Harold H.
27 Jackson Ave.,
Toronto 18, Ont. 501

Elliott, Miss Phyllis
240 Northcliffe Blvd., Apt. 207
Toronto 10, Ont. 200

Evans, John E.
234 Queensdale Ave.,
Toronto 6, Ont. 500

Evans, Mrs. Rose L.
234 Queensdale Ave.,
Toronto 6, Ont. 300

W. Edgar Evans
100 Winston Cres.
Guelph, Ont. 10

Eyre, Warren
36 Yonge Street
Toronto 1, Ont. 100

Fagan, Eugene M.
P.O. Box 95
Port Credit, Ont. 100

Fairbairn, John
420 Grand Ave., East
Chatham, Ont. 100

Fairweather, Donald H. B.
47 Winston Grove Blvd.,
Toronto 18, Ont. 100

Fallis, Harold
18 Southwood Drive
Toronto, Ont. 100

Farncomb, Mrs. Anne E.
182 Elexandra Blvd.,
Toronto 12, Ont. 100

Feggans, Scott
605 Rogers Rd.,
Toronto, Ont. 200

Fenwick, Willington
142 Cornwall Heights
Brampton, Ont. 100

Findlay, Mr. Claude A.
1921 Delaware Ave.,
Niagara Falls, Ont. 100

Findlay, Earl
c/o Sarco Canada Ltd.
611 Gerrard St. E.,
Toronto 8, Ont. 50

Finucan, J. T.
61 Wigar Road,
Toronto 18, Ont. 200

Flavelle, J. David
c/o Nat. Trust Co. Ltd.
21 King St. East,
Toronto 1, Ont. 200

Fletcher, Dr. Marwood D.
141 Kittredge St. E.,
Strathroy, Ont. 200

Foley, Frank H.
282 George St.,
Belleville, Ont. 100

Forster, Alan C.
49 Lexfield Ave.,
Downsview, Ont. 100

Jorstmann, Mrs. Jean
91 Sherman Ave., S., Apt. No. 1,
Hamilton, Ont. 100

Foster, Francis
c/o Creamery,
Dresden, Ont. 100

Foster, Mrs. Muriel
71 Westhampton Dr.,
Kingsview Village,
Weston, Ont. 1

Foster, Victor
71 Westhampton Dr.,
Kingsview Village, Ont. 1

Fraser, Alexander F.
Box 246,
Marmora, Ont. 100

Alex F. Fraser, Exec. for the Estate
of Miss Anna W. Fraser
P.O. Box 246,
Marmora, Ont. 100

Fraser, Dr. James E.
Port Elgin, Ont. 200

Fraser, William K.
62 Rykert Cres.,
Toronto 17, Ont. 100

Freele, Mr. Bill O.
c/o Cuddy Hardware,
Front St., Box 95,
Strathroy, Ont. 200

Fry, Kenneth
12-14 St. Catharine St.,
St. Thomas, Ont. 100

Fuller, Ralph T.
No. 3 Douglas Drive,
Toronto 5, Ont. 1000

Fuller, Mrs. Reta 1000
3 Douglas Drive,
Toronto 5, Ont.

Furness, Miss Jane 50
110 Cheltenham Ave.,
Toronto, Ont.

Gallagher, Thomas 100
27 Fairmar Ave.,
Toronto 18, Ont.

Galonski, Mr. Anton M. 50
750 Rosedale Ave.,
Sarnia, Ont.

Galonski, Mrs. Ruth 100
750 Rosedale Ave.,
Sarnia, Ont.

Garfield, Harold William 50
125 Ferris Road,
Toronto 16, (Ont.)

Garlick, Fred 300
22 Prospect Street,
Guelph, Ont.

Garlick, Ross 100
c/o Walker's Cloverdale Mall,
Etobicoke, Ont.

Garnett, Miss Elizabeth C. 100
220 Eglinton Ave. East., Apt. 702,
Toronto 12, Ont.

Garrett, James W. 400
R.R. 1
Stouffville, Ont.

Garton, Mrs. Phyllis M. 200
315 Willard Ave.,
Toronto 9, Ont.

Gaskon, Henry G. 100
1 Duplex Cresc.,
Toronto, Ont.

Gaviller, Dr. Eldwin 25
767 Second Ave. W.,
Owen Sound, Ont.

Gavin, Ralph 200
30 Grove Street East
Barrie, Ont.

Geddes, Homer D. 100
312—10th Street
Hanover, Ont.

George, John D. In Trust 100
350 North Chistina Street
Sarnia, Ont.

Gerhard, Mrs. Mary 50
182 Eagle St.,
Delhi, Ont.

Gerring, William J. 100
257 Erskine Ave.,
Toronto 12, Ont.

Glad, John G. 50
283 Old Orchard Grove
Toronto 12, Ont.

Glenny, John Russell 1,500
150 Islington Ave., N.,
Islington, Ont.

Goldman, Kurt 100
Meaford, Ont.

Goodfellow, Vernon C. 100
55 King Forest Drive
Hamilton, Ont.

Gora, Mrs. Mary 750
21 Crestwood Place
Guelph, Ont.

Gora, Mrs. Mary in Trust 250
21Crestwood Place
Guelph, Ont.

Gordon, Jack A. 100
Cannington, Ont.

Gosskie, Joseph E. 150
259 Dunwoody Drive
Oakville, Ont.

Graham, Harold S. 500
Box 269
Port Stanley, Ont.

Grant, Jack 200
12 Collingwood Street
Kingston, Ont.

Grant, Mrs Marjorie 200
52 Wellington St.,
Aylmer, Ont.

Grant, Peter Macb. 25
25 Rumbsey Road,
Toronto 17, Ont.

Gray, Charles 50
R.R. 2,
Port Lambton, Ont.

Gray, Mrs. Sarah F. 200
396 Markham Street
Toronto 4, Ont.

Greenfield, Mrs. Ferne 100
40 Fulton Street
Brantford, Ont.

Greenfield, Harry F. 65
40 Fulton Street
Brantford, Ont.

Gregory, Mr. Courtney G. 100
1 Shaver Court
Islington, Ont.

Greene, Harry A. 100
127 Brooklawn Ave.,
Scarborough, Ont.

Griffiths, Oriel 300
141 George Street
Belleville, Ont.

Grigg, J. V. 300
Orangeville, Ont.

Grindley, Frank H. 300
231 Glenwood Crescent
Oshawa, Ont.

Hagey, Mrs. Ardell 300
112 Dufferin Ave.,
Brantford, Ont.

Hagey, H. Louis 200
148 Dalhousie St.,
Brantford, Ont.

Hain, John 200
130 Stath Ave.,
Toronto 18, Ont.

Hall, George 30
15 Decarie Circle
Islington, Ont.

Hall, Dr. Graham W. 100
450 Central Ave.,
London, Ont.

Hall, James 100
R.R. No. 1
Galt, Ont.

Hall, Mrs. Pearl 100
P.O. Box 209
Strathroy, Ont.

Hamilton, Mrs. Gladys B. 50
1201 Richmond St., Apt. 509
London, Ont.

Hamilton, Frank 50
Glen Huron, Ont.

Hamilton, Russel J. 50
1201 Richmond St., Apt. 509
London, Ont.

Hamilton, William C. 100
39 Winlock Park
Willowdale, Ont.

Hammond, Miss Elizabeth E. 100
Apt. 734, Kensington Towers
21 Dale Ave.,
Toronto 5, Ont.

Hammond, Mrs. Emily L. 30
19 Blossie St.,
Brantford, Ont.

Harding, Frank C. 200
Woolworth Co. Ltd.
180 Yonge St.,
Toronto 1, Ont.

Harker, James R. 200
253 Queensway Dr.,
Simcoe, Ont.

Harshaw, Archibald 500
79 Rosemount Crescent
Westmount, P.Q.

Hartleib, Harry D. 100
572 Cheapside St.,
London, Ont.

Harvie, Dalton B. 300
93 John Street
Thornhill, Ont.

Harvie, John D. 100
102 Dunvegan Rd.,
Toronto 7, Ont.

Haskett, Charles Pacey 100
382 Ridout St. N.,
London, Ont.

Hassard, Mrs. Mary Anne 150
c/o Stevens Hassard & Elliott
1245 Bloor St. W.,
Toronto 4, Ont.

Hassard, Richard J. 522
199 Parkside Dr.,
Toronto 3, Ont.

Hawkins, Roland S. 190
660 Glengrove Ave. W.,
Toronto 19, Ont.

Hayhoe, J. Boyce 150
Pine Grove, Ont.

Hazlett, Mrs. Sarah D. 200
3 Machockie Road
Toronto 6, Ont.

Helwig, Professor Carl E. 200
89 Woodlawn Ave. West
Toronto 7, Ont.

Henderson, James M. 20
483 Blythwood Rd.,
Toronto 12, Ont.

Hennessey, Mrs. Violet 100
35 Fulton Ave.,
Toronto 6, Ont.

Hennings, Thomas 50
53 Park Ave.,
Brantford, Ont.

Henwood, Leslie G. 200
80 Carrick Ave., Apt. 5
Hamilton, Ont.

Heron, James F. 100
145 St. George St., Apt. 1211
Toronto, Ont.

Hersh, Cyril 200
201 Hillhurst Blvd.,
Toronto 12, Ont.

Hickling, Mrs. Jean 50
Box 189
Delhi, Ont.

Hillier, Mrs. Janet 100
R.R. No. 1
Sarnia, Ont.

Hislop, Donald B. 50
1691 Lakeshore Rd.,
Sarnia, Ont.

Hobson, George and Hobson, Mrs. Eleanor 100
as joint tenants and not as tenants in common
1645 Cadillac
Detroit 4, Mich.

Hodgson, Mrs. Vera 100
161 East Ave.,
Brantford, Ont.

Haldenby, Eric W. 100
Mathers & Haldenby
10st. Mary Street
Toronto 5, Ont.

Hollend, Martin 50
Box 461
Lakefield, Ont.

Holmes, Mrs. Agnes C. 1575
538 Broadway Ave.,
Toronto 18, Ont.

Holmes, Bernard A. 15
1390 Islington Ave. North
Rexdale, Ont.

Honegger, H. E. 50
55 Stuart Ave.,
Willowdale, Ont.

Hooper, Miss Jeane L. 50
c/o Canada Trust Co.,
Huron Erie Bldg.,
Dundas St.,
London, Ont.

Hughes, Miss Eleanor 100
50 Nina Ave.,
Toronto 10, Ont.

Hunter, Mr. E. Norval 200
The K.V.P. Co. Ltd., Ste. 320
48 Yonge St.,
Toronto, Ont.

Hutcheson, Frank W. 500
Huntsville, Ont.

Hyatt, Mrs. Marjorie J. 25
P.O. Box 554
Petrolia, Ont.

Hyde, Frank A., 100
233 Creek St.,
Wallaceburge, Ont.

Hymus, Ernest S., 100
32 St. Cuthberts Road,
Toronto 17, Ont.

Infuso, Lloyd 235
50 Braywin Drive
Weston, Ont.

Irving, Henry 25
9 West Cove
Galt, Ont.

Jamison, Mrs. Norah K. 50
Apt. 3, 16 Yonge Blvd.,
Toronto, 12, Ont.

Jarjour, Wilfrid 200
2842 Bloor St. W.,
Toronto 18, Ont.

Jenkins, George C. 100
Eden, Ont.

P. Ray, St. John 100
100 Stratford Cres.,
Toronto 12, Ont.

Johns, Mrs. Kathleen 100
77 Inniswood Dr.,
Scarborough, Ont.

Johnson, A. Hamilton 400
4 Denison St.,
Stratford, Ont.

Johnson, Edgar U. 200
318 Glen Road
Toronto 5, Ont.

Johnson, Mrs. Jane 100
30 Gwendolyn Ave.,
Toronto, Ont.

Johnson, John B. 100
c/o Bernard Cairns Ltd.
134 Richmond West
Toronto, Ont.

Johnston, Edward 100
c/o Cuddy Hardware
Strathroy, Ont.

Johnson, Dr. J. Gordon 200
29 Marmora St.,
Trenton, Ont.

Jones, Mrs. Gladys M. 100
103 Eldomar Ave.,
Brampton, Ont.

Kaplan, Mrs. Estherelke 60
580 Christie Street
Toronto, Ont.

Keeler, Mrs. Grace L. 100
R.R. No. 1
Carrying Place, Ont.

Kelly, Howard 1,000
35 Wellington Street
Kingston, Ont.

Kennedy, Alexander M. 50
Room 1200, Nat. Trust Bldg.,
7 King St. E.
Toronto 1, Ont.

Kenyon, Thomas 1,882
72 Durant St. Toronto, Ont.

Kerr, Miss Mavis 100
R.R. No. 2
Dresden, Ont.

Louis Kesten
48 De Quincy Blvd.,
Downsview, Ont. 100

Kightley, James A.
126 York St.,
London, Ont. 200

Kightley, Paul F.
c/o Kighley Auto Electric Ltd.,
126 York St.,
London, Ont. 200

Kitchen, George H.
150 Wibleton Rd.,
Islington, Ont. 100

Kukovica, Andrew
66 Station Rd., Apt. 7
Toronto, Ont. 100

Kukovica, Mrs. Maria
202 Grove St.,
Guelph, Ont. 100

Kukovica, Mr. Teja
66 Station Rr., Apt No. 7
Toronto 14, Ont. 100

Kunitomo, Tak
8 Dante Road
Toronto 15, Ont. 100

Kyle, Dr. Paul R.
283 David St.,
Sudbury, Ont. 200

Laarz, Elmer J.
Box 294
Ingersoll, Ont. 50

Laidlaw, G. Wallace
R.R. No. 7
London, Ont. 200

Laidley, Clifford M.
58 Kent St. W.,
Lindsay, Ont. 50

Laird, Mrs. V. Pearl
13 Erie Ave.,
London, Ont. 100

Lamb, Max
202 Rosedale Heights Drive
Toronto 5, Ont. 200

Lamont, J. Leslie
P.O. Box 249
Kincardine, Ont. 100

Landau, Mrs. Nettie
515 Chaplin Crescent, Apt. 711
Toronto 12, Ont. 200

Lang, C. Whintney
200 Divadale Drive
Toronto 17, Ont. 100

Lang, John
50 King St. W., Ste 910
Toronto, Ont. 150

Lane Basil L.
c/o Easy Washing Machine Co.,
Shell & Maranda Sts.,
Toronto 10, Ont. 100

Large, W. J.
412 Mt. Pleasant Road
Toronto 7, Ont. 100

Larson, Eric V.
74 Airdrie Road
Toronto 17, Ont. 25

Lashley, Homer,
156 Thames St., N.
Ingersoll, Ont. 50

Laughlin, Mrs. Gladys E.
193 Golfdale Rd.,
Toronto 12, Ont. 100

Layzell, William H.
Apt. 502, 3541 Yonge St.,
Toronto 12, Ont. 150

Lazarus, Mrs. E. Irene
16 Martin Cresc.,
Toronto 7, Ont. 25

Lea, Geoffrey
35 Northumberland St.,
Toronto 4, Ont. 100

Leahy, Dr. Phillip J.,
Teeswater, Ont. 50

Lee, Mr. J. Douglas
309 King St. W.,
Kingston, Ont. 200

Lee, Mrs. Norma M.
33 Knighton Dr.,
Toronto 16, Ont. 7

Lees, Hyman
106 Longwood Rd., S.
Hamilton, Ont. 500

Lennox, Mr. George B.
1060 Oxford St.,
London, Ont. 100

Lennox, John H.
161 Front St.,
Belleville, Ont. 100

Leprich, Carl
172 Richard Clark Dr.,
Downsview, Ont. 100

Levy, Benjamin
1400 Weston Rd.,
Toronto 15, Ont. 500

Lichter, Symon
59 Baycrest Ave.,
Toronto 19, Ont. 100

Lister, Cyril A.
11 Parkman Place,
Westmount 6, P.Q. 50

Lloyd, Hugh M.
66 Queenston St.,
Winnipeg 9, Man. 100

Lloyd, Mrs. Mary L.
17 Lascelles Blvd., Apt. 208
Toronto 7, Ont. 100

Lobsinger, William J.
Jackson St.,
Walkerton, Ont. 100

Lockwood, Dr. Charles A.
Glencoe, Ont. 100

Lorenson, Mrs. Ruth M.
Box 177
Marmora, Ont. 100

Loucks, Mrs. Dorothy J.
Chesley, Ont. 50

Loucks, Joseph A.
1379 Londonderry Blvd.,
Port Credit, Ont. 600

Lucchetta, Frank
69 Burr Ave., North York
Toronto, Ont. 200

Ludlow, Mrs. Rita
119 Parkview Ave.,
Willowdale, Ont. 100

Lundy, Robert
22 Colwood Rd.,
Islington, Ont. 50

Lyon, John D.
179 College St.,
Kingston, Ont. 100

MacDonald, Donald S.
16 Summerhill Gdns.,
Toronto, Ont. 100

MacDonald, Dr. Earle M.
197 Charles Street
Belleville, Ont. 200

MacDonald, J. Willard
2479 "A" Bloor St. W.
Toronto 1, Ont. 200

MacDonald, Philip B.
68 Delhi Ave.,
Toronto, Ont. 3

MacFarlane, Mrs. Lilyan
26 Woodland A Cres.,
Belleville, Ont. 100

MacFarlane, Mr. Phyllis E.
17 Lichen Place,
Don Mills, Ont. 100

MacKendrick, Mrs. Annie E.
1306 Lake Shore E.,
Oakville, Ont. 200

MacLaren, William J.
Wynnwood Road
Greenwick, Connecticut U.S.A. 200

MacNab, John M.
24 Classic Ave.,
Toronto 5, Ont. 200

MacVicar, Wilfred G.,
Strathroy, Ont. 200

Malcolm, Carl J.
14 Breadner Drive
Weston, Ont. 100

Malloy, Fred C.
c/o Bank of Nova Scotia
Savings Acc. No. 4067
Oshawa, Ont. 200

Mandell, Mrs. Frances
52 Timberlade Drive,
Downsview, Ont. 60

Marchand, Mr. Eugene J.
R.R. No. 1, St. Clair Shores
Belle River, Ont. 100

Marcus, Harold
R.R. No. 4,
Bothwell, Ont. 200

Mark, Howard S.
257 Dawlish Ave.,
Toronto 12, Ont. 200

Markshall, Arthur S.
Box 317,
Fonthill, Ont. 50

Martin, William A.
55 Gardenvale Rd.,
Toronto 18, Ont. 105

Mascioli, Mr. Guy
150 Kingsmount Blvd.,
Sudbury, Ont. 100

Maslink, Mr. William
11 Front St. S.,
Thorold, Ont. 50

Matta, Mr. Virgil E.
918 Parent Ave.,
Windsor, Ont. 100

Mervin, Alexander S.
1759 Byng Ave.,
Niagara Falls, Ont. 100

Metcalfe, Mrs. Lillian M.,
Oil Springs, Ont. 25

Metivier, Ralph
248 The Kingsway North,
Islington, Ont. 300

Middleton, William H.
Unionville, Ont. 500

Milfod, Benjamin
347 Royal York Road,
Toronto 18, Ont. 50

Milks, William J.
322 Brooke Ave.,
Toronto, Ont. 25

Miller, Ronald C. Box 509, 173 John St., Napanee, Ont.	100
Mills, Derek W., 5 Maryvale Cres., Thornhill, Ont.	50
Milne, Donald A. Kincardine, Ont.	100
Miskimmin, David 16 Glen Ames Ave., Toronto 13, Ont.	200
Mitchell, Mrs. Dorothy 194 Dufferin Ave., Brantford, Ont.	25
Mitchell, John S., 286 Coleman Street Belleville, Ont.	100
Moffatt, J. Hiram Watford, Ont.	100
Mollard, Mrs. Dorothy J. 11 Kings Lynn Rd., Toronto 18, Ont.	1,320
Mollard, William A. 28 Bennington Heights Dr., Toronto, Ont.	1,575
Mollard, William J. 11 Kings Lynn Rd., Toronto 18, Ont.	3,633
Monette, Miss Jean 876 Broadview Ave., Toronto, Ont.	150
Montgomery, J. Hector 1053 Cannon Street East Hamilton, Ont.	500
Mooney, Michael J. 224 Sloane Ave., Toronto 16, Ont.	315
Moore, Ralph R., Norwich, Ont.	200
Morris, Mrs. Sheila M. 126 Dinnick Cres., Toronto 12, Ont.	400
Morrison, Dr. Roy 2 Paisley Ave., So., Hamilton, Ont.	100
Morrison, Mrs. Vera V. Apt. 506, 6060 Avenue Rd., Toronto, Ont.	100
Moyle, Joseph R. 87 St. George St., Brantford, Ont.	25
Muller, Charles, 24 Westmount Road, Guelph, Ont.	10
Muller, Donald, 545 Eramosa Road, Guelph, Ont.	15
Munn, Harold, 3 Beckwith St., West Perth, Ont.	100
Munro, Mrs. Vivian A. 68 Howland Ave., Toronto 4, Ont.	125
Murdoch, William J. Canada Permanent Mortgage Co., 47 James St., S., Hamilton, Ont.	50
Murphy, Mr. Henry A. 656 University St. W. Windsor, Ont.	100
McCarthy, Lorne E. R.R. No. 6 Brampton, Ont.	25
McClure, Mr. Ivie S. R.R. No. 6 Brantford, Ont.	200
McConaghy, Frank P. 20 Bedford Park Ave., Richmond Hill, Ont.	50
McConaghy, Mrs. Lavada M. 20 Bedford Park Ave., Richmond Hill, Ont.	50
McConkey, Oswald M. R.R. No. 2, Elora, Ont.	250
McConnell, Elmer K. R.R. No. 1, Delhi, Ont.	100
McCormack, Mrs. Margaret I. 149 Inglewood Dr., Toronto, Ont.	900
McCready, Mrs. Elizabeth Jane 28 Bennington Heights Dr., Toronto, Ont.	787
McCrimmon, John S. G. 26 Anglesey Boulevard Islington, Ont.	100
McCullough, Dr. David W. 96 Larch St., Suite 206 Sudbury, Ont.	100
McCullough, Dr. John F. 260 Cedar St., Sudbury, Ont.	100
McDermid, Dr. Elsie M. (Miss) 508 William Street London, Ont.	50
McDowell, Chester C R.R. No. 3 Milton, Ont.	250

McEwan, Thomas A.
21 Dormie Lane,
Guelph, Ont. 200

McFadden, Harold W.
1 Lake Cres.,
Toronto 14, Ont. 50

McGillivray, Dr. Douglas A.
71 Dundas St.,
Wallaceburg, Ont. 50

McGuigan, Miss Veronica
87 Withrow Ave.,
Toronto 6, Ont. 163

McIlmoyd, Clarence
20 Bunty Lane,
Willowdale, Ont. 100

McInnis, John H.
588 Hurontario Street,
Collingwood, Ont. 100

McIntyre, Ronald
489 Rouge Hill Drive
West Hill, Ont. 50

McKee, James A.
640 Roselawn Ave.,
Toronto 12, Ont. 880

McKee, Mr. Raymond
314 Griffith Street
London, Ont. 100

McKee, William J.
Apt. 504, 915 Midland Ave.,
Scarborough, Ont. 100

McKenzie, Kenneth H.
21 Wellington St., W.
Barrie, Ont. 100

McKergow, F. Chester,
227 Ledbury Ave.,
Toronto 12, Ont. 100

McMillan, Miss Jessie,
521 The Kingsway
Islington, Ont. 100

McMurtry, Mrs. Joan M.,
1053 Cannon St. E.,
Hamilton, Ont. 100

McNeil, Stanley R.,
64 Pine St.,
Woodbridge, Ont. 25

Needham, John E.,
41 Donaree Dr.,
Don Mills, Ont. 100

Nelles, Malcolm S.,
156 Main St. E.,
Grimsby, Ont. 300

Niblett, George S.,
8 Valleyanna Drive,
Toronto 12, Ont. 1,000

Nikiforuk, Mrs. Hellena,
802 Colborne St.,
Brantford, Ont. 100

Nikiforuk, John,
802 Colborne St.,
Brantford, Ont. 100

Nishimura, Mr. Kazumi,
136 Beatrice Street,
Toronto 3, Ont. 150

O'Brecht, Miss Sharon,
28 George Street, Apt. 1,
Toronto 14, Ont. 50

Oelbaum, Mrs. Ethel,
46 Old Forest Hill Rd.,
Toronto 7, Ont. 50

Okuno, Mr. Matthew S.,
136 Beatrice St.,
Toronto 3, Ont. 200

Okuno, Mrs. Polly,
136 Beatrice St.,
Toronto 3, Ont. 50

Olds, Mr. Percy,
532 Michigan Ave.,
Sarnia, Ont. 50

O'Neill, Clarence Francis,
14 Burton Rd.,
Forest Hill Village,
Toronto 10, Ont. 6,500

Orr, Mr. E. Royden,
35 Eaglewood Blvd.,
Port Credit, Ont. 50

Ovens, Samuel,
72 Alexis Blvd.,
Downsview, Ont. 100

Parker, Harvey W.,
Listowel, Ont. 200

Pascoe, Mrs. Sandra M.,
95 Parkside Drive,
Brantford, Ont. 200

Paterson, Mrs. Daphne H.,
Box 300,
Trenton, Ont. 150

Patterson, Dr. Donald M.,
286 King St. W.,
Chatham, Ont. 200

Patterson, Mr. John B.,
78 Cardiff Road,
Toronto 12, Ont. 100

Patterson, Launcelot O.,
R.R. No. 3
Wallaceburg, Ont. 200

Payne, Arthur J.,
405 South Vidal St.,
Sarnia, Ont. 100

Payne, Mrs. Mary Emma, 100
824 London Road,
Sarnia, Ont.

Pearson, Chester R., 100
19 Eleventh Street,
Toronto 14, Ont.

Pearson, Harvey C., 100
395 Old Orchard Grove,
Toronto 12, Ont.

Pember, Dr. Frank R., 100
Box 340,
Colborne, Ont.

Pember, Mrs. Marion E., 50
Box 340,
Colborne, Ont.

Pentland, W. Lawrence 100
P.O. Box 83
Sarnia, Ont.

Perille, Veronica 50
8 Emery Circle,
Weston, Ont.

Pepall, Robert L. 100
217 Lonsdale Road
Toronto 7, Ont.

Phillips, R. Darrell 300
31 Larkin Ave.,
Toronto 3, Ont.

Phillips, Mr. Leonard E. 100
55 Hendrick St., Apt. 205
Toronto 4, Ont.

Phillips, Mrs. Lillian 100
55 Hendrick St., Apt 205
Toronto 4, Ont.

Phillips, Mr. William T. 100
American Optical Co. Ltd.
Box 175
Peterborough, Ont.

Pitt, Stanley 100
1093 Valley Way
Niagara Falls, Ont.

Plant, Mrs. Thelma Dorothea 100
3 Brian Cliff Dr.,
Don Mills, Ont.

Plowman, Mr. Herbert G. 100
84 Prince George Dr.,
Toronto 18, Ont.

Pollitt, Stanley 200
1408 Londenderry Blvd.,
Port Credit, Ont.

Pollock, Dr. Allan D. 500
117-10th Street West
Owen Sound, Ont.

Pollock, Norton Grant 50
Box 433
Parkhill, Ont.

Poupore, Robert D. 200
c/o National Trust Company
Limited
Trust Department
21 King St. E.,
Toronto, Ont.

Powers, Mr. Rowan E. 100
Sarco Canada Ltd.,
611 Gerrard St. E.,
Toronto 8, Ont.

Pringle, Mrs. Ethel M. 300
1023 Royal York Road
Toronto 18, Ont.

Proter, Dr. John F. 700
4 Strathearn Blvd.
Toronto 10, Ont.

Puskas, Miss Elizabeth J. 50
1262 Simcoe St., S.
Oshawa, Ont.

Pynn, John L. 50
7 Brian Ave.,
Scarborough, Ont.

Quant, Mr. Leslie W. 100
80 Wharncliffe Rd., S.,
London, Ont.

Quickert, Arthur E. 100
435 Bridge St. E.
Belleville, Ont.

Quinlan, Thomas P. Jr. 50
541 James St.,
Wallaceburg, Ont.

Rae, G. L. Boyd 100
17 Ivylea Cres.,
Toronto 18, Ont.

Raffaghello, Mrs. Margaret 200
30 Winnipeg Road
Weston, Ont.

Rathbun, J. Grant 100
c/o Rathbun Bus Service Ltd.,
148 Victoria Ave.,
Toronto, Ont.

Rawlinson, Mrs. Shirley M. 100
37 Old Colony Road
Willowdale, Ont.

Reid, Mr. W. T. Craig 100
20 Chipper Court
Georgetown, Ont.

Read, Mr. Kenneth 200
Bobcaygeon, Ont.

Reid, Miss Evelyn C. 100
1 Church St.,
Brantford, Ont.

Reid, Mrs. Hendrina M. 50
23 Lescelles Blvd., Apt. 808,
Toronto 7, Ont.

Reiter, Mr. Rudy H. 15
159 Beechwood Cres.,
Newmarket, Ont.

Reynolds, Mr. George B. 100
96 Lankin Blvd.,
Toronto, Ont.

Reynolds, Mr. Russell 200
160 Humbervale Blvd.,
Toronto 18, Ont.

Richards, C. Harold 100
37 Killdeer Crescent,
Toronto 17, Ont.

Rivers, Stanley F. 50
137 Hillhurst Blvd.,
Toronto 12, Ont.

Robertson, Mr. Donald L. 200
c/o Bank of Montreal,
Grand Bend, Ont.

Robinette, Thomas W. 225
306 Inglewood Dr.,
Toronto, Ont.

Robinson, Bertrand 200
c/o Room 1715, 44 Victoria St.,
Toronto 1, Ont.

Robinson, Dr. Sanmuel S. 500
301 Brock Street,
Kingston, Ont.

Robinson, Mrs. Vera 100
Apt. 501, 80 Scott St.,
Brampton, Ont.

Robson, Mrs. Barbara 200
50 Esgore Dr.,
Toronto 12, Ont.

Robson, Mr. Morris W. 100
1234 Dupont St.,
Toronto 4, Ont.

Roesener, Mr. Werner F. 50
67 Jasper Drive,
Aurora, Ont.

Rogers, L. Joslyn 300
110 Garfield Ave.,
Toronto 7, Ont.

Rose, Arnold 10
90 Erie Ave.,
Brantford, Ont.

Ross, Mr. Alvin H. 125
50 Oxbow Road,
Willowdale, Ont.

Ross, Donald H. 1,000
107 Citation Drive,
Willowdale, Ont.

Ross, John St. C. 100
1651 Dominion St.,
Sherbrooke, Que.

Roth, Mrs. Beryl C. 100
84 Wigmore Drive,
Toronto 16, Ont.

Rowat, Ross 50
c/o Co-Operators Insurance
Association,
150—9th St. W.,
Owen Sound, Ont.

Rowe, Austin 50
c/o Rowe Dairies,
489 St. Patrick W.,
Fergus, Ont.

Rowe, Ronald T. 30
41 Pepler Ave.,
Toronto 6, Ont.

Rudlen, Miss Florence M. 100
7 Rose Ave.,
Toronto 12, Ont.

Rumble, Mr. Allan 50
89 Arnold St.,
Richmond Hill, Ont.

Ruble, Mrs. Eugenia G. 200
Executrix Estate of George Rumble,
c/o National Trust Co. Ltd.
Trust Dept.,
21 King St. East,
Toronto 1, Ont.

Rumble, Mrs. E. Grace 100
96 St. Leonard's Ave.,
Toronto 12, Ont.

Rupert, Alexander 100
Tweed, Ont.

Russell, Mrs. Ada G. 50
c/o L. W. Doncaster,
R.R. No. 2,
Streetsville, Ont.

Samuel, David 200
Suite 801, 62 Richmond St. W.,
Toronto, Ont.

Sanderson, C. Herbert 100
47 Centre St. E.,
Richmond Hill, Ont.

Scarfone, Dr. Joseph D. 200
1310 Ouellette Ave.,
Windsor, Ont.

Schacter, Harry W. 500
56 Thorncliffe Park Drive,
Toronto 17, Ont.

Schafer, Matthew 550
2176 Cathcart Blvd.,
Sarnia, Ont.

Schatz, Edwin 100
9 Kingsway Dr.,
Hamilton, Ont.

Schnarr, Mrs. Faith E. 100
30 Springbrook Gardens,
Toronto 18, Ont.

Scott, W. Bruce 500
148 Donegal Drive,
Leaside, Ont.

Scott, Frank 100
Lucan, Ont.

Scott, Dr. John A. L. 200
45 Mont St.
Guelph, Ont.

Scully, James Kevin 50
28 Aberdeen Ave.,
Hamilton, Ont.

Sgarlata, Mrs. Jean Helen 100
14 Twyford Rd.,
Islington, Ont.

Shaffer, Mr. Eldon A. 150
40 Hillcroft Dr.,
Kingston, Ont.

Sharp, Miss Elizabeth W. 100
2 Glen Elm Ave., Apt. 24,
Toronto 7, Ont.

Sheahan, Mrs. Alyce 25
98 Silverbirch Ave.,
Toronto 13, Ont.

Shiozaki, David Fumiaki 100
3 Averill Crescent,
Willowdale, Ont.

Showell, Miss Elizabeth 5
298—2nd Avenue East,
Owen Sound, Ont.

Shultis, Perceil A. 100
61 Dalhousie St.,
Brantford, Ont.

Siegel, Dr. E. J. 60
345 Bloor St. West,
Toronto 5, Ont.

Simmons, Mr. Archie H. 100
Wilton, Ont.

Simmons, Francis J. 100
15 Holborn St.,
Brantford, Ont.

Simonett, John 500
Sharbot Lake, Ont.

Robert E. Simpson 200
17 Queen St. E. Suite 340
Toronto 1, Ont.

Skinner, Grant 100
264 Margaret Ave.,
Wallaceburg, Ont.

Skinner, Thomas C. 25
1 Evans Ave.,
Toronto 9, Ont.

Smale, John 100
c/o Victoria & Gray Trust Company
Lindsay, Ont.

Small, Mr. Howard 300
c/o Guelph Paper Box Co. Ltd.,
69 Huron St.,
Guelph, Ont.

Smith, Albert J. 200
c/o G. R. McBride
372 Bay Street,
Toronto 1, Ont.

Smith, Chauncey 175
Box 84,
Tillsonburg, Ont.

Smith, E. Donald 650
386 Talbot St.,
St. Thomas, Ont.

Smith, Mrs. Dorothy M. 100
14 Glenaden Ave., West
Toronto 18, Ont.

Smith, Miss Edith F. 50
512 St. George St.,
London, Ont.

Ross, A. Smith 100
50 Arthur St. N.
Guelph, Ont.

Smith, Mrs. Ruth D. 500
c/o Chester H. Smith
386 Talbot St.,
St. Thomas, Ont.

Smither, Mrs. Gladys 100
75 Thorncrest Road
Islington, Ont.

Snelgrove, Ralph T. 600
23 Theresa St.,
Barrie, Ont.

Sparling, Dr. Ivan R. 100
R. R. No. 6
Brampton, Ont.

Sparrow, D. Harold 100
18 Lowrey St. S.,
Galt, Ont.

Springett, Gordon D. 300
526 Bellamy Rd.,
Scarborough, Ont.

Sprowl, Percy A. 200
King St.,
Burford, Ont.

Stafford, John H. 1,000
c/o Stafford Foods Ltd.,
37 Hanna Ave.,
Toronto 3, Ont.

Stanbury, Edwin T. 25
1 Waterfield Drive
Scarborough, Ont.

Standfield, Mrs. Mary 315
323 Belsize Drive
Toronto 17, Ont.

Staples, Dr. Thomas E. 200
307—Tenth Street
Hanover, Ont.

Steel, Alexander S. 100
c/o The Borden Company Ltd.
1275 Lawrence Ave., E.
Don Mills, Ont.

Sterling, Mrs. Leta F. 50
199 St. Vincent St.
Sarnia, Ont.

Sterne, Mrs. Hilda D. 100
Apt. No. 7, 88 Charlotte St.,
Brantford, Ont.

Stevens, Charles 50
273 Manor R., East
Toronto 7, Ont.

Stevens, Mrs. Noreen M. 150
1460 Bayview Ave., Apt. 701,
Toronto 7, Ont.

Stevens, Sinclair M. 576
1460 Bayview Ave., Apt. 701
Toronto 7, Ont.

John W. Stevenson 100
P.O. Box 848
Sarnia, Ont.

Stevenson, Dr. C. Keith 100
Box 187
Milton, Ont.

Stewart, James A. 100
11 Minnie St.,
Wallaceburg, Ont.

Stewart, Miss Alberta 100
249 St. Clair Ave., West
Toronto 7, Ont.

Stinson, Dr. William J. 200
V.C. Box 442
Perth, Ont.

Stock, Mrs. Helene M. 150
District Traffic Office
Bell Telephone Co.,
London, Ont.

Stockman, Helmut O. 50
R.R. No. 4
Embro, Ont.

Stoneman, Bruce A. 100
Sombra, Ont.

Strain, Mrs. Helen M. 100
376 St. Clements Ave.,
Toronto 12, Ont.

William, K. M. Straw 50
25 St. Andrews, P.O. Box 481
Paris, Ont.

Stuckey, Norman 50
64 Bywood Drive
Islington, Ont.

Studhome, Allan E. Executor Estate of Alice Studhome 200
c/o The London Life Insurance Company
170 University Ave.,
Toronto, Ont.

Mrs. Sullivan Hannah 100
Elgin Street
Arnprior, Ont.

Mrs. Sullivan Hannah in trust for Jane Sullivan 100
Elgin Street
Arnprior, Ont.

Mrs. Sullivan Hannah in trust for Judith Sullivan 100
Elgin Street
Arnprior, Ont.

Summerhayes, Mrs. Eva R. 50
St. George Road,
Brantford, Ont.

Sunnen, August 75
23 Grand Ave., Chatham, Ont.

Sutherland Leroy J. 100
854 1st. Ave. West
Owen Sound, Ont.

Sutter, Mr. Henry 100
346 Stewart Dr.,
Sudbury, Ont.

C. Howard Swayze 200
351 Bessborough Drive
Toronto 17, Ont.

Tate, Ernest C. 100
Box 22
Guelph, Ont.

Taylor, Mrs. Adell 500
Box 325,
Madoc, Ont.

Taylor, Mrs. Bessie H. 150
48 Grenoble Dr. Apr. 502,
Don Mills, Ont.

Taylor, Hohn M. 50
R.R. No. 1
Collingwood, Ont.

Taylor, Robert B. 1
27 Bradgate Rd.,
Don Mills, Ont.

Taylor, Roy 500
Box 325,
Madoc, Ont.

Thomlinson, Mrs. Isobel 125
St. Stevens Court Apt. 306F,
The Kingsway,
Islington, Ont.

Thompson, Bruce E. 500
37, McCrae Blvd.,
Guelph, Ont.

Thompson, Mrs. Margaret I., 300
199 Lakewood Dr.,
Oakville, Ont.

Thompson, Mr. T. Clive 100
Box 64,
Brighton, Ont.

Thompson, Victor W. 100
291 Main St. West
Grimsby, Ont.

Thorne, Mrs. Gladys 200
Box 22
Bobcaygeon, Ont.

Thornton, Philip S. 200
7 Drouin Ave.,
Dollard Des Ormeaux, P.Q.

Thurston, Melville 50
Bobcaygeon, Ont.

Tinning, John W. 100
71 Jonge Blvd.
Toronto 12, Ont.

Toole, Grant W. 500
c/o Toole & Runions
123 Woolwich St.
Guelph, Ont.

Tremaine, Mrs. Audrey 15
Janetville, Ont.

Tronbar & Co., 1,500
c/o Canadian Imperial Bank of Commerce,
King & Victoria Sts.
Toronto 1

Trott, William L. 100
15 Riverhead Drive
Rexdale, Ont.

Mrs. Tse, Poon Fook 100
129 Dundas St. W.
Toronto, Ont.

Dr. Tse, Vat T. 333
129 Dundas St. West
Toronto 2B, Ont.

Tutt, J. McIntosh 50
15 Springfield Dr.,
Brantford, Ont.

Tytler, James 100
46, Margaret St.,
Hamilton, Ont.

Dr. Unger, Hella 100
189 Cameron Ave.,
Willowdale, Ont.

Valentini, Edward 300
25 Manor Hampton Dr.,
Weston Post Office
Weston, Ont.

Valentini, Emilio 2,000
165 Cartwright Ave.,
Toronto 19, Ont.

Vande Velde, Rene 200
R.R. No. 6
Wallaceburg, Ont.

Van Den Akker, Mrs. Mary 25
458 Clare Ave., South
Welland, Ont.

Van Koughnet, Miss Minerva A. 150
876 Broadview Ave.,
Toronto 6, Ont.

Veldhuis 15
28 A Mont St.
Guelph, Ont.

Vincent, Stanley S. 200
2 Union St., East
Waterloo, Ont.

Vogan, Robert C. 25
206 Percival Ave.,
Montreal West, Que.

Wagern, Dr. G. Anton 100
P.P. Box 159, Station "H"
Montreal, Que.

Wald, Harry 200
712 Eagle Drive
Burlington, Ont. 200

Walker, Gordon S. 100
c/o Forst High School,
Forest, Ont.

Wambold, Mrs. Edna M. 50
629 Hurontario St.,
Collingwood, Ont.

Warburton, Harold C. 200
131 Erindale Avenue,
Hamilton, Ont.

Ware, Mrs. Elizabeth M. 1

Warner, Mrs. J. Cecelia J., 200
27 Delwood Drive,
Scarborough, Ont.

Warnica, Dr. John K. 225
599 Second Ave., E.,
Owen Sound, Ont.

Waterous, Charles L. 60
36 William St.,
Brantford, Ont.

Watt, William F. 400
Cornell, Mrs. Georgie Executrix Estate
26 Lytton Blvd.
Toronto 12, Ont.

Watts, Mrs. Ann D. 75
83 Elm Ave., Apt. 114,
Toronto 5, Ont.

Watts, Mr. Kenneth, 75
83 Elm Ave., Apt. 114,
Toronto 5, Ont.

Webb, Miss Esther A. 180
701 Eglinton Ave. W.
Toronto 10, Ont.

Webb, Mr. Norman E. 200
c/o Abco Box Carton Co. Ltd.,
460 York St.,
Guelph, Ont.

Weese, Frank A. 100
41 Nelson Street,
Wallaceburg, Ont.

Welch, Dr. Robert H. 200
284 St. Clair Ave., West
Toronto 7, Ont. "Personal"

Welsman, George G. 200
189 Bridle Path
Don Mills, Ont.

Wesley, James C. 150
Port Lambton, Ont.

West, Mr. Aubrey 50
1 Sprucedale Place,
Toronto 16, Ont.

Whitehead, Harry Y. 300
Caledonia, Ont.

Whittaker, John A. 25
24 Ridgewood Drive,
Welland, Ont.

Wice, Mrs. Helen Jean 300
282 Kempenfeldt,
Barrie, Ont.

Wigle, Mrs. Jean 50
266 Briscoe St.,
London, Ont.

Wildman, Mr. William N. 100
Box 292,
Woodbridge, Ont.

Wilkinson, Leonard A., 100
1542 Bayview Ave.,
Toronto, Ont.

Williams, Miss D. Esther 500
c/o Toronto Dominion Bank
1492 Yonge St.,
Toronto 7, Ont.

Williams, Norman E. 100
58 McNairn Ave.,
Toronto 12, Ont.

Wilson, Angus M. 300
42 Albert St.
Stratford, Ont.

Wilson, Dr. Angus M. 200
11 Denison Ave.,
Stratford, Ont.

Wilson, Mr. Arthur J. 200
Box 256,
Delhi, Ont.

Wilson, Mr. Richard B. 100
c/o Bank of Nova Scotia,
602 W. Hastings St.
Vancouver, B. C.

Wilson, Dr. Robert I. 25
3 Drew Avenue,
Galt, Ont.

Windeler, Cyril H. 200
c/o Naranda Mines Limited
1700 Bank of Nova Scotia Bldg.
Toronto, Ont.

Wofford, Andrew M. 708
5704 - 94 "A" Ave.,
Edmonton, Alta.

Wong, George 50
62, Elm Street,
Toronto 2, Ont.

Wood, Mrs. Nancy Marion 195
22 Wythenshaw Wood,
Scarborough, Ont.

Woodland, Dr. Lawrence A. 100
194, Lord Seaton Drive,
Willowdale, Ont.

Woodland, Mr. F. A. Leslie, 100
4, Hillhurst Blvd.,
Toronto 12, Ont.

Wynd, Mr. G. Douglas, 25
5 Hartfield Court,
Toronto 18, Ont.

Yeigh, E. H., 300
3, Douglas Crescent,
Toronto 5, Ont.

Youdan, Mr. John P., 50
86, Brock St.,
Kingston, Ont.

Young, Mr. George, 200
Lucan, Ont.

Young, Mrs. Isobel, 100
5 Sylvan Crescent,
Lindsay, Ont.

Young, Miss Madeline, 150
55 Queen Street,
Belleville, Ont.

Ames, A. E. & Co., 200
320, Bay Street,
Toronto, Ont.

Bansco & Co., 19,200
44, King Street West,
Toronto, Ont.

Beatty Oil Limited, 300
Box 220,
Bothwell, Ont.

Binkley Investments Limited, 500
103 St. John St. S.,
Hamilton, Ont.

Brools & Co., 100
c/o Bank of Montreal, Prudential Bldg.,
6 King St. W.,
Toronto, Ont.

Cardiff Construction Co. Limited 2,446
50 King St. W., Apt. 907,
Toronto 1, Ont.

J. H. Crang & Co., 50
40 Adelaide St. W.,
Toronto, Ont.

F. H. Deacon & Company Limited 55,930
181 Bay Street,
Toronto, Ont.
Deacon Findley Coyne Ltd.,

Decarie Investments Limited, 1,100
12 Richmond St., E., Ste. 406,
Toronto 1, Ont.

Dominion Securities Company, 50
50 King St. W.,
Toronto 1, Ont.

Demtor Company 1,200
The Toronto Dominion Bank Bldg.,
King and Yonge Sts.,
Toronto, Ont.

Equitable Brokers Limited, 2,250
60 Yonge St.,
Toronto, Ont.

Gateway Theatres & Entertainment Co. Ltd., 500
attn. Mr. Frank L. Giaschi, c/o Capito Theatre,
Huntsville, Ont.

Gill Construction Limited, 2,226
Ste. 907, 50 King St. W.,
Toronto, Ont.

Grand National Investments Ltd., 500
c/o Dunn & Dunn,
67, Yonge Street,
Toronto, Ont.

Hamilton Capital Holdings Limited, 250
c/o General Engineering Company,
100 Adelaide St. W.,
Toronto 1, Ont.

Houston & Co., 900
335 Bay St.,
Toronto, Ont.

Jackson McFadyen Securities Ltd., 550
11 Adelaide St. West,
Toronto 1, Ont.

Jamelynn Holdings Limited, 5,000
250 University Ave., Ste 600,
Toronto, Ont.

Kamm, Gerland & Co. Ltd., 322
38 King St. W.,
Toronto, Ont.

Legibus Investments Ltd., 200
32, James St. South, Room 506,
Hamilton, Ont.

Lombard & Co., 200
c/o Canadian Imperial Bank of Commerce,
Box 4040, Place d'Armes,
265, St. James Street, West,
Montreal 1, Que.

Macron Holdings Limited, 6,144
50 King St. W., Ste 907,
Toronto, Ont.

Manleys Limited, 100
142, Lichiel St.,
Sarnia, Ont.

Mildon Hall Investments, 500
12 Richmond Street East, Suite 406,
Toronto, Ont.

Milner, Spence & Co. Limited,
112 King Street West,
Toronto, Ont.

McLeod, Young Weir & Company Ltd., 50
50 King St. W.,
Toronto 1, Ont.

New Alliance Investors Limited, 500
12 Richmond St. East, Ste. 406,
Toronto, Ont.

Norman Marcus Products Ltd., 200
596 King St., W.,
Toronto 2B, Ont.

Old Canada Investment Company Ltd., 200
221 King St.,
Attn: Mr. A. E. O'Neill,
Oshawa, Ont.

Orlilont Limited, 1,000
c/o Mr. T. G. Beament,
Fahralloy Canada Limited,
Orillia, Ont.

Richardson & Sons, James, 20
173 Portage Ave.,
Winnipeg 2, Man.

Robertson Malone & Co. Ltd., 100
20 Wellington St. W.,
Toronto, Ont.

Ross Knowles & Co. Ltd., 14,225
105 Adelaide St. West,
Toronto, Ont.

Roytor & Co., #1 a/c/, 100
c/o The Royal Bank of Canada,
2 King St. E.,
Toronto, Ont.

Saugeen Enterprises Limited, 400
14 Emrick Ave.,
Fort Erie, Ont.

Stevens Securities Limited, 5,283
48 Yonge Street,
Toronto, Ont.

Torbay Company, 400
55 King St. W.,
Toronto, Ont.

Turnbull and Cutcliffe Limited, 100
c/o Jago, Box 533,
Port Dover, Ont.

Vidette Investments Limited,
Attn: A. E. O'Neill,
221 King St. E.,
Oshawa, Ont.

Waite, Reid & Co. Ltd., 25
200 Bay St.,
Toronto, Ont.

Waterloo Trust and Savings
Company 2,000
T 2241,
Kitchener, Ont.

Wills Bickle & Co. Limited, 100
44 King St. W.,
Toronto, Ont.

Wood, Gundy & Company Ltd., 100
36 King St. West,
Toronto, Ont.

B.I.F. COMMON SHAREHOLDERS

Bansco & Co., 2,500
44 King St. W.,
Toronto, Ont.

Bell, W. E. N., 5,000
130 Inglewood Dr.,
Toronto 7, Ont.

Blois, Walter G., 75
36 Hartfield Rd.,
Islington, Ont.

Brotherton, Ian D., 1
537 Donlands Ave.,
Toronto, Ont.

Bruce, Maxwell, 750
68 Binscarth Rd.,
Toronto 5, Ont.

Buck, George A., 3
115 Dowling Ave., Apt. 303,
Toronto 3, Ont.

Charlebois, Miss Eloise, 720
63 Robert St. W.,
Penetanguishene, Ont.

Charlebois, Miss Mary Ann, 2,250
1460 Bayview Ave., Apt. 104,
Toronto 17, Ont.

Charlebois, Mary Beare (Mrs.), 1,200
63 Robert St.,
Penetanguishene, Ont.

Charlebois, Peter A., 301
63 Robert St. W.,
Penetanguishene, Ont.

Charlebois, Phil A., 1,807
63 Robert St. W.,
Penetanguishene, Ont.

Colman, Jeremy M., 3
97 Post Rd.,
Don Mills, Ont.

Elliott, Harold H., 150
27 Jackson Ave.,
Toronto 18, Ont.

Findley, John R., 3
c/o F. H. Deacon & Co.,
181 Bay St.,
Toronto, Ont.

Gill Construction Limited, 2,226
Ste. 907,
50 King St. W.,
Toronto, Ont.

Gothard, James C., 1
813 O'Connor Dr.,
Toronto, Ont.

Hall, George, 3
15 Decarie Circle,
Islington, Ont.

Hassard, Richard J., 525
Toronto 3, Ont.

Hawkins, William S., 453
46 Lothian Ave.,
Toronto, Ont.

Inverness Investments Limited, 9,375
48 Yonge Street,
Toronto, Ont.,

Jamelynn Holdings Limited, 7,500
250 University Ave., Ste 600,
Toronto, Ont.

Jennings, Maurice R., 750
100 Bidwell Ave.,
Downsview, Ont.

Jewitt, Donald Arthur, 3
c/o F. H. Deacon & Co. Ltd.,
181 Bay St.,
Toronto 1, Ont.

Macron Holdings Limited, 9,375
48 Yonge St.,
Toronto 1, Ont.

Mollard, William J., 750
11 Kings Lynn Rd.,
Toronto 18, Ont.

Robinette, Thomas W., 1
306 Inglewood Dr.,
Toronto, Ont.

Smith, Jeffrey K., 39
160 Balmoral Ave.,
Toronto 7, Ont.

Stevens, Mrs. Noreen M., 5,250
1460 Bayview Ave., Apt. 701
Toronto 7, Ont.

Stevens, Robert, 825
1460 Bayview Ave., Apt. 405,
Toronto 7, Ont.

Stevens, Sinclair M., 904
1460 Bayview Ave., Apt. 701,
Toronto 7, Ont.

Stevens Securities Limited, 11,191
48 Yonge Street,
Toronto 1, Ont.

Taylor, Robert B., 1
27 Bradgate Rd.,
Don Mills, Ont.

Tronbar & Co., 300
c/o Canadian Imp. Bank of Commerce,
King & Victoria Sts.,
Toronto 1, Ont.

Wofford, Andrew M., 1
5704 - 94 "A" Ave.,
Edmonton, Alta.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-6, intituled: "An Act to incorporate Bank of Western Canada".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, MAY 20, 1964

No. 3

WITNESSES

Mr. John E. Coyne, Mr. Sinclair M. Stevens.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20746—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 12th, 1964:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Leonard, seconded by the Honourable Senator Inman, for second reading of the Bill S-6, intituled: "An Act to incorporate Bank of Western Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Inman, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20746—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, May 20, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.10 a.m.

Present: The Honourable Senators: Hayden (*Chairman*), Aseltine, Bouffard, Brooks, Cook, Croll, Davies, Farris, Fergusson, Flynn, Gelinas, Gershaw, Gouin, Hugessen, Isnor, Lang, Leonard, McCutcheon, McLean, Molson, Pearson, Power, Reid, Taylor (*Norfolk*), Thorvaldson, White, Willis and Woodrow. (28)

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

Bill S-6, intituled: "An Act to incorporate Bank of Western Canada", was discussed.

The following witness was heard:

Mr. Sinclair M. Stevens.

On Motion of the Honourable Senator Leonard that the Committee consider clauses 1 to 7, both inclusive, the Committee divided as follows:

YEAS 7 NAYS 5

The Motion carried.—All clauses carried.

On Motion of the Honourable Senator Aseltine it was *RESOLVED* to defer the Preamble and the reporting of the Bill to a later meeting of the Committee.

At 10.45 a.m. the Committee adjourned to the call of the Chairman.

Attest:

F. A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, May 20, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-6, to incorporate the Bank of Western Canada, met this day at 10.10 a.m. to give further consideration to the bill.

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

The CHAIRMAN: To check the date of the last meeting I sent for the *Hansard* copy because there is nothing like the written record. My memory was incorrect. The date of the last meeting was on May 6. The notification would be in the hands of the Canadian Bankers' Association by the following Monday or Tuesday, which would be the 11th or 12th, so they have had about a week.

Senator LEONARD: Can I come back to the position I was in before. I thought we should proceed section by section, but before doing so I wondered if we might ask the indulgence of the committee to consider the suggestion by Senator Croll to link these bills together. While I cannot divest myself of the responsibility of being sponsor of the bill concerning the Bank of Western Canada, I think that Senator Croll's suggestion is a good one.

If, as and when this bill passes through the Senate it will go over to the House of Commons, as Senator Croll mentioned. There it will be a private bill, and will be on the list of private bills and debated only during the hour or so reserved for such bills. I think the most enthusiastic supporter of the bill would not expect it to receive royal assent by July 1 this year. The reason I mention that date is that all bank charters end on July 1 this year subject to continuation for one further year. The Government has given notice that it intends to extend them.

Assuming July 1, 1964, is the earliest possible date that the Bill in relation to the Bank of Western Canada could be passed, I recall to you that before it can commence business it must have a certificate from the Treasury Board, and that board has one year in which to issue a certificate, up to July 1, 1965, which is the date for the termination of the charter for all banks. In the meantime the Government has said they will present a revision of the Bank Act this fall. This would apply to this bank or to any other bank whether it has a certificate or not. It is rather unthinkable to me that the Treasury Board, a department of the Government, would grant a certificate to commence business except under the same terms as proposed by the Bank Act which will also be a Government bill.

So the question of if and when the Bank of Western Canada commences operations is ultimately a decision to be made by the Government and ultimately by Parliament under the Bank Act. In the meantime it seems to me there is the matter of the Porter Commission, which I think I can dispose of in just a few minutes. I don't know whether the revision of the Bank Act will contain mention of any of the recommendations in the Porter Commission.

Whatever they are, they will apply to this Bank of Western Canada as well as to all other chartered banks. The sponsors of this bill have said they appreciate this. They are prepared to accept everything or anything, as the case may be, that the Porter Commission gets into the Bank Act.

The only question that arises is whether a new bank, if it is classified as a banking institution, could hold a charter of a chartered bank. There is also the question that the York Trust and Savings Corporation holds 5 per cent of the capital, that it can divest itself of those holdings if that is a provision contained in the Bank Act following on the Porter Commission. Otherwise the Porter Commission emphasizes the desirability of competition in banking business. There is nothing in it which would adversely affect the incorporation of this bank. Therefore we can assume that the Porter Commission Report has some public support, and there is a public reaction which is probably favourable towards competition among banks.

If we hold this bill up in the Senate, for as long as we do so we are assuming that responsibility which ultimately must fall on members of the House of Commons, and on the Government as to its dealing with these banks. We are denying, at least to some extent, the opportunity to members of the House of Commons to debate this bill. In the debates we have had and the evidence before this committee we have brought out some very important and significant factors.

It may well be that those will be taken into consideration in the revision of the Bank Act, but if the Bank Act deals with the question of concentration of ownership of shares, or with the question of who may be the owners of shares, then those provisions will apply to all banks. They will apply to the Bank of Western Canada just as effectively as to other banks.

Therefore, it seems to me that as members of the Senate we ought to deal with this bill on the basis of the law as it now is—on the basis of the Bank Act as enacted by Parliament. If the bill complies with that act then it should be passed subject to any amendments that may be necessary so that it may be debated in the House of Commons. The bank will not function until a governmental decision has been made. In the meantime the revised Bank Act will be before Parliament, and it will govern this particular charter. This is why I think we might just as well go ahead now with the consideration, section by section, of this bill.

If I am correct in my understanding it will be two weeks tomorrow since the letter was sent to the Canadian Bankers' Association, and my inference from the fact that we have not heard from them is that they do not want to appear before the committee with respect to any of these applications for bank charters. In any event, it would seem to me that we are in order in dealing with the bill section by section.

Senator WOODROW: Mr. Chairman, was there not an announcement by the Government, or by a member of the cabinet, that very shortly there would be some action with respect to the report of the Royal Commission on Banking and Finance?

The CHAIRMAN: Yes, there was. It was said that Government policy based on the royal commission's report touching on banking would be dealt with in the fall, assuming that sittings of the House of Commons resume in the fall.

Senator LEONARD: May I add that if public reaction is favourable to the incorporation of another bank then it seems to me that this application, rather than being held up here, should go before the House of Commons. Any complaint about delaying the bill should not be laid at the door of the Senate. It does not seem to me to be our responsibility to delay the bill. I do not say that there has been any delay, but that is why I am suggesting we should proceed with it.

Senator ISNOR: Mr. Chairman, I think Senator Leonard has made a very fair and reasonable proposal. I would like to say that I am in accord with his thinking; that we should go ahead with this bill. The other bills will take their turn in due time.

The CHAIRMAN: Are there any other comments?

Senator MCLEAN: Mr. Chairman, I do not think there is any emergency that requires the incorporation of a new bank at this time. This is not a case of one bank; there are several banks seeking incorporation. We have the very comprehensive report of the royal commission. I have been trying to read it, and I find that I can read only 20 pages a night because it is a report that has to be read very slowly. It cannot be read like a novel. In the fall the Government will be in a position to place before Parliament certain changes in the Bank Act. I do not think there is any great emergency at the present time in respect to the incorporation of new banks.

Senator COOK: What will happen, Mr. Chairman, if the Bankers' Association wish to appear before the committee, or if the committee asks them to assist it? If they have something to say then it will be too late after the passage of this bill.

The CHAIRMAN: If we conclude today, yes.

Senator LEONARD: Could we deal with that question when we come to the reporting of the bill? Could we deal with the bill section by section to see if there are any amendments or comments? Perhaps Senator Cook could raise his point when we come to the question of reporting the bill.

Senator COOK: I am quite happy with that.

The CHAIRMAN: Let me see if I understand this. Is it proposed that we examine the bill section by section this morning and stop at the stage of approving the preamble as a preliminary to reporting the bill, and that then we adjourn?

Senator LEONARD: I have not agreed to that, but I think the question Senator Cook raised might be better discussed as and when we have dealt with the bill section by section. As I say, we may never reach the point of considering the preamble or of reporting it. There may be some amendments suggested.

Senator POWER: Perhaps I caused some of this difficulty by suggesting that we hear from the Canadian Bankers' Association. However, if they do not desire to come here then I am quite willing, and, indeed, I would be very glad, to withdraw the motion I made at that time. They have been notified. If they do not wish to come then I would prefer to withdraw my motion at once.

The CHAIRMAN: What is the wish of the committee?

Senator REID: Is there any reason why they have not appeared before the committee?

The CHAIRMAN: I cannot answer that question.

Senator FARRIS: They do not want to come.

The CHAIRMAN: I would not want to assume that.

Senator HUGESSEN: Mr. Chairman, there is one thing I would like to say. I have no objection to considering the bill section by section today provided we do not pass the preamble and carry it. We are faced with a situation where we have one bill already before us, and we may have another. It may be that we will want to deal with all of them in one particular way.

Senator ASELTINE: We may have two more.

Senator HUGESSEN: Yes. Even if we consider this bill section by section today I want to be able to reserve my right to deal with this and the other bills together.

Senator ASELTINE: I cannot see why there is all the rush.

Senator POWER: We have been considering during the last year numerous bills changing the names of different insurance companies. Would it have been wise for us to say that we should have waited until all the applications were in. This application should stand on its own feet. If it complies with the provisions of the Bank Act and we are satisfied that competition in banking is a good thing, why should we not pass this bill? I do not think there is any reason for putting all these together.

The CHAIRMAN: We have a difference of viewpoint here. In which way are we going to resolve it? One view is that we consider the bill section by section, and at the end face the issue of whether we report the bill today or adjourn our consideration of it. The other viewpoint is that we consider the bill section by section on the understanding that we do not approve the preamble and we do not have a motion to report the bill today—that we have it stand, I take it, for further consideration of principle in relation to other banking bills that may come before us.

Senator POWER: Let us get on with the bill. When we get to the preamble—

The CHAIRMAN: I am just saying that we have had two points of view expressed. It is up to the committee as to which way we proceed.

Senator REID: Let us have a show of hands.

Senator LEONARD: My motion is that we proceed to consider the bill section by section, and withhold consideration of the preamble and the reporting of the bill until we arrive at that stage.

The CHAIRMAN: Until when?

Senator LEONARD: Until we arrive at the stage of considering the preamble and reporting the bill. In the meantime we will deal with sections 1, 2 and 7, and then stop at the question: "Does the preamble carry?"

The CHAIRMAN: Those who wish to proceed with the consideration of the bill section by section, stopping when we reach the stage of considering the preamble, please signify by raising your hands. Those to the contrary? The vote is in favour of proceeding section by section up to the point of dealing with the preamble.

Section 1 of the bill lists the incorporators. Shall section 1 carry? I will wait until copies of the bill are distributed.

Senator THORVALDSON: What is the purpose of all the names given here as applicants for the incorporation?

The CHAIRMAN: We have here now Mr. Coyne and Mr. Stevens.

Senator THORVALDSON: What is the purpose of the large number of names given as petitioners? It is unusual in bills of this type.

MR. SINCLAIR M. STEVENS: Honourable senators, when we were carrying out the original organizing with respect to applying to Parliament for this bank, we found a great number of people showed interest in the various localities, especially west of Toronto. As a result of that, we felt we would like to give some of those most active people the right to appear as actual petitioners, as opposed to being just shareholders in our application. Therefore, we have 100 people shown in the bill as petitioners. Of that number, 85 are from the four western provinces; I believe 31 are from Manitoba and the balance of the 85 are in the other three western provinces.

Senator REID: Were those names solicited?

Mr. STEVENS: No. They were not solicited. It was done in the sense that we talked to people in an area. This radiated out from speaking to two or three

people who would suggest that others would be interested. There are 85 from the four western provinces and the other 15 are from Ontario and are mainly people connected with my own group, as I outlined before you at the last hearing.

The CHAIRMAN: I have raised a question with Senator Leonard in connection with section 1, that is, that they appear in the schedule to be given a French name as well as an English name. I told him that I thought the French name should appear also in the substance of section 1. Have you considered that, Senator Leonard?

Senator LEONARD: I am sorry, I know your point, and I have no objection to it.

Mr. COYNE: Honourable senators, I believe this is the practice followed under the provisions of the Bank Act.

Rather than have the bill incorporate a bank actually naming as other bills do the English name and the French name in the body of the bill, the bill is either in English or in French and the alternative name in the other language is placed in a schedule. It appears here in Section 6 of this bill on page 5 of the brochure.

We were following what we understood to be the practice under the Bank Act.

The CHAIRMAN: This is not my bill and therefore I only raised the question at issue.

Senator LEONARD: Some changes have been taking place in recent years with respect to the names of corporations. I might ask Mr. Stevens whether there would be any objection to the name being given in French, if the committee desired to amend the bill in that way?

Mr. COYNE: None whatsoever.

The CHAIRMAN: Is it the wish of the committee? I think it is up to the incorporators of the bill, if they have a motion.

Senator LEONARD: May I ask our legislative counsel, Mr. Hopkins on that?

Mr. HOPKINS: Honourable senators, I would think that the procedure in this bill accomplishes the object provided for in the Bank Act and gives an alternative name in French. This is a special procedure applicable to banks and I personally see no need for repeating it. In fact, such repetition would make the schedule, giving an additional name, seem superfluous.

Senator THORVALDSON: I agree with that point of view and I do not think we should interfere with the way this is being done, if counsel so approves.

The CHAIRMAN: I am not suggesting any interference. I am merely pointing out that in the operative section they have only the English name as the name in which the bank is being incorporated. The other name is an additional one in the schedule, which the bank is authorized to use in carrying on business.

Mr. HOPKINS: This is provided in Section 6 of the act and has statutory authority and it gives complete statutory authority to the alternative name.

The CHAIRMAN: Shall Section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall Section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall Section 3, dealing with the capital stock, carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall Section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: The next is Section 5. This is the section which embraces certain restrictions on transfer of shares to non-residents?

That takes us right through all the subsections of Section 5. Should Section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall Section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall Section 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now we come to the preamble, the question being "shall the preamble carry"? This is where we pause for a moment for the views of the committee.

Senator ASELTINE: I agree with Senator Hugessen's idea, that this be left in abeyance and report the bill now.

The CHAIRMAN: Do you so move?

Senator ASELTINE: I move.

The CHAIRMAN: The motion we have is that we defer the approval of the preamble at this time. I take it Senator Hugessen seconds that motion.

Senator LEONARD: Honourable senators, while I think the time is ripe for the completion of the consideration of this bill by the Senate, nevertheless I do not want to press it against any substantial body of opinion that wants still further time before finally disposing of this bill. If the motion is that this preamble and the reporting of the bill stand for consideration at the next regular meeting of the committee, I have no objection.

The CHAIRMAN: I did not understand those additional words being in Senator Aseltine's motion.

Senator LEONARD: I said that if the motion is such. I understood it was.

Senator ASELTINE: That was not my motion.

The CHAIRMAN: Senator Aseltine's motion was that we defer consideration at this time to the approval of the preamble and to report the bill.

Senator REID: What we do now will be a precedent in the House of Commons.

Senator HUGESSEN: That is exactly the point I had in mind. I will tell the committee what I really had in mind in seconding Senator Aseltine's motion. We have two other bank bills in different stages. The second bill, the Laurentian bill, is before us now.

The CHAIRMAN: Next Wednesday.

Senator HUGESSEN: Then there is the Bank of British Columbia. To my mind, that raises a very important constitutional issue, as to whether a provincial government should be allowed to control the operations of a federally incorporated bank. That indeed will be discussed on the second reading of the British Columbia bill. I can quite see that, when that discussion comes up, this committee may very well desire to insert in all of these bills a provision to the effect that neither a provincial government nor even a federal government should be shareholders. That is why I wanted to reserve my rights to consider the preamble of this bill, in case we should decide to take a stand on this question of whether or not a provincial government should throw the operation to the federal government.

Senator POWER: Would it not be much simpler for the committee to complete the bill dealing with the Bank of British Columbia? I really do not see

that the Bank of British Columbia is in any different position, from the standpoint of the Senate. There is no question of the constitutionality of this particular bill.

Senator HUGESSEN: I do not think Senator Power quite appreciates what I have in mind. If we want to take that stand, as we may well, then I think probably we would want to insert a restrictive provision in all of these bank bills, including this one.

Senator POWER: Might I suggest we deal now with this bill?

Senator HUGESSEN: I would not want to do that until we have had a discussion on the second reading of the British Columbia bill.

The CHAIRMAN: No, we could not at this stage. We are not going to lay down a principle in committee which could defeat a bill at second reading; the committee could not do that. Are you ready for the question on the motion?

Senator LEONARD: Mr. Chairman, I do not think that this should be an unlimited deferment. There is no reason why it should not be deferred until our next regular meeting of the Banking and Commerce Committee, and then reconsider, in the light of Senator Hugessen's remarks, the debate on the Bank of British Columbia. I think an unlimited deferment would be unfair. And Senator Aseltine will not accept an amendment to deal with it at the next meeting, and then come up again for consideration.

The CHAIRMAN: The only effect of putting a time limit to the next regular meeting would be that if we were not going to proceed with it, then you would have a series of votes from meeting to meeting.

Senator LEONARD: That is how I think it should be.

The CHAIRMAN: It is on the agenda, and the committee can call it at any time.

Senator HUGESSEN: I have no desire to hold up the consideration of the bill indefinitely. I am suggesting that we hold up the consideration of the reporting of the bill until we have had a chance to discuss the principle involved in the British Columbia bill. Whether that is before or after the regular meeting of this committee, I do not think makes very much difference.

Senator ASELTINE: That is not an indefinite period.

Senator LEONARD: If the senator is correct, the bill will be on the regular agenda of our next meeting, I think.

The CHAIRMAN: The bill is still before us and stands on our agenda.

Senator CROLL: Mr. Chairman, we are not getting anywhere. You say we are now considering Bill S-6, and we have the Laurentide bill at the same time, and nothing comes of it but deferment. Senator Hugessen suggests that we wait until such time as the British Columbia bill has received second reading in the house so that we shall have had a full discussion on the principle, and that after that time we then give consideration to this bill. That makes sense. Senator Leonard should agree to that and let it stand until then, and the air will be cleared on a particular point.

Senator LEONARD: I can understand the validity with respect to the argument. The bank of British Columbia bill may take a long, long time on second reading, and I do not think this bill should be held up. If the Chairman is correct on Senator Aseltine's motion, we defer for further action, the bill stays on the agenda, and we can call it whenever we are ready to call it.

Senator CROLL: That is sensible.

Senator LEONARD: That is my understanding.

The CHAIRMAN: Well, that is my interpretation of Senator Aseltine's motion. Is that what you intended, senator?

Senator ASELTINE: Yes.

Senator POWER: This is not a postponement forever.

Senator HUGESSEN: Oh, no.

Senator POWER: This will remain on the agenda?

The CHAIRMAN: Yes.

Senator FARRIS: I should like to be assured that there could be no prejudice, and I do not think there could be, of the discussion on its merits of the British Columbia bill.

The CHAIRMAN: No. I took the position that we were not going to discuss anything that would affect a bill standing at second reading; and there is nothing in the discussion which went on here today which could indicate anything in the view of the committee either for or against the bill which is standing at second reading. Are you ready for the question?

Senator ISNOR: Before that, Mr. Chairman, I understand we can take it for granted that it is on the agenda?

The CHAIRMAN: Yes, it is on the agenda; the bill is before us.

Senator ISNOR: At the next meeting, if we so decide, we can adjourn further?

The CHAIRMAN: If we so decide, you can ask to have the bill brought forward, yes.

Senator WHITE: What happens if Senator Leonard says at the next meeting he wants the bill brought forward? Is that all there is to it, or is there a vote?

The CHAIRMAN: There is a vote.

Senator ISNOR: That is what I wanted to know.

The CHAIRMAN: You have heard the question. Are you ready? Those in favour? Contrary, if any? Carried.

The meeting is adjourned.

Whereupon the meeting adjourned.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-6, intituled: "An Act to incorporate Bank of Western Canada".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, JULY 22, 1964

No. 4

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20811—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine
Baird
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Blois
Bouffard
Burchill
Choquette
Cook
Crerar
Croll
Davies
Dessureault
Farris
Fergusson
Flynn
Gelinas
Gershaw
Gouin
Hayden
Hugessen
Irvine
Isnor
Kinley
Lambert
Lang
Leonard
Macdonald (*Brantford*)
McCutcheon
McKeen
McLean
Molson
Monette
O'Leary (*Carleton*)
Paterson
Pearson
Pouliot
Power
Reid
Robertson (*Shelburne*)
Roebuck
Smith (*Kamloops*)
Taylor (*Norfolk*)
Thorvaldson
Vaillancourt
Vien
Walker
White
Willis
Woodrow—(50).

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 12th, 1964:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Leonard, seconded by the Honourable Senator Inman, for second reading of the Bill S-6, intituled: "An Act to incorporate Bank of Western Canada".

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

The Bill was then read the second time, on division.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Inman, that the Bill be referred to the Standing Committee on Banking and Commerce.

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

J. F. MACNEILL,
Clerk of the Senate.

20811—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, July 22, 1964

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

Present: The Honourable Senators: Hayden (*Chairman*), Beaubien (*Provencher*), Bouffard, Burchill, Cook, Crerar, Croll, Dessureault, Farris, Fergusson, Flynn, Gelinas, Gershaw, Hugessen, Isnor, Kinley, Lambert, Lang, Leonard, Macdonald (*Brantford*), McCutcheon, McLean, Molson, O'Leary (*Carleton*), Paterson, Pouliot, Power, Reid, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), and Walker.—(32)

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

The Committee resumed consideration of Bill S-6, "An Act to incorporate Bank of Western Canada".

The Honourable Senator McCutcheon moved that the Committee do now adjourn.

The question being put on the said Motion, it was RESOLVED in the negative.

The Honourable Senator Leonard moved that the Preamble to the said Bill be now approved.

The question being put on the said Motion, it was RESOLVED in the affirmative.

A Motion was duly put that the Title be now approved.

The question being put on the said Motion, it was RESOLVED in the affirmative.

A Motion was duly put that the said Bill be now reported without amendment.

The question being put on the said Motion, it was RESOLVED in the affirmative.

At 8.25 p.m. the Committee concluded its deliberations on the said Bill.

Attest.

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, July 22, 1964

The Standing Committee on Banking and Commerce to whom was referred the Bill S-6, intituled: "An Act to incorporate Bank of Western Canada", have in obedience to the order of reference of March 12th, 1964, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, July 22, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-6, to incorporate the Bank of Western Canada, met this day at 8 p.m. to give further consideration to the bill.

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

The CHAIRMAN: I call the meeting to order. We have two bills to consider this evening in continuation of hearings started some time ago. The first is Bill S-6, an act to incorporate the Bank of Western Canada. As you will recall, all the sections of this bill have been approved. When we came to the stage of approving the preamble there was a motion in this committee that we should not approve the preamble until we had heard the evidence in connection with other bank bills.

This bill has been on the agenda for every meeting of the Standing Committee on Banking and Commerce since that time, except for meetings called specifically to deal with certain bills. It still stands tonight and there is nothing as chairman that I can do.

Senator LEONARD: I am ready to proceed with the preamble of the bill if the committee is in agreement with that.

The CHAIRMAN: Will you make a motion that the preamble be approved?

Senator LEONARD: Before making that motion, may I make a few brief preliminary remarks. The chairman has quite accurately stated the position. This bill has been standing, all the sections having been approved, pending the hearing of the evidence in connection with the two other applications, the application for the Laurentide Bank and the application for the Bank of British Columbia.

In view of the fact that some considerable time has been taken in connection with this bill, I might explain in fairness to the Senate and to members of the committee that although the bill did receive first reading as far back as February, I agreed on behalf of the petitioners, after discussion with Senator McCutcheon, that there would be a period of delay in connection with this bill pending the consideration or receipt and consideration of the Porter Commission report. That accounted for a delay of some time. When that commission report came down, it was considered to be quite apparent that it contained nothing adverse to this application for incorporation. On the contrary, the tenor of the report was directed towards a more competitive banking system.

The committee dealt with the bill section by section, and passed all the sections with the exception of the preamble which was not considered then, at the suggestion of a number of senators. I remember particularly Senator Hugessen expressing the view that he wanted to hear the evidence in connection with the other two applications before the preamble was passed. He felt that before any one bill passed we should have the evidence in connection with the other two.

Therefore the bill has stood until first the Laurentide evidence was heard and then the evidence in conection with the Bank of British Columbia. Now

I think the time is ripe for the consideration of the motion for carrying the preamble to the bill in connection with the Bank of Western Canada.

I should like to add some observations in connection with this application. At the hearing of the evidence there was some discussion as to the concentration of control of the Bank of Western Canada in the hands of comparatively few persons. I would like to say something else in connection with that. Before dealing with what has happened since the hearing of the evidence, I might say that this was the first application in 52 years for a charter for a bank to be Canadian-owned. It was rather a courageous step on the part of the sponsors of this bank to undertake. There was considerable doubt in the minds of various people as to whether it could be done. Such people had particularly in mind what was expressed in a remark made by the late Mr. Muir, that it would take something like $10 million to start a Canadian-owned bank. Consequently, it was not only desirable but necessary, I think, that they themselves should have been quite prepared to back any application with their own money, as far as they could go. That has turned out to be the case, and when they did ask the public they felt they should be sure that the money would be available for capital if a charter were granted. In the result there has been a substantial public subscription to trust certificates for the purpose of investing the money so that if and when a charter is granted there is an amount of $12 million or $13 million available.

Senator McCutcheon, in examining the witnesses, Mr. Coyne and Mr. Stevens, said that while there may be some doubt as to exactly what percentage of control might be vested in the group which sponsored this bank there was nevertheless a substantial shareholding. It was in my mind, and in the minds of the petitioners, that having raised this money it might be desirable to have some dilution of that control.

Since the evidence of Mr. Stevens and Mr. Coyne was given, they have advised me that Stevens Securities Limited has sold 10 per cent of the outstanding common shares of Canadian Finance and Investments. That was one of the companies deemed to be under their control, and that held a substantial portion of the proposed share capital of the bank. They sold it to Empire Life Insurance Company, and Stevens Securities Limited and British International Finance (Canada) Limited, which were at the base of this—

Senator McCUTCHEON: —this pyramid standing on its point.

Senator LEONARD: Well, they believe they no longer have control of that particular company. They want to put on record their intention to appoint a majority of the shareholders from Western Canada should the bank be incorporated, and to confirm that the majority of the shareholders will not be directly or indirectly nominees of the British International group.

Furthermore, it is their intention in due course, and subject to favourable economic conditions, to issue further treasury shares of the proposed bank, or to make a secondary distribution of stock, so that the effective voting power of the British International group in the proposed bank will be lessened by at least 10 per cent to something less than 20 per cent of the total capital stock.

Then, finally it would be their expectation that after the bank is in operation there would be a further dilution of the shareholding of this group.

I convey that information to you as indicating their intention to move in the direction of a dilution of control. At the same time I emphasize that to get this bank started, to get it organized and properly operating, they thought it did require the energy, money and the courage of a small group of people. If anything further in that direction were either desirable or required it seems to me it should be a matter of general application to all banks. That is to say, if there should be any limitation on the amount of share capital in a bank that any one individual or any group of individuals, or any interlocking

group, may have then is something that should apply to all banks, and should be properly a part of an amendment to the Bank Act.

That brings me to the point that the Bank Act will, of course, be revised. The revision will probably be brought down this fall. Assuming that this application will carry in the Senate it will then go to the House of Commons where it will be a private bill taking its place on the Order Paper in the time allotted for private members' bills. In the normal course one would not expect that bills such as that could get through in less than one or two months. After the bill passes the House of Commons, the bank, before it can commence business, must receive a certificate from the Treasury Board which is, of course, a committee of ministers of the Cabinet. The Treasury Board has one year from the time at which the bill is passed within which to issue a certificate. In other words, under the law it may be October or November of 1965 before the bank can commence operation, unless the Government itself decides otherwise.

It is the Government that will bring in whatever amendments there are to be made to the Bank Act, and they will apply to this bank just as much as they will apply to any other bank. This bank charter if granted will itself expire on July 1, 1965.

So, all in all, it seems to me that even if everything is perfectly satisfactory with respect to this bill, the desirable thing is that it go to the House of Commons and that it be debated there, so that if in the revision of the Bank Act there is anything that should be made applicable to this bank in particular then the Government will have the benefit of the debate in the House of Commons.

I can only add that so far as the sponsors of the bank are concerned they are quite prepared to accept any amendments that may be made to the Bank Act as a result of the report of the Royal Commission on Banking and Finance, or otherwise, and will adapt themselves accordingly.

I will conclude by saying, Mr. Chairman, that it is 52 years since a Canadian-owned bank obtained a charter and commenced operation. I think the time has come when we Canadians should demonstrate our faith in our own country, and our confidence in the ability of Canadian citizens of this generation to organize and operate a Canadian bank. We have a strong and efficient banking system now—a system of which, like most Canadians, I am very proud. I see no reason why the Bank of Western Canada should not prove to be a worthy addition to that system. I move that the preamble be now carried.

Senator HUGESSEN: Mr. Chairman, Senator Leonard mentioned my name in the course of his remarks as having been responsible for the fact that we deferred final consideration of this bill until we heard evidence on the other two applications. I think that that has been a good thing, because now we have the whole picture before us in connection with these three applications.

It also seems to me in this particular instance to have been a good thing because now we are informed by the sponsor that there has been a substantial dilution of what was rather objected to when we first met to discuss this bill —the possibility of too much concentration of share ownership in one group. A final decision on this matter has been held up for some time, and I think that now we should come to a conclusion about it. Speaking for myself, I am very much impressed with the evidence given on this and the other applications. There is obviously a very strong feeling in parts of the country that the head offices of our chartered banks should not be confined to the cities of Montreal and Toronto.

Senator MCCUTCHEON: And Halifax, of course.

Senator HUGESSEN: Yes, Halifax too. There is also, I think, rather a strong feeling in the country that the business of banking should not be a monopoly; that there should be more possibility of competition.

Senator MOLSON: There is not a monopoly now, senator.

Senator HUGESSEN: Under those circumstances I must say I have no objection to the passage of this particular bill, and I am glad to support the motion moved by Senator Leonard.

The CHAIRMAN: Are you ready for the question?

Senator MCCUTCHEON: No.

Senator BEAUBIEN (*Bedford*): I wish to ask a question of the sponsor. British International Finance (Canada) Limited seems to control 43 per cent of the bank. Exactly what has happened since, to get it down under 20 per cent. That was the figure, was it not?

The CHAIRMAN: Yes, 20 per cent.

Senator LEONARD: The information is that they no longer control Canadian finance investments at the start of the bank. As the result of the sale of 10 per cent of the shares of that company to Empire Life, they propose to take over a further treasury issue of deferred shares which would be at least 10 per cent of the shares of the bank. Between those two, 25 per cent is the amount, it would go down below 20.

Senator PATERSON: Might I ask Senator Leonard whether it would not be better to use the term "contract for" rather than "employ"?

Senator LEONARD: If I used those other words, I was wrong. What they have sold are trust certificates or they have sold certificates in trust, getting the money out of the investment in the bank.

Senator MCCUTCHEON: I was going to suggest earlier that we do not consider any of these bills tonight, because as you yourself, Mr. Chairman, said, honourable senators would want to read the evidence that we had today, they would want to read the transcript and, as I say, I understood the sense of the committee some weeks ago was that until we had all the evidence on hearing the applications we would consider none of them. Now I take it that there has been a change in the situation and we are now considering this application.

The CHAIRMAN: There has not been a change, senator. This particular bill has stood on the Order Paper, by order of this committee, until such time as the sponsor was prepared to move the adoption of the preamble. He has moved that tonight.

Senator MCCUTCHEON: All I say is that I am not satisfied that the sale of 10 per cent of the shares by the company—I have not got my notes or my papers with me—the sale of 10 per cent of the shares of a company which is obviously not a top company or, as I described this group, not the bottom company to the Empire Life, represents a substantial change in the control, which I object to.

I suggest, Mr. Chairman, that if the basis on which this application has been made to us is now being substantially changed, as Senator Leonard suggests, then we should call the witnesses back and let us find out where control really lies, who really controls this company, because the company which it is alleged 10 per cent of the shares will be sold to Empire Life, is not the top controlling company in this group. As far as saying that the Treasury Board will have an opportunity of looking over this, the Treasury Board is not concerned with the things that we are concerned with in this committee. Treasury Board is only concerned with "How much money have you got paid in and how much money have you paid to the Minister of Finance?" There is no suggestion that there be any Government legislation to delineate Canadian control of any bank. There is some suggestion that the Minister of Finance said there may be legislation to delineate what foreigners may own. And I say that if there has been any substantial change in the proposals of the petitioners for this bill, then they should come before us, we should hear the evidence and they should tell us what they are.

Senator FARRIS: My understanding was that the previous adjournment was for one reason at least, that these three bank bills could be considered together. As far as the Bank of British Columbia is concerned, it is definitely not ready to make that decision tonight. We received evidence all day today, and we had a lot of speeches in the guise of questions, which was very much to the detriment of those who were supporting the bill, because our questions were not antagonistic to the bill. But every question practically that was asked was a speech in the guise of a question, opposing the measure.

Senator MCCUTCHEON: I made no speeches, I just asked questions.

Senator FARRIS: My honourable friend contends he made no speeches. That is what I say. He made them in the guise of questions. I think that they were intended to be speeches in opposition to the measure. If that is not so, I very much misunderstood the tenor of his questions. What I say is that that is how the start was made, that the record of what has taken place should be typed and copies prepared and I would like to see consideration of the Bank of British Columbia bill adjourned until there has been ample time to study those speeches in the guise of questions, and the evidence that was given. If that is agreed, it confirms my opinion that the last adjournment was so that these three bills could be considered. Am I not right in that?

Some Hon. SENATORS: No, no, no.

The CHAIRMAN: May I state again that when we considered the Bank of Western Canada bill we passed each and every section of it. Then we came to the preamble and there was a motion—as a matter of fact, Senator Aseltine moved it and Senator Hugessen seconded it—that the preamble be not dealt with at this time.

Senator FARRIS: Why not? My understanding is that the reason it was adjourned was to bring all three measures to consideration together.

The CHAIRMAN: Whatever the reason was, I am discussing the terms on which the approval of the preamble stood. The direction of the committee was that at subsequent meetings of the Banking and Commerce Committee this bill would appear on the list of bills to be considered, on the basis that there was nothing further at the present time that the committee would do. In order to reactivate this bill its sponsor had to make a motion. He has made the motion tonight, and it is up to the committee to deal with it.

Senator FARRIS: Why did he not make it earlier?

The CHAIRMAN: I do not know.

Senator FARRIS: I think we said he did not make it because we adjourned until all these bank bills would be considered.

The CHAIRMAN: I think that if you look at the definition of conditions at the time, you will see that it stood to be brought on at any time the sponsor wanted to make a motion to consider the preamble.

Senator FARRIS: That to me is incomprehensible, because that shows no reason on earth why that was done.

Senator MCCUTCHEON: Senator, I think it is very clear that the preamble was not voted on because the sponsor of the bill knew the bill would have been voted down.

Senator LEONARD: That is not correct.

Senator FARRIS: No.

The CHAIRMAN: These are gratuitous comments. Let us get down to the motion on the matter.

Senator FARRIS: These three bank bills have more or less been labeled as "western bills". The head office of one of these banks is to be in Winnipeg. I said more or less in a joking way that we in British Columbia do not regard

Winnipeg as "west". It is away back east. But that is quite immaterial. I was in favour of the Bank of Western Canada, but after the discussion which has gone on since, I am not so sure that I would support the bill if the real western bill were killed. That is an intimation of what might prevail if the principles on which my friend Senator Crerar, who has been advocating apparent opposition to the British Columbia bill, are to prevail.

Senator POWER: Do you want it to come first?

Senator FARRIS: I want them all to come together.

The CHAIRMAN: Order, please, senators. Let us keep this in order. The *Hansard* reporters can only report one conversation at a time, and while Senator Farris has the floor I think we should accord him the courtesy.

Senator FARRIS: What I am saying is simply this, that it is impossible to completely consider the evidence that has been given pro and con today on the Bank of British Columbia bill. That cannot be considered until there is an adjournment long enough in order to study proceedings given here today. That being so, I understand that my friend Senator McCutchean is also in favour of an adjournment.

Senator MCCUTCHEON: Right.

Senator FARRIS: Whoever you are representing—

Senator MCCUTCHEON: I am representing no one. I just want this thing adjourned until a week from today. Now I think the time is ripe for the consideration of the motion for carrying the preamble to the bill in connection with the Bank of Western Canada.

The CHAIRMAN: There is a motion for this committee to approve the preamble. Those not in favour, vote against it.

Senator MCCUTCHEON: I will move an amendment, Mr. Chairman, that we adjourn until 9.30 a.m., Wednesday, July 29.

Senator FARRIS: To adjourn all three?

Senator MCCUTCHEON: I move that this committee adjourn now until Wednesday, July 29—seconded by Senator Farris.

The CHAIRMAN: For what?

Senator MCCUTCHEON: For everything.

The CHAIRMAN: No. We shall be sitting tomorrow morning.

Senator MCCUTCHEON: Well, we adjourn on the bank bill, then.

The CHAIRMAN: Your motion is a motion to adjourn, and a motion to adjourn is always in order. Your motion is to adjourn consideration of this bill?

Senator MCCUTCHEON: My motion is to adjourn consideration of this bill, and the other two bills, the numbers of which I do not know, until 9.30 a.m., on July 29.

Senator REID: Have you any reason for setting that date?

Senator MCCUTCHEON: Whether we are sitting or not.

Senator REID: What reason have you for giving that precise date?

Senator MCCUTCHEON: I am afraid this house and the House of Commons will still be sitting.

Senator LAMBERT: Is this a motion for adjournment?

The CHAIRMAN: No, it is a motion to adjourn consideration of the three bank bills. I am asking the Law Clerk whether we can accept a motion to adjourn following a motion to approve the preamble.

Senator CROLL: Before his advice is given—and I think he will say no—may I say that that is not the point. The meeting was called for the purpose of considering two bills.

The CHAIRMAN: That is right.

Senator CROLL: Now, Senator Cameron is here, but he has not been feeling too well and has asked me to look after the Laurentide bill. Some of the people are here today who are not likely to be here next week, and they came with that understanding, not to deal with one bill but with both bills tonight. The other understanding was that when the evidence was ready, perhaps by Wednesday, we would give consideration to the third bill. I do not think we should do anything at all that would upset that understanding. If we did, it would be highly unfair to either one or the other of these bills.

The CHAIRMAN: While we are waiting for the Law Clerk to have a look at this matter, it occurred to me that you could resolve the question and have a vote on one motion. If the motion that we are dealing with is that we do now approve the preamble, those opposed to approving it will of course vote against it. Then we would have to settle on adjournment later; but if the majority vote to approve, that settles it.

Senator CROLL: What does it settle?

The CHAIRMAN: The approval of the preamble of the bill.

Senator CROLL: It settles the approval of the Bank of Western Canada.

The CHAIRMAN: No; then there is the next question—shall I report the bill without amendment?

Senator CROLL: Assuming that is approved, yes; but then there is no motion to adjourn.

The CHAIRMAN: That is right. That is why I am suggesting that possibly if Senator Leonard's motion was that we do now approve the preamble—

Senator LEONARD: I so amend my motion, Mr. Chairman.

The CHAIRMAN: Then do you withdraw your motion to adjourn, Senator McCutcheon?

Senator MCCUTCHEON: No, I do not.

The CHAIRMAN: We have a motion that we do now approve the preamble, and subject to what the Law Clerk may say, I think that is in order, and it does not interfere with the motion to adjourn which may come subsequently? Are you ready for the question?

Senator CROLL: Mr. Chairman, I must object when you say that it does not interfere with the motion to adjourn which may come subsequently.

The CHAIRMAN: It can come at any time.

Senator CROLL: It has come now; but you are ruling it out of order, surely?

The CHAIRMAN: I am ruling that if Senator Leonard's motion is that we do now approve the preamble, we must deal with that before any other motion.

Senator CROLL: I have no objection; I want to deal with it. However, I do not want to be faced with a motion to adjourn on the next bill.

Senator LAMBERT: Oppose it then.

Senator CROLL: No, that is not the point. The understanding was that both bills would be dealt with tonight, and the Chairman agrees.

The CHAIRMAN: Order, please. Senator Croll, we must not mix up the two bills. We are dealing with this bill. When we are through with it, we move on to the next one.

Senator REID: That is right.

The CHAIRMAN: There is only one bill before us at this moment. Now, Senator Cameron, we only have the one bill, the Bank of Western Canada.

Senator CAMERON: Mr. Chairman, I most strongly protest the idea of an adjournment. We came to deal with the two bills, and people have come, not

once, but several times to have this matter discussed. I think it is most unfair and unreasonable to ask for an adjournment now.

Senator MACDONALD (*Brantford*): Mr. Chairman, I do not want to interfere, but on a question of procedure there is a motion before the committee that this committee do now adjourn.

The CHAIRMAN: No. There is a motion before the committee that we do now approve the preamble.

Senator MACDONALD (*Brantford*): The original motion is that the preamble be now approved, and there is discussion on that motion before the committee; but someone has interrupted and moved the adjournment of the committee.

The CHAIRMAN: No. He has moved an adjournment of the consideration of a second bill which is not yet before us, which is on the agenda for consideration.

Senator CROLL: No, he did not move that.

Senator MCCUTCHEON: No—of all the bills.

The CHAIRMAN: We are only considering the first bill at the moment. Therefore, I am not accepting the motion to adjourn.

Senator MCCUTCHEON: Then I do move that the debate be now adjourned.

Senator CROLL: That motion is always in order. I think, Mr. Chairman, you must accept it.

Senator ROEBUCK: A motion to adjourn is always in order.

Senator MACDONALD (*Brantford*): I am against the motion to adjourn; but as a matter of procedure, I think we must follow—

The CHAIRMAN: Either you vote on the motion that the preamble be now approved, or if there is a motion that the committee do now adjourn, you vote on that motion whether the committee now adjourns without reference to any bills.

Senator CROLL: That is right.

The CHAIRMAN: Which do you move?

Senator MCCUTCHEON: I move that the committee do now adjourn.

The CHAIRMAN: Are you ready for the question?

Some Hon. SENATORS: Question.

The CHAIRMAN: Those in favour that the committee do now adjourn please raise your arm. Opposed? The motion is lost.

Now we have a motion before us that the committee do now approve the preamble. Are you ready for the question? Those in favour of that motion to approve the preamble, please signify. Contrary, if any? Motion is carried.

Now shall we approve the title?

Senator CROLL: Approved.

Senator MCCUTCHEON: No, no.

The CHAIRMAN: On division?

Senator MCCUTCHEON: No.

The CHAIRMAN: Those in favour of approving the title, please signify? Contrary, if any? The motion is carried. Shall I report the bill without amendment?

Some SENATORS: Carried.

Senator MCCUTCHEON: No.

The CHAIRMAN: Those in favour? Contrary, if any? The motion is carried.

The committee concluded its consideration of Bill S-6, to incorporate the Bank of Western Canada.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-13, intituled: "An Act to incorporate Laurentide Bank of Canada".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, MAY 27, 1964

No. 1

WITNESSES:

Mr. Alastair Macdonald, Q.C., Parliamentary Agent, Mr. Peter Paul Saunders, petitioner, and Mr. Paul Britton Paine, Counsel.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20907—1

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 13th, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cameron, seconded by the Honourable Senator Stambaugh, for second reading of the Bill S-13, intituled: "An Act to incorporate Laurentide Bank of Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Cameron moved, seconded by the Honourable Senator Stambaugh, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20907—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, May 27, 1964.

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

Present: The Honourable Senators: Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Blois, Bouffard, Brooks, Burchill, Choquette, Cook, Crerar, Croll, Fergusson, Flynn, Gershaw, Gouin, Hugessen, Irvine, Kinley, Lambert, Lang, Leonard, Macdonald (*Brantford*), McCutcheon, McLean, Molson, Power, Reid, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Walker, White, Willis and Woodrow. (34)

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

On Motion of the Honourable Senator McCutcheon it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-13.

Bill S-13, intituled: "An Act to incorporate Laurentide Bank of Canada", was read and considered.

The following witnesses were heard: Mr. Alastair Macdonald, Q.C., Parliamentary Agent; Mr. Peter Paul Saunders, petitioner; Mr. Paul Britton Paine, Counsel.

At 11.10 a.m. the Committee adjourned further consideration of the said Bill.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, May 27, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-13, to incorporate Laurentide Bank of Canada, met this day at 9.30 a.m.

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

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

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

The CHAIRMAN: Senator Cameron, you are the sponsor of the bill.

Senator KINLEY: Mr. Chairman, I was away last time. What happened to the Bank of Western Canada bill?

The CHAIRMAN: We considered the sections, and when we came to the preamble there was a motion to defer consideration of it at that time, and that motion carried. So it stands on the agenda, but it will not be proceeded with again until a motion is made that we consider the preamble.

Senator KINLEY: Was the substance passed?

The CHAIRMAN: The various sections were passed.

Senator KINLEY: But not the preamble?

The CHAIRMAN: No, so it stands.

Senator KINLEY: All right.

Senator CAMERON: Mr. Chairman and honourable senators, I do not propose to take any of your time this morning because the principals are here who can speak for this bill, but I would merely like to present those who are making the application.

First, I introduced to you Mr. Alastair Macdonald, Q.C., of Ottawa, Ontario, Parliamentary Agent and Counsel for the petitioners; Mr. Paul Britton Paine, Q.C., of Vancouver, B.C., who is one of the petitioners and also a counsel for the petitioners; Mr. Peter Paul Saunders, executive of Vancouver, B.C., who is one of the petitioners. In addition, in attendance are: Mr. Andrew Elliott Saxton, executive, of Vancouver, B.C., a petitioner; Mr. William Crossley Mainwaring, executive, of Vancouver, a petitioner; Mr. Lionel Leroux, notary, of Montreal, Quebec, a petitioner; and Mr. Bernard de Lorimier Bourgeois, Q.C., of Montreal, also a petitioner.

I will now ask Mr. Macdonald to address you.

The CHAIRMAN: Yes, Mr. Macdonald?

Mr. MACDONALD: Mr. Chairman, could we have leave to call Mr. Peter Paul Saunders, who has a presentation.

The CHAIRMAN: Yes.

Mr. MACDONALD: And could we have leave to distribute some material?

The CHAIRMAN: Yes. In the meantime I should advise the committee that our Law Clerk reports that in his opinion this bill is in proper legal form.

Mr. Peter Paul Saunders. Executive, Vancouver, British Columbia: Mr. Chairman and Honourable Senators:

Thank you for the opportunity to appear before you today on behalf of the petitioners for the incorporation of the Laurentide Bank of Canada.

This submission, which appears rather bulky, is in fact quite brief; a substantial portion of its bulk is made up of some of the charts we prepared when examining the feasibility of our proposed new enterprise. I will touch briefly upon them in my remarks and hope they may prove useful to the Committee in your consideration of this bill.

Before proceeding with other matters relevant to our position, I should like to take a minute or two to review with you the personal and business experience of our petitioners, including those who, regrettably, are unable to attend today.

Mr. Andrew Elliott Saxton is Executive Vice President of Laurentide Financial Corporation Ltd., a director of that company and a director of all of its subsidiaries, both Canadian and foreign. Mr. Saxton has had extensive experience in the field of credit on a very broad scale. Mr. Saxton is married, has four young children and lives in West Vancouver, British Columbia.

Mr. William Crossley Mainwaring, O.B.E., is currently President of the Peace River Power Development Company Limited. Recently, as you are no doubt aware, the assets of this corporation were expropriated by the Government of the Province of British Columbia. From 1932 until the appointment to his present position. Mr. Mainwaring held various executive positions with the B.C. Electric Company, except for the period from 1940 to 1946 when he was loaned to the Bank of Canada to carry on some special assignments as a member of the National War Finance Committee. He holds a number of directorships and has been active in a variety of community projects, especially in his home city of Vancouver.

Mr. Paul Britton Paine, Q.C., is senior partner of the firm of Paine, Edmonds, Mercer, Smith and Williams of Vancouver. He is Secretary of Laurentide Financial Corporation Ltd., a Bencher of the Law Society of British Columbia and a director of several companies. Mr. Paine has had extensive experience in matters of public financing including the negotiations involved in the raising of substantial capital funds and the development of debt and money market instruments.

Mr. Edgar Saba, who unfortunately could not be with us today, is President and General Manager of Saba Bros. Limited, a chain of departmental stores founded by his father many years ago and operating in British Columbia. Mr. Saba has grown up in the merchandising business and has a broad knowledge of the problems encountered in that industry; he has been an active member of a variety of cultural and community organizations in his native city of Vancouver.

Mr. Howard T. Mitchell is President of Mitchell Press Limited, a printing and publishing firm located in the city of Vancouver. He is a director of a number of other companies including one of the largest in the forest industry in the Province of British Columbia. Mr. Mitchell is currently President of the Canadian Chamber of Commerce, in which capacity he is today addressing the Chamber of Commerce in Charlottetown, Prince Edward Island and therefore is unable to be with us today. Through his varied activities, Mr. Mitchell is knowledgeable of many matters having to do with the problems of business and industry, both large and small. He is an active and public spirited Canadian and makes his home in the city of Vancouver.

Mr. Bernard De Lorimier Bourgeois, Q.C., LL.L. is senior partner of the firm of Bourgeois, Doheny, Day and Mackenzie of the city of Montreal. He has

been an active and prominent member of the Bar and is currently Vice-President for Quebec of the Canadian Bar Association. He was born in the city of Montreal where he makes his home and is a director of a number of corporations and has had experience in a great variety of business matters.

Mr. Lionel Leroux is a member of the firm Leroux, Faribault and Leroux, Notaries of the city of Montreal. He is a director of a number of corporations in the fields of finance, real estate and insurance and his business experience in these and other fields is extensive. He lives in Outremont and conducts his business in the city of Montreal.

As for myself, I am President of Laurentide Financial Corporation Ltd., a position which I have held for approximately fourteen years. My business activities have been manly in the field of finance and credit, a field which is closely allied to the business of banking and I have had some experience in building a branch organization which is portrayed in appended Charts 1, 2 and 3. It is contemplated that if the charter is granted that I will become the Chairman of the Board of Directors of the Laurentide Bank of Canada. It is also intended that all the petitioners will become directors of the bank. We are all Canadian citizens and as you may have noted, six of us live in Vancouver in the Province of British Columbia and two in Montreal in the Province of Quebec.

It is intended that the Bank should be truly national in character. However, it is obvious that it will take time to accomplish this and because of this the first branches will be opened in and around the two cities where the provisional directors reside. As it becomes appropriate, more directors will be appointed so that representation on the Board will broaden and cover a wide range of our country on a geographic and economic basis.

When Senator Cameron introduced our bill for second reading in the Senate, he mentioned that the bank was intended to be a subsidiary of Laurentide Financial Corporation Ltd. It has been our intention that the new bank should be in some fashion allied with the latter company, for the operations of the two institutions can be in many ways complementary one to the other as has been evidenced by similar alliances established by some of the existing chartered banks. Initially, it appeared appropriate that this alliance should take the form of a parent-subsidiary relationship, with subsequent public participation in the Bank being invited when its circumstances had somewhat matured. However, it is apparent that if the bank should be a subsidiary of Laurentide Financial Corporation, the restrictions upon non-resident participation in its share capital—as set forth in section 5 of the Bill before you—would have little meaning; transfer of control of the parent company to a non-resident would effectively place the bank under foreign control. I shall refer further to the question of control of Laurentide Financial Corporation later.

This matter has been thoroughly canvassed by the Directors of Laurentide Financial Corporation. In the result, the proposed invitation for public participation in the bank has been accelerated, and accordingly, it is now intended that the bank will be financed by a portion of the capital to be issued being offered to the shareholders of Laurentide Financial Corporation Ltd. in the form of rights. These shareholders numbered approximately 5,700 as at December 31, 1963, and no significant change has occurred in this number since that date—see Chart 4 respecting their geographic distribution. The balance of the shares will be sold to a group of underwriters for the purpose of public distribution in Canada. The underwriters will attempt to obtain the widest possible distribution of the shares of the bank.

This plan of financing, by way of rights granted to the Laurentide Financial Corporation shareholders and wide public distribution through the underwriters, is intended to ensure that the shares of the bank will be available to

a broad segment of Canadian investors, that no person or group should have control of the bank and that Section 5 of the bill will effectively achieve its intended purpose.

I might mention that our confidence that the proposed financing will be favourably received by the Canadian public is reinforced by the very widespread demand for direct participation through purchase of the bank's shares which has been made known to us through the many letters, telephone calls and other communications we have received.

Because of the public financing which is now contemplated, it appears desirable that the authorized capital should be increased from the one million shares set forth in the bill. Accordingly, we respectfully request that the appropriate amendments may be made to increase the capitalization to three million shares of the par value of $10 each.

You will appreciate that the exact number of shares which will be issued, and their issue price, cannot be stated at this time. However, if our application as amended is approved, the number of shares to be initially issued will probably exceed one million, and it is the intention of the provisional directors that they will be issued at a price which will result in a paid-in surplus on the books of the bank at least equal to the amount of the capital account.

I have mentioned that we consider it desirable for the proposed bank to ally itself with Laurentide Financial Corporation Ltd., with which company a number of us appearing before you today are associated in one way or another. It may be of interest to the members of the Committee to know that the Directors of Laurentide Financial Corporation formed the intention, approximately eight years ago, to assist in the formation and development of a new Canadian chartered bank. This was prompted by their view, which continues today, that such an institution could be of benefit to and be assisted by that company to the advantage of each. Active preparation towards this end commenced some four years ago when Laurentide Financial Corporation Ltd., together with local interests, formed the Commonwealth Industrial Bank Ltd. in the Bahama Islands. At about the same time, the company began to locate its offices in Canada in premises which could be suitable for the operation of bank branches. There are now more than 70 such locations distributed amongst the Provinces of Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Some of these might be made available to the proposed bank, in order to assist the development of its branch system. Certain employees of Laurentide Financial Corporation who have considerable banking experience and who were employed in anticipation of the incorporation of the bank will be available for employment by it, and this staff should assist in its rapid organization and early readiness for the commencement of business. Other areas of co-operation may be developed between Laurentide Financial Corporation and the new bank. Any such arrangements would be made up on an equitable basis, and, of course, in conformity with the Bank Act, so that the cost of the contributed facilities would be properly allocated between the two institutions. Such arrangements would have to be worked out keeping in mind the extent of the activities covered, and would be subject to change from time to time as variations occur in them.

I might add that any arrangement envisaged in these remarks would be subject to scrutiny by the Inspector General of Banks who would satisfy himself concerning their fairness, a situation with which we would be entirely satisfied.

I have stated that I would refer further to the question of the control of Laurentide Financial Corporation Ltd.

At the present time, this control is vested in Power Corporation of Canada, Ltd. which holds a substantial number of the Corporation's shares and, as it

advised Senator Hayden and the Committee by letter dated May 15, 1964, its shareholdings either in whole or in part represent an investment which is at any time subject to disposition. By reason of a voting trust arrangement in its favour, the sale of its interests by Power Corporation could result in control passing to another corporation or group, and a consequent dislocation of the tentative plans I have mentioned earlier. This would be material in two principal areas.

Firstly, were such a sale to be accompanied by a successful offer to acquire the common shares of Laurentide Financial Corporation, the present large number of such shareholders might be reduced to only one. In this event, the contemplated offer of rights to the Laurentide Financial Corporation shareholders to purchase shares in the bank would, in the view of the petitioners, require curtailment so that any such new owner of the shares could not obtain the right to acquire greater than 10% of the bank's shares.

Secondly, if any such transfer of control should occur, the new owner might not be prepared to enter into the possible reciprocal arrangements concerning business co-operation which I discussed before. This might delay the growth of the enterprise; it would not prevent its successful establishment.

Some views have been expressed concerning the need, or lack of it, with regard to additional chartered banks for our country. Our application is not based on any criticism of the existing chartered banks, but rather on conclusions at which we have arrived from extensive study that apportunities do exist for new banks in Canada.

A correlation of the growth in national income and the assets of all the Canadian chartered banks shows a remarkably similar pattern. In the nine year period ending December 31, 1963, the national income increased by 72% as did the assets of the chartered banks. This is graphically portrayed on Chart 5. During this period the composition of the assets of the Canadian banks as a group changed, as shown on Chart 6, to the extent that approximately two thirds of the growth took place in the "Loans" category. Well over half of this growth was financed by growth in savings deposits, and about one quarter by growth in demand deposits, as shown on Chart 7. The change in the number of deposit accounts per branch and their makeup are shown on Chart 8.

As a matter of interest, the number of bank branches increased in this period by 1,359, Chart 9, at a slightly faster rate since 1955 than the increase in population as shown by Chart 10, while average total loans and deposits per branch increased as shown by Charts 11 and 12. At the end of December 1962, 48.8% of total lending in Canada was carried out by the eight chartered banks, while 51.2% of loans were granted by some 4,600 other organizations, including life insurance companies, credit unions, finance companies and trust companies. This is illustrated by Chart 13.

In spite of this impressive growth pattern, growth in bank assets in Canada during the years 1960-1963 was slower than the comparable figures for France, the U.K. or the U.S.A. as shown on Charts 14 and 15, a situation which may be significant when it is realized that in these countries a far greater number of banks compete for the available business than is the case in Canada.

We believe that under our free enterprise system, opportunity rather than need dictates the number of competitors in any given field. Our system does not limit the number of new participants in any industry and its strength, in fact, lies in the competitive spirit which it engenders so that new ideas and greater service to the public are rewarded. Our studies have convinced us that there is indeed room for new banks and particularly so for one such as the Laurentide Bank which will establish its head office in Vancouver. We strongly feel that its establishment of a bank head office in this city will encourage the

development of business enterprises, the fostering of trade with other countries, especially the Pacific region of the United States and the Orient, and the development of new industry in the Province of British Columbia. We feel that our proposal will help in the achieving of these goals.

In the period December 31, 1954, to December 31, 1963, Canadian chartered bank loans have grown from 4.24 billion dollars to 9.48 billion dollars. Chart 16 portrays this growth and breaks down the loans into three categories—namely, general loans, special loans and other loans. You will note from the chart that out of the growth of 5.24 billions of dollars, the greatest increase has been achieved in the field of general loans. The category of general loans which has shown the greatest growth can then be broken down into four components: business loans, personal loans, loans to farmers and loans to non-business institutions. Relative growth of the various categories just mentioned can be assessed by examining Chart 17 and it becomes obvious that the main growth has taken place in the first two categories, namely, business loans and personal loans.

In examining the situation relating to these two types of loans, I would first like to deal for a moment with the category of personal loans. This is a segment of the credit industry in Canada which has experienced a strong demand on the part of the Canadian public. Such loans are made primarily to younger people for purposes of advancement and acquisition and represent a field in which several of us have had experience. Credit of this type has contributed materially to the advancement of our standard of living and to the development of a domestic market for Canadian production. The Canadian chartered banks have only recently entered this field and our studies show that in spite of a remarkable growth in the field of personal loans by our banks, there exists a continuously growing demand for this service and again we hope that the proposed Laurentide Bank of Canada will help in meeting this demand.

Personal loans are divided into two categories, namely, secured loans against marketable securities and unsecured. Chart 18 shows the relative growth which has taken place in these two classifications. You will note that the main part of the growth has been in the unsecured segment and this is the field which has been termed the consumer credit industry. Chart 19 shows the overall growth in the consumer credit picture and breaks down the various participants which make up the total. The heavy line towards the middle of the page demonstrates the growth of the chartered banks in the field of consumer credit as it relates to the other participants. Chart 20 demonstrates the importance of consumer credit in the total loan portfolio of the Canadian chartered banks. This growth in the percentage of total loans represented by consumer credit as far as the portfolio of the chartered banks is concerned, is shown on Chart 21 which provides seasonal detail for the material previously referred to in Chart 18.

The situation concerning competition in the field of personal loans is quite different from the one which exists with regard to business loans. Chart 22 illustrates this and the conclusion can be drawn that the field of business loans, which is indeed a very important and vital factor in the growth and development of business organizations in the nation, is served to the extent of 86.9% by only eight chartered banks.

We are aware of the fact that there may be changes to the Bank Act during the next year and before the time our application was submitted, we had considered holding it up until the proposed changes were known. However, the conclusions from the studies which we have made, not only in our own country but also in the United States, the United Kingdom, France and other countries, have convinced us that need and opportunity do, in fact, exist and

that they will not decline but rather increase with the passage of time. Should the Bank Act change, it will, of course, apply to all competitors in the field, including the eight chartered banks whose charters will expire on July 1st of this year and who presumably will obtain temporary charters for the following twelve months. Is it not consistent with the intended temporary renewal of the charters of the existing eight banks to consider the granting of new charters at this time on a similar basis?

On Wednesday, March 18, 1964, Mr. Chairman, during the hearing of this Committee, you recommended that in order to report favourably upon a Bill for the incorporation of an additional chartered bank, the Committee must be satisfied with regard to the make-up and personnel of the proposed institution and with the economic situation existing in the country. We have attempted to provide the Committee with information along the lines indicated by you, Mr. Chairman, and we are, of course, available to furnish the Committee with any information which you feel would be of assistance.

THE CHAIRMAN: Honourable senators, before you commence questioning Mr. Saunders, I should make part of the record, and read to you, the letter which is referred to on page 7 in this brief.

This is a letter of May 15, 1964, from Power Corporation of Canada, Limited. It was addressed to me with a request that I convey the message to the committee. Thereupon I had copies made and distributed to the members of the committee, so you are familiar with it. I think it should be part of the record. It reads:

POWER CORPORATION OF CANADA, LIMITED

One Place Ville Marie

Montreal 2

May 15, 1964.

The Honourable Senator Salter Hayden,
Chairman,
Senate Banking and Commerce Committee,
Parliament Buildings,
Ottawa, Ont.

Dear Senator Hayden:

Laurentide Financial Corporation Ltd., has caused an application to be submitted for the incorporation of a new bank under the name of Laurentide Bank of Canada.

Power Corporation of Canada, Limited is the beneficial owner of less than 36% of the voting shares of Laurentide. This holding represents less than 9% of the equity, (i.e., those shares entitled to participate in its surplus) although Power Corporation is a party to a voting trust arrangement which does control the votes pertaining to a majority of such shares. The Board of Directors of Laurentide comprises ten members, of which only two are also Directors of Power Corporation.

The opinion of the Board of Laurentide in the administration of its affairs does not necessarily coincide with that of the Directors of Power Corporation, who must give consideration to its many investments in institutions other than Laurentide. The application has been made on the the initiative of the management of Laurentide, representing its shareholders, which number in the thousands, following a decision of a majority of its Directors. Power Corporation has not sponsored, and does not support the application in any way.

In considering this application Parliament should not assume that Power Corporation may not in the future vary its investment in Laurentide, although if the investment were disposed of in whole or in part we would seek to give Canadians first preference.

Would you please convey this message to the other members of your Committee.

Yours very truly,

(Signed)

Peter N. Thomson
Chairman and President

Honourable senators, have you any questions to ask Mr. Saunders now?

SENATOR HUGESSEN: I must say that this brief which has been submitted by Mr. Saunders shows a very different picture from that which we were given upon the second reading of the bill. From my point of view, I think it is a much more favourable picture, because it appears to indicate now that this has started on the basis of broad and diversified ownership of its shares. I wanted to ask Mr. Saunders this question: He says that the objection now is that part of the capital is to be offered in the form of rates, and that the rest of the financing is to be done by underwriters; is that so?

Mr. SAUNDERS : That is correct, sir.

Senator HUGESSEN: Could you tell us, Mr. Saunders, what is your present capital structure in Laurentide Finance Corporation and what proportion of its issued shares are held by Power Corporation of Canada?

Mr. SAUNDERS: I think, senator, the letter which the Chairman has just read out indicates the approximate equity ownership of Power Corporation.

Senator HUGESSEN: It does, Mr. Saunders; but I would like a little more detail about that. Is your capital in Laurentide Finance in one class of shares, or two, or what?

Mr. SAUNDERS: There are several classes, sir. A company like Laurentide Finance Company operates on a formula, and the formula has to do with ratio equity to debt, and there are various levels of equity and also quite a few levels of debt. But to answer your question, sir, at the bottom of the pile we have subordinated common shares which number three million, both authorized and issued.

Senator MCCUTCHEON: Owned by whom?

Mr. SAUNDERS: They are principally owned by Power Corporation; about a little more than half are owned by them; and a little less than 50 per cent are owned by Derston Investment Corporation Limited. This is a company which is owned by Mr. Andrew Saxton and myself.

Senator MCCUTCHEON: The sole voting shares?

Mr. SAUNDERS: No. Both the subordinated and common.

Senator LEONARD: Three million subordinated common shares with one vote per share?

Mr. SAUNDERS: Yes, one vote per share. The next class are the common shares, and there are approximately a million and three-quarters of common shares outstanding. Chart 4 shows the distribution by shareholders, and there are approximately 5,700 shareholders. The largest shareholder, again, is Power Corporation of Canada, and it owns approximately 138,000 of these shares. Derston Investment Corporation, which I mentioned earlier, owns approximately 100,000 shares. Then there are various sizes of ownership ranging down from there.

The CHAIRMAN: Are there any companies of the style or character of Derston that own these common shares?

Mr. SAUNDERS: Not to any extent, sir. No, I have no knowledge of any. The shareholdings could be small.

The CHAIRMAN: In which you or any other directors of Laurentide have an interest?

Mr. SAUNDERS: Only nominal.

Senator BEAUBIEN (*Bedford*): Nothing of any significance?

Mr. SAUNDERS: Nothing of any significance.

Senator HUGESSEN: Any other class of common shares?

Mr. SAUNDERS: No. These are the only going shares, and these are the only common shares. There is a second class of preferred shares.

Senator HUGESSEN: I am only dealing with the shares to which rights would be given.

Mr. SAUNDERS: The secondary preferred are convertible into the common, and it is conceivable that they will have converted. We did not set out the holdings of the secondary preferred, but they are distributed on quite a wide scale.

Senator HUGESSEN: How many issued shares of preferred?

Mr. SAUNDERS: I will have to trust to my memory—119,000, and they are convertible into common on the basis of two common shares for each secondary preferred share.

Senator HUGESSEN: Would it be your intention to offer the shares to your subordinating common shares and to your common shares on an equal basis?

Mr. SAUNDERS: Well, on an equitable basis but not necessarily an equal basis.

Senator HUGESSEN: What do you mean by an equitable basis?

Mr. SAUNDERS: I mean, the subordinated common have a par value of one dollar. The common shares have an actual market value at the present time in the neighbourhood of $14, so the ratio would have to be worked out between them, because the subordinated common have conversion rights into the common on the basis of seven to one, with some payment. They also represent the control of the company and we feel that we would sit down with our underwriters at the time when this distribution is made and work out a formula whereby the subordinated common would be offered rights on a certain basis, and the common on another basis.

The CHAIRMAN: And if your shareholders were not happy with that you might have some difficulty?

Mr. SAUNDERS: Oh, yes, that is always a possibility. It is very difficult to keep everybody happy, but we try to work it out on a basis which seems fair to everybody.

Senator HUGESSEN: I think it would be of interest to the committee, Mr. Saunders, if you could present us, perhaps in due course, with a table or formula showing, first of all, approximately the number of common shares, the number of shares at the bank you propose to offer to your existing shareholders by way of rights, and on the assumption that those are all taken up, what proportion of the shares of the bank would then be offered to and owned by Power Corporation of Canada and the other holding corporation you mentioned.

Mr. SAUNDERS: We can work that out, sir. We have not determined at this point what percentages of the proposed capitalization of the bank would be offered to the shareholders.

Senator McCUTCHEON: These are new concepts you are putting forward to us this morning?

Mr. SAUNDERS: Not exactly. It is a little new to the extent that we felt to begin with the bank should be a subsidiary of the finance company. However, we always did have in mind to bring the public in. Then it appeared that the controls as far as Canadian ownership would not be workable if the parent company's position changed, so rather than Laurentide Financial buying the interest, we thought that the shareholders of Laurentide Financial would be given the opportunity to come in.

Senator HUGESSEN: I think that is a much happier picture.

Mr. SAUNDERS: Thank you.

Senator McCUTCHEON: What investment does Laurentide intend to make in the new bank, if any?

Mr. SAUNDERS: It is not contemplated at this time, sir.

Senator McCUTCHEON: Laurentide as such will hold no shares in the new bank?

Mr. SAUNDERS: No.

Senator BOUFFARD: Could you give us a detailed résumé?

Mr. SAUNDERS: Let me say that there is an agreement between Power Corporation of Canada Limited and Derston Investment Corporation Limited, whereby the two corporations will pool their stock, and Power Corporation of Canada Limited has the right to determine how they are to be voted. There are a number of other things covered in that agreement, and this is the basic part as far as the voting is concerned.

Senator BOUFFARD: Do you think it would be possible to get a copy of the voting trust agreement?

Mr. SAUNDERS: Yes, that would be quite all right. I do not have it with me; we can get it.

Senator BOUFFARD: What is the control of the voting trust agreement? What is the percentage you carry in the voting trust agreement? What percentage of shares do you have to vote?

Mr. SAUNDERS: This percentage is subject to change. There are at the moment about 1¾ million common shares outstanding and exactly three million subordinated common shares. The subordinated common shares have one vote per share, and the common shares have one vote per share. So at the present moment three million out of 4¾ million are the subordinated common. Just about the entire subordinated common would be covered by this voting trust; I would say, about 98 per cent. There is no restriction, other than the limits on authorization, on the number of common shares that could be issued. Let us assume that the Laurentide Finance Corporation group require additional capital. There might be five million of common outstanding. At this point the subordinated common would represent three-eighths, but today they represent two-thirds.

The CHAIRMAN: That change could only take place with the approval of those who presently control?

Mr. SAUNDERS: There is some room in the authorized?

The CHAIRMAN: I do not mean that. I mean, if you have a voting trust agreement under which the parties have voting control and it is proposed to issue additional voting shares which would upset that control, the people who enjoy the control would certainly have a good, hard look at it.

Mr. SAUNDERS: Yes.

The CHAIRMAN: And you would have to carry them along with you?

Mr. SAUNDERS: There are provisions in the articles relating to the subordinated common that provide, on a certain basis, that the subordinated common can convert into the common. The agreement you have referred to sets out, for instance, the position which would result if, let us say, one of the parties decided to convert into the common and the other one would like to continue with the voting trust.

Senator MCCUTCHEON: You will let us have a copy of the agreement?

Mr. SAUNDERS: Yes.

Senator MCCUTCHEON: That is the best way.

Senator CRERAR: Laurentide started, Mr. Saunders, about 1950, is that right?

Mr. SAUNDERS: Yes.

Senator CRERAR: What was your original capital?

Mr. SAUNDERS: $1,500.

Senator CRERAR: What is it now?

Mr. SAUNDERS: The paid-in capital of the company is approximately $35 million.

Senator CRERAR: When did Power Corporation come in?

Mr. SAUNDERS: In 1956.

Senator CRERAR: Did they initiate, or did you initiate?

Mr. SAUNDERS: Their entrance into it?

Senator CRERAR: Yes.

Mr. SAUNDERS: It is hard to say where it started. I would say it was a mutually agreeable arrangement. We met them first through their efforts, but we were quite interested in associating ourselves with somebody who had greater knowledge of the financial markets than we did, and we were very pleased to enter into that association.

Senator CRERAR: When they entered, did they really get control of Laurentide?

Mr. SAUNDERS: Yes, when they came into the picture they acquired 99 per cent of the voting stock, and the capital was re-organized last year whereby their actual control was considerably reduced. As I mentioned, Derston Investment Corporation, which is owned by Mr. Saxton and me, together with Power Corporation, invested a large amount of money, over $3 million, to add more capital to the company, and at the same time the voting control was reduced. It was foreseen that the time would come when this control position would completely disappear, and machinery was set up which would enable that to happen.

We have never had any interference from Power Corporation in matters of management, and as their letter says only two of our ten directors are also directors of Power Corporation. However, in this matter of the bank application they have had a rather sensitive position, because Mr. Thomson, who wrote this letter, is a director of one of the chartered banks. Several of the directors of Power Corporation are directors of chartered banks, including the president of one of the chartered banks; and this is a situation which has created a little bit of embarrassment, I suppose; and this particular gentleman who is president of one of the chartered banks has gone on record as not favouring further bank charters. So there has been a little bit of, you might say, tightrope walking on the part of directors of Power Corporation who are also directors of Laurentide.

Senator CRERAR: Could I put it this way: is it a reasonable assumption that the Power Corporation interests were a bit doubtful about the wisdom of Laurentide applying for a bank charter?

Mr. SAUNDERS: We were certainly not advised of that at the time we made our studies for this application. They now express some doubt, but we do not share those doubts.

Senator MCCUTCHEON: Mr. Thomson, the president of Power Corporation, is a director of yours. Did he vote in favour of your making this application? He says in his letter that the majority of your directors approved this application.

Mr. SAUNDERS: Yes.

Senator MCCUTCHEON: What is his position?

Mr. PAINE: Might I answer the question, Senator McCutcheon? I do not think Mr. Thomson was present at the directors' meeting when the final decision was taken. The matter was first referred to a committee, and he was not present at the subsequent meeting. Among the directors present—a substantial number of the ten—there was no dissent.

The CHAIRMAN: I think the answer is in the letter, where it is stated that, "Power Corporation has not sponsored, and does not support the application in any way".

Senator MCCUTCHEON: He indicated the majority of directors, and I wondered if there had been a division, or whether some were absent.

Mr. SAUNDERS: That is the case.

Senator CRERAR: The letter which the Chairman read from the Power Corporation, would you construe that as a sort of intimation to the committee that it should not rely in any way on the permanency of Power Corporation being associated with Laurentide?

Mr. SAUNDERS: I would say, senator, that is a possibility. I have no way of interpreting it. The letter was written with our knowledge, but against our advice because we felt that the application for the charter which we are making is not materially affected by Power Corporation's position.

Senator CRERAR: Were you aware that Power Corporation was going to send this letter?

The CHAIRMAN: Yes, he said that he was.

Mr. SAUNDERS: Yes, we were advised it was going to be mailed. Our own advice was that it is of no particular significance as far as our application is concerned, and that it may confuse rather than clarify the situation.

Senator CROLL: I think it would be useful to the committee to have the last three annual statements of Laurentide, the Derston Corporation, who are concerned, and any others about whom we may not have heard that are in any way involved, so we could have the opportunity to examine them.

Mr. SAUNDERS: We would be happy to make the Laurentide available, they are public; and, Power Corporation, if you would care to look at them, they are public. Derston is a private company. We will be happy to supply information that would be of use.

Senator CROLL: I am not pressing for the private one, just the public ones.

Senator MCCUTCHEON: Mr. Saunders, you have undertaken to provide certain information that Senator Hugessen asked for. Have you reached any conclusion as to what proportion of the initial capital of the bank will be offered by way of rights and what proportion will be underwritten?

Mr. SAUNDERS: We have no conclusion, senator, but we have naturally some ideas.

Senator McCUTCHEON: How firm are those ideas? Could you give them to us?

Mr. SAUNDERS: Let us say for the sake of simplicity that we are thinking about half and half. Whether it will be 40 per cent and 60 per cent, or 35-65, or 55-45 we cannot determine that at the moment because things could change in the meantime. For instance, today Laurentide has about 5,700 common shareholders. At the time the charter is granted and we set out to raise the capital and the number increases to, say, 8,000, we may make a little larger percentage available.

These are some of the considerations, but let us say for the sake of simplicity that we are thinking in terms of approximately half and half being offered to the shareholders, and this has no significance as far as any controlling position is concerned, because it is on an equity basis which is more or less how the offer would be made. Nobody holds a substantial percentage.

Senator McCUTCHEON: That is the point I am coming to I think the committee will be interested in having some more definite information as to the manner in which you propose to finance the bank, the number of shares you propose to issue initially. You say you are going to have a surplus equal to the capital which would mean you are going to issue $50 shares presumably. We would like to know, assuming all the rights are taken up, how many would be owned by Derston and how many would be owned by Power Corporation.

Mr. SAUNDERS: We can give that on the assumption of a percentage.

Senator McCUTCHEON: On the basis of the situation existing today.

The CHAIRMAN: Let us assume you had your charter today, and you were going to raise the money. What would your plan be? You would be in the hands of the underwriters to some extent as to how much they could support on a public offer. Then on the question of rights or restriction, are you proposing, if it is not going to be an equal distribution of rights in relation to shareholdings, on what basis will you make the distribution?

Mr. SAUNDERS: I am not sure I understand this. I was under the impression that one has about a year after a charter is approuved to raise the capital, and then you have to submit the information to the Treasury Board for their approval.

The CHAIRMAN: That is right. Of course you don't have to give us this information.

Mr. SAUNDERS: We would be happy to do this but we cannot. We have to deal with the facts as they exist when we go out to raise the money.

The CHAIRMAN: Supposing you have a charter, what would your plan be?

Mr. SAUNDERS: We would have to discuss it with the underwriters.

The CHAIRMAN: If you get your charter and didn't get the certificate for a year, the situation might be difficult. We are interested in where the control of the bank may end up.

Mr. SAUNDERS: We can make the assumption that if we had the charter today it certainly would be done.

Senator McCUTCHEON: As of today's conditions and the outstanding capital shareholdings situation.

Senator THORVALDSON: I would like to go back to the letter you have from Power Corporation. To me that is very confusing. I can see where certain matters in that regard, if not cleared up, might become a cause of controversy in this committee, and I don't think that should happen. In the first place I don't see what status they have to write a letter of this kind even if they have a large share interest in this company. In the second place I am confused by what they mean when they say they do not support this application. I would

have gathered from that that they oppose the application, and if they do so perhaps we should know that.

I wonder if it is possible to find out Power Corporation's connection in this matter, whether they have the status before this committee of a shareholder, majority or otherwise, and I want to know if they are merely straddling the fence because of their four bank directors or whether they are in opposition to this application.

The CHAIRMAN: Are you ready to make a comment on this?

Mr. SAUNDERS: Perhaps Mr. Paine could answer that.

Paul Britton Paine, Esq., Q.C., Vancouver, B.C., Counsel: I discussed this letter with Mr. Thomson on Tuesday last. The letter was written on the 15th of this month. I asked specifically what was intended to be meant by the phrase "The Power Corporation does not support the application." In other words, did he intend to say, as one may do in talking about, for example, a political figure, "I do not support Mr. So-and-so"—because the implication is that you oppose him. He said that was not the intention at all. The intention was to make it clear that Power Corporation was preserving a completely neutral position in that it neither sponsored nor opposed the application. The situation that has arisen is one of delicacy. Senator Blois mentioned this on second reading. Power Corporation has a number of bankers on its board. It is clear their association with us now may cause them some embarrassment, and they want to set the record straight.

The CHAIRMAN: Is it a fair conclusion from what you have said that Power Corporation as the controlling shareholder is neutral in respect of this application?

Senator THORVALDSON: I think that answers my question.

Senator HUGESSEN: Arising out of my previous questions, I want to go back to my previous discussion on rates. I understood you to say that the three million subordinated common shares owned by the big groups are of a par value of a dollar, and on the other hand the other common shares which are held very extensively have a market value of $14.

Mr. SAUNDERS: That is market value.

Senator HUGESSEN: Does that mean in determining what rights respectively you will give to those two classes of shareholders, you are taking the difference between the $1 and the $14?

Mr. SAUNDERS: I don't think that would be a fair assumption.

Senator HUGESSEN: Would you offer the shares equally?

Mr. SAUNDERS: I think I tried to differentiate between equally and equitably. The subordinated common shares are not listed. If they were, it is conceivable they would have a trading market value several times the par value. The common shares are listed and they have fluctuated, reaching a high of $29 and a low of $1.25, our original listing price away back 14 years ago. At the present time their market value as traded, for example, on the Toronto Stock Exchange is approximately $14.

Senator HUGESSEN: I am not interested in the market value. I am interested in the different rights you are proposing to give to these two different classes of shares. That affects the matter in regard to who will have the right to apply for what proportion is to be made.

Mr. SAUNDERS: Well, I understand your question, but we have not attempted to work that out in advance because we felt that we have to deal with market conditions as they are at the time the rights are being offered.

Senator HUGESSEN: I do not see, Mr. Saunders, what this special market value has to do with rights. If the two classes of common shares have the same rights as shares of ordinary banks—I suppose it is a legal question as to whether you can differentiate between the two; as to whether you are giving rights to the two classes of shareholders. It is very important.

Mr. SAUNDERS: Could I ask Mr. Paine to answer that question?

Senator HUGESSEN: Yes.

Mr. PAINE: The provisions relating to the subordinated common now provide that if Laurentide gives a rights offering to its common shareholders the rights given to a common shareholder for one share would be extended to a subordinated common shareholder for seven shares. It is on this basis that you can assume that the number of rights given to the subordinated would be a seventh of those given to each of the common. This would not necessarily apply in the case of the bank, because the bank is separate and is not bound by that. It could decide that it would give a right to each common, and a right to each 14 subordinated common. But I think we will lay out a proposed plan as suggested, based on today's assumptions.

Senator BEAUBIEN (*Bedford*): Mr. Chairman, from the evidence it appears that Power Corporation controls Laurentide Financial Corporation completely, and without any argument.

The CHAIRMAN: Yes.

Senator BEAUBIEN (*Bedford*): If we are going to discuss how the rights are going to be issued should we not ask Power Corporation?

The CHAIRMAN: That is a question I put to Mr. Saunders a while ago. I said that the person who has voting control in the long run has to be satisfied with what is being done, otherwise he will get a different board that will do what he wishes to have done. The question I was concerned about was when we were to be told who the first directors were going to be. I would assume that if there is going to be a public offering, and control is going to be in the hands of the public, we will not be sure as to how that board will be made up.

Mr. SAUNDERS: We can only deal with assumptions because we have no bank charter today.

The CHAIRMAN: No, but you do not need a bank charter to decide on a plan to follow, do you?

Mr. SAUNDERS: No, but—

The CHAIRMAN: Do you only start planning when you have a charter?

Mr. SAUNDERS: I did not mean to imply that, but there are certain things that you have to deal with as they exist at the time.

The CHAIRMAN: Your plan, if I can suggest it, might be influenced by conditions at the time when you have to make a decision on this matter, but, surely, you have a plan beforehand.

Mr. SAUNDERS: There are various stages of planning. We have been planning this for close to eight years. We have spent a lot of time in planning it. So far as the board of directors is concerned, well, we have the petitioners who have agreed to become directors, and the bank is not tied to Laurentide Financial Corporation. Therefore, the petitioners are applying for the charter. They propose to make some arrangements with Laurentide so far as the availability of some personnel and the possibility of transferring some locations are concerned, and also, perhaps, certain services.

Senator McLEAN: Is not the Mr. Peter Thomson of the Power Corporation the head of Nesbitt Thomson and Company?

Mr. SAUNDERS: No, sir.

Senator MCLEAN: But he is interested in Nesbitt Thomson and Company?

Mr. SAUNDERS: No. His father was the Mr. Thomson of the firm of Nesbitt Thomson and Company. Mr. Peter Thomson has been a director of Nesbitt Thomson and Company, but he is no longer.

Senator BLOIS: May I ask Mr. Saunders if he can tell us who has control of Power Corporation in Canada?

Mr. SAUNDERS: I have no specific knowledge of that at this particular moment. However, I have heard it said, and I presume it to be correct, that Mr. Thomson has the working control.

Senator BLOIS: I am under the impression that Power Corporation is controlled by another corporation, and that that corporation is in turn controlled by somebody else. What I am leading up to is that eventually the control of Laurentide and this bank may pass to some other person. I want that cleared up.

Mr. SAUNDERS: I do not think that could happen because our plan is that the shares of the banks are to be distributed in two ways; one, in the form of rights to the shareholders of Laurentide and, two, to the public. Nobody can stop any member of the public from buying shares. This is the situation which exists in respect of the chartered banks, and many other Canadian corporations.

Perhaps the question of rights has caused some confusion, and I think I see the point, which I did not see before. We have never intended that the majority of the shares of the bank be offered in the form of rights to the Laurentide shareholders. I would say that the reason we have not answered specifically is that we have not dealt with the specific problem to this date. It is quite conceivable that the subordinated common, for instance, could disappear completely, because there is a formula as to how that might happen. We intend to offer the majority of the shares to the public. Therefore, it is only in that minority, which might be a large minority, which is going to be offered to the Laurentide shareholders that any purchase by Power Corporation in the form of rights could take place.

Now, Power Corporation, or any corporation for that matter which has shares in Laurentide, would be offered rights on that portion. That being a minority portion in the first instance their opportunity to buy rights would be a fraction of that portion. We will work out a plan, as has been suggested, but I am quite sure that your question is based on the possibility of Power Corporation's controlling a certain block of stock in the bank which they would be offered in the form of rights, and that that would represent a certain type of control.

Senator BLOIS: There is an agreement between Power Corporation and Laurentide which we have not seen.

The CHAIRMAN: Following your question, Senator Blois, is it that easy, Mr. Saunders, to propose a plan under which you will make the major portion of the offer of rights to the public to an extent that might divest the present controlling shareholder of his control? Is it that easy?

Mr. SAUNDERS: I do not think it is a question of divesting the present controlling shareholder of his control, because the present controlling shareholder controls Laurentide Financial Corporation, and Laurentide Financial Corporation makes no direct investment in the bank.

We feel that the application for this charter, which contemplates the sharing of facilities between Laurentide Financial Corporation and the Laurentide bank, has a lot of merit for both organizations. It is not necessary

to have financial overlap of ownership in order to accomplish that. The directors of Laurentide Financial Corporation recognize the situation that they have no say whatsoever in so far as the bank is concerned. They have understood this situation, that it is only the Laurentide shareholder who is going to get the opportunity of buying these shares.

The CHAIRMAN: Then, you are speaking to us as one of the petitioners for the incorporation of Laurentide Bank, and you are also speaking as chairman of the board of Laurentide Financial Corporation?

Mr. SAUNDERS: That is correct.

Senator LEONARD: Will not Laurentide Financial Corporation have to approve of the relative relationship of the rights to their respective shareholders? You assume that an offer can be made by the bank itself without regard to the wishes of the directors of Laurentide Financial Corporation as to the portion of those rights?

Mr. SAUNDERS: Yes, we do.

Senator LEONARD: But if the subordinated common shares have the right to convert—is it one subordinated common share for seven?

Mr. SAUNDERS: No, the other way around, sir.

The CHAIRMAN: I was wondering, Mr. Saunders, how we could assume that Laurentide Financial Corporation is going to give all the cooperation you are talking about if they are not going to have any financial interest in the bank.

Mr. SAUNDERS: We can assume that because it makes good sense, business-wise. As we have stated, if they decide not to do it then that would not eliminate the possibility of the bank being successful.

The CHAIRMAN: Are there any other questions?

Senator CRERAR: What is the net worth of Laurentide today?

Mr. SAUNDERS: Laurentide Finance is worth about $35 million.

Senator CRERAR: Laurentide propose to take certain shares in the bank?

Mr. SAUNDERS: No, sir.

Senator CRERAR: You are offering rights to the shareholders of Laurentide today?

Mr. SAUNDERS: That is correct.

Senator CRERAR: Assuming you get 20 or 25 per cent of the proposed capital of the bank, your plan is to offer the remaining shares to the public, am I correct?

Mr. SAUNDERS: That is correct.

Senator CRERAR: We will presently have before us I expect an application for a charter from British Columbia. Is there enough financial resources in British Columbia to start off both these banks?

Mr. SAUNDERS: That, of course, is a matter of opinion but I believe there is. There is a great deal of activity going on in British Columbia. There is a number of new industries being built and two very large Hydro Electric schemes. There is a great deal of activity. Our studies have concerned themselves mainly with banking in Canada rather than on a strictly regional basis.

The CHAIRMAN: You are not putting it forward on the basis of being a regional bank for British Columbia?

Mr. SAUNDERS: No, sir.

The CHAIRMAN: Then that answers the question.

Senator CRERAR: I would agree that there is a great deal of activity in British Columbia and that probably it will have a great future; but my concern is as to whether there are sufficient financial resources in capital available in British Columbia to finance your bank and the other one.

Mr. SAUNDERS: We intend to sell our shares all across Canada and we have not made any study of the capital resources of British Columbia. We know they are fairly extensive but we could not comment on that. For instance, on Chart 4 we show as an example where the shareholders of Laurentide are situated, and that portion which is going to be offered in the form of rights will be offered to this group.

Senator CRERAR: That would indicate that more of the shares of Laurentide are outside British Columbia than inside it?

Mr. SAUNDERS: Yes.

Senator CRERAR: You have shareholders in other countries?

Mr. SAUNDERS: We have some, yes.

Senator CRERAR: What percentage?

Mr. SAUNDERS: Something under 10 per cent.

Senator CRERAR: I beg your pardon.

Mr. SAUNDERS: About 9 per cent.

Senator CRERAR: About 9?

Mr. SAUNDERS: Yes.

Senator CRERAR: Do you propose to offer those shareholders privileged equity in the bank also?

Mr. SAUNDERS: Where it is permitted. We do not propose to offer them in the United States because they have certain restrictions against rights there.

Senator CRERAR: You would have to get by their Securities Commission to do that.

Mr. SAUNDERS: Yes.

Senator CRERAR: But your expectation or your intention is that the control will remain solidly in Canada?

Mr. SAUNDERS: Yes. We have provided in our charter conversion that 90 per cent of the shares are to be held by Canadians, and we propose to take a statement from the shareholders to that effect.

Senator CRERAR: What is the amount of capital you are planning to have when your program is through selling shares?

Mr. SAUNDERS: The minimum amount of paid-in capital and surplus which we contemplate is $20 million, but it is quite possible and quite likely that we will actually raise a larger amount than that.

Senator CRERAR: Those shares are sold for a certain amount per share; and a certain percentage of that is capital and a certain amount is reserve?

Mr. SAUNDERS: That is right.

Senator CRERAR: How do you divide that?

Mr. SAUNDERS: Well, $10 is going to capital as a part of stock. Supposing we sold the shares at $22, then $12 would go to the reserve and $10 to capital.

Senator CRERAR: That would be $10 to capital and $13 to reserve?

Mr. SAUNDERS: If we sold for $23 that would be the case.

Senator CRERAR: When would you expect to be able to pay dividends?

The CHAIRMAN: Senator Molson.

Senator CRERAR: It is a pertinent question.

Senator KINLEY: I do not think he could answer.

The CHAIRMAN: You want dividends before the charter is granted?

Senator CRERAR: No, Mr. Chairman. These gentlemen come along with a very interesting proposal and I have not seen at all that they have made projections as to when they might be able to pay dividends.

Mr. SAUNDERS: We have made projections, sir, and it is our feeling that the bank will lose money for—

Senator CRERAR: For a year?

Mr. SAUNDERS: For the first year and probably through the second year. It should begin to pick up in the third year and, depending on the amount of expansion, how much it will pick up, because naturally as you are building branches across the country and write off the expenses of the branches, it takes some time until you get it back from each branch.

Senator CRERAR: Your plans are based on the expectation that the economy will be growing in Canada at the rate of 5 or 6 per cent a year?

Mr. SAUNDERS: That is about right.

Senator CRERAR: Supposing it does not, what happens?

The CHAIRMAN: A lot of things happen.

Mr. SAUNDERS: I am afraid a lot of things would happen. We have covered the period of ten years in most of our studies on these charts, and it would indicate to us that we can look forward to quite a steady growth. I think that the matter of dividends will have to be dealt with by the board of the bank but I would feel quite certain that it will not be for the first few years.

Senator CRERAR: I think perhaps that is the last question I have to ask.

Senator MOLSON: This bill, as now presented to us today, is in rather a different form from what we understood earlier. I am personally very favourably impressed by the changes. In common with most of the members of the committee, I am completely confused as to the possibilities of ownership, as the result of the rights issue proposed. I wonder if it would not help to clarify this point in our minds a little if Mr. Saunders could tell us what he contemplates now might be the maximum or minimum percentage ownership of the bank which would accrue to the holders of the subordinated common shares?

The CHAIRMAN: He did undertake earlier to make a submission in that regard.

Mr. SAUNDERS: I think I can answer that in general terms, Senator Molson. There are three million subordinated common shares. Through the formula which has been established for their possible conversion, seven of those shares together with a certain cash payment become one common. On that basis, roughly 210,000 common shares would be created through the exercise of that conversion privilege.

Senator MOLSON: No.

Mr. SAUNDERS: I am sorry, 450,000. My mathematics are not very good.

The CHAIRMAN: This is an off day in bank business.

Mr. SAUNDERS: Can I say 400,000 shares in round figures? If we take the 1,700,000 which are outstanding today, and this does not include the conversion privilege of the second preferred, added to that 400,000, that would make it 2 million odd.

At that point they might represent in total 20 per cent of the common shares. Now, that 20 per cent would be owned approximately at the rate of half and half by Power Corporation and Derston, and the voting trust agreement which we have referred to disappears when conversion takes place. So at this point you have about 100,000 shares owned by Power Corporation, representing roughly 5 per cent of the total number of shares, plus their holding of approximately 128,000 in the common, which would make 238,000 shares.

Senator LEONARD: Where do you get your 100,000? Is it not 200,000?

Mr. SAUNDERS: Oh, yes, 200,000—plus 138,000, which makes 338,000, out of a possible two million one. Derston's position would be somewhat less, but approximately the same.

The CHAIRMAN: Any other questions?

Senator KINLEY: Are we to assume that you are fulfilling all the statutory obligations you are supposed to in your application?

Mr. SAUNDERS: I suppose so, sir.

Senator KINLEY: Well, you should say yes or no. I remember there was an application in the Commons, and it was refused because they could not or would not fulfill the statutory obligations. Now, are you complying with all the statutory obligations that you know of?

Mr. SAUNDERS: Yes, sir.

Senator KINLEY: With regard to this Power Corporation, who controls it?

Mr. SAUNDERS: Well, I have no definite knowledge, but Mr. Thomson would require to control Power Corporation.

Senator KINLEY: That is the point. Mr. Thomson, you think, controls that corporation?

Mr. SAUNDERS: Right, sir.

Senator KINLEY: He writes a letter in which your partner implies that he is a director of another bank and he does not want to get mixed up in this application, it that it?

Mr. SAUNDERS: That is what it would appear, sir.

Senator KINLEY: Power Corporation has how many directors who are directors of the bank?

Mr. SAUNDERS: Several, sir, but I don't know the exact number.

Senator KINLEY: How many of which you spoke this morning?

The CHAIRMAN: You spoke about four.

Senator KINLEY: You have four directors in your financial arrangements who are directors of other banks?

Mr. SAUNDERS: I am not sure that I understand the question, sir.

Senator KINLEY: The point is that you come here and you have been telling us that there are several companies, subsidiary companies or controlling companies interested in your application. The only thing I am asking you is, how many in that theatre are directors or chartered banks at the present time?

Mr. SAUNDERS: I can't say that, sir; but as we have been discussing here, investment companies like Power Corporation have a diversity of interests, and this may or may not be one of them. In their letter they imply that it may not be a permanent investment at all. However, at the present time they do own a substantial block of Laurentide Finance which is not synonymous with Laurentide Bank. Laurentide Bank will offer some of its shares, a minority of them, to the shareholders of Laurentide Financial Corporation, and through the exercising of those rights, Power Corporation could acquire perhaps 15 per cent, or maybe thereabouts of the bank. Now, in order to do that they would have to exercise all their rights. There is nothing to prevent them, or any other corporation, from buying shares on the market.

The CHAIRMAN: No; and there is nothing to prevent shareholders who receive rights from selling them.

Mr. SAUNDERS: From selling them; that is correct, sir. So we do not feel that the question of Power Corporation's ownership affects the bank to any significant extent.

Senator KINLEY: Mr. Chairman, may I ask the witness this question: In your stock arrangements that you have been telling us about here, can you do that by a 50 per cent vote?

Mr. SAUNDERS: Well it depends on the subject which is being voted on. Mr. Paine here is the counsel, and perhaps he will give you a better answer. But most matters as far as ordinary resolutions at shareholders meetings are concerned are covered by 50 per cent.

The CHAIRMAN: A majority vote.

Mr. SAUNDERS: A majority of the meeting; which does not necessarily mean 50 per cent of the total shares, which could be a much smaller per cent.

Senator KINLEY: How about when you increase your stock in the company, is that done by 50 per cent?

The CHAIRMAN: There is no proposal to do that here.

Senator KINLEY: I know. What I am getting at is if they are going to do something afterwards, it is of some interest.

Mr. PAINE: To answer your question, senator, if we wanted to increase the stock, the authorized capital at the bank after its formation, we would have to come back to Parliament.

Senator KINLEY: I did not get that.

Mr. PAINE: After the charter is granted, if we wanted to increase the authorized capital we would have to come back to Parliament.

Senator KINLEY: You could not do it with a 75 per cent control?

The CHAIRMAN: You could not do it with any vote. This is a private company.

Senator CRERAR: I have one question, Mr. Chairman. How many shareholders has Laurentide in Canada apart from Power Corporation?

Mr. SAUNDERS: Common shareholders, 5,780, I believe, and maybe 30 or 40 subordinating common shareholders. Of this number, 540 approximately are foreign and the balance are Canadians. So in round figures, 5,300 shareholders are Canadian.

Senator CRERAR: What are the average shareholdings under 5,300?

The CHAIRMAN: This is the second question.

Mr. SAUNDERS: Three hundred shares.

Senator CRERAR: About 300 shares?

Mr. SAUNDERS: Yes.

Senator KINLEY: Does that average include the big fellows?

Mr. SAUNDERS: Yes.

Senator LEONARD: Mal I ask Mr. Saunders: If the Porter Commission recommendations were implemented, would any shareholder have to divest itself of your shares; that is, that under the recommendation of the Porter Commission, what we call near banks would be classified as banking institutions, and they could not hold shares in your bank. What is the relationship of your application with respect to those recommendations, if they were implemented?

Mr. SAUNDERS: There seems to be no relationship. Of course, we cannot tell if another institution might acquire on the market an amount beyond 10 per cent; but the way the plan is laid out that is an unlikely situation because we would attempt to have a wide distribution. But no corporate shareholders would end up with what we would consider a situation which would be contrary to the recommendations of the Porter Commission.

Senator LEONARD: What have you to say with regard to short-term obligations under 100 days?

Mr. SAUNDERS: We issue them a prospectus, sir, and I think the Porter Commission deals with offerings that are not issued pursuant to the prospectus.

The CHAIRMAN: Are there any other questions? I take it, Mr. Saunders, you have made a note of the information you are going to send forward to us?

Mr. SAUNDERS: We have, sir.

The CHAIRMAN: Now, Mr. Alastair Macdonald?

Mr. MACDONALD: That is the presentation, Mr. Chairman.

The CHAIRMAN: There is some material still to come forward to us, and I take it we still have to make up our minds after we have received that as to whether we wish to hear from Mr. Elderkin, the Inspector-General of Banks, as we did in the case of the Bank of Western Canada. My suggestion is that this stand until the next regular sitting of the committee. Is that agreeable?

Hon. SENATORS: Agreed.

The committee adjourned.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-13, intituled: "An Act to incorporate Laurentide Bank of Canada".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, JUNE 10, 1964

No. 2

WITNESS:

Mr. Peter Paul Saunders, petitioner.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20909—1

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine
Baird
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Blois
Bouffard
Burchill
Choquette
Cook
Crerar
Croll
Davies
Dessureault
Farris
Fergusson
Flynn
Gelinas
Gershaw
Gouin
Hayden
Hugessen
Irvine
Isnor
Kinley
Lambert
Lang
Leonard
Macdonald (*Brantford*)
McCutcheon
McKeen
McLean
Molson
Monette
O'Leary (*Carleton*)
Paterson
Pearson
Pouliot
Power
Reid
Robertson (*Shelburne*)
Roebuck
Smith (*Kamloops*)
Taylor (*Norfolk*)
Thorvaldson
Vaillancourt
Vien
Walker
White
Willis
Woodrow—(50).

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 13th, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cameron, seconded by the Honourable Senator Stambaugh, for second reading of the Bill S-13, intituled: "An Act to incorporate Laurentide Bank of Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Cameron moved, seconded by the Honourable Senator Stambaugh, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20909—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, June 10, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 12.20 p.m.

Present: The Honourable Senators: Hayden (*Chairman*), Beaubien (*Bedford*), Blois, Bouffard, Bourget (*Speaker*), Burchill, Crerar, Dessureault, Fergusson, Flynn, Gershaw, Hugessen, Irvine, Isnor, Lang, Leonard, McCutcheon, McLean, Paterson, Pouliot, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt, Walker, White and Willis.—(27).

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

Bill S-13, intituled: "An Act to incorporate Laurentide Bank of Canada", was again considered.

The following witness was heard:

Mr. Peter Paul Saunders, petitioner.

The Clerk of the Committee was directed to notify Mr. Saunders three days in advance of the next Committee meeting on Bill S-13.

On Motion duly put it was agreed to retain Bill S-13 on the agenda of the Committee.

At 12.35 p.m. the Committee adjourned to the call of the Chairman.

Attest:

F. A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 10, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-13, to incorporate Laurentide Bank of Canada, met this day at 12.20 p.m. to give further consideration to the bill.

Senator SALTER A. HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: Gentlemen, was have a continuation of the hearing on Bill S-13, to incorporate the Laurentide Bank of Canada. Additional material requested at the last hearing has now been filed, and I think it is to be distributed among the members of the committee. There is a supplemental brief and Mr. Peter Paul Saunders is here. It is not very long and I thought we should hear him since he is here. I have of course warned him that we will require time to examine the exhibits filed. It is agreed that we should hear him now?

Hon. SENATORS: Agreed.

Mr. Peter Paul Saunders, Executive, Vancouver, British Columbia: Mr. Chairman and honourable senators, at the meeting of this committee held on May 27 last, certain questions arose relating to the proposed capitalization of the Laurentide Bank of Canada. It was requested that a plan be presented setting forth the capitalization proposed by the petitioners upon the assumption that the charter had been approved on that date.

We respectfully submit this information, based upon that assumption.

I. (a) The petitioners of the Laurentide Bank of Canada are the persons outlined in the presentation made on May 27, 1964; we respectfully remind the committee they are acting on their own behalf and are not nominees for any other persons or corporations.

(b) Accordingly, the proportion of the shares of the Laurentide Bank of Canada to be offered in the form of rights to shareholders of Laurentide Financial Corporation Ltd. is a matter for determination by petitioners in their absolute discretion.

II. Were the Laurentide Bank of Canada today in possession of its charter and therefore in the position to offer its shares for subscription, it would do so upon the following basis:

(a) The total number of bank shares offered would be 1,500,000, each having the par value of $10.00 as set forth in the proposed bill. The offering price would not be less than $20 per share but the exact price would be determined after consultation with the underwriters.

(b) Of the 1,500,000 bank shares to be issued, 706,883 or 47.13 per cent would be offered in the form or rights to the shareholders of Laurentide Financial Corporation Ltd. This figure would permit the Laurentide Financial Corporation Ltd. shareholder to purchase one bank share for each three common shares held by him and one bank share for each 21 subordinated common shares held by him.

(c) The remainder of the bank share issue, comprising 793,117 shares or 52.87 per cent, would be offered to the public throughout Canada by the underwriters.

(d) Consequent upon the financing outlined above, the following concentration of shareholdings would result if we assume in each case that those entitled to rights by reason of shareholdings in Laurentide Financial Corporation Ltd. would exercise such rights in full—

There is a table set out here, do you require that I read it?

The CHAIRMAN: We shall take it as read.

(*The table is as follows:*)

	Number of Bank Shares	Percentage of Bank Shares
Existing public shareholders of Laurentide Financial Corporation Ltd.	480,061	32.01
New public shareholders by underwriters distribution	793,117	52.87
Total General Public	1,273,178	84.88
Power Corporation of Canada Limited	117,945	7.86
Derston Investment Corporation Ltd.	108,877	7.26
	1,500,000	100.00

Mr. SAUNDERS: For this purpose, all personal shareholdings of Mr. Peter Paul Saunders and Mr. Andrew Elliott Saxton in Laurentide Financial Corporation Ltd. have been added to such shares held by their investment company, Derston Investment Corporation Ltd.

(e) The bank share distribution is portrayed graphically upon the chart annexed to this supplementary submission.

We have this chart here if honourable senators would care to see it.

(f) It will be noted that, upon the assumptions before expressed, the largest individual shareholding to be acquired by reason of the rights offering would be that of Power Corporation of Canada Ltd. at 7.86 per cent and the second largest would be that of Derston Investment Corporation at 7.26 per cent. Neither of these corporations acting individually would be in a position of control.

The balance of approximately 85 per cent would be owned by the public, partly through the rights offered to Laurentide shareholders, and partly through the draft which the underwriters would offer to the public.

Senator LEONARD: What happens to the shares that are not taken up by the shareholders on the issue of rights?

Mr. SAUNDERS: If they were not taken up by the shareholders then presumably the rights issue would be underwritten by the group of underwriters.

Senator HUGESSEN: Those would be added to the shares offered to the public?

Mr. SAUNDERS: Yes.

III. Power Corporation of Canada Limited and Derston Investment Corporation Ltd. have entered into a voting trust agreement with regard to some of their shareholdings in Laurentide Financial Corporation Ltd. This agreement has been made available to the committee for examination, and you will have noted that it does not apply to any shareholdings other than those specifically set forth. The agreement does not extend to the proposed investment in the Laurentide Bank of Canada. The sole directors of Derston Investment Corporation Ltd. are Messrs. Saunders and Saxton, who are among the petitioners; they are prepared unconditionally to undertake that Derston Investment Corporation Ltd. will not enter into any voting trust or similar arrangement with respect to its investment in the bank.

IV. As requested by the committee, we have appended copies of the annual reports of Laurentide Financial Corporation Ltd. for the immediately preceding three years. Also as requested, we are submitting separately copies of the voting trust agreement between Power Corporation of Canada, Limited and Derston Investment Corporation Ltd., in addition to copies of the annual reports of the Power Corporation for the last three years.

The CHAIRMAN: Are there any questions senators would like to ask Mr. Saunders at this time? We now have before us all the material we asked for. I do not know what the members of the committee feel, but I certainly feel I would like an opportunity to examine this information. Is there any other evidence you would like to offer at this time, Mr. Saunders?

Mr. SAUNDERS: No, sir, you have all the answers to your questions.

The CHAIRMAN: Then, my suggestion is that we adjourn so that we will have an opportunity of considering this material. If in the meantime we decide there are other questions we wish to ask we can notify Mr. Saunders so he may attend here. Is that satisfactory?

Mr. SAUNDERS: Yes.

The CHAIRMAN: We have to have an opportunity of reading this material. I saw it for the first time yesterday and, as I told you, I expected to be busy in the evening and I was not going to burn the midnight oil.

Mr. SAUNDERS: I understand that. We had hoped that by sending it down last week we would have had a chance of answering questions today.

The CHAIRMAN: We did not have a meeting until last night. Is it the pleasure of the committee that we adjourn? the bill remains on our agenda, and we will notify you, Mr. Saunders. How much notice will you require?

Mr. SAUNDERS: It takes about a day to come here from Vancouver.

The CHAIRMAN: If you are notified three or four days before the meeting of the committee, will that be satisfactory?

Mr. SAUNDERS: Yes.

The CHAIRMAN: Bill S-13 will remain on the agenda.

Then, is it the wish of the committee that we adjourn?

Hon. SENATORS: Agreed.

The Committee adjourned further consideration of Bill S-13.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-13, intituled: "An Act to incorporate Laurentide Bank of Canada".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, JULY 22, 1964

No. 3

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21045—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 13, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cameron, seconded by the Honourable Senator Stambaugh, for second reading of the Bill S-13, intituled: "An Act to incorporate Laurentide Bank of Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Cameron moved, seconded by the Honourable Senator Stambaugh, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21045—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, July 22, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.30 p.m.

Present: The Honourable Senators: Hayden (*Chairman*), Beaubien (*Provencher*), Bouffard, Burchill, Cook, Crerar, Croll, Dessureault, Farris, Fergusson, Flynn, Gelinas, Gershaw Hugessen, Isnor, Kinley, Lambert, Lang, Leonard, Macdonald (*Brantford*), McCutcheon, McLean, Molson, O'Leary (*Carleton*), Paterson, Pouliot, Power, Reid, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*) and Walker. (32)

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

The Committee resumed consideration of Bill S-13, "An Act to incorporate Laurentide Bank of Canada", clause by clause.

On Motion duly put to report the Bill as amended, the Honourable Senator Farris moved that the Motion be amended to defer consideration of the said Bill until Bill S-20, "An Act to incorporate Bank of British Columbia", be considered.

The question being put on the amendment, is was RESOLVED in the negative.

On Motion duly put it was RESOLVED to report the said Bill with the following amendments:

1. *Page 1, line 20:* Strike out "ten" and substitute therefor "thirty".
2. *Page 3, line 22:* Strike out "1" and substitute therefor "3".

The Committee concluded its deliberations on the said Bill.

At 9.10 p.m. the Committee adjourned until Wednesday next, July 29, 1964 at 9.30 a.m.

Attest.

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, July 22, 1964.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-13, intituled: "An Act to incorporate Laurentide Bank of Canada", have in obedience to the order of reference of May 13, 1964, examined the said Bill and now report the same with the following amendments:

1. *Page 1, line 20:* Strike out "ten" and substitute therefore "thirty".

2. *Page 3, line 22:* Strike out "1" and substitute therefor "3".

All which is respecfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, July 22, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-13, to incorporate Laurentide Bank of Canada, met this day at 8.30 p.m. to give further consideration to the bill.

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

The CHAIRMAN: Honourable senators, we now have before us for further consideration Bill S-13, to incorporate Laurentide Bank of Canada. Shall we deal with it section by section?

Senator CROLL: I so move.

The CHAIRMAN: Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 3 carry?

Senator CAMERON: I would like to make an amendment there, Mr. Chairman, that the capitalization in sections 3 and 6 be increased from $10 million to $30 million—to change the words in sections 3 and 6.

The CHAIRMAN: We are dealing with section 3 of the bill. The amendment proposed is that the capital stock of the bank shall be $30 million. Carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 5?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 6, there is a proposed change there, to change the $10 million to $30 million. Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 7 carry?

Hon. SENATORS: Carried.

Senator CROLL: I move the preamble.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill with the amendments?

Senator FARRIS: My position is this, that so far as this bill is concerned I am not objecting to it unless it is suggested that it is to be an alternative to the Bank of British Columbia bill.

The CHAIRMAN: I have not heard any suggestion of that kind.

Senator FARRIS: I think it was pretty nearly suggested by Senator McCutcheon this afternoon. I asked him whether he took that position or not, and he said that he would not be cross-examined.

All I have to say is that if there is or will be any suggestion that as a result of the passing of this bill the second bank is not needed, then I say this should go over until we have an opportunity to discuss both bills together. That cannot take place until we have a transcript of all the evidence which has been heard today and time to study it.

The CHAIRMAN: Senator, there is nothing before this committee which suggests the bill to incorporate the Bank of British Columbia is now ruled out and is not to be considered because we have agreed to report the Laurentide bill. There is no such thing that I know of in the record of proceedings.

Senator FARRIS: There is not any suggestion in that wording, but I think there is the implication that if you get one of these bills passed that ought to satisfy the demand from British Columbia and the other bill should not be passed.

The CHAIRMAN: You asked the question of Senator McCutcheon this afternoon. He did not answer it, which position he had a right to take; but one swallow does not make a summer.

Senator FARRIS: The fact he did not answer, after the question that he put before, left the thing up in the air.

I say it is not fair that we should, at a time when we have two bills in connection with a bank for British Columbia, deal with one of them without final consideration of the other. Therefore, I move as an amendment, that the final decision on this bill be postponed to the date suggested by Senator McCutcheon for the hearing of the other bill.

The CHAIRMAN: There is a motion I report the bill without amendment. The motion you want to make you would accomplish by voting against this motion to report the bill.

Senator FARRIS: I want to do more than that. I do not want to oppose it, but I want the adjournment of it until such time as we have had an opportunity of considering both bills. That is very different, Mr. Chairman.

Senator CROLL: We have already dealt with the matter of adjournment, Mr. Chairman.

The CHAIRMAN: In those circumstances, in order that I might put your motion first you have to move the adjournment at this stage.

Senator FARRIS: I move the adjournment, not of the committee but of the consideration of the motion approving the title of the bill until a date fixed for the final hearing of the B.C. bill.

The CHAIRMAN: In other words, you are moving—

Senator POWER: —that this bill be not now reported, but be reported two weeks hence.

The CHAIRMAN: Are you ready for the amendment?

Those in favour of the amendment—which is that we do not now report this bill but that it be considered for report next Wednesday, when another banking bill is before us—please signify?

Senator CRERAR: I do not think we are clear as to the motion, Mr. Chairman.

The CHAIRMAN: We have a motion to report the bill now. Senator Farris wants to defer the voting on the reporting of this bill until we have considered the bill for the Bank of British Columbia, and that the reporting of this bill be deferred until that time. I am putting it as an amendment. If you are in favour of deferring the making of the report until such time as the bill for the Bank of British Columbia is considered, you will raise your hand.

Those in favour?

Those opposed?

The amendment is lost.

The motion now is to report the bill with the amendments that have been made at this time. Those in favour, signify? Contrary, if any? Carried.

The committee adjourned.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-17, intituled: "An Act respecting the Territorial Sea and Fishing Zones of Canada".

The Honourable SALTER A. HAYDEN, Chairman

THURSDAY, MAY 7, 1964.

No. 1

WITNESSES:

The Hon. Paul Martin, Minister of External Affairs; The Hon. H. Robichaud, Minister of Fisheries; Mr. C. Gordon O'Brien, Manager, Fisheries Council of Canada; Mr. J. D. Affleck, Assistant Deputy Minister of Justice; Mr. A. E. Gottlieb, Deputy Head, Legal Division, Department of External Affairs.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20764—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 6th, 1964:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Lang, for second reading of Bill S-17, intituled: "An Act respecting the Territorial Sea and Fishing Zones of Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

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

The question then being put on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Lang, that the Bill be referred to the Standing Committee on Banking and Commerce, it was—

Resolved in the affirmative, on division."

J. F. MacNEILL,
Clerk of the Senate.

20764—1½

MINUTES OF PROCEEDINGS

THURSDAY, May 7th, 1964

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

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Blois, Bouffard, Brooks, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Crerar, Croll, Davies, Fergusson, Flynn, Gelinas, Hugessen, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, McLean, Molson, Pearson, Pouliot, Power, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt, White, Willis and Woodrow. (37)

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

On Motion of the Honourable Senator McCutcheon it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-17.

Bill S-17, intituled: "An Act respecting Territorial Sea and Fishing Zones of Canada", was considered.

The following witnesses were heard: The Hon. Paul Martin, Minister of External Affairs; The Hon. H. Robichaud, Minister of Fisheries; Mr. C. Gordon O'Brien, Manager, Fisheries Council of Canada; Mr. J. D. Affleck, Assistant Deputy Minister of Justice; Mr. A. E. Gottlieb, Deputy Head, Legal Division, Department of External Affairs.

On Motion of the Honourable Senator Aseltine it was RESOLVED to print the brief of the Fisheries Council of Canada as APPENDIX "A" to this day's proceedings of the Committee.

At 11.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, May 7, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-17, respecting the Territorial Sea and Fishing Zones of Canada.

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

The CHAIRMAN: I call the meeting to order.

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

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

The CHAIRMAN: Senators, we have before us this morning Bill S-17, respecting the Territorial Sea and Fishing Zones of Canada. We have a number of witnesses here this morning dealing with Bill S-17, including the honourable Paul Martin, Secretary of State for External Affairs, and the honourable Mr. Robichaud, Minister of Fisheries. I suggest that we might hear from the Honourable Mr. Martin first, if it is the wish of the committee. Possibly he will make a statement, and then if you wish to ask any questions he will hear them. Is that agreeable?

Hon. SENATORS: Agreed.

The Honourable Paul Martin, Secretary of State for External Affairs: Mr. Chairman and honourable senators, I have had the advantage of reading the debate in the house on this subject, and may I say that I thought it was of a very high order. This is a very difficult subject, and it is one that involves continuing negotiations that I am having, along with the Minister of Fisheries, with a number of countries. Anything that is said by me in particular as the negotiator for Canada is naturally going to be carefully observed by the countries with whom we are carrying on negotiations. On that account, I want to be precise with regard to anything that I say in chief, or anything that I say by way of response. I am sure that you will all appreciate that while negotiations are under way it is extremely difficult to engage in the fullest kind of disclosure, and that I know no one would expect me to do. But subject to that, I shall be very glad to put this matter as I see it, and to answer any questions as to the course of the negotiations and why more definitive things are not undertaken in the bill.

A year ago, on June 4, the Prime Minister made a statement in the other house on the law of the sea. This was an important announcement, and it followed a period of negotiation under this government, under the previous government and the government before it. I may say that we are all the happy beneficiaries of the very important work that was carried on by the former government, as well as its predecessor, at two international conferences.

I would like to emphasize that as far as I am concerned, and as far as the department over which I preside is concerned, this is essentially a problem of a technical character; it is one deeply involving the national interest, and as far as we are concerned, it has no political connotation at all.

The Prime Minister informed the house that the Government had decided to establish a 12-mile exclusive fishery zone along the whole of Canada's coastline, as of mid-May 1964 and to begin the establishment of the straight baseline system at the same time as the basis from which Canada's territorial sea and exclusive fishery zone would be measured. It may not be possible to have this declared by mid-May, 1964, because I think that, as Senator Brooks mentioned, it is desirable that the fullest examination be made of this problem, and there is no real time-limit in the sense it must be announced on a particular day. However, I think it is important that the 12-mile fishing zone limit be established at the earliest possible moment.

You have before you a bill concerning the territorial sea and the fishing zones of Canada. This legislation will carry out the policy of the Government, as announced by the Prime Minister and as mentioned by him to the President of the United States last May.

Now I should like to review the background, as we see it, in order to ensure that you appreciate the full situation at the moment and the action that the Government contemplates.

For Canadians, the Law of the Sea has been a matter of major importance for many years. The pages of our history, both in the last century and the present one, contain long accounts of negotiations concerning Canadian waters. In recent years the problem has become acute, as foreign fishing has steadily increased off our east and west coasts. There has been a growing strain on our national resources, and a danger of our stocks being depleted. On the fisheries side, my colleague the Minister of Fisheries will be able to give you more authoritative information than I can be expected to do, and he is here for that purpose.

It became evident to the Canadian Government 10 years ago that the traditional three-mile limit for territorial waters was no longer adequate to meet all our Canadian needs, and we began to try to find a way in which our own interests in our coastal waters could adequately be protected. In developing this policy, successive Canadian Governments have been motivated not only by the need to preserve the living resources of our seas but by the interests of our national security. Our coastline is unique; it is perhaps the longest of any country in the world. It is unique in another respect, because ours is the only country bounded by three oceans. Year after year we have seen an increasing concentration of foreign ships off our shores.

It was against this background that in 1956, at the Eleventh Session of the General Assembly of the United Nations, the Canadian delegation proposed to that body that new solutions must be found for the protection of the interests of coasted states. Our delegation suggested that a 12-mile fishing zone should be established, in which the coastal state would have the same rights over fishing as it has in its territorial sea. This was the first time that the proposal for an exclusive 12-mile fishing zone was advanced by any country in an international forum. It was not the first time it had been advanced in bilateral negotiations, but it was the first time before an international body.

The phrase "12-mile exclusive fishing zone" is now a familiar term to international lawyers, but it is oftentimes a term that is misunderstood. It means that in a 12-mile band of water adjacent to its coastline a country is entitled to exclusive jurisdiction over fishing. The concept does not allow a coastal state to have a 12-mile fishing belt beyond the three-mile territorial

limit; that would mean a 15-mile exclusive fisheries jurisdiction. In the case of a country like Canada, with a three-mile territorial sea over which the nation exercises full sovereignty, an exclusive 12-mile fisheries jurisdiction would be composed of a nine-mile fishing belt extending beyond the three-mile territorial sea. The outer limits of the fishing belt would thus be 12 miles from the baselines along the coast.

Since the Canadian proposal was first introduced in 1956, Canadian efforts to protect our coastal waters fall within three broad stages. The first, from 1956 to 1960, marked a continuation of attempts to achieve a world-wide treaty obligation bringing into effect a new rule of international law which it was hoped would be established. Canada sought such a solution at the two U.N. conferences on the Law of the Sea. At the first conference in 1958 the Canadian delegation, supported by many of the new states, put forward the proposal earlier advanced in the U.N. for an exclusive 12-mile fishing zone. At that time we lacked the support of many of the leading maritime states, such as the United States, the United Kingdom and the western European countries. By the end of the first conference these states were prepared to envisage certain limited modifications in the traditional rules of international law, but they were not willing to support the Canadian proposal. Had they done so, we could have achieved international agreement on a three-mile limit and a 12-mile fishing zone. I strongly support what Senator Brooks has said about the contribution made by my predecessors in this office, and the work of Mr. Drew at these two conferences, and of those associated with me in my own department and in the department presided over by my colleague.

Canada, in close co-operation with Norway, then undertook extensive preparations for the second U.N. conference in 1960. We continue to remain, and I want to say now I am, very grateful to the Government of Norway for the support it gave to our efforts at that time and for the initiative which it has taken and which has inspired the legislation that is embodied in this bill.

The purpose of the 1960 conference was to seek agreement in that one area where the first conference failed—the breadth of the territorial sea and fishing limits. This time the United States and the western European countries agreed to support the Canadian formula for a six-mile territorial sea and exclusive 12-mile fishing zone provided that states which had fished in the fishing zone for five years would be allowed to fish there for a period of 10 years. This 10-year interval was called the "phasing-out period," and we proposed it in order to win the support of those nations which had fished in our waters for many years. This joint United States-Canada proposal failed. It failed by a single vote, as you know, to win the required two-thirds majority. A number of the leading Maritime states then announced they would continue to adhere to the three-mile limit and would consider any unilateral changes as contrary to international law.

In the second phase, the then Canadian Government undertook soundings in various parts of the world to see whether something could be salvaged from the support won for an exclusive 12-mile fishing zone at the two U. N. conferences. Canada helped to conduct a survey to see whether support could be had for a multilateral convention allowing the parties to erect a fishing limit of 12 miles. These discussions were carried out for some time, but proved inconclusive.

When we took over the responsibilities of Government we had this background before us, and the position in April of 1963 was that in spite of the past efforts of ourselves and others these efforts had not succeeded in getting an agreement with other states on a multilateral basis. Notwithstanding Canadian actions at the two U. N. conferences, there was no formal change or improvement in our rights to our coastal fisheries. In the meantime, the climate of

opinion was changing, and several important fishing countries had decided that, in view of the inadequacy of the three-mile limit for fishing purposes and the increasing number of countries departing from it, it could no longer be said that there was any clear rule of international law in this sphere.

Iceland, Norway and others unilaterally proclaimed a 12-mile fishing zone, adding their number to the many countries which had at some point during the present century extended their territorial limits or claimed fishing rights beyond their traditional limits for their territorial sea. At the same time, a number of the leading Maritime countries, especially those interested in distant-water fishing, strongly maintained their traditional positions. I think the proposer of the resolution in your house was right in saying that all of these measures throughout the course of history for the most part have been brought about as a result of unilateral action.

The Government decided in April that we could no longer pin our hopes on the possibility of a new rule of international law being created by general agreement, nor could we expect sufficient support for a limited multilateral agreement with likeminded countries. The Government considered that, in these circumstances, appropriate action would have to be taken and taken soon to alleviate our difficulties. That is what we have done. We decided that remedial action was necessary for the protection of our inshore fisheries, as my colleague will show, and the people that depend on them, for the development of the living resources of our seas and for the security of Canada. We concluded that our decision would be solidly based on international custom as reflected in the present practice of coastal states.

The third and final stage of our efforts began when the present Prime Minister announced in our house that we would establish a 12-mile fishing limit and seek to establish straight baselines in 1964.

At that time the Prime Minister emphasized—and I attach some importance to this—that we would try to reach satisfactory arrangements with the countries that would be affected by our decision. These are all friendly countries to Canada. These are countries which have fished off our shores for years. They include our closest friends and we have had with them a long tradition of co-operation on fishing as we have on other matters. It must always be remembered that the delineation by a state of its coastal waters is bound to have an international aspect and perhaps an international implication.

In the period between the announcement made by the Prime Minister in June and the present, we have accordingly carried out a series of negotiations with a number of countries, beginning with the United States. My colleague and I have participated particularly in these negotiations with the United States. We have had three separate rounds of discussions with them. We have also had exploratory talks with the following countries: Norway, Denmark, France, Portugal, Spain, Italy, Britain and Japan. These countries have sent officials to Ottawa to discuss the matter with us. I will refer to those talks later.

Where do we stand now—mid-May, 1964? The Government, in fulfilment of its declared policy, has introduced legislation which we hope will shortly come into force. There are, as you know, five aspects to the bill before you.

First, when the bill is proclaimed and comes into force, we will have a fishing zone. The bill provides:

> —the fishing zones of Canada comprise those areas of the sea contiguous to the territorial sea of Canada and having, as their inner limits, the outer limits of the territorial sea and, as their outer limits, lines measured seaward and equidistant from such inner limits so that each point of the outer limit line of a fishing zone is distant nine nautical miles from the nearest point of the inner limit line.

This legal language is complicated, but the effect is simple. It means that Canada will have established a 12-mile exclusive fisheries jurisdiction along the whole of our coastline. It is only an exclusive fisheries jurisdiction that we are seeking to establish, because we are maintaining our traditional three-mile territorial sea limit.

Second, the legislation, in accordance with the Prime Minister's statement of June 4, gives to the Governor in Council authority to issue lists of geographical co-ordinates of points from which the baselines of the territorial sea will be drawn. This means that the limits of Canada's territorial sea will be three miles from the straight baselines. The baselines will not come into force immediately as a result of the act. When the act takes effect, the Governor in Council will be able, under section 5, I think, by means of an order in council, to proclaim the straight baselines. Both the territorial sea and the fishing zone will then be measured from these lines.

We would all be happier if the situation were such that we could finalize this whole matter in the one bill at this time, but it is just not possible to do so. Our negotiations are under way and in the case of most countries we have reached only the first stage. The suggestion that we could have waited until the negotiations were completed does not take into account the nature of these negotiations and the nature of the problem itself, and would in my judgment, after most careful consideration, mean a postponement for a long time, an indefinite period, of what we regard as essential in the interests of the fishing community—the establishment of a 12-mile fishery zone limit.

At the first Law of the Sea Conference in 1958 a special rule was agreed upon, based on the Anglo-Norwegian Fisheries Case which was decided in the International Court of Justice. That decision, which was very germane to the action we have taken, allows a country to measure the territorial limit not from the sinuosities, the normal, but from the straight baselines where a coastline is highly indented or where there is a fringe of islands along its immediate vicinity. This has important implications for Canada, as ours is a jagged coastline with island fringes and lends itself to the application of this Norwegian case.

Our officers—and I assure you that this was the result of a technical examination by the officers of the departments concerned—after careful examination recommended to the Government, and the Government concluded that, taking into account legal, economic, historic, and other factors, the straight baseline system is applicable to most of our coastline. Consequently, the Governor in Council, pursuant to legislation contained in this bill, will publish lists of points for drawing straight baselines along our coasts based on the rules of international law and taking into account our historic and other interests in special bodies of water.

As you know, Canadian Governments over the years have laid claims to certain bodies of water. It is very difficult for me to discuss this at the present time because of the negotiations that are under way.

Third, you will note that under the act we continue to adhere to the three-mile territorial sea, and not to the six-mile territorial sea as at one point we did in the conference in Geneva. The reason we do that is because it is the rule that does the least damage to the principle of the freedom of the high seas and to international navigation.

The Government considers that the three-mile limit drawn from straight baselines, together with the new fishing zone, will meet Canada's requirements.

Fourth, the proposed legislation contained in the second part of the bill includes certain changes of a consequential character in the Aeronautics Act, the Canada Shipping Act, the Customs Act, the Criminal Code, the Fisheries and Coastal Fisheries Protection Acts. The alterations in these acts are limited to modifying their sphere of application so as to take into the account the new

legislation concerning the straight baselines, the territorial sea and, where appropriate, the fishing zone. The Customs Act, the Criminal Code, the Canada Shipping and Aeronautics Act are altered so as to bring them into line with the provisions of the first part of the bill concerning the territorial sea and internal Canadian waters. The Fisheries and Coastal Fisheries Acts are modified so as to provide for their application to Canadian fisheries waters comprising the territorial sea, internal waters and fishing zones of Canada.

Fifth, the final provision of the bill entitled "Coming into Force", provides that the act or any provision thereof will come into force on a day or days to be fixed by proclamation of the Governor in Council.

This last provision is important in understanding the timetable for implementation of the act and the effects of the legislation. I should like to provide members with as clear a picture as possible of the legal effects of the bill, as I see it. These should be considered in two phases.

In the first phase, the situation in law—immediately upon the act coming into force—will be as follows: The fishing zone will be created, and it will come into existence on proclamation of the act. However, a certain amount of time is necessary for the promulgation of the new baselines from which the territorial sea and fishery zones will be drawn.

When you are examining this question with the technical officers of the Department of Fisheries, and perhaps other departments, I am sure you will see why this delay is inevitable.

As I explained, the authority in the Governor in Council to publish points for drawing straight baselines is granted immediately on the coming into force of this act. But our coastline is extraordinarily long and intricate. In addition, the interests of those countries, which I mentioned earlier, are affected, as they have been fishing in waters which will be enclosed by the new baselines or in the new fishing zone. The complexity of the task of drawing these baselines and of seeking to adjust the interests of friendly nations is such that the negotiations have not yet concluded; and I am not in a position to say when they will be concluded. Therefore a period of time will elapse before Canadian laws will be implemented in the zone.

I am hopeful that our discussions will be completed within a few months, and that the Governor in Council will then be in a position to proclaim the list of points for drawing the straight baselines which we have in mind. It is unlikely that the Governor in Council will publish points covering our entire coastline in his first list. It is possible that, depending on how far the negotiations have advanced, he will publish several lists and that, in the first, baselines will come into force only for those areas where we have completed our discussions. In any event, the first phase will consist of a short period, after entry into force of the act, which will permit completion of our negotiations before proclaiming straight baselines and enforcing the fishing zone.

When the straight baselines are proclaimed, in whole or in part, and when Canadian laws come into operation in the fishing zone, the second phase begins.

The legal effects will be as follows. First, those countries which have not fished in those areas or have just begun to fish will not be able to come in. At least, they will not be able to come in according to Canadian law. They must cease their operations at once both in the fishing zone and in the internal waters enclosed by the baselines after their proclamation.

Second, special arrangements will come into force for those countries which have treaty rights off parts of our shores—the United States and France—in order to allow them to continue to fish in those areas where they have fished before, and subject to agreed arrangements and regulations for the protection of the fisheries concerned. I am not in a position at the present time to give further details about this.

Third, we are in the process of discussing arrangements with countries with no treaty rights which have fished off our shores for many years—Portugal, Spain, Norway, Denmark and Italy—to allow them time to adjust their operations so that they do not suffer undue economic losses.

I should like to conclude by discussing briefly our negotiations with the United States. The Prime Minister said, when he announced this policy, that he had had discussions with President Kennedy at Hyannis Port and that he had informed the President that the Canadian Government would shortly be taking decisions to establish a 12-mile fishing zone. The President reserved the longstanding American position in support of the 3-mile limit and he also called our attention to the historic and treaty fishing rights of the United States. Our Prime Minister assured him that these rights would be taken into account. In our negotiations with the United States this has been the Canadian position throughout. Discussions have taken place with the United States with a view of determining the nature and the extent of these rights and in determining the extent to which they might be affected by the action we take.

I am confident that the United States and Canada will be able to work out a solution in this field, as we have done in other difficult problems. In view of our tradition of the closest co-operation, we remain optimistic that we will reach a satisfactory common accord with the United States. However, we have not yet been able to settle all outstanding problems. On most matters there are no differences between us; in certain other areas, our points of view have yet to coincide.

We have made clear that we are prepared to be fair and just towards our neighbour. In our efforts to reach an accord with the United States we will continue to be guided by our tradition of friendship. We are convinced that our case is a fair one, solidly founded on legal, economic and historic considerations and those of a security nature. The configuration of our coastline, the needs of the people of Canada and the interests of our security, require us to draw baselines so as to enclose Canadian internal waters. We have informed the United States that in view of their treaty rights, and in order to be as fair as possible to the interests of their fishermen, we are prepared to allow them to continue to fish in those areas where they have operated until now, subject to agreed regulations for the protection of the fisheries concerned.

I hope that with the adoption of this legislation our negotiations will be furthered. I noticed what Senator Thorvaldson had to say in this connection in the speech he delivered the other day in your house. I believe this bill will assist us greatly in our negotiations.

It is my expectation that by the end of the year straight baselines will be proclaimed for most of our coastline and the fishing zone will be implemented. The differences which we must overcome do not affect the great portion of our coastal limits where there will be no difficulty in achieving agreement on what we propose to do. I am hopeful that in the foreseeable future, all difficulties will have been removed and that our longstanding desire to protect our coastal waters will be considerably furthered.

The CHAIRMAN: Are you ready for questions?

Senator FLYNN: Mr. Chairman, may I say first that I am sure we are all indebted to the minister for his statement, which is most helpful in understanding the purpose of the bill. My questions are to help one who is not too familar with the problem. Therefore, I would like to know what is the present status of the problem. First, with regard to baselines. I see in the bill that some baselines exist presently. What have been the rules in establishing these

baselines? Do we take into consideration the judgment of the International Court, in the Norwegian case that you have mentioned?

Hon. Mr. MARTIN: The Norwegian case, certainly in our judgment, is applicable to our situation, and in our judgment authorizes us to establish the straight baseline system in Canada. That is our authority in law.

Senator FLYNN: I wonder whether the present baseline has been established in accordance with the rules contained in this judgment?

Hon. Mr. MARTIN: I do not think so, but I do not know.

Hon. Hédard Robichaud, Minister of Fisheries: The existing baselines are based on the sinuosity of our coast; so the one you have in mind would be based on headland to headland points, which would be determined by order in council.

Senator FLYNN: So that the three-mile limit is based on baselines following the coast?

Hon. Mr. ROBICHAUD: That is on the sinuosity principle.

Senator FLYNN: But the intention is to establish a three-mile limit based on straight baselines.

Hon. Mr. MARTIN: To establish a territorial sea based upon the straight baseline system.

Senator FLYNN: And the Government is of the opinion that the case which has been mentioned is sufficient authority to establish new baselines?

Hon. Mr. MARTIN: That is right. We would go further. We would say that if there was no case and if there was no decision standing in the way, the promulgation of a new international principle could be affected in this unilateral way.

Senator FLYNN: Would it have been possible to establish now, without waiting for the bill, these new baselines?

Hon. Mr. MARTIN: Not without waiting for the bill.

Senator FLYNN: I mean, the bill does not give more authority to the Government than it has presently with respect to establishing baselines?

Hon. Mr. MARTIN: This is an enabling bill which gives the Governor in Council power to establish the straight baseline system.

Senator FLYNN: But the present baselines have been established on what authority—those which follow the coasts?

Senator KINLEY: On agreement with the United States.

Hon. Mr. MARTIN: Not necessarily. On executive authority.

Senator FLYNN: I think the Government could have established new straight baselines under the same authority it had to establish the present baselines.

Hon. Mr. MARTIN: We are doing something that is going to have an international application in a new kind of international society. We are seeking to do this in the way that will give as great an opportunity for being as fair as possible to one's neighbours and to nations that have an interest in our waters. For that reason we believe there should be clear legislative authority for the action that the Government proposes to take.

Another reason is, as I pointed out in my statement, that we have a number of acts that are affected by this—the Aeronautics Act, and so on—that have to be modified, and the only way in which they can be modified is by Act of Parliament.

Senator FLYNN: Would you say that the situations of the baselines which will be proclaimed will be affected by the negotiations which are under way or which may take place hereafter?

Hon. Mr. MARTIN: It is possible. With regard to a good part of our coastline I do not think there is a problem.

Senator MCCUTCHEON: That is the unimportant part of the coastline.

Hon. Mr. MARTIN: No, I think some of it is very important—Newfoundland, for instance.

I would rather put it this way, senator, that it would be more helpful in our negotiations to be able to take into account the discussions that we will be subsequently having with these other countries, and in some instances to let them know what we have in mind, rather than take a pre-determined position now. In any event, the decisions of the Governor in Council with regard to the baselines that will be established, will always be a matter which can be reviewed by the legislative authority in Canada.

Senator BROOKS: Of course, the difficulty now is that other countries have treaties, and you cannot establish baselines on that account. That is the main reason, is it not?

Hon. Mr. MARTIN: Well, with regard to the United States and France, their fishing claims are based on treaty rights; but not with regard to the others.

Senator BROOKS: What particular fishing areas are concerned? Could you give us that list?

Hon. Mr. MARTIN: I do not think I can. Perhaps my colleague has that.

Hon. Mr. ROBICHAUD: The main areas which are affected by treaties are the coast of Newfoundland and the Gulf of St. Lawrence. These are definitely affected by existing treaties which we have agreed to recognize.

Senator BROOKS: Is it not true that practically all the important fishing areas are concerned? These areas, as the minister said, could be determined possibly at the present time, but they are not really particularly good fishing areas. The real fishing areas of Canada are those with which we are having difficulty and in which the fishermen are mostly interested.

Hon. Mr. ROBICHAUD: Yes, except that the fishing areas already covered by treaties are only France and the United States; while some of the others are covered by historic rights only, and others by—

Hon. Mr. MARTIN: Usage.

Senator BROOKS: I understood from the minister the intention was to negotiate on the historic rights as well as the treaty rights?

Hon. Mr. ROBICHAUD: Yes.

Senator BROOKS: I also notice that the U.S.S.R. have not been mentioned. Have they any rights at all in the places you have mentioned?

Hon. Mr. MARTIN: We do not think they have rights.

Senator BROOKS: Do they think that they have?

Hon. Mr. MARTIN: I am not aware that they have made any claims to us.

The CHAIRMAN: Senator Flynn were you through?

Senator BROOKS: I am sorry, I thought you had finished.

Hon. Mr. MARTIN: I would like to finish that. Of course, if they had carried on for a fairly substantial period, they could have said they had acquired these rights.

Senator FLYNN: I have just two other questions. I want to make sure that the establishing of these straight baselines would follow only technical principles rather than the situation of fact effected by negotiations or treaties or historic rights.

Hon. Mr. MARTIN: They will be drawn by the people in the departments concerned.

Senator FLYNN: I notice the Department of Mines and Technical Surveys is represented, because this is a technical problem.

Hon. Mr. MARTIN: They will be drawn in consultation with all the departments concerned, including the Department of External Affairs, and they will be drawn by technical people.

Senator FLYNN: And only taking into account the technical problems and not treaty problems? That would be something different.

Hon. Mr. MARTIN: Yes, that is something different.

Senator FLYNN: You could establish a baseline based on technical rules and yet, at the same time, recognize the rights of the United States, for instance, to fish in certain areas?

Hon. Mr. MARTIN: I do not want to go too far into this, perhaps for obvious reasons. The closing of certain bodies of water will be gradually effected by what is done in certain areas on the straight baseline principle.

Senator FLYNN: So, in conclusion, the Government is satisfied, as far as establishing straight baselines is concerned, it has sufficient authority with the decision of the International Court—at least, sufficient support by the viewpoint of other nations, to establish those straight baselines?

Hon. Mr. MARTIN: That is right.

Senator FLYNN: The Government is also satisfied that the three-mile territorial limit would not be contested seriously?

Hon. Mr. MARTIN: The three-mile territorial limit is now a fact. It suits our practical purposes to continue the three-mile territorial sea, which is the area where our sovereignty runs beyond the land. It was not the position we took at Geneva when we agreed to a six-plus-six formula; but we did that because we thought it was the way by which we could better achieve our objective of a 12-mile fishing zone. But we have now come back to the three-mile territorial sea because we believe it is in our interests and because it serves navigation and other needs.

Senator FLYNN: Therefore, there would be these additional nine miles which would complete the fishing zone?

Hon. Mr. MARTIN: Yes.

Senator FLYNN: That is really the big problem still?

Hon. Mr. MARTIN: That is right.

Senator FLYNN: And the Government is satisfied it can negotiate successfully within a period of a year or so, or less?

Hon. Mr. MARTIN: Well, I am hopeful. This is a very difficult negotiation, senator.

The CHAIRMAN: Senator Thorvaldson?

Senator THORVALDSON: Mr. Minister, there is one question on which I might have heard you wrongly, but I thought you said it was the intention that the United States, particularly, would continue with its historic and treaty rights. I presume it is intended to negotiate with that country in regard to treaty interests and historic rights?

Hon. Mr. MARTIN: Yes. Basically, of course, their position with respect to fishing rights will not be changed. What we are concerned with is that they

will not take a position which would make it difficult for us to extend to the limit we would like the principle of the straight baseline system. This is particularly so with regard to certain bodies of waters in which we claim a proprietary interest.

Senator THORVALDSON: However, these treaty rights concern much more than just the question of the baseline, they concern the right of fishing in certain waters.

Hon. Mr. MARTIN: Yes, which we do not propose to disturb. United States fishing will not be affected by what we are proposing to do. We have made this clear to them.

Senator THORVALDSON: This is really my question, Mr. Minister. Therefore, it is not the intention to attempt to disturb in any way in perpetuity or at—

Hon. Mr. MARTIN: Basically.

Senator THORVALDSON: Or at least as long as this lasts, it is not intended in any way to negotiate with the United States on these matters?

Hon. Mr. MARTIN: That is right.

The CHAIRMAN: I thought I gathered from what the minister said that we would not negotiate in connection with the making of fishing regulations.

Senator THORVALDSON: This was my question. I just wanted to know how far these negotiations would presumably go. It is just in regard to baselines and regulations and no more?

Hon. Mr. MARTIN: That is right. There will be no disturbance of their treaty rights or what they regard as their historic fishing rights. The negotiation is not in that area whatsoever. The negotiation is with regard to the consequences of our application of a straight baseline system, in their mind. That is the area of negotiation.

Senator THORVALDSON: May I ask also with regard to our treaty or treaties with France. Is it also expected that we will not be able to negotiate completely with regard to those treaties, or do you expect success in doing so?

Hon. Mr. MARTIN: I think the situation with France is very satisfactory.

Senator THORVALDSON: Does the Government hope that you might get a complete abrogation in due course of the French treaty?

Hon. Mr. MARTIN: No, no, we do not intend to seek an abrogation of the fishing rights which France enjoys under treaty.

Senator THORVALDSON: I take it, of course, you propose—

Hon. Mr. MARTIN: We propose fully to respect treaty rights. We never intended in any way to take action that would involve in any way a diminution of treaty rights.

Senator THORVALDSON: Consequently this bill and the result of it could not possibly have as favourable a result as would have been the case if the 1960 conference in Geneva had succeeded in approving of the resolution which was before it, even with the 10-year phasing out period.

Hon. Mr. MARTIN: If it was intended in Geneva to abrogate treaty rights, that would be the case; but I am not so sure that that was the intention. What was sought there was the establishment of a 12-mile fishing zone by multilateral agreement.

Senator THORVALDSON: Then would I be correct in saying that if historic and treaty rights are not to be negotiated with those countries, the results of this bill cannot be very considerable.

Some hon. MEMBERS: Oh.

Hon. Mr. MARTIN: It will have tremendous effects. First of all it will establish the 12-mile fishing zone, which is the objective. That is the achievement.

Senator THORVALDSON: I recognize that.

Hon. Mr. MARTIN: That is what we are after and that is what we are going to do. No matter what happens to the negotiation, that is what we are going to do. That is provided in section 4 of the bill.

Senator THORVALDSON: We do that unilaterally of course.

Hon. Mr. MARTIN: That is the objective and we had recourse to this only as a last resort. The United States and France have certain historic rights, certain treaty rights, and we have made known we respect these. The answer to your question would have to be determined in the light of the nature of the catch, the worth of the catch of the two countries concerned. This will have a tremendous effect for us and will add considerably to the potential of the economic power of Canada's fishing industry.

Senator THORVALDSON: I was going to ask a question about respecting treaty rights and historic rights. The substance of my question was that it is presumed that there will be no negotiations in regard to those rights on the basic element of the right to fish in certain waters?

Hon. Mr. MARTIN: That is clear. We have made that clear. In the Prime Minister's announcement of June 4, he said that we would fully respect these treaty and historic fishing rights. I would just like to go back to one other question. You drew an inference that what we would get out of this bill would be substantially what we hoped to get out of a successful international conference. It did not yield the result we wanted.

That is not exactly the situation. We will be getting, as a result of this bill, unilaterally, a 12-mile fishing zone. But we will also be adjusting our territorial sea and our fishing zone on the basis of straight base fishing lines, which is new.

Senator KINLEY: I submit that the present arrangement with the United States under the bilateral treaty is that there is 10 miles across the bays as a baseline. The United Nations has raised that to 24 miles. With regard to the rights of the Americans, I think that any rights they have in the restricted territory would be subject to the method of fishing. The municipal law or the treaty rights make them respect that. I have it right here and will quote it to you. It is the Agreement signed with the United States on July 20, 1912 and it says:

> In every bay not hereinafter specifically provided for, the limits of exclusion shall be drawn 3 miles seaward from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed 10 miles.

The United Nations in 1959 raised that to 24 miles. I think Mr. Ozere will agree with me on that. Article 1 (1) says:

> All future municipal laws, ordinances, or rules for the regulation of the fisheries by Great Britain, Canada, or Newfoundland in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements used in the taking of fish or in carrying on fishing operations; (3) any other regulations of a similar character; and all alterations or amendments of such laws, ordinances, or rules shall be promulgated and come into operation within the first fifteen days of November in each year; provided, however, in so far as any such law, ordinance, or rule shall apply to a fishery con-

ducted between the 1st day of November and the 1st day of February, the same shall be promulgated at least six months before the 1st day of November in each year.

This whole question is the method of fishing—the machine method of fishing, the mass production by which the Russians, the Americans and ourselves have produced conditions that we think dangerous to conservation. At present we make our own fishermen stay outside 12 miles in the deep sea. Of course there was considerable ministerial discussion on this law. We only want them to do as we are doing ourselves, and I think that as far as American rights are concerned that is a fair proposition.

Hon. H. ROBICHAUD: I have very little to add to this except that, as has been said, the American fishery operation would not be disturbed. It has been made clear in our negotiations that any operation within Canadian waters will be subject to agreed Canadian fishery regulations. I think this is the point you had in mind.

Senator MCCUTCHEON: I assume this means that you contemplate when this becomes effective, requiring the American trawlers, the large trawlers for example, to stay outside the 12-mile limit, just as ours are.

Hon. Mr. ROBICHAUD: This is a matter which is under negotiation. This has been discussed between the Americans and ourselves. We cannot say at this time exactly what the decision would be but we are negotiating with the Americans as to their operation, the operation of their draggers and ours of similar size.

Senator MCCUTCHEON: So you still have a situation where our fishermen using one type of equipment would have to stay outside, beyond the 12 miles, and other fishermen using similar equipment would be able to fish within it?

Hon. Mr. MARTIN: I think it will be possible to arrive at some understanding with the United States which will provide through some conciliatory arrangements the application of rules to both countries.

Senator MCCUTCHEON: But that will involve negotiation?

The CHAIRMAN: Yes, that is what he said.

Hon. Mr. ROBICHAUD: We hope there will be finalized negotiations whereby there will be no discrimination between United States fishermen and our Canadian fishermen.

Senator MCCUTCHEON: Well, that is a matter for negotiation.

Mr. Chairman, the minister in his statement referred to what would be the legal effect of this bill coming in and in the first place he referred to countries which had no historic fishing rights. He said they will not be able to come in, and he interjected, "at least, according to Canadian law." Is there not the possibility they might come in, and if so, what happens?

Hon. Mr. MARTIN: That was the point anticipated by Senator Brooks in his speech. He talked about enforcement. I think we have got to feel our way in this, senator. We will proclaim our law, and Canada will have to take every measure at its disposal to see that that law is enforced. After, of course, we will have concluded certain arrangements with countries with which we are now negotiating, I am satisfied that they will respect our law. However, if they or any other country do not, we would regard that as a violation of our law, and would have to take those steps within our power to enforce it.

Senator MCCUTCHEON: Including going to the International Court of Justice?

Hon. Mr. MARTIN: It could involve that, or could involve arbitration.

Senator McCUTCHEON: Coming to the baselines, you used the words, I believe, "includes Canadian internal waters." Is the minister free to state what bodies he has in mind in that connection?

Hon. Mr. MARTIN: Our case is pretty well based upon the submissions made by the Fisheries Council to the Minister of Fisheries last January. I can see no harm in my reciting the names of the bodies of water, although I don't want to get into any detailed discussion about our position. The bodies are: Bay of Fundy, Gulf of St. Lawrence, Hudson Bay, Hecate Strait, Dixon Entrance, and Queen Charlotte Sound.

Senator McCUTCHEON: So that really what the bill will do, when it becomes fully effective, is to create some Canadian internal seas over which we exercise complete and absolute jurisdiction. It will create a territorial zone, which will be effectively larger than the present territorial zone?

The CHAIRMAN: By the difference between sinuosity and straight lines.

Senator McCUTCHEON: Yes, and that might make quite a difference.

The CHAIRMAN: Yes.

Senator McCUTCHEON: And create a nine-mile fishing zone outside that. Really, it is a series of negotiations of fishing rights which are on the baseline principle?

Hon. Mr. MARTIN: Do you mind if I do not answer that, in the interest of a successful negotiation?

Senator McCUTCHEON: I will not ask any question to embarrass negotiations at all.

Hon. Mr. MARTIN: Thank you, honourable senator. With regard to the United States and France, there is no difficulty on the question of their interpretation of their fishing rights.

Senator McCUTCHEON: I think you have answered my question.

Senator THORVALDSON: I wonder if I might ask one more question? I want to say to the minister that I do not ask in a critical way, because I am very pleased that a method has been found to deal with the problem, which I realize is a long term one. However, I think it is of some importance for the committee to know further in regard to the question that I asked some time ago, that is, whether the phasing-out period of ten years, which was 1960, and which I suspect was proposed by the United States delegation at the conference, did or did not include first the question of treaty rights—and perhaps it did not—but historic rights. I see Mr. Alan Gotlieb present, and he was at that conference. Possibly he can answer that question, because I feel that I want to express the view that certainly it is essential for us to negotiate in regard to historic rights sooner or later.

Hon. Mr. MARTIN: The fact is that nothing happened at Geneva which would have abrogated or diminished the treaty rights enjoyed.

Mr. Alan E. Gotlieb, Deputy Head, Legal Division, Department of External Affairs: As I understand it, sir, the conventions to be adopted at Geneva on those points would not have abrogated existing treaty obligations. They would have been solemn obligations, which once established one would be compelled to honour.

Senator THORVALDSON: I quite realize that we could not expect information which would affect treaty rights, but what about historic rights? As Mr. Gotlieb knows, there is a serious question in the minds of the majority of countries in the world on historic rights which continue to have any basic significance, because the rights held by the old maritime nations are not had by the new nations.

Mr. GOTLIEB: Sir, I think the intention was that historic rights would be allowed for ten years, and after would cease; but unfortunately the countries of the world could not get agreement on that rule.

Senator THORVALDSON: That is an answer to the question.

Hon. Mr. MARTIN: The senator points out, though, and this goes back to his earlier question to me, that if that conference had succeeded more would have been yielded from it than would have yielded from some aspects of the bill before us. I think we have to admit that is the case. But the conference did not succeed. Against that, we have in this bill the straight baselines that were not provided for at the conference.

Senator BROOKS: Mr. Chairman, I would like to ask one question in that connection. Has Norway not adopted the phasing-out period? You were speaking about the phasing-out period and the conference in Geneva of 1960, and I am asking if Norway had not adopted that phasing-out period as far as other nations were concerned?

Mr. GOTLIEB: I believe Norway has been involved in rather a series of negotiations with other countries, and in some cases, in any event, they have been seeking a phasing-out period.

Senator BROOKS: Without too much success?

Mr. GOTLIEB: I believe they had some success with certain countries, but they have been negotiating on this for quite a while.

Senator THORVALDSON: There is one more question that I think should be on the record. Canada, of course, supported the resolution which included the 10-year phasing-out period; isn't that correct?

The CHAIRMAN: Any other questions?

Senator KINLEY: I should like to put on record, Mr. Chairman, something I shall read from volumes I to III of the "Conference on the Law of the Sea," under "Fishing Rights". This is from the official records of the United Nations.

Article 13 reads:

> If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line on the banks.

Now, with regard to "going it alone," as it is called, I should like to read from page 139, article 6, which is an interpretation:

> A coastal state has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

Then article 7:

> Having regard to the provisions of paragraph 1 of article 6,—

—and that is the one I read—

> —any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.

That is definite. You have to justify it afterwards, and the question was asked if there was any appeal from this. There is no immediate appeal, but you have 12 months to work it out, and then there can be an appeal.

Article 8 says, in part:

> 2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 9.

And article 9 says:

> 4. The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties of the dispute, failing agreement by the parties on this matter.

That would take about three years to carry out afterwards. It seems to me that the way you proceeded by unilateral negotiation is the way it is intended in the charter.

Furthermore, I said there was 24 miles.

> 4. If the distance between the low water marks of the natural entrance points of a bay does not exceed 24 miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.
>
> 5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 miles, a straight baseline of 24 miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

Then paragraph 3:

> For the purpose of measurement, the area of an identation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

That defines what the United Nations have done since we made our agreement with the United States.

I want to say with regard to the treaty rights of France and the United States, I think their presence on the coast of Newfoundland makes their interests almost similar to those of Newfoundland. I also wish to say that they had the right to cure and dry fish. That was outmoded 50 years ago; the Americans do not do that any more in Newfoundland.

Furthermore, the right to fish in perpetuity let them go up the coast line. They had that right on the west coast of Newfoundland, and I do not think you can do much otter trawling on the west coast of Newfoundland because it is too rocky. The treaty coast also extends from Ramea Island to Cape Ray, and also on the coast of Labrador and the Magdalen Islands. But surely they will not dare to go inside the three-mile limit, and if we make it 12 miles the Americans and we must conform to the same thing. We have to have equal rights because we must stop mass production on the coast for the protection of the inshore fishermen.

The CHAIRMAN: Are there any other questions you want to ask the minister? I should point out to you, for your guidance, we have here the Minister of Fisheries, Mr. Robichaud, and his Assistant Deputy Minister, Mr. Ozere; and from the Justice Department, Mr. Affleck, the Assistant Deputy Minister. Mr. Martin has his assistant, the Assistant Under Secretary of State for External Affairs, and Mr. Gaskell of the Cabinet Secretariat. We also have present Mr.

O'Brien of the Fisheries Council of Canada; and the Department of Transport represented by Mr. Macgillivray, who is the assistant counsel.

If there is any point on this bill, legal or factual, on which you want further information we have a large array of witnesses here, and it is for the committee to decide to what extent they want to hear them.

Senator BROOKS: I understood that the special reason for having this meeting this morning was to hear Mr. Martin, who is leaving the country and who would not be available for some time. This is a great array of information that we would have.

The CHAIRMAN: I am offering it to you.

Senator BROOKS: But are we to take it all at one gulp?

The CHAIRMAN: Your capacity is pretty good, Senator Brooks.

Senator BROOKS: Not that good. I think we should hear the Minister of Fisheries, and then perhaps these other gentlemen could attend later.

The CHAIRMAN: I was going to suggest we could excuse Mr. Martin now, who has other duties to attend to. I want to thank him on behalf of the committee for the excellent presentation he has made.

Senator BROOKS: And we wish him *bon voyage*.

Hon. SENATORS: Hear, hear.

The CHAIRMAN: Now, Mr. Robichaud. Gentlemen, we have the Minister of Fisheries present. Are there any questions you would like to direct to him, or is there a statement you would like to make, Mr. Robichaud, in addition to what Mr. Martin has said?

Hon. Mr. ROBICHAUD: Honourable senators, no, I do not think there is any need for any additional statement. My colleague has covered the whole aspect of the bill.

Senator BROOKS: There were certain phases which he did not mention, as Senator Kinley mentioned, and that is the preservation of the fish and the fisheries our fishermen have in certain areas where outside fishermen come in to trawl. I think we would like to have a statement on that.

Hon. Mr. ROBICHAUD: Mr. Chairman, I understand that the matter raised by Senator Kinley has to do with fishing on the high seas and, as we all know, we have international commissions which are dealing with that aspect of the problem. We have, on the Atlantic coast, the ICNAF—the International Commission of North Atlantic Fisheries—where all the countries interested in the fishing operation of the North Atlantic area are part of this commission. On the Pacific coast we have also a number of commissions, such as the North Pacific Treaty, and others. So the matter raised by Senator Kinley had to do particularly with this aspect of the fishery. Besides that, as has been mentioned by my colleague, the present interpretation of the baseline will by itself give additional protection to our inshore fishermen.

Senator BAIRD: That is the very purpose of the bill, I presume?

Hon. Mr. ROBICHAUD: Exactly. I could also add, for the information of honourable senators, that it is our intention and we are now considering applying special fishery regulations to certain areas, particularly on the Atlantic coast where there is a very active inshore fishery. This we will do for the specific protection of our inshore fishermen.

Senator HOLLETT: I am very happy to hear that. I am from Newfoundland. I am sorry I came in late, and I did not hear the honourable minister at all. As I came in late, this may have been touched on. In regard to the base fixing the geographical co-ordinates, has it been determined where these points will be located? Take Placentia Bay, for instance—there are others too—can you tell us whether these co-ordinates will protect the whole bay or only part of it?

Hon. Mr. ROBICHAUD: I think this matter has been covered by my colleague, the Secretary of State for External Affairs, and it has been made very clear that at this time, while negotiations are still going on—and as has been mentioned, we have completed the first phase of our negotiations and we are now getting down to details—it would not be fair to some of the countries involved if we made public now the exact points which would be used. But I think it has also been clarified, to some extent, by my colleague when he mentioned the proposal that was made to the Government in January, 1963 by the Fisheries Council of Canada, and he said we have particularly used that proposal that was made to the Government as a matter of discussions or negotiations with the countries interested.

Senator HOLLETT: How are we going to know whether to support this bill or not, if we do not know what part of our coast is going to be affected? You say it would be unfair to say so now?

Hon. Mr. ROBICHAUD: If we made public now the co-ordinates by which the order in council wil be determined, which this Government gives power to make by enabling legislation—I want to repeat what has been said by my colleague—it would not be fair. It could render more difficult our negotiation. I repeat what he said, that the basis of our negotiation has been the proposal made to the Government by the Fisheries Council. This is a public document and I think, Mr. Chairman, that if anyone goes through those proposals, he will have a pretty good idea of the basis on which the discussions are taking place.

Senator BROOKS: May I ask the honourable minister this. He says, "We have completed our first phase of negotiations". How many phases does he expect the negotiations to comprise, and what were the first phases of the negotiations? Could he tell us that, or how far we have got with it?

Hon. Mr. ROBICHAUD: The phases of negotiations have been different with different countries. For example, with the United States we have met with them on three or I could say four different occasions because personally I had a special meeting last week with them. With some of the other countries, they have sent their representatives. We have made clear to them what our intent was. We have made clear to them on what basis we were prepared to have discussions or negotiate.

Senator BROOKS: For instance, you have made it clear to them that you have an intent to have the Bay of Fundy as territorial waters?

The CHAIRMAN: As an inland sea?

Hon. Mr. ROBICHAUD: If you want this as an example, I am not prepared to say this was the term that we have used, but we have made clear to them what our intentions were, to establish a new territorial sea which would have three miles based on headland to headland and then with a nine miles fishing zone as provided by this bill.

Senator HOLLETT: Would it be fair to say with what countries you have negotiated?

Hon. Mr. ROBICHAUD: Yes we have negotiated already with the United States, France, Norway, Spain, Portugal, United Kingdom, Denmark, Japan and Italy.

Senator HOLLETT: Not with the U.S.S.R.?

Hon. Mr. ROBICHAUD: Not at this stage.

Senator THORVALDSON: Why has all this negotiation been necessary with these countries? I presume you would be able to follow the principles laid down or set forth in the Anglo-Norwegian case of 1951, and I would have thought, that fixing our baselines, was our own business more than anyone else's.

Hon. Mr. ROBICHAUD: It is true, Mr. Chairman, that it has been made clear we are taking a unilateral position; but the Prime Minister made a statement in the House on June 4—and I think could read the last paragraph —making it very clear it was the intention of the Government that, before proceeding in taking this unilateral position, the countries involved would have a chance of discussing with us, that we would make it clear to them what our position was and then we would have discussion with them.

Senator THORVALDSON: Did he specifically refer to the question of baselines?

Hon. Mr. ROBICHAUD: He referred to the whole proposal. We are taking a unilateral position on baselines, on territorial sea and on fishing zones. Those were the three points mentioned by the Prime Minister in his statement. The last sentence of his statement in the House said:

> Discussions will also be opened as soon as possible with other countries affected, and it is our hope and belief that we will be able to reach agreement with such countries on mutually satisfactory arrangements.

This is the procedure that we have been following.

Senator HOLLETT: In other words, that order in council under section 5 will depend on negotiations you have with the various countries fishing off our coast?

Hon. Mr. ROBICHAUD: To some extent, yes.

The CHAIRMAN: I would say, if agreements are reached.

Senator HOLLETT: If agreements are reached, that will be quite simple. But if no agreement is reached?

The CHAIRMAN: Then we have to take our own course.

Senator KINLEY: I would like to say something which would be of interest to fishermen. You must put lighthouses on the points of the coast from which these lines are to be measured, so that there will be no question of their not knowing where the demarkation lines are.

The United Nations say that you must put up a lighthouse on the points in the bays from which these lines are measured so that there will be no trouble among the seamen, no confusion, and they will know whether they are inside or outside the line.

Hon. Mr. ROBICHAUD: When the maps have been drawn up, as was mentioned by my colleague from the department concerned, they will be made available to the countries who are operating in our waters. They will know just as well as they know at present where the three-mile limit is.

Senator KINLEY: They do not want to take the wrong light.

The CHAIRMAN: Then we would have to work out a system of colours.

Senator FLYNN: I think there is some contradiction between the answer we obtained from the Minister of External Affairs and the answer given by the Minister of Fisheries now. If we were not to establish a 12-mile fishing zone, but only to define the territorial sea of three miles with a straight baseline, we would have to negotiate.

Hon. Mr. ROBICHAUD: If we limit ourselves?

Senator FLYNN: To establish the three-mile territorial sea based on a straight baseline.

Hon. Mr. ROBICHAUD: Mr. Chairman, I think the question is, we would have to negotiate?

Senator FLYNN: Yes.

Hon. Mr. ROBICHAUD: No, I do not think we would have had to negotiate but we would have had to have enabling legislation to do it, because it affects five or six different bills.

Senator FLYNN: That may be; this is only a legal question.

The CHAIRMAN: Senator, even the three-mile territorial sea as provided for in this bill, the location and the area that it will occupy, will be different by reason of being based on straight baselines as against the sinuosities of the coastline.

Senator FLYNN: I agree, but the Minister of External Affairs said, if I am right, that the rules laid down in the Anglo-Norwegian case were generally accepted, that we could base a baseline on straight lines.

The CHAIRMAN: I understood what the minister said was that that was their interpretation of that case.

Senator FLYNN: I think he went further than that and said it was practically the accepted rule now.

Senator THORVALDSON: That was my point a moment ago.

Hon. Mr. ROBICHAUD: I might go a little further than I did when I first answered the question. Negotiations would still have been possible, because even if we were only establishing a new territorial sea based on headland to headland, it would affect countries like France and the United States which have treaties with us, and to some extent, probably to a lesser extent, it would also have affected other countries which have established historic rights.

Senator BROOKS: That would be in closed bays, and so on?

Hon. Mr. ROBICHAUD: Small bays and inlets.

The CHAIRMAN: And the extent to which the territorial area was being involved.

Senator FLYNN: It seems to me that the treaty rights and the method of drawing lines are two things entirely different and that we can very well establish a territorial sea of three miles based on straight baselines and, considering that the treaty rights of France and United States are not affected thereby, they would apply to other countries and those countries in other respects.

Hon. Mr. ROBICHAUD: This is a legal point which is a little difficult.

Senator FLYNN: I was merely asking you did you negotiate on this particular point?

The CHAIRMAN: Usually, Senator Flynn, but there are exceptions to the general laws sooner or later.

Senator FLYNN: I will have questions to put to the representative of that department.

Senator HOLLETT: I did not hear the honourable minister. I am thinking of places in Newfoundland. I am sure the honourable minister has dealt with that. From one point, my indication is that it is about 100 miles. So it would appear that a large part of any bay would be open to foreign competition. That is important to our fishermen and to our livelihood. I wonder if the minister could make that clear.

Hon. Mr. ROBICHAUD: We realized the importance and, for the protection of our fishermen, have certain of those bays closed by the establishment of a line, headland to headland. But again I think I agree with what my colleague has said, if we gave details on certain points, whether it should be ten miles or five miles, we would have no more justification than if it were 100 miles or 90 miles. That is why I referred the honourable gentleman to the proposal that was made to us by the Fisheries Council. I am sorry, but again I have to limit my reply on the point to that.

Senator HOLLETT: That is all I want to know. It has not been established yet.

Senator MCLEAN: Mr. Chairman, I have something I wish to call to the minister's attention. About two weeks ago I read an item in the *Christian Science Monitor* from the *New York Times*. Senator Henry Jackson, a senator from Washington, and one of the most influential senators in the United States Senate, asked the question if any assurances had been made to Canada that historic and treaty rights would be preserved if this bill went through. He did not get an answer. He spoke, of course, of the west coast, and of some historic fishing places there off the coast. Another senator said, "We are buying $140 million worth of fish in Canada every year, and this matter should be looked into." Apparently the Senate did not have any information at that time, at least Senator Jackson did not get it.

The CHAIRMAN: That does not prove they did not have it.

Hon. Mr. ROBICHAUD: They started to ask for details of negotiations that had taken place. It could make it much more difficult for us to arrive at a favourable agreement with them; and I can add that it has also been mentioned that retaliation might be taken, as you have mentioned, vis a vis our exports. This matter has never been in question, has never been brought up in our negotiations. We were discussing the fishery operation, the baseline, the territorial sea, and the fishing zone.

The CHAIRMAN: Any other questions?

Senator HOLLETT: Is there no question of bringing the matter again before the United Nations before the weeks pass? It almost succeeded, you know.

Hon. Mr. ROBICHAUD: My colleague, again, has referred to that possibility, Mr. Chairman, but we all know that it would have taken probably many years, or a number of years, before the United Nations may have accepted to discuss this matter again, which came so close in 1960 to being accepted. In the meantime, certain countries whose operations are being activated year after year off our shores may have established historic fishing rights which they would have claimed then, and this is one of the main reasons for the Government to proceed at the earliest possible date with the implementation of this legislation.

Senator THORVALDSON: We have been talking a lot about treaty rights. Is one of the treaties involved the Washington Treaty of 1871, which gave the United States rights particularly on the east coast?

Hon. Mr. ROBICHAUD: Mr. Chairman, the main treaty involved is the treaty of 1818.

Senator KINLEY: I do not think the fishing rights under the Washington Treaty exist any more.

Senator THORVALDSON: That is the point I wanted to make.

Hon. Mr. ROBICHAUD: No; I am told the 1871 treaty is not in effect.

Senator THORVALDSON: So the treaty rights essentially of the United States and Canada result from the 1818 treaty?

Hon. Mr. ROBICHAUD: That is right.

Senator BROOKS: That is on the east coast?

Hon. Mr. ROBICHAUD: That is right.

Senator THORVALDSON: I take it, then, there is no intention whatsoever to try and renegotiate the 1818 treaty, even in the light of developments in international law since that time, concerning fishing? I want to see if we can get a clear answer to that.

Hon. Mr. ROBICHAUD: Mr. Chairman, I can add again what my colleague said. Not at this stage. We have not taken any decision to renegotiate this treaty.

The CHAIRMAN: Any other questions?

Senator WHITE: The witness speaks about the fishing rights of the entire Canadian waters. Have Canadians under this treaty any rights to fish in American waters?

Hon. Mr. ROBICHAUD: I could add at this time that it has been made clear the Canadian fishermen should have the same rights, that should the day come when the Americans decide to impose a 12-mile limit, or its like, we should have the same historic rights as their fishermen have in our waters.

Senator WHITE: But at the present time do Canadians fish down there?

Hon. Mr. ROBICHAUD: Yes, they do.

Senator KINLEY: Under the Washington Treaty Canadians had reciprocal rights on the American coast. That had been abrogated by the Americans.

The CHAIRMAN: Any other questions for the minister?

Senator ASELTINE: Mr. Chairman, I should like to know what organizations in Canada have been notified of these meetings to consider this bill. I believe the Fisheries Council of Canada had been notified, and are presently represented today?

The CHAIRMAN: That is right.

Senator ASELTINE: It is a large organization—with headquarters in Ottawa, and embraces 15 regional fish trade associations. There is also the Vessel Owners Association of British Columbia, Vancouver, B.C.; the Newfoundland Federation of Fishermen, St. John's, Newfoundland; the Fishermen's Union; the United Truckers of Vancouver, B.C.; the Newfoundland Association of Fish Exporters Limited, St. John's, Newfoundland. I think these organizations, if they have not been notified, should be notified, so that they can make representations if they wish to do so.

The CHAIRMAN: I think the minister has an answer to that.

Hon. Mr. ROBICHAUD: Perhaps I could clarify the position. I mentioned before that representations had been made last January 1963 by the Fisheries Council of Canada. In January this year we had, as you all know, the Federal Fisheries Conference, where all provinces were represented, and where the industry, or any fisheries organizations were invited to present their briefs. We had at the time representations made by some of the organizations you have mentioned, senator, in addition to this, at the time of the Fisheries Council meeting in Charlottetown on April 20, I personally met with the ministers of fisheries for the Atlantic provinces and the representative from the Quebec Government, where we discussed in as much detail as we could the implications of legislation which at the time we had decided to present, either to the House of Commons or to the Senate. So the representations have been made, the view of the different groups have been expressed.

Senator ASELTINE: But since that time this bill has been introduced.

The CHAIRMAN: But I understood the minister to say that the proposals incorporated in this bill were discussed with these people he met.

Hon. Mr. ROBICHAUD: That is right; not the details of the bill, because the bill had not been introduced.

Senator ASELTINE: I still think they should be notified that the bill has been introduced so that they can satisfy themselves if the bill does comply with what they feel should be in it.

The CHAIRMAN: Mr. O'Brien, Manager of the Fisheries Council of Canada is here. Since you are here, Mr. O'Brien, would you come forward? Mr. O'Brien is subject to any questions which you wish to ask relating to the bill.

Senator ASELTINE: Perhaps he has a statement that he would like to make, and we could question him later.

Mr. C. Gordon O'Brien, Manager, Fisheries Council of Canada: Mr. Chairman and honourable senators, I really have no statement. We made our statement a year ago last January—

Senator ASELTINE: Not before this committee.

Mr. O'BRIEN: —and it appears from the comments this morning we are pretty well stuck with it.

Senator LEONARD: Perhaps Mr. O'Brien might file with the committee a copy of the statement which the Council made so that it could be made part of our file record.

The CHAIRMAN: This will be appended?

Senator LEONARD: Not printed; just made available to us.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, how large is the document? Is it very extensive?

The CHAIRMAN: The document itself is only eight short pages?

Senator ASELTINE: I move it be printed as an appendix.

The CHAIRMAN: I take it these are the member associations of the Fisheries Council of Canada who supported this brief, and I see their names on page 11 of this memorandum:

Atlantic Fisheries By-Products Association,
Halifax, N.S.

Canadian Atlantic Salt Fish Exporters Association,
Halifax, N.S.

Fish Distributors Association of Ontario,
Toronto, Ont.

Fisheries Association of B.C.
Vancouver, B.C.

Frozen Fish Trades Association Limited, The
St. John's, Newfoundland

Lake Erie Fisheries Council,
Wheatley, Ont.

Montreal Fish Merchants Association,
Montreal, P.Q.

New Brunswick Fish Packers Association,
Moncton, N.B.

Nova Scotia Fish Packers Association,
Halifax, N.S.

Prairie Fisheries Federation,
Winnipeg, Man.

P.E.I. Fisheries Federation,
Charlottetown, P.E.I.

Prince Rupert Fishermen's Cooperative Association,
Prince Rupert, B.C.

Prince Rupert Wholesale Fish Dealers Association,
Prince Rupert, B.C.

Quebec Fish Producers Association,
Quebec, P.Q.

Quebec United Fishermen,
Montreal, P.Q.

These constitute the group in respect of which this presentation was made by the Fisheries Council of Canada to the Government, is that right?

Mr. O'BRIEN: Yes.

The CHAIRMAN: I see no reason why it should not be printed as an appendix to our printed proceedings. Are the members of the committee in favour of that?

Hon. SENATORS: Yes.

(*For the text of brief, see Appendix "A" to to-day's proceedings.*)

Senator BROOKS: Perhaps while Mr. O'Brien is here he could let us know some of the main recommendations made by his Council to the Government.

Senator THORVALDSON: Before that is printed in the record, I think we should know if it deals exclusively with the problem we are considering?

Senator BROOKS: That is the point I wanted to make.

The CHAIRMAN: Even without reading it, I just look at the table of contents and it says:

Introduction.
National Waters.
Straight Base Line.
Breadth of Territorial Seas and Exclusive Fishing Zone.
Historic Fishing Rights.
Unilateral Declaration and Enforcement.
Conclusion.

Senator BROOKS: Yes, those are all points it would be very interesting to hear Mr. O'Brien's comments on.

Mr. O'BRIEN: Perhaps I could read the six points in the conclusion, where we summarize the brief?

The CHAIRMAN: That is page 8.

Mr. O'BRIEN:

Action by the Government of Canada is required to:

1. declare certain bodies of water as Canadian national waters.

We specify certain bodies in the brief and illustrate them on the maps which we attach to the brief.

Senator BROOKS: The list is not long?

Mr. O'BRIEN: No. I will not read it in its entirety, but just hit the highlights. Dixon entrance and Queen Charlotte Sound, on the west. On the Atlantic coast, the Strait of Belle Isle, the Gulf of St. Lawrence and the Bay of Fundy—recognizing at the same time we had already declared Hudson Bay as national waters. Those were the specific items.

Again referring to the conclusion:

2. establish a straight base line to enclose the national waters,
3. proclaim an exclusive fishing zone to seaward of the base line,
4. recognize and negotiate historic treaty fishing rights,

Senator THORVALDSON: May I ask a question here? What do you mean by "historic treaty fishing rights"? There are treaty rights and, as I understand it, there are historic rights, and they are entirely different.

The CHAIRMAN: This is developed in some paragraphs in this brief. Would you like some of it read?

Senator THORVALDSON: No, that is all right.

Mr. O'BRIEN: It is perhaps the most lengthy part of the brief, the explanation of historic fishing rights.

Senator BROOKS: What was your main reason for recommending the recognition of the historic rights? Was it trade with the United States?

Mr. O'BRIEN: We have treaties with two of the countries involved. The plain fact is we know the Portuguese have been fishing there longer than we have, probably, and with a situation like that negotiation would obviously be necessary.

The CHAIRMAN: And desirable?

Mr. O'BRIEN: Yes, and desirable. I think, basically, I could not put it any more plainly than that, sir.

5. make a unilateral declaration with regard to the aforesaid decisions, and
6. enforce the above progressive steps.

These are the six points summarizing it.

Senator HOLLETT: How do you propose enforcing them?

Mr. O'BRIEN: We left that to the discretion of the people to whom we presented the brief.

Senator BROOKS: Did you make any different recommendations on the conservation?

The CHAIRMAN: The conclusion generally follows what Mr. O'Brien has enumerated:

> The Fisheries Council of Canada is aware that positive action in implementing the aforesaid progressive steps by the Government of Canada will not solve all the problems of the Canadian Commercial Fishing Industry. It will, however, bring about the orderly development of sound programs of fishery conservation and management for the benefit of present and future generations of Canadians.

Mr. O'BRIEN: I think too, in the introduction to our brief you will see, when you read it, it is the conservation aspect which prompted this approach to the Government; this is our main concern.

Senator THORVALDSON: Mr. O'Brien, did you make any recommendation in regard to what you would like the Government to do concerning the treaty rights of other countries? You referred to the two countries that had treaty rights.

The CHAIRMAN: At the bottom of page 6 there are some recommendations.

Mr. O'BRIEN:

> It is, therefore, recommended that, in view of these long-standing Treaties which exist on both coasts, that the Government of Canada immediately enter into negotiations with France and the United States with the objective of reaching a mutual understanding with regard to their historic fishing rights in Canada's national waters as enclosed by the proposed base line.
>
> Nations not having treaty fishing rights with Canada would be denied access to the marine resources in Canadian national waters. With regard to these nations, the Fisheries Council proposes that the Government of Canada implement Clause No. 3 of the joint Canada-United States proposal as submitted to the 1960 Law of the Sea Conference. This clause provides that any nation whose vessels have made a practice of fishing in the outer six miles of Canada's proposed exclusive fishing zone for the immediate preceding five years would have the right to continue to fish for a period of ten years.

Perhaps I should explain that reference to six miles. Our proposal to the Government was for a six-mile territorial water plus a six-mile fishing zone, based on the 1960 resolution which did not quite succeed at Geneva. However, we are quite happy. What we were concerned about was the 12-mile fishing zone from the straight baseline. Whether it is three-and-nine or six-and-six really makes no difference as far as we are concerned.

Senator ISNOR: I wonder if Mr. O'Brien would care to comment with respect to the bill now before us, as to whether it meets the main suggestions as outlined in the brief?

Mr. O'BRIEN: I think, Mr. Chairman, I cannot comment very specifically on this bill. It is enabling legislation. I think we are going to be very interested when the Government has concluded its negotiations with the countries involved and tells us, as well as members of Parliament and the honourable senators, just where these lines are going to go. We do support in principle the procedure of getting legislation on the books so that we do not have to run too many more years before the Russians say to us: "We have been fishing long enough to have historic rights." At least, this establishes a date on which we took some definite action and which we can point to. The fact that it may take a little longer than some of us would like to establish co-ordinates, and so on, is not a serious matter. We would support getting this thing on record, that we are taking action to implement the Government's announced intention.

Senator BAIRD: In other words, you are anxious to see that it gets on the statute book?

Mr. O'BRIEN: Yes.

Senator PHILLIPS: In the Fisheries Case, they were very definite on the fact that they wanted certain waters declared as international waters. I wonder whether Mr. O'Brien would declare whether this bill meets that request or not.

Mr. O'BRIEN: I guess I would have to give the same answer, that the bill is is not specific in regard to these things and until agreements have been reached with other countries we would not be able to say whether we are satisfied with what the Government has done, until they tell us what exactly they are going to do.

The CHAIRMAN: To tell you where the straight baselines are going to be located?

Mr. O'BRIEN: And what bodies of water will be enclosed. We would hope that all those we have suggested would come within the new baselines.

Senator PHILLIPS: If the co-ordinates to be published later on follow those suggestions, you believe they would include all the waters you want.

Senator THORVALDSON: Mr. O'Brien, I do not think you could answer this question. I am referring now to the east coast of Canada. Could you give the relationship and the adverse effect on Canadian fisheries by, first, the fishing that is done on the east coast under treaty rights; and then, on the other hand, the fishing that is done by various nations either under historic rights or simply by the rights that they consider they have from international law at present?

Mr. O'BRIEN: The fishing that is done under treaty rights is almost insignificant in the total picture.

Senator ASELTINE: I understand the brief will be printed as an appendix.

The CHAIRMAN: That is right.

Senator HOLLETT: Might I ask if this 12-mile limit will assist in the protection of our sealing industries on the front, as it is called, on the east coast. Has that been considered?

Mr. O'BRIEN: I think that it would assist. I know that the sealing industry of Newfoundland particularly is very much concerned over this matter and would perhaps like to see the baseline in one or two places extended much farther out than we proposed originally.

Senator PHILLIPS: Following on Senator Hollett's question, I believe the minister in Charlottetown made a statement along that line. Perhaps he would like to comment on it?

Hon. Mr. ROBICHAUD: If I am allowed to comment on it, I may say it will affect the sealing operations within the 12-mile zone and waters that will be declared Canadian waters. Outside of that, on the high seas, I want to repeat that we are attempting to bring into force the protocol of I.C.N.A.F. and it will be discussed at the annual meeting in Hamburg in June.

The CHAIRMAN: Are you ready to examine the bill clause by clause?

Senator BROOKS: Are there any other people who should make representations?

The CHAIRMAN: Let me go over the list of those who are here so that we can see whether there is anyone you would like to call. We have Mr. Wershof, Assistant Under Secretary of the Department of External Affairs; Mr. Gaskell; Mr. Affleck, Assistant Deputy Minister, Department of Justice, who is here on legal aspects. We have the minister; you have heard Mr. Robichaud. We have the assistant deputy minister, Mr. Ozere. From the Department of Mines and Technical Surveys we have Mr. Gray, Chief Dominion Hydrographer, and Mr. Cooper of the Dominion Hydrographic Survey Branch. We have had Mr. O'Brien. We have the Department of Transport, represented by Mr. Macgillivray, who is Assistant Counsel. Are there any of these men you would like to hear?

Senator BROOKS: Certain legal points were brought up this morning which neither the Minister of External Affairs nor the Minister of Fisheries cared to answer. I would think that the legal representatives of the Departments of External Affairs and Justice should be heard.

Mr. J. D. Affleck, Assistant Deputy Minister, Department of Justice: I can speak for the Department of Justice. I think, gentlemen, that the legal experts in the Department of External Affairs are probably more familiar with this.

The CHAIRMAN: We could gather them round, too.

Senator FLYNN: My question is that which I put before. The present baseline mentioned in paragraph 3 of article 5, baselines which remain in effect until there is an order in council adopted under this bill—under what authority are they established?

Mr. AFFLECK: There is no existing legislation or in fact anything describing baselines at all. There is no general legislation.

Senator FLYNN: Who has established in fact those baselines?

Mr. AFFLECK: I do not know any statute describing baselines. If one were to consider what is a baseline now on one part of the coast, one would have to consider the established feature of the coast in any case. It could be the low water mark, it could follow the historic bays, or the harbour works.

Senator FLYNN: There is nothing in our statutes that would give any legal value to any baselines which are presently applicable, as mentioned in paragraph 3 of article 5 of this bill?

Mr. AFFLECK: There is no general statute which now provides for the creation or description of baselines.

Senator FLYNN: Nothing special?

Mr. AFFLECK: There is of course now in the case of a couple of statutes, for their own specific purposes. In the Customs Act you have a definition of Canadian waters; it does not prescribe a baseline but there is a definition of what is intended to be included in that act. You have also in the Coastal Fisheries Protection Act a definition—I am not sure what the existing term is—the Canadian territorial waters for the purpose of that act—but again these are definitions in specific statutes for the purposes of those statutes; and there is no general law.

Senator FLYNN: Could we conclude, therefore, that you could establish straight baselines without this legislation, which would be as valid and as applicable as the present baselines. This does not improve the situation?

Mr. AFFLECK: I am not quite sure how you could do it. I suppose people could draw maps and put lines on them, but I suppose it would be better to have some statutory authority before that takes place.

Senator COOK: In other words, you have no statutory authority to draw lines on the maps?

Senator FLYNN: The baselines are prepared by the Department of Mines and Technical Surveys?

Mr. AFFLECK: I do not think there is any map showing existing baselines.

Senator FLYNN: To what are we referring in this paragraph 3, article 5 when we say "Baselines remain those applicable immediately before the coming into force of this section"? It must refer to something factual.

Mr. AFFLECK: We could mean that up to a given part of the coast could properly now be regarded as a baseline; for that part of the coast it frequently would be the low water mark.

Senator FLYNN: The low water mark would serve for these baselines, because it is in accordance with tradition now. If we adopt the rules laid down in the Norwegian case, we could draw baselines in fact in the same way as we have drawn those baselines based on the low water mark?

Mr. AFFLECK: Yes.

Senator FLYNN: Because in this legislation we are not referring to any specific rule to establish those straight baselines, we are not even referring to the case, which apparently is the leading case in this matter, and upon which is based the idea of establishing straight baselines.

The CHAIRMAN: Except, senator, the Secretary of State for External Affairs did say the old lines for determining the territorial waters seemed to proceed on the sinuosity of the coastline; and this is intended to be a departure from that and to establish straight lines.

Senator FLYNN: But it is not stated in the act as it is drawn.

The CHAIRMAN: Under section 5, that is a job still to be done after the bill becomes law and the act is proclaimed by Governor in Council.

Senator THORVALDSON: May I ask a question, to continue on the question of the baseline? I would like to know whether the law officers of the Crown are not able to advise the Government, following the principles of the Anglo-Norway case, whether Canada itself is not empowered in international law to draw its own baselines without negotiation with other countries.

Mr. AFFLECK: I think the people from External Affairs could answer that better than I. My own impression is that Canada can unilaterally apply the baseline system as is proposed in this bill.

Senator THORVALDSON: That is my view.

Mr. AFFLECK: This would not prevent other countries challenging whatever line is drawn, and possibly, for that matter, seeking some kind of adjudication in the International Court of Justice at some later date.

The CHAIRMAN: Senator Thorvaldson, I cannot imagine any other country drawing our baselines. They might dispute a baseline, once we said "this is it".

Senator THORVALDSON: That was my whole point, Mr. Chairman, and consequently I was concerned and could not understand why all this negotiation was taking place with other countries. I can quite see that other countries might want to challenge what we do, but I cannot see why Canada does not simply go ahead and draw its own baselines, and then negotiate subject to challenges.

The CHAIRMAN: Except that that is an arbitrary course of action.

Senator THORVALDSON: It is not arbitrary at all, Mr. Chairman.

The CHAIRMAN: Arbitrary in the sense that you are saying "this is it", whereas, as I understand the plan here, there will be some discussion as to whether that straight line is going to enclose in the waters a five-mile area or ten miles. You can extend your territorial limits on this by the location, by the departures you make from sinuosity, and how far out you start your straight line. That distance may be a matter of negotiation, and with friendly countries I presume that is a better way of dealing with the situation.

Senator THORVALDSON: We may not be very far apart on this point, Mr. Chairman. I have another question. I wonder if we could get a statement from some of the law officers, either from the Department of Justice or the Department of External Affairs, as to what in their opinion the general legal effect of this bill under the present status of international law will be.

Mr. AFFLECK: I am not quite sure what you mean by your question, senator.

Senator THORVALDSON: In other words, apart from the question of baselines, which I maintain we have a right to draw ourselves, pursuant to the decision of international law we have been talking about, has this bill any other effect than merely as the prelude to negotiations with other states?

Mr. AFFLECK: Yes. I think this bill will have a domestic effect, as far as domestic law is concerned. The territorial sea is described in it, and the fishing zone, where applicable, in other states. It will serve as a sort of interpretation act for other Canadian laws, from a domestic point of view.

Senator THORVALDSON: Is it anything more than simply a statement of what Canada believes should be a territorial sea three miles from the baselines, and then a contiguous fishing zone of nine miles, after a three mile limit? Is this ont merely a statement of what we hope to achieve through negotiation?

The CHAIRMAN: No, I think, honourable senator, if I might answer, it goes further than that.

Senator THORVALDSON: Mr. Chairman, please—

Senator CRERAR: Mr. Chairman, I rise on a point of order.

The CHAIRMAN: That is in order at any time.

Senator CRERAR: The question of where baselines are, how they would be drawn, how far zones should extend, is a matter of Government policy, and I do not think we should ask the civil servants who are here, and who have intimate relationships with the Government, to pass their opinions upon these matters.

The CHAIRMAN: But, senator, the question did not go that far. As I understood the question, this witness was asked what did he think this bill, if it becomes law, would achieve. Is it only an expression of the Government's viewpoint, or what effect will it have?

Senator THORVALDSON: That is right—what effect will it have?

The CHAIRMAN: So it is not a disclosure of policy.

Mr. AFFLECK: I cannot comment, of course, on policy. I do not know what baselines will be drawn, in any event. But the bill will, when you take all parts of it, apply the concept of the territorial sea and the fishing zone as measured from straight baselines, once the whole scheme is in operation and the list of co-ordinates are published to maintain legislation. Now, six statutes in part 2 are the ones most affected, and probably the most important piece of legislation is the Coastal Fisheries Protection Act.

Senator THORVALDSON: I think probably your answer is complete. In other words, the bill applies a Canadian concept?

Mr. AFFLECK: That is right.

The CHAIRMAN: Any other questions?

Senator KINLEY: Mr. Chairman, I should like to have a comment from the law officers with respect to article 2 of an agreement signed at Washington, July 20, 1912, and entitled, "Agreement between His Majesty and the United States of America respecting the North Atlantic Fisheries." It reads as follows:

> In case of bays the 3 marine miles are to be measured from a straight line drawn across the body of water at a place where it ceases to have the configuration and characteristics of a bay. At all other places the 3 marine miles are to be measured following the sinuosities of the coast.

It continues:

> Now, therefore, it is agreed that the recommendations, in so far as the same relate to bays contiguous to the territory of the Dominion of Canada, to which Question V of the Special Agreement is applicable, are hereby adopted, to wit:
>
> In every bay not hereinafter specifically provided for, the limits of exclusion shall be drawn 3 miles seaward from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed 10 miles.
>
> For the Baie de Chaleurs the limits of exclusion shall be drawn from the line from the Light at Birch Point on Miscou Island to Macquereau Point Light; for the Bay of Miramichi, the line from the Light at Point Escuminac to the Light on the eastern point of Tabisintac Gully; for Egmont Bay, in Prince Edward Island, the line from the Light at Cape Egmont to the Light at West Point; and off St. Ann's Bay, in the Province of Nova Scotia, the line from the Light at Point Anconi to the nearest point on the opposite shore of the mainland.

I think that is definite.

Mr. AFFLECK: That is a treaty, though, on fishing rights. I am afraid I am not too familiar with that.

Senator KINLEY: This shows where the lines will be drawn.

Mr. AFFLECK: This does not affect the baselines drawn under this bill.

Senator KINLEY: No. This is an agreement between His Majesty and the United States, and I believe it still exists.

The CHAIRMAN: That is right.

Senator KINLEY: But the United Nations has raised it 24 miles.

The CHAIRMAN: Any other questions of Mr. Affleck? I think we have had a pretty solid working period, senators. I never like to run away from anything, but if the senators feel we should adjourn and start again some time—

Senator ASELTINE: I would like an opportunity to read a report of this committee.

The CHAIRMAN: What is the wish of the members?

Senator BROOKS: I see the Deputy Minister of Fisheries here. He has the reputation of being one of our best men. I should think we could hear from him, perhaps not this morning, because we have had a busy morning.

The CHAIRMAN: We have had a good working period. Shall we adjourn now until the call of the Chair?

Hon SENATORS: Agreed.

The committee adjourned.

APPENDIX "A"

A Brief Concerning

CANADA'S NATIONAL AND TERRITORIAL WATERS

Submitted to the

GOVERNMENT OF CANADA

by the

FISHERIES COUNCIL OF CANADA

January 28, 1963

Ottawa, Canada

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INTRODUCTION

The Fisheries Council of Canada representing the commercial fishing industry of Canada,[1] has an interest in ensuring that the fisheries resources in the waters adjacent to our coastlines are conserved and developed in the interests of Canadian citizens, both at the present time and in the future. For this reason, the Council wishes to present its views with regard to the jurisdiction over waters adjacent to Canada.

The Fisheries Council of Canada recognizes that there are many international and national complications with regard to establishing the breadth of territorial seas and therefore, it is not intended that this submission should apply to any other aspect of national or international laws except fisheries.

The rapid increase in world fishing effort and efficiency has focused attention on the fact that unless adequate safeguards are taken, the marine resources, that have played such a vital role in the development of the Canadian economy, will be harvested by foreign fishing fleets. It is our opinion that unless Canada takes immediate action to protect and conserve the marine fishery resources, they will be rapidly depleted by reason of the incursion of foreign fishing fleets.

Fishery resources harvested by Canadian fishermen in or out of Canadian territorial waters are also exploited by fishermen of other countries in the high seas adjacent to Canadian territorial waters. For several centuries the fishery stocks in the Northwest Atlantic have been exploited by the fishermen of Europe as well as those of North America. Similarly, on the Pacific Coast of Canada, the fishery resources on which the Canadian fishing industry depends are accessible to foreign fishermen beyond Canadian territorial waters. The same problem exists in the Great Lakes region where a common fishery resource is exploited by both the Canadian and United States fishermen.

To meet the problem of conservation of certain fishery resources, treaties have been negotiated with some participating countries. In addition to these bilateral and multilateral treaties between nations jointly interested in certain fishery resources, considerable progress has been made recently in international meetings to establish an all-embracing code of the Law of the Sea. Such a code would establish international rules for the conservation and management of high seas fisheries which are beyond the national territorial limits and as such are not within the jurisdiction of any nation, except to the extent that any state may exercise control over its own nationals and vessels.

To protect, conserve and develop the fisheries resources adjacent to Canadian shores, the Fisheries Council of Canada urges the Government of Canada to take the following action:—

1) Declare certain bodies of water as Canadian national waters, and adopt the straight base line principle, from which line the breadth of territorial seas and exclusive fishing zone would be measured.

2) Recognize the historic fishing rights of France and the United States of America in Canadian national waters as established by the Treaty of Utrecht and the Convention of 1818.

3) Enter into negotiations with France and the United States seeking recognition of Canadian national waters and the base line enclosing these waters.

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[1]*See Appendix No. 3.*

4) Make a unilateral declaration with regard to Canadian national waters and the straight base line, once an understanding is reached with France and the United States.

5) Enforce the Canadian maritime boundaries, thereby preventing all other foreign fishing fleets, save the aforesaid, from exploiting the marine resources in the declared national waters and the territorial seas.

Positive action by the Government of Canada in implementing the above progressive steps is imperative and will permit planned programs of fisheries' management and conservation. Such programs will ensure a means of livelihood for Canadians engaged in the primary fishing operation and in the many processing and ancillary industries.

NATIONAL WATERS

Canada must declare that certain bodies of water adjacent to her coasts are, for the purposes of fishing regulations and conservation, Canadian national waters in which no foreign fishing fleets may operate without the consent of the Government of Canada.

Early records of the Government of Canada as well as Provincial documents make many references to the fact that bodies of water partially enclosed by the mainland are Canadian national waters.

Respecting Pacific coast waters, a report of The Committee of the Privy Council, dated July 6, 1909, and approved by The Governor-in-Council, declared that the waters of Hecate Strait shall, for the purpose of fishing regulations and conservation, be deemed part of the territorial waters of Canada and within the jurisdiction of the Federal Department of Fisheries. It is essential that this Order-in-Council be re-asserted and enlarged to include not only the waters of Hecate Strait, but also Dixon Entrance and Queen Charlotte Sound. The Fisheries Council of Canada stresses the importance of the Government of Canada declaring these waters to be Canadian national waters.

On the Atlantic Coast the Strait of Belle Isle, the Gulf of St. Lawrence and the Bay of Fundy should be declared and recognized as Canadian national waters in the same manner as Hudson's Bay, which has been recognized internationally as Canadian national waters for at least thirty years and has been so declared by Parliament (see Statutes of Canada, 1932, c.42, s.9(4)).

The claim to jurisdiction over these bodies of water on both the Atlantic and Pacific Coast is justified by the extensive fishery carried out by Canadian fishermen for many decades.

STRAIGHT BASE LINE

To protect the fishery resources in water adjacent to Canada, the Council advocates that the breadth of territorial seas be measured seaward from a straight base line. This base line would be drawn headland to headland following the practice of other maritime nations of the world and would be in accordance with the decision of the International Court of Justice in the case of the United Kingdom versus Norway, known as the Anglo-Norwegian Fisheries Case, decided in 1951.

The base line would follow the general direction of the coastline, recognizing the geographic realities of the area and the economic interest peculiar to the region and would enclose Canadian national waters.

On the Atlantic Coast the base line would commence at the International boundary between Canada and the United States at the mouth of the St. Croix River, to Southwest Head on Grand Manan Island, across the mouth of the Bay of Fundy to Cape Fourchu, thence headland to headland to Cape Sable, to Cape Canso, to Scatari Island, to Cape Egmont, to Channel Head, Newfoundland, Thence to Ramea Island, to Penguin Islands, to Pass Island, to Brunette Island,

to Green Islands, to Cape Pine and to Cape Race. From Cape Race the base line would be drawn to Cape Spear, to Baccalieu Island, to Flower Point, to Cape Bonavista, to Cabot Island, to Cape Freels, to Offer Wadham Island, to Little Fogo Islands, to Bell Island, to Groais Island, to Northeast Point of Belle Isle, to Cape Charles in Labrador. From Cape Charles in Labrador headland to headland along the shores of Labrador to Cape Mugford and Cape Chidley and to continue in a general northerly direction across Hudson Strait. (See Appendix No. 1).

On the Pacific Coast the base line would commence at the International boundary between Canada and the United States, in the Juan de Fuca Strait, thence north to Bonilla Point on Vancouver Island. From this point the base line would run in a north-westerly direction, headland to headland along the coast of Vancouver Island to Cape Cook, thence to Triangle Island (outer island of the Scott Islands). From Triangle Island the base line would be drawn in a north westerly direction to Cape St. James (south end of Queen Charlotte Islands) continuing along the western shore of Queen Charlotte Islands headland to headland to Langara Island (northwest tip of the Queen Charlotte Islands). From Langara Point the base line would be drawn in a northerly direction to Cape Muzon (southern point of Dall Island in Southeast Alaska). (See Appendix No. 2.)

The proposed straight base line is shown on the attached charts. The line would ensure that the waters thus enclosed would be deemed to be Canadian national waters where no foreign vessel could fish without Canadian permission. This would provide partial protection to our fishery resources which have been developed to their present state by the expenditure of Canadian funds and effort.

BREADTH OF TERRITORIAL SEAS AND EXCLUSIVE FISHING ZONE

The diverging interest of nations has prevented an agreement on the establishment of an acceptable uniform breadth of Territorial Seas. The Second United Nations Conference on the Law of the Sea, held in 1960, came close to resolving the many problems particularly related in the breadth of territorial seas and fishing zones.

At this Conference, Canada and the United States jointly sponsored the folowing proposal:

"1. A State is entitled to fix the breadth of its Territorial Sea up to a maximum of six nautical miles measured from the applicable baseline.

"2. A State is entitled to establish a fishing zone contiguous to its Territorial Sea extending to a maximum limit of twelve nautical miles from the base line from which the breadth of its Territorial Sea is measured, in which it shall have the same rights in respect to fishing and the exploitations of the living resources of the sea as it has in its Territorial Sea.

"3. Any State whose vessels have made a practice of fishing in the outer six miles of the fishing zone established by the coastal State, in accordance with Paragraph 2 above, for the period of five years immediately preceding January 1, 1958, may continue to do so for a period of ten years from October 31, 1960.

"4. The provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva, April 28, 1958, shall apply mutatis mutandis to the settlement of any dispute arising out of the application of the foregoing paragraphs."

While this joint proposal was not accepted by the necessary majority of nations to ensure implementation, it received the support of the main maritime nations of the world, and indicated the desire to establish a uniform rule of law with regard to establishing the breadth of territorial seas.

It is, therefore, recommended that, in view of these long-standing Treaties which exist on both coasts, that the Government of Canada immediately enter into negotiations with France and the United States with the objective of reaching a mutual understanding with regard to their historic fishing rights in Canada's national waters as enclosed by the proposed base line.

Nations not having treaty fishing rights with Canada would be denied access to the marine resources in Canadian national waters. With regard to these nations, the Fisheries Council proposes that the Government of Canada implement Clause No. 3 of the joint Canada-United States proposal as submitted to the 1960 Law of the Sea Conference. This clause provides that any nation whose vessels have made a practice of fishing in the outer six miles of Canada's proposed exclusive fishing zone for the immediate preceding five years would have the right to continue to fish for a period of ten years.

UNILATERAL DECLARATION AND ENFORCEMENT

The Government of Canada, having reached an understanding with the United States and France and having determined a policy with regard to other nations not having historic fishing treaties with Canada, is urged by the Fisheries Council to make a unilateral declaration to all nations announcing her jurisdiction over fishery resources in the waters adjacent to her Atlantic and Pacific coastlines.

Unilateral declaration of the Government's policy must be followed immediately by active enforcement of the base line and the policing of foreign fishing fleets in the exclusive fishing zone to seaward of the base line. In the Council's opinion, enforcement is absolutely essential if Canada is to maintain her position in world fisheries.

CONCLUSION

Canada, as one of the pioneering nations in the field of international agreements for the conservation of the fishery resources of the sea, should continue to provide international leadership and protection for our Canadian marine resources.

Action by the Government of Canada is required to:

1. declare certain bodies of water as Canadian national waters,
2. establish a straight base line to enclose the national waters,
3. proclaim an exclusive fishing zone to seaward of the base line,
4. recognize and negotiate historic treaty fishing rights,
5. make a unilateral declaration with regard to the aforesaid decisions, and
6. enforce the above progressive steps.

The Fisheries Council of Canada is aware that positive action in implementing the aforesaid progressive steps by the Government of Canada will not solve all the problems of the Canadian Commercial Fishing Industry. It will, however, bring about the orderly development of sound programs of fishery conservation and management for the benefit of present and future generations of Canadians.

Respectfully submitted,

FISHERIES COUNCIL OF CANADA

R. L. PAYNE, *President*

MCR 77 SECOND EDITION

Copies may be obtained from the Map Distribution Office, Department of Mines and Technical Surveys, Ottawa.

CANADA
DEPARTMENT OF
MINES AND TECHNICAL SURVEYS
SURVEYS AND MAPPING BRANCH

BRITISH COLUMBIA

SCALE 1:2,000,000

1 inch equals approximately 32 miles

Miles 20 0 20 40 60 80 100 Miles

Road ..... Railway .....

Provincial capital .....

POPULATED PLACES

Over 100,000 ..... Vancouver

25,000 to 100,000 ..... New Westminster

2,000 to 25,000 ..... Prince George

500 to 2,000 ..... Merritt

Under 500 ..... Port Hardy

Lambert Conformal Conic Projection with Standard Parallels at 49°N and 77°N

Reproduced from the 1:2,000,000 Map of Canada by the Surveys and Mapping Branch, Ottawa, 1962.

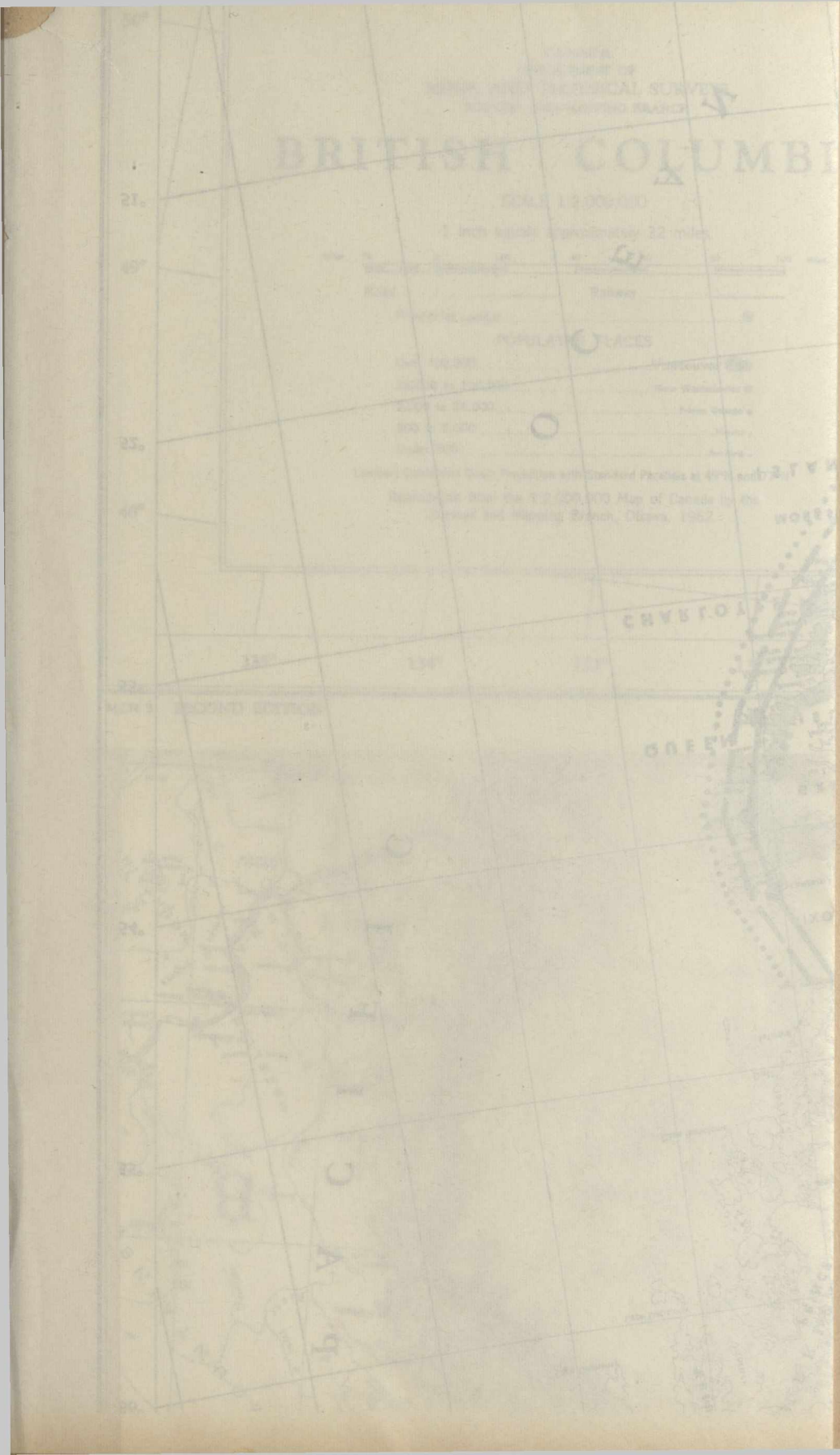
APPENDIX 2

STRAIGHT BASE LINE ——————

TERRITORIAL WATER LIMITS — — —

EXCLUSIVE FISHING ZONE LIMITS .....

MCR 3 SECOND EDITION



Appendix No. 3

MEMBER ASSOCIATIONS
OF THE
FISHERIES COUNCIL OF CANADA

Atlantic Fisheries By-Products Association,
Halifax, N.S.

Canadian Atlantic Salt Fish Exporters Association,
Halifax, N.S.

Fish Distributors Association of Ontario,
Toronto, Ont.

Fisheries Association of B.C.
Vancouver, B.C.

Frozen Fish Trades Association Limited, The
St. John's, Newfoundland

Lake Erie Fisheries Council,
Wheatley, Ont.

Montreal Fish Merchants Association,
Montreal, P.Q.

New Brunswick Fish Packers Association,
Moncton, N.B.

Nova Scotia Fish Packers Association,
Halifax, N.S.

Prairie Fisheries Federation,
Winnipeg, Man.

P.E.I. Fisheries Federation,
Charlottetown, P.E.I.

Prince Rupert Fishermen's Cooperative Association,
Prince Rupert, B.C.

Prince Rupert Wholesale Fish Dealers Association,
Prince Rupert, B.C.

Quebec Fish Producers Association,
Quebec, P.Q.

Quebec United Fishermen,
Montreal, P.Q.

Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-17, intituled: An Act respecting the Territorial Sea and Fishing Zones of Canada.

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, MAY 13, 1964

No. 2

WITNESSES:

Mr. S. V. Ozere, Assistant Deputy Minister of Fisheries.
Mr. M. H. Wershof, Assistant Under Secretary of State for External Affairs.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20766—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, May 6th, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Lang, for second reading of Bill S-17, intituled: "An Act respecting the Territorial Sea and Fishing Zones of Canada".

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

The Bill was then read the second time, on division.

The question then being put on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Lang, that the Bill be referred to the Standing Committee on Banking and Commerce, it was—
Resolved in the affirmative, on division."

J. F. MacNeill,
Clerk of the Senate.

20766—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, May 13th, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators—Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Provencher*), Blois, Bouffard, Brooks, Burchill, Connolly (*Ottawa West*), Cook, Crerar, Fergusson, Flynn, Gershaw, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, Molson, Pouliot, Taylor (*Norfolk*), Thorvaldson, Vaillancourt and Woodrow. (28)

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

Consideration of Bill S-17, intituled: "An Act respecting Territorial Sea and Fishing Zones of Canada", was resumed.

The following witnesses were heard: Mr. S. V. Ozere, Assistant Deputy Minister of Fisheries. Mr. M. H. Wershof, Assistant Under Secretary of State for External Affairs.

The Bill was considered clause by clause.

On Motion of the Honourable Senator Leonard it was RESOLVED to report the Bill without any amendment.

At 10.45 p.m. the Committee adjourned to the call of the Chairman.

Attest;

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, May 13th, 1964.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-17, intituled: "An Act respecting the Territorial Sea and Fishing Zones of Canada", have in obedience to the order of reference of May 6th, 1964, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, May 13, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-17, respecting the Territorial Sea and Fishing Zones of Canada, met this day at 10 a.m.

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

The CHAIRMAN: I call the meeting to order. Today we continue our hearings in relation to Bill S-17. The last time, it will be recalled, we heard the Secretary of State for External Affairs, and also the Minister of Fisheries. We have present today a panel which I am sure will deal most capably with any questions that the committee may conceive in connection with the contents of this bill. The panel has been armed with the necessary accommodation in which they can spread their papers, and are ready to do business.

Before we get to that phase of it I should direct attention to the fact that there has been a number of telegrams received from the fishermen's organization, the United Fishermen's and Allied Workers' Union, the purport of which appears to be that they are opposed to some aspects of the bill and they want to come here at a later time towards the end of the month.

I should say that after the Committee adjourned last week one of the officers of this Union, in company with a member of the House of Commons, came to see me to discuss the question of appearing before the Committee, and whether it was too late to make such a request. I said that it was not too late; that we were going to sit again the following Wednesday, which is today.

The suggestion then was that since they were coming to Ottawa at the end of the month on some other matter they would like to make the two trips at the same time. I pointed out that with the convenience of transportation now there was no particular reason why we should delay until the end of the month, and they agreed that they could get a flight overnight and be here, and I told them that that should be their course of action for next Wednesday.

I endeavoured to find out what the nature of their objection was, but the disclosure to me only got so far as to deal with the matter of straight baselines and the locations of the points from which those straight lines would run. They thought the points should be set out specifically in the bill.

Since that time there have been telegrams going back and forth, and I notice in one of them they refer to a letter they have sent me outlining the problems making postponement necessary. I have not received that letter as yet. It may be in Ottawa at the moment, but as I left my desk this morning I did not have it. Whether it amplifies what I have said I do not know.

The following is a telegram sent from the Chief Clerk of Senate Committees to Mr. Homer Stevens, Secretary Treasurer, United Fishermen and Allied Workers' Union, Vancouver, B.C.

> Re your telegram May 8, chairman directs me to advise you that Senate committee meeting already called for Wednesday next May 13. Further adjournment unlikely. He urges you to make your representations that day as he already advised you.

Is Mr. Stevens of the United Fishermen and Allied Workers' Union here?

Senator ASELTINE: He is the Secretary Treasurer?

The CHAIRMAN: Yes, and I understand he is the one who is going to appear. I had an assurance when these two gentlemen left my office last Wednesday that if they could not secure a postponement they would be here. I think some of the other senators have received telegrams.

Senator ASELTINE: I have one here.

Senator MCCUTCHEON: I received several. I suggest we proceed, Mr. Chairman.

The CHAIRMAN: Yes. Statements were made by both ministers and the questioning went along until there appeared to be no further questions. Unless there are further questions that you would like to ask of our panel this morning I suggest we proceed with the bill clause by clause.

Senator BROOKS: I thought we decided we might have Mr. S. V. Ozere give us some evidence this morning in connection with the treaty rights of the United States and of France, and what they mean so far as this bill is concerned.

The CHAIRMAN: Do you wish a concise statement of the treaty rights?

Senator BROOKS: Yes. For instance, I would like to know whether France and the United States have the privilege of fishing in the Gulf of St. Lawrence or in the Bay of Fundy.

Mr. S. V. Ozere (Assistant Deputy Minister of Fisheries): Honourable senators, by means of this map I can explain the situation. The United States have, under the 1818 treaty, rights to fish in our territorial waters in certain areas of the Gulf of St. Lawrence and also on the southwest coast of Newfoundland. It is an area from Cape Ray to Ramea Island on the south coast of Newfoundland and along the west coast of Newfoundland right up to Quirpon Island; then starting at Mont Joli in the Labrador and going indefinitely up to the North Pole. These rights are in the three-mile limit.

They also have fishing rights around the Magdalen Islands, in the Gulf of St. Lawrence. They also have rights to cure fish in the unoccupied or unsettled areas of certain parts of Newfoundland and the Magdalen Islands.

These rights were given to them back in 1818 and they used them at the time when the United States was engaged in curing salt fish. They have not used those rights for a long time now. In those areas they have not been fishing inside the three-mile limit because they are no longer engaged in producing salt fish. Those are the United States fishing rights.

Senator BROOKS: They are not exercising them to any extent at the present time and probably would not, under the new boundaries?

Mr. OZERE: That is right.

France has similar rights along the west coast of Newfoundland up as far as Cape St. John. In the territorial waters they have rights of fishing for all species of fish in common with Canadian fishermen. They also have been making very little use of those rights, that is, they have not been fishing inside the territorial limits.

In most of the fishing nowadays, the modern method is dragging and some of these areas are not suitable for dragging, so the fishing now is done in other areas.

Until about 1958 France used those treaty rights very little. Since then they have increased their fishing activity, principally in the St. George's Bay area off Newfoundland.

Senator BROOKS: Have they any particular rights off the southern part of Nova Scotia, for instance?

Mr. OZERE: Not France.

Senator BROOKS: How about the United States?

Mr. OZERE: The United States has rights in the southern part of Newfoundland, from Cape Ray to the Ramea Islands.

Senator BROOKS: I said Nova Scotia.

Mr. OZERE: No sir, not off Nova Scotia—neither France nor the United States.

Senator ASELTINE: Nor in the Bay of Fundy?

Senator BROOKS: On the Pacific coast?

Mr. OZERE: On the Pacific coast there are no treaty rights, and the only country fishing off our Pacific coast is the United States.

Senator BURCHILL: Have the Canadians any rights to fish off the Atlantic seaboard, the American seaboard?

Mr. OZERE: No sir, not in the territorial waters of the United States. There is very little fishing in the south. Most of the fisheries happen to be off the Canadian coast. But on George's Bank there is a quite extensive fishery for scallops, by Canadians; but that is many miles off the United States coast.

Senator BROOKS: What would be the serious problems which Canada and the United States would have to discuss in any so-called discussions in connection with this bill?

The CHAIRMAN: Could we have that question a little differently, so that we do not run into any disclosures, or policies?

Senator BROOKS: It is not a matter of policies. What is the nature of the problems they are going to discuss? I understand there are serious problems between the two countries.

Mr. OZERE: Looking at the fishery, I think one of the serious problems is that for many years, more than half a century, we have kept our large trawlers off 12 miles from some of our coasts, principally off Nova Scotia; and foreign trawlers have, until now—because Canada had only a three-mile limit—been permitted to come up to the three-mile limit. This naturally is a problem and one which has to be discussed with the United States and other countries.

Senator BROOKS: That would be the traditional right, instead of the treaty right?

Mr. OZERE: That is right.

Senator BROOKS: The traditional rights are more important than the treaty rights.

Senator THORVALDSON: In regard to this testimony, I wonder if Mr. Ozere would give us an idea of the areas where the greatest concentration of foreign fishing activity occurs around the Canadian coast.

Mr. OZERE: I think the greatest concentration of fishing, and where we are going to have problems, is off Cape Breton, both inside the gulf and outside the gulf. This is where the biggest concentration is. In all other areas, I do not think there would be a very serious problem, because off Newfoundland, ever since the union of Newfoundland with Canada, we have had what is known as the headland to headland rule in bays, that is, the bays have been closed off by a line drawn from headland to headland. This was an undertaking by the Canadian Government at the time of union.

It was represented to the Canadian Government that this rule had applied in Newfoundland for a long time; and the Canadian Government undertook to enforce the same rule after union. Therefore, most of the fishing off Newfoundland has been off the bays, but there is quite a concentration here off Nova Scotia, where the problem will principally arise.

There has been some fishing by United States off Anticosti, and some of it in the Bay of Fundy, and some pretty well scattered along the Nova Scotia coast.

However, the principal area of concentration is going to be in the Laurentian Channel.

Senator THORVALDSON: Would you be good enough to indicate generally the proportion of nationalities involved, such as Portuguese, Spanish, French, United States.

Mr. OZERE: Portuguese, French and Spanish are probably the three that are getting most of the catch from that area, in addition to the United States.

Senator THORVALDSON: How extensive is the Russian fishing in those areas?

Mr. OZERE: The Russians have so far not fished in any of these areas that we have under discussion, that is, they have not fished the Gulf of St. Lawrence, they have not fished inside the 12-mile limit off our coast. They have occasionally come in for relief, for trans-shipping of catch from one vessel to another, for repairs, for supply, and things like that; but we have no record of the Russians having fished in any of the areas where the 12-mile zone would apply.

Senator BROOKS: Were they not in the Bay of Fundy?

Mr. OZERE: They came to the Bay of Fundy but we have no evidence whether they fished in there or not. I think when the statement was made by the Government that these vessels were in our waters, by the time the patrol vessels got there, they had gone.

Senator KINLEY: They are fishing close to George's Bank. It caused a lot of trouble with the Americans. Would you show where it is on the map? Between that and Cape Cod. You are putting it further over. It is about 100 miles from Yarmouth itself. It is a little over 100 miles from Cape Cod. This is where they were fishing and the Americans fished and we fished there too.

Senator BAIRD: That is on the high seas.

Senator KINLEY: The treaty rights with Newfoundland came in the 1818 treaty. The one which we made with the rest of Nova Scotia, and the rest of Canada came with the reciprocity treaty.

Mr. OZERE: In 1871.

Senator KINLEY: Yes. They came in then. That was a limited treaty and the Americans themselves cancelled that treaty. I have here the report of the American Commission, in which it is said that they cancelled the treaty because they objected to our fish going into the American market.

Mr. OZERE: There were a number of treaties since 1818, but they have either been abrogated or have lapsed.

Senator KINLEY: The 1818 treaty provided that rights should be extended to Nova Scotia, and that Nova Scotia should be able to go down there. That also applied to New Brunswick and the province of Quebec, and the colony of Prince Edward Island. The fact they cancelled that treaty, which seems to have superseded all other treaties, cancelled their own rights. Anything they do now is no good, anyway. Whatever they had they cancelled themselves.

The CHAIRMAN: The witness is not making any comment on your statement.

Senator KINLEY: No. Silence is consent.

Senator MOLSON: Mr. Chairman, if I understand it rightly, any foreign ship coming into the Gulf of St. Lawrence at present stays outside of the 3-mile limit?

Mr. OZERE: That is right. That has been the enforcement policy so far.

Senator MOLSON: What about the Baltic; are we free to go into the Baltic?

Mr. OZERE: I really do not know what the situation would be, but I do not think we would have any interest in going there.

Senator MOLSON: I did not ask if we had any interest; I asked if we could go there.

Mr. OZERE: I really could not say.

Senator BAIRD: Ask Khrushchev.

The CHAIRMAN: Are we through with the map?

Senator THORVALDSON: I think the question I have to ask relates to the map. You referred to the fact, Mr. Ozere, that Canada adopted a policy many years ago of excluding our own fishermen from the area between the three-mile limit and the 12-mile limit, and that that was one of the reasons for this bill.

Mr. OZERE: Yes, this was one reason which gave the impetus for claims by Canada for a 12-mile zone.

Senator THORVALDSON: Does that situation prevail generally around all those coasts there? Are Canadian fishermen excluded from all areas indicated on the map you have before you there, in that 12-mile zone?

Mr. OZERE: No. They are excluded from all areas except Newfoundland, because at the time of union of Newfoundland with Canada, Newfoundland had requested that the 12-mile rule which we applied to Canadian trawlers should not be applied to Newfoundland trawlers. They wanted their trawlers to come in up to the three-mile limit, with the result that trawlers in Newfoundland come up to the three-mile limit; but in all other areas the rule is that they can only come up to the 12-mile limit. This of course means only the large trawlers. We permit small draggers, which fish exactly in the same way as the large ones, except that they are small, and they are generally operated by inshore fishermen, and they are permitted to come right down to the shore, except in a few limited zones.

Senator THORVALDSON: In other words, they have been able to come up to our three-mile limit, whereas Canadians have not been able to.

Mr. OZERE: That is one of our big problems.

Senator THORVALDSON: What are we going to do about Newfoundland trawlers which have been granted rights they had at Confederation?

The CHAIRMAN: I am not sure that he can state what the policy is.

Senator SMITH (*Queens-Shelburne*): I was not quite clear on a subject which you dealt with in the first part of your evidence, Mr. Ozere, which had to do with United States treaty rights. Do I understand that the United States has the right in various parts of the Newfoundland coast to fish within that three-mile limit?

Mr. OZERE: That is correct, within the three-mile limit.

The CHAIRMAN: Senator Crerar?

Senator CRERAR: Mr. Chairman, I would like to ask the witness a question. We see reports from time to time that the temperature of the ocean waters is changing, causing fish to move farther north. Is there anything in that?

Mr. OZERE: Yes, there has been some indication. The currents in the oceans change, and temperatures change. Fish are sensitive to change and live within a limited temperature range, and if therefore a change of water temperature occurs the movements of fish in the oceans change.

Senator CRERAR: I read a report from the *European Scientist,* stating that the Norwegians, who have studied Arctic conditions, say that the glaciers are slowly melting and that farther north the temperature of the waters is rising.

If there is anything in that theory, of course, ultimately we may be going up beyond Newfoundland.

Mr. OZERE: Yes. There is a possibility, if such a thing occurs, that this might happen.

Senator THORVALDSON: Mr. Ozere, a moment ago you referred to the fact that the treaty rights of the United States enable them to come within our three-mile limit. Now, this bill really does not deal in any way with that three-mile limit in that respect. As I understand it, it deals essentially with a limit up to 12 miles. My question is, does this bill meet the problem of this United States treaty in any way, in so far as that treaty enables them to fish within a three-mile limit?

Mr. OZERE: Well, the bill itself would not affect the treaty rights, and this would have to be a matter of negotiation and arrangement with the United States if we wanted to alter the treaty in any way.

Senator THORVALDSON: Yes. In other words, although the bill does refer to matters within that three-mile limit, namely, with respect to the baselines, the fact of the matter is that the main principle of the bill affects those outer nine miles, is that not correct?

Mr. OZERE: Yes. That is the main purpose of the bill that we would have to take into account.

Senator THORVALDSON: In regard to the United States rights within that three-mile limit, it is entirely a matter of negotiation, whether this bill is affected or not?

Mr. OZERE: Yes.

Senator THORVALDSON: And the bill does not in any way affect that question of negotiation?

Mr. OZERE: That is right.

The CHAIRMAN: I would think there was another purpose, namely, to draw a line and have Canada make a declaration to stop the extension of historic rights.

Senator BROOKS: That would affect the three-mile limit as well as the 12-mile limit, would it not? The three-mile starts with the baseline, and the United States line 12 miles?

The CHAIRMAN: That is right.

Senator THORVALDSON: There are no historic rights, of course, within our three-mile limit, as I understand it?

Mr. OZERE: That is correct; there are no historic rights.

The CHAIRMAN: It is the extension of the fishing zone.

Senator THORVALDSON: And has always been.

Senator SMITH (*Queens-Shelburne*): Did not Mr. Ozere say that the watershed within the three-mile limit within certain parts of Newfoundland and Labrador coast have not been fished for some years because of different methods of fishing, and these are not important any more?

Mr. OZERE: I said they have not been fishing in these waters for a long time, because modern methods of fishing enable them to fish in other areas where it is easier for them to fish.

Senator SMITH (*Queens-Shelburne*): In other words, these fisheries hold historic rights, but are not important to us, not having any effect on our inshore fisheries because they are not being used by the United States?

Mr. OZERE: Well, they are important from an administration point of view. It makes it very difficult to enforce any regulations outside the three-

mile limit on fishing vessels which have a right to come within the three-mile limit; but from the point of view of catch, certainly the catch by these countries inside the treaty limits has been negligible.

Senator ISNOR: As far as Canadian trawlers are concerned you have no trouble at all in enforcing your regulations on the 12-mile limit, have you?

Mr. OZERE: Not as to our own nationals, but of course it is a very difficult situation when you have to enforce something on your nationals that you cannot enforce against foreign vessels.

Senator KINLEY: With regard to the carrying out of the regulations, the Americans who come down the coast fishing inside the 12-mile limit, if they see a Canadian vessel do it, they telephone ashore and say that the Canadian vessel is breaking the regulations.

Mr. OZERE: Yes.

Senator MCCUTCHEON: That is "friendly co-operation"!

Senator MOLSON: May I ask if there is serious concern about the depletion of the fishing stocks in the inshore, 12-mile area? I am speaking of the east coast.

Mr. OZERE: As you know, we have a convention with all countries that are fishing in the area covering the high seas. Even after we have the 12-mile limit there will still be areas in the high seas where we will have to have conventions with other countries for conservation purposes of stocks of fish in the high seas. So far as the Northwest Atlantic Fisheries Commission is concerned, it has made certain recommendations regulating the size of mesh in the nets for the fishing of cod, haddock and halibut. This is the extent of the conservation measures applicable now to most of our ground fish in the Atlantic. We have very strict conservation measures in the case of lobster, but fortunately lobster happen to be practically all inshore, most within the three-mile limit, and if we had a 12-mile limit we would cover lobster completely, so we would have the sole right of regulating lobster. Here is where our great conservation effort is on the east coast. So far as the ground fisheries are concerned, we have the regulations which have been recommended by the Northwest Atlantic Fisheries Commission.

The CHAIRMAN: Any other questions? Are there any questions you wish to ask in relation to the bill of other members of the panel?

Senator FLYNN: Mr. Chairman, the witness we have just heard has mentioned that since Newfoundland joined Confederation they have been using straight baselines. I wonder if somebody could produce before the committee those baselines which are presently used for Newfoundland?

Mr. OZERE: I do not think there has been any chart made, but it was in general from headland to headland. In other words, it followed the decision of the arbitration on the North Atlantic in The Hague, which interpreted the word "bays" in the 1818 treaty. At that time there was a dispute as to whether "bays" meant bays in the international or geographic sense. The tribunal decided it was "bays" in the geographic sense; in other words, from the outermost tip of one headland to the outermost tip of the other headland.

Senator FLYNN: I would like to see those baselines, if they have been published somewhere.

Mr. OZERE: They have not been published.

Senator BROOKS: Is there any width set for the mouth of a bay from headland to headland?

Mr. OZERE: No, there were no widths at all. Regardless of the width of the bay, it was from headland to headland.

The CHAIRMAN: Any other questions? Are you ready to deal with the bill section by section?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 2 is simply limiting or directing or providing for the application of the provisions of this act to other pertinent legislation. Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 3 deals with territorial seas. Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4 deals with fishing zones. Shall section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 5 gives certain authority to the Governor in Council in connection with the determination of points or co-ordinates.

Senator BROOKS: This is a section we considered it would be very difficult to understand unless we knew the geographical co-ordinates, because this is just a permissive section.

The CHAIRMAN: As I understood the evidence the other day the failure to provide the specific co-ordinates was not an oversight, but was deliberate so as not to interfere in any way with negotiations.

Senator BROOKS: And there are none provided at the present time?

The CHAIRMAN: I beg your pardon?

Senator BROOKS: What are provided at the present time? There are none, is that correct?

Mr. M. H. Wershof (Under Secretary of State for External Affairs): The ministers have said the Government does not consider it in the Canadian interest at present to say what the baselines will be. That does not mean no work is being done on the subject. A great deal of work has been done, but the Government has said they are not announcing at the present time what the baselines will be.

Senator MCCUTCHEON: This is the "blank cheque" provision of the bill.

Senator KINLEY: Except they have to go from headland to headland.

Senator FLYNN: No, not even that. The main point of this section is that:

> The Governor in Council may, by order in council, issue one or more lists of geographical co-ordinates of points from which baselines may be determined and may, as he deems necessary, amend such lists.

There is nothing in this section or bill that suggests the Government must follow what has been laid down in that decision. Some witnesses have already pointed out these baselines will depend on negotiations. If you agree with one country you could follow a certain line and adopt a certain baseline, a headland or a certain point at a certain place, but that does not mean the other countries would be agreeable to accepting it. We do not even lay down the rules that anybody who is going to determine those lines would have to follow. I think in this respect the statement by Senator McCutcheon is entirely right, that we are saying to the Government, "Do what you can, but you are not bound by any rule of any kind."

Senator KINLEY: I think they have made an announcement of policy that they will demand the headland-to-headland baseline.

Senator FLYNN: If this is Government policy, why not incorporate it in the bill?

Senator KINLEY: That is difficult. That is saying what you want.

Senator BROOKS: They made the statement, but it was subject to consultation.

Senator KINLEY: Subject to certain rights.

Senator FLYNN: There is no limitation here.

Senator KINLEY: I know there is not, but they did announce what they were going to do.

The CHAIRMAN: Any other questions?

Shall section 5 carry?

Hon. SENATORS: Carried.

Senator BROOKS: It leaves the whole thing up in the air, really.

The CHAIRMAN: It leaves the provision of straight baselines to be published by the Governor in Council.

Section 6. Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: In Part II of the bill you have what are called consequential amendments. I do not think there is any quarrel in connection with these. Shall section 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 8 goes for quite a number of pages.

Section 9, shall section 9 carry? That is dealing with the Coastal Fisheries Protection Act.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 10 deals with certain provisions in the Criminal Code. Shall section 10 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 11 deals with certain provisions in the Customs Act as to what is meant by Canadian waters. Shall section 11 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 12 deals with what is meant by Canadian fisheries waters in the Fisheries Act, shall section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Part III of section 13 deals with the coming into force, shall that carry?

Senator MCCUTCHEON: Mr. Chairman, I can understand the desire for the bill not coming into force on the day it receives royal assent, but is there someone here who can tell us why there should not be some date mentioned, because there will be people looking at this legislation who will feel that there have been some rights or benefits conferred by it on the fishermen of the country. Is there any reason why this should be so indefinite? Why should it not be said that it would come into force on proclamation but in any event not later than a particular date? We are passing nothing today except a blanket authority to the Government to do whatever it chooses to do, or to do nothing.

The CHAIRMAN: It is not an unusual circumstance in legislation, as you must know.

Senator BROOKS: Is it being based on negotiations? Or how long do they expect these negotiations to last?

The CHAIRMAN: The Secretary of State for External Affairs last time said he was hopeful that these negotiations would be concluded by the end of the year. That was part of his statement last day.

Senator FLYNN: May I suggest to you this is not as usual as you say. This is enabling legislation. It is not like saying that this act will come into force when proclaimed by Governor in Council, because everything is already provided by the act. This is legislation to authorize the Government to negotiate to determine baselines, etc. You say the act may come into force by proclamation but the Government may spend five years in negotiations, and they will still have this authority. It is a mandate to the Government from Parliament, and I am not sure that it would not be reasonable to have the day mentioned for the coming into force of this act. If after two years the Government should not act it seems to me it should come back to Parliament and explain why.

Senator BROOKS: If they set a date now which is later found to be unsatisfactory, this bill could be amended.

The CHAIRMAN: Except that the minister said last time he hopes to have negotiations finished by the end of the year, and that as far as the negotiations themselves are concerned, he felt they were in a better position to conduct negotiations if they didn't have a definite date in the bill for its coming into force.

Senator COOK: Also the bill may come into force piecemeal, and not necessarily by proclamation of the whole bill.

The CHAIRMAN: It doesn't mean that the whole flock of co-ordinates will be settled by one order in council.

Senator MCCUTCHEON: But fixing the date does not affect fixing the co-ordinates at all.

The CHAIRMAN: No.

Senator COOK: But you could fix the baseline and not establish a fishing zone.

Senator BROOKS: The bill will be brought in all at one time. There will not be half a dozen dates for that.

The CHAIRMAN: I think the whole thing is contained in the minister's statement last time. His view is that he is in a better position to negotiate if he has not a deadline in the bill at this time. But he did express the best opinion he could that he hoped to have it all concluded by the end of the year.

Senator BROOKS: It is hard to understand the reason.

The CHAIRMAN: It isn't the first time we have accepted an explanation by a minister, and I don't suppose it will be the last.

Senator BROOKS: There is so much interest in this across the country. The fishermen would like to have something more definite.

The CHAIRMAN: If there is so much interest it will not be long delayed. Shall section 13 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Carried.

The committee adjourned.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-20
An Act to incorporate Bank of British Columbia.

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, JULY 22, 1964.

No. 1

WITNESSES:

The Honourable W. A. C. Bennett, Premier of British Columbia; The Honourable R. W. Bonner, Q.C., Attorney General of British Columbia; The Honourable L. R. Peterson, Q.C., Minister of Education and Minister of Labour of British Columbia; Mr. E. M. Gunderson, Provisional Director, Vancouver, B.C.

APPENDICES:

"A" Brief submitted by Premier W. A. C. Bennett of British Columbia.

"B" Brief submitted by R. W. Bonner, Q.C., Attorney General of British Columbia.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21280—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 9th, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Farris, seconded by the Honourable Senator Beaubien (*Provencher*), for second reading of the Bill S-20, intituled: "An Act to incorporate Bank of British Columbia".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Farris moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

21280—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, July 22nd, 1964.

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

Present: The Honourable Senators: Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Blois, Bouffard, Burchill, Cook, Crerar, Croll, Dessureault, Farris, Fergusson, Flynn, Gelinas, Gershaw, Gouin, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, Macdonald (*Brantford*), McCutcheon, McLean, Molson, O'Leary (*Carleton*), Paterson, Pearson, Pouliot, Power, Reid, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt, Walker and Willis—(41).

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

On Motion of the Honourable Senator McCutcheon it was RESOLVED to report recommending that authority by granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-20.

Bill S-20, "An Act to incorporate Bank of British Columbia", was read and considered.

The following witnesses were heard:

The Honourable W. A. C. Bennett, Premier of British Columbia; The Honourable R. W. Bonner, Q.C., Attorney General of British Columbia; The Honourable L. R. Peterson, Q.C., Minister of Education and Minister of Labour of British Columbia; Mr. E. M. Gunderson, Provisional Director.

On Motion of the Honourable Senator Croll it was RESOLVED to print as appendices to today's proceedings the following:

"A" Brief submitted by Premier Bennett of British Columbia.

"B" Brief submitted by Attorney General Bonner of British Columbia.

At 12.30 p.m. the Committee adjourned to the rise of the Senate this day.

At 3.45 p.m. the Committee resumed consideration of Bill S-20.

The Committee postponed further consideration of the said Bill.

At 5.35 p.m. the Committee adjourned until 8.00 p.m. this day.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, July 22, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-20, to incorporate Bank of British Columbia, met this day at 9.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: Senators, it is 9.30. I call the meeting to order.

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

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

The CHAIRMAN: Before we get down to the business of the meeting, there are one or two things I would like to say, if you will bear with me for about two and a half minutes.

This is the first meeting of the Banking and Commerce Committee to consider a banking bill since there developed quite a spread in the newspapers in relation to the kind of consideration that was being given to these banking bills that up to that time had been before this committee, and also to the effect that four of the senators were directors of chartered banks. I think one of the articles suggested the bills were being held back in the Senate, and earlier in the article it had discussed the effect of four members of the Senate committee being directors of banks. I think the connotation in which those remarks occurred might lead to the interpretation or the inference that it was because these four senators were directors of banks that these bills were being held up in the Senate.

First, I want to assure you—and I think you accept it and know it without my telling you—that there has been no attempt to hold up these bills. For instance, the bill which is before us this morning: at the request of the sponsor I agreed on July 7th as a date for hearing; that was not satisfactory. Agreed on July 15th; that was not satisfactory. Counsel for the promoters of this bill was in touch with me and suggested the 22nd as a date which would be convenient for those who wished to appear as witnesses. I said, "Fine. You are No. 1 on the list for July 22nd."

So far as the Bank of Western Canada is concerned: we have heard all the evidence; we have passed all the sections of the bill; and the only item of the bill that stands is the preamble. When we came to consider that there was a motion in this committee that consideration of this item stand until we had heard the evidence on the other bills. So it has stood, and it has appeared on the agenda of the committee meetings of the Banking and Commerce Committee, and it has been open to the sponsor of the bill at any time to move that the preamble be now considered.

The third bill, the Laurentide: all the evidence has been concluded on that, and in view of the motion which was made in committee in relation

to the Bank of Western Canada that one has been standing until this evidence would be heard here today. I can assure you, as far as the plan of the chairman is concerned—and I think I speak for all senators—the consideration of all these bills will take place very promptly after we conclude the evidence on this bill.

If I might take a further moment. I am a director, as you know, of a chartered bank. I am well aware of the provisions of our rules in the Senate. I have no pecuniary interest in the subject matter of the bill before us whether directly or by arrangement, by understanding or in any other way, and I do not regard the fact that I am a director of an existing chartered bank as creating a pecuniary interest which would disqualify me from voting. There is no ground for disqualification in my attendance at the meetings of the committee of the Senate. Every member is entitled to attend meetings, but unless he is a member of the particular committee he cannot vote. I feel that in every respect I am entitled to be here. I intend to remain here, but only so long as I know I can remain impartial. If I should ever reach the stage of not being impartial, well then, if you don't move, I shall move. Having said this, I wish to say that I do not think that anything that I have said can be looked upon as an admission of any kind.

I come now to the question or the suggestion of conflict of interest. There is no rule in the Senate about that. And as I see it there is no conflict of interest in my being a director of a chartered bank and sitting as chairman of this committee. The practice here has usually been that the chairman only votes to resolve a tie. If he does not vote, whatever the motion is that has been under discussion and which has resulted in a tie is lost. We have had no roll call votes on the bills before us up to this time. I feel there is no impropriety, and nothing illegal in my being here, but I am more concerned about the good will and the understanding of and the place the Senate takes in our parliamentary system that I am about making a vindication of my position. Therefore in the interest of not providing any additional ammunition for people with, shall I say, florid pens and fanciful imaginations on this so-called question of conflict of interest, I am not going to vote in committee, if a vote should be required at any time in dealing with this particular bill.

Senator CROLL: Mr. Chairman, may I just in the interest of clarity ask a question. When you say we will promptly proceed with the two other bills, I gather by that you mean we will continue this afternoon or this evening if we conclude the hearing of this present bill.

The CHAIRMAN: "Promptly" includes this afternoon and this evening.

Senator MOLSON: Mr. Chairman, before we start proceedings I would like to make a statement. First, I would like to reiterate that I am a director of a chartered bank. I have stated this on many previous occasions in the Senate record and I think it is well known. Secondly, I wish to make clear that I am not in any way opposed to the creation of additional competition for the banks by the issuance of new bank charters. It is my firm understanding and my belief that this is the position of the bank of which I am a director, the Bank of Montreal.

It has been suggested that there might be a conflict of interest for a member of this committee to be a bank director, and with this I cannot agree. I serve on the committee in my capacity as senator and I regard my responsibilities very seriously. Senate rules preclude a senator voting on "any question in which he has any pecuniary interest whatsoever, not held in common with the rest of the Canadian subjects of the Crown".

As I have no pecuniary interest in this bill I feel that I have every right to vote as well as the right and duty to fulfil my functions as a member of the committee. As neither I nor my bank have any reservations to the creation of new banks, my only concern will be that of any senator who

attempts to see that, in so far as he is able, any bills passed by this committee and our chamber are good bills—for the benefit of Canada and Canadians.

However, Mr. Chairman, in order to prevent any person from colouring or shading our proceedings, or using my participation for propaganda purposes —no matter how far-fetched or ill-founded—I wish to state that I shall not vote on this bill.

Senator BOUFFARD: Like the chairman and Senator Molson, I am not going to vote on these bills, in order that nobody will think there is a conflict of interest because there is none.

Senator COOK: I am a director of a chartered bank, and a very junior member of this committee. In view of the comments of my honourable colleagues I have also decided not to take part in the deliberations of this committee.

Senator LAMBERT: I am not a director of any bank, and I have been a member of the Senate for many years. I think the turning of this committee into an experience committee has been completely misdirected. I have proceeded for many years on a certain basis, and I do so today. By that I mean that there are certain things about our honourable colleagues that we in the Senate take for granted.

The CHAIRMAN: Senator Farris, do you wish to speak?

Senator FARRIS: Yes, Mr. Chairman. In the first place in regard to the discussion that has taken place this morning with respect to the conflict of interest, I certainly have been no party to it, and as far as I know and believe the Government of British Columbia as represented by the Premier and other ministers have never made any suggestion of that kind. I don't believe they have any suggestions of that kind to make. If they have, they have never said anything of that nature to my knowledge or to me.

I should like to say just a word, and I would like you to take it as true when I say "just a word", because I am not always that brief. I would like to clarify what I conceive to be the issues that should be considered at this time. First of all I should like to say that Premier Bennett is the first person I would like to hear making a statement, but before I do that, and I would emphasize this, after reading my reply in the Senate, I felt perhaps I didn't clarify the issues as clearly as I should have done at that time. I would like to add one or two sentences now. You will recall Senator White expressed the idea that perhaps I wasn't altogether in sympathy with the motion I was making. I must admit in reading my speech perhaps there was some ground for that remark. But there certainly is no ground for it in what I am about to say. First of all there are three issues, the first one concerning a western bank located in Vancouver with its head office in Vancouver. The question arises whether it is in the interest of Canada, and in developing that I would say that it is primarily in the interest of British Columbia, and anything that is in the interest of British Columbia is likely to be in the interest of all Canadians. Secondly, is it in the public interest to have a province, represented by a Government strongly supported by almost 41 to five members of the legislature—is it in the public interest to have that provincial Government give support to such a bank? Well, I strongly support that. I say first of all that it is in the interest of Canada that we have a western bank, and that is no reflection on the banks existing, but it is a recognition of conditions that should be met.

In the second place I can see no harm resulting in any way whatever, and I have considered all the solutions I have heard in public and in private about this. I believe that there is nothing wrong with having support from a government which is an official government, and while I don't support it and I don't expect to support it, I must say I regard Mr. Bennett as being an

efficient and outstanding man of business. In that regard I must repeat that I consider it to be in the interest of British Columbia and in the interest of Canada to have a western bank and to have the Government of the province take some financial interest in the bank. It is in the interests of Canada to have a Western bank that has provincial backing, and in which the province takes some financial interest.

Senator White in his speech put undue emphasis on what I said. What I said was that if you are not in favour of the bank you should at least be in favour of the province's jurisdiction in the matter of property and civil rights. The province of British Columbia should have a say in this matter as well as the Parliament of Canada which has duties to perform under the Bank Act.

I have given my opinion, and I have had some experience in constitutional law. In my opinion the proper forum in which to settle any question as to whether British Columbia should invest in a bank—which is purely a matter of property and civil rights—is the legislature of the province.

Mr. Chairman, there is one other matter that I would mention. This is a private bill, but it has wide public interest. I think that not only should everything be said here that can be said, but there should be provision that it be reported so that everybody will have the same opportunity of knowing what has been said, and to read what has been said, in the same way as they do in respect of important public bills. I ask you, Mr. Chairman, to give recognition to that statement.

Now then, as the one who introduced and promoted this bill in the Senate I now will outline those who are here to support it. The Premier of the Province, Mr. Bennett, is here. The Attorney General of the Province is here, as is the Minister of Education and Labour. Four of the five provisional directors are here. I do not suggest that they be called either individually or collectively, but they are here to answer any questions that may be put to them by the members of the committee.

Mr. Bennett is prepared to address the committee as soon as I conclude this statement. After Mr. Bennett has spoken the attorney general will make a statement. What others will speak depends partly on how the matter develops after that.

Mr. Chairman, may Mr. Bennett be asked to address the committee?

The CHAIRMAN: Mr. Burke-Robertson, counsel for the petitioners, wishes to say a few words.

Mr. W. G. BURKE-ROBERTSON, Q.C.: Mr. Chairman and honourable senators, you will recall during the course of the debate on second reading many senators showed concern over the interest of the province of British Columbia in the proposed Bank of British Columbia. It is because of this concern, and at the request of the petitioners, that Mr. Bennett, the Premier of the Province of British Columbia, and Mr. Bonner, the Attorney General, have expressed their willingness to come to Ottawa to explain in person to this committee the true nature and extent of the province's interest, not only in the proposed Bank of British Columbia but also in the establishment and development of chartered banks generally in the province of British Columbia.

With your permission, I will ask Mr. Bennett to address the committee.

Hon. W. A. C. Bennett, Premier of the Province of British Columbia: Mr. Chairman, honourable senators and my colleagues, we realize that it is, perhaps, a little out of the ordinary that the premier of a province should appear before the Standing Committee on Banking and Commerce of the Senate to deal with the application for a private chartered bank, but I gladly do so because we live in a democarcy. I believe that the leader of a government should be willing at all times to state his position on behalf of his government on any matter

in which the government has a vital interest and which will have the effect of expanding the economy of the province, thereby contributing to the building of this great dominion of Canada.

I want to say how pleased I am that Senator Farris is piloting this bill through the Senate. Senator Farris was born in New Brunswick. Although he comes from different political affiliations in that province, and different backgrounds, and still has in British Columbia different political affiliations, I am very pround that he, as a New Brunswicker, as a British Columbian and as a Canadian, is piloting this bill. He has served his nation well. He is a good product of his native New Brunswick. He served in the Provincial Legislature as attorney general in a Liberal administration. He is a great lawyer. He has had a lifetime career of public service. When we can find in our country men of another political stripe, who have held strong political feelings, who are willing to sponsor a bill on behalf of a Social Credit Government of British Columbia, then it shows there is goodwill between all groups in this nation. That is a very important thing for us all.

The reason I am here is because the word has gone abroad that this is a partisan political bank that is proposed, and I am here to answer that in a humble way and to the best of my ability. I am here also to answer, to the best of my ability, any questions that may be asked.

I have with me the Attorney General of the province, the Minister of Education and Minister of Labour, the advisers to our Government in finance and in the attorney general's department, and four of the five provisional directors. The fifth feels, as we all feel at times, not too well, and regrets his absence.

I want to make it very clear that not only will the Government representatives address you, but I am informed by the provisional directors that they are willing to make any representations that you want to hear regarding this bank. They are willing to answer any questions that you might ask, and please feel free to ask any questions you like. They tell me they will be pleased to try to answer them. They are outstanding businessmen in the province of British Columbia.

In case somebody says they are members of the Social Credit Party I will state here that that is not true. Mr. Gunderson was a former director of the Bank of Commerce, and he may be a member of the Social Credit Party, but I have never seen his card. When I chose him to be Minister of Finance in 1952 and went into his office the only picture I saw there was one of one of the great statesmen of Canada, Mr. St. Laurent. I told him that he did not have to turn that picture over in order to serve the Province of British Columbia because our Government would be a strictly nonpartisan government.

I can go down through the record to show that the former Chief Justice of the Province of British Columbia had been a Liberal attorney general, and he left the Bench in order to be an adviser to this government on forestry matters—a most important industry.

I can show too that we appointed to the Energy Board which is so important to British Columbia and to Canada, the Honourable James Sinclair, a former Liberal Cabinet Minister in Ottawa. He was surprised to find he was appointed, and thought that one of his Liberal friends was playing a joke on him.

Dr. Angus was appointed as head of our Public Utilities Commission. He was a professor at the University of British Columbia. He has criticized Social Credit principles, and yet he was appointed head of the Public Utilities Commission.

I can go on down the list. So far as the other provisional directors are concerned, none of them are Social Crediters. We seek only in our province to see

first that the man has the qualifications, the ability and the drive necessary for the job, and at no time do we consider his party affiliation. This is true with respect to the provisional directors.

There have been suggestions in the press about the Senate and about our provisional directors. I want to join with the members of the Senate in saying that these articles are completely unfounded.

I and the two ministers will present briefs, and then we will invite questions after each of us has spoken. Honourable senators may interrupt us if they wish, or wait until we have spoken.

Senator CROLL: Are copies of the brief available?

Hon Mr. BENNETT: Copies of the brief will be made available almost immediately.

Mr. Chairman and honourable senators, I appreciate the opportunity of appearing before your Standing Committee on Banking and Commerce to support, on behalf of the Government of British Columbia, the application of five outstanding and experienced Canadians for the incorporation of the private Bank of British Columbia.

Perhaps you are wondering why the Premier of the Province is appearing before you in support of a bill to incorporate a private bank. I do so wholeheartedly on behalf of the people of British Columbia to assist them in setting up a large financial institution with its head office in the Province of British Columbia.

From the beginning of the idea to form a Bank of British Columbia with its head office in the City of Vancouver, the only interest of the provincial government in the matter has been to support the principle, and to attempt to ensure its development on a sound financial and businesslike basis. To this end the Legislature of British Columbia authorized the provincial Government to purchase shares in a privately-chartered bank with its head office in the province. As is customary in this type of legislation, a limit was imposed—in this case not more than 25 per cent of the share capital. This authorization is not contained in the bill under discussion to charter the bank. I mention it, however, as it has given rise to the charge that this is a "government bank" or a "political bank".

Here I want to say that the only bank in Canada that could be a political bank would be a central bank, not a retail bank such as a chartered bank. I remember, back in the 1930's, when we did not have a central bank in Canada, the cry was that if the Government set up a central bank it would be a political bank. I remember my namesake from my native province, New Brunswick, when he brought the Bank of Canada into being, was criticized for this, so he set it up so that half the directors could be elected by the shareholders and half by the Government. The shares were sold across Canada. That is many years ago and I was much younger then than I am now. I, with many other Canadians, bought those shares, but the limit we could receive was 15 shares, maximum, so great was the demand for those shares. Later, in his wisdom, the next Prime Minister, the Right Honourable Mackenzie King, changed that and made it a complete Government bank, with all the power to issue money and so forth. But all the talk and the charges that it was a political bank are not heard today, and I think it is the best central bank in the whole world. The Bank of British Columbia will of course co-operate at all times with the central bank. The chartered banks today, following the setting up of the Bank of Canada, are retailers who sell, the same as others, the merchandising of any commodity.

I have publicly stated on behalf of the Government, and I repeat to this committee, that in view of the tremendous support evidenced by our citizens, for this bank, the Government of British Columbia will not purchase more than 10 per cent of the shares—I emphasize, "not more than 10 per cent of the shares."

I want to emphasize that the Bank of British Columbia will be a private chartered bank. We are all aware that regulations and controls concerning the shareholders and the operations of chartered banks in Canada are contained in the Bank Act. British Columbians recognize that the Parliament of Canada has the control of such matters and they have confidence in Parliament to regulate uniformly for all Canadians.

I can assure you that the Government of the Province of British Columbia has only one desire in supporting Bill S-20, that is, to see a large bank incorporated, with its head office in the province, and developed and operated on sound business and financial principles.

As Premier, I am convinced it is urgently required and wanted by the people of the Province of British Columbia.

The bill itself contains five principles for your consideration. One, the name, the Bank of British Columbia. It honours one of our ten provinces, as does the name "Bank of Nova Scotia".

Two, the location of the head office in the City of Vancouver, the largest city in British Columbia and the third largest city in Canada. This city has now reached a financial stature of its own, being the largest metropolitan centre west of Toronto and it is an appropriate location for the direction of a large bank dealing mainly in western matters.

Three, the capitalization of $100 million. That is the third principle. This sum exceeds the maximum for incorporation set out in the Bank Act and indicates that the provisional directors are convinced that the ability of the new bank to be successful, to achieve a responsible position among Canadian banks, and to avoid amalgamation, depends on adequate financial resources at the start of business.

Four, the names of the provisional directors; they are all well known and respected businessmen of the province. We will supply all the senators in the committee today a full rundown of the whole history of each of these directors. I think every senator will agree that they are outstanding Canadians, outstanding businessmen and that they have something to offer the bank—each one of them. Of course, these five provisional directors have to go up for election by the shareholders when the bank is formed, the same as any other directors. As well, there will be more directors elected at the meeting of the shareholders. I repeat that any information you wish concerning their background or business knowledge will be made available.

The fifth principle is the qualification that no non-resident of Canada may be issued shares in this bank or may become a director. The bank is to be owned and operated exclusively by Canadians. In addition, the bill stipulates very clearly that the proposed bank—and I quote—"shall have all the powers, privileges and immunities and be subject to all the liabilities and provisions set forth in the Bank Act".

Mr. Chairman, surely no Canadian can object to any of these provisions or principles? Honourable gentlemen, the form and content of this bill are straightforward and within the law. My Government sought the authority of the Legislature before and not after presentation of this bill to the Senate.

May I discuss, therefore, Mr. Chairman, the basic implications of this bill which explain why the Government of British Columbia supports the petition of the provisional directors for this private bank charter. The compelling reasons for this bill are geographic, economic and social. Canada has a greater area than any other country in this hemisphere and is the second largest in extent on earth. The vision of the Fathers of Confederation of a nation stretching 3,000 miles "from sea to sea" and covering almost half the land area in the northern part of the western hemisphere, was phenomenal 100 years ago, but it was achieved.

While British Columbia has 10 per cent of the national land area, (17 per cent, excluding the Northwest and Yukon Territories,) it is the third of the provinces in size and population and greater in land area, excluding lakes, than the Province of Ontario. British Columbia is one-sixth larger than the combined area of the United Kingdom and France, and is about equal to the combined areas of the States of Washington, Oregon, California and New York.

Of more import is the fact that our major financial community of Vancouver is two-third of a continent away from the principal Canadian financial centres of Toronto and Montreal, where four of the five head offices of our national private banks with branches across Canada, are located. The fifth chartered bank with nation-wide branches has its principal office in Halifax, which is closer to London, England or to Paris, France than to Vancouver, British Columbia.

In fact, Vancouver is farther away from the head office of a chartered bank than any other city of comparable size in the whole free world.

Gentlemen, I mention these facts of geography because they are fundamental and fixed. In spite of rapid communication and transportation today, the great distances between, and varying local environments of the different regions of Canada, influence financial decisions of our private Canadian bankers. That is no criticims. Who will seriously question that all men are conditioned by their local environment, in a widespread federal nation where each economic region is an empire in itself, seeking adequate credit to achieve maximum economic growth?

Let me be more explicit. The majority of the directors of the five chartered banks with branches across the nation, their policy committees and their top executives, which control day to day decisions and operations, are from eastern Canada. The Government of British Columbia believes that the national strength and conscience of a federal nation must flow from the sum of all its regions. This has been the historical experience in the United States, a similar continental nation. Honourable senators will recall the history of the Bank of America, with headquarters in San Francisco, which has played a prominent part in the development of the western United States.

The economic reasons in support of a private chartered bank in British Columbia are strong, because Canada basically has five distinct business regions. This fact is fully accepted, and the Dominion Bureau of Statistics publishes indices of business activity for each of the Atlantic, Quebec, Ontario, Prairie and British Columbia Pacific regions. Yet there are head offices of our chartered banks in only three of those regions— the Atlantic, Quebec and Ontario regions, or in three of the five.

As there is a head office of a chartered Canadian bank in Halifax, it is appropriate to compare 1963 national economic data, which strongly suggests there are more business reasons for the head office of a large chartered bank in Vancouver.

In this brief, a copy of which has been given to each senator, table 1 compares the 1963 population and business activity in the Atlantic provinces and British Columbia as follows:

TABLE 1.—1963 POPULATION AND BUSINESS ACTIVITY IN THE ATLANTIC PROVINCES (NOVA SCOTIA, NEW BRUNSWICK, NEWFOUNDLAND, AND PRINCE EDWARD ISLAND) AND BRITISH COLUMBIA.

Item	Four Atlantic Provinces	British Columbia	Per-cent British Columbia Greater (Less) than Atlantic Provinces
Population, June, 1963 (000)	1,958	1,695	(−13.4)
Labour force (000)	601	616	2.5
Labour income ($ millions)	1,445	2,248	55.6
Capital investment ($ millions) .	957	1,382	44.4
Factory shipments ($ millions) ..	1,052	2,463	134.1
Retail sales ($ millions)	1,560	1,888	21.0
Cheques cashed ($ millions)	7,406	25,070	238.5

Source: Dominion Bureau of Statistics.

It is one of the historical twists of fate that British Columbia did not achieve sufficient relative importance in the Canadian economy before the trend towards concentration of assets in a decreasing number of Canadian chartered banks commenced. Compared to the three eastern regions, British Columbia is a relatively young economy. When the Montreal City and District Savings Bank was founded in 1846, there was a handful of fur-traders in British Columbia. At Confederation, British Columbia with 36,000 persons had slightly less than 1 per cent of the national population. British Columbia did not exceed the population of Prince Edward Island until 1901, of New Brunswick and Newfoundland until 1911, of Nova Scotia until 1921, of Manitoba and Alberta until 1941, and of Saskatchewan until 1951. British Columbia reached 5 per cent of the total national population in 1911 and 8.9 per cent in 1961. The population of British Columbia is 50 times greater today than at Confederation, while in the same period the population of Ontario and Quebec increased less than three and four times respectively.

Does the present level of economic activity and its more recent growth in the Pacific region as compared with progress of the nation support a charter for the Bank of British Columbia? The answer appears strongly in the affirmative.

Let us look at some comparisons as given in Table 2. In the 12 years from 1952 to 1963 British Columbia increased its share of national population from 8.3 to 9 per cent, of labour force from 8.4 to 9.1 per cent, of personal income from 9.9 to 10.1 per cent, of factory shipments from 7.8 to 8.5 per cent, and of foreign exports from 11.3 to 15.6 per cent. British Columbia retained between 1952 and 1963 its 11-per-cent-share of national capital investment and 10.2 per cent of retail sales—both well above its share of national population. For all these growth factors, the relative progress of British Columbia in 1963 exceeded that of the rest of Canada.

TABLE 2.—GROWTH IN BUSINESS ACTIVITY OF BRITISH COLUMBIA AND CANADA, 1952 TO 1963

	1952		1963		Percentage Growth, 1952/63		Percentage Growth, 1963	
	B.C.	Per Cent of Canada	B.C.	Per Cent of Canada	B.C.	Rest of Canada	B.C.	Rest of Canada
Population, June 1 (000)	1,205	8.3	1,695	9.0	41	30	2.2	1.7
Labour force (000)	447	8.4	616	9.1	38	26	2.8	1.9
Personal income ($ millions)	1,728	9.9	3,317	10.1	92	88	6.6	6.3
Capital investment ($ millions)	811	11.1	1,382	11.0	70	73	7.3	5.6
Factory shipments ($ millions)	1,332	7.8	2,463	8.5	85	69	10.8	6.6
Retail sales ($ millions)	1,177	10.2	1,888	10.2	60	60	5.8	4.8
Foreign exports[1] ($ millions)	486	11.3	1,059	15.6	118	51	13.6	9.4

[1] Export of products produced in British Columbia and exported through all Canadian customs ports.
SOURCE: Dominion Bureau of Statistics and British Columbia Bureau of Economics and Statistics

While these figures are there, we are in a different period now in British Columbia. Only today the Montreal *Gazette* quoted that British Columbia is starting a great new period of expansion; and because of that—because of these two great river hydro-electric plants and pulp and paper mills and chemical plants, and people moving into our province, we must have additional bank facilities on a retail basis.

Of great importance to the Canadian economy is the increasing proportion of national foreign exchange earnings produced by exports of British Columbia products. Between 1952 and 1963, foreign shipments of British Columbia goods rose from $486 million to $1.06 billion, up 118 per cent, while those of the rest of Canada increased by only 51 per cent. In 1963 the 9 per cent of Canadians in the province produced 15.6 per cent of national foreign commodity exports.

It is well known that Canada is a major world exporter of goods. However, it is less well known that 1963 British Columbia merchandise exports were equivalent to 23.6 per cent of its gross provincial product while the rest of the nation exported only 14.9 per cent of its gross product (*see* Table 3). In other words, British Columbia is 58 per cent more dependent on world markets for its livelihood than the rest of Canada.

With respect to interprovincial trade, British Columbia imports of products of Ontario and Quebec have an annual value of about five times the yearly worth of British Columbia goods shipped to the central Provinces.

Thus British Columbia has basically different trade patterns than the rest of Canada and, in particular, than Ontario and Quebec, where management of our chartered banks is concentrated. The Pacific region is a greater *per capita* exporter of its goods to open or world markets: 75 per cent of our lumber, pulp, and paper and up to 90 per cent of our minerals are shipped to foreign markets. British Columbia in 1963 was a greater earner of foreign exchange ($624.48 *per capita*)—so vital to our international solvency—than the rest of Canada ($333.67 *per capita*). British Columbia buys its manufactured goods largely from Ontario and Quebec, which are protected sources of goods for the captive British Columbia market.

TABLE 3.—1963 EXPORTS OF BRITISH COLUMBIA AND CANADIAN GOODS AS A PROPORTION OF 1963 GROSS PRODUCT (INCLUDING SERVICES).

Area	Value of Merchandise Exports	Gross Provincial or National Product (Including Services)	Exports as a per Cent of Gross Product
British Columbia ($ millions)	1,058.5	4,484	23.6
Per capita ($)	624.48	2,645.73	
Rest of Canada ($ millions)	5,739.5	38,523	14.95
Per capita ($)	333.67	2,239.58	
Canada ($ millions)	6,798.5	43,007	15.8
Per capita ($)	359.79	2,275.98	

June 1, 1963, population: British Columbia, 1,695,000; rest of Canada, 17,201,000; Canada, 18,896,000.

SOURCE:—
National: Dominion Bureau of Statistics—National Accounts, 1963.
Provincial: Gross British Columbia product—Estimates, Provincial Department of Finance; foreign exports—Bureau of Economics and Statistics.

Here I want to stress that anything that can be done to encourage and assist development in British Columbia greatly assists the rest of Canada.

The realities of British Columbia's international and national trading positions, which differ so much from those of Ontario and Quebec, justify the Bank of British Columbia with principal office in Vancouver to service effectively our distinctive trade needs.

We are on the Pacific rim. The Attorney General will have more to say about that. It is a great new trading area, and so important to Canada as a nation.

Japanese businessmen refer to British Columbia as the "California of tomorrow." We say that British Columbia is the "California of Canada today." Although our economy is much younger than Eastern Canada, and as significant as our progress has been in making an increasingly worth-while contribution in recent years to the progress of Canada, British Columbia is only on the verge of making its maximum and appropriate contribution to national growth. I say appropriate because in terms of our physical resources, and the vitality and optimism of our labour force, British Columbia is now in a position to provide more for a greater Canada than California has for the United States.

Here are a few facts of our current progress. Work is already well advanced on the Peace River hydro-electric project and major contracts will be awarded by fall on the Columbia River dams, involving total outlays for generation and transmission of power over the next ten years of more than $1 billion. These two electrical projects in British Columbia will add 4.1 million kilowatts of firm electricity, being twice installed capacity added in the last decade and 1¼ times total current provincial facilities; and the standard of living in any country depends on the amount of energy available per capita. This amount of energy developed in British Columbia today is the largest amount of combined energy that has taken place in any place in the world. We ask that you encourage that development by granting this charter of the Bank of British Columbia. That is the reason the Premier is here today.

In its forests British Columbia has 84 per cent of national softwood reserves of trees 10 inches and over in diameter. Provincial timber cut has climbed 74 per cent since 1952, and the forest industry is being rapidly diversified and extended in the north. 1964 federal estimates of British Columbia capital investment in plywood, pulp, paper, and lumber mills is $184 million—$½ mil-

lion every day. New investment in progress or about to commence at 10 pulp and paper plants exceeds $230 million, and new pulp and paper investment proposed is a further $336 million.

In natural gas British Columbia is self-sufficient and a major exporter, while provincial oil wells are supplying 50 per cent of our refinery needs. A major natural-gas transportation pipe-line is under construction to tap proven northern fields for export.

In production of fertilizers, electrolytic pig iron, zinc, aluminum, copper, and molybdenum, major plant construction is under way. A $55 million copper development near Stewart was announced this month. In commercial fishing British Columbia is first among the Provinces. Our specialized agriculture with its efficient units is increasing output. Our manufacturing shipments increased 85 per cent since 1952. By 1975 the number of provincial residents is expected to reach at least 2½ million and exceed 10 per cent of Canadian population.

It is our view that the financial development of Canada should parallel that of the continental United States. British Columbia is in the same geographic and economic position in the Canadian economy as California is in the United States. United States banking policies permitted the Callforia-based Bank of America to achieve first place in world assets. The Bank of British Columbia will augment the growth, competitiveness, and effective service of the Canadian banking system.

I have mentioned that three of the five national economic regions have head offices of chartered banks.

Mr. Chairman, I ask this question: what would be the view of eastern Canadians if all the head offices of the chartered banks were in British Columbia? They would most certainly feel their vital credit needs were not receiving first-class consideration and priority. If such a deficiency existed, they would contend, and properly so, that chartered banks with head offices in Toronto, Montreal, and Halifax were essential to meet their regional financial needs. I am sure eastern Canadians would not be fully satisfied with services provided from branches and regional offices subject to distant head-office approval.

Mr. Chairman, banking is a service industry. Bankers must have an intimate knowledge of the financial, credit, and commercial needs of regional commerce and industry. Senior executives should be attuned to the needs of local borrowers, local opportunities for investment, and able to make decisions quickly by proximity to head office. Bankers must have a hard-headed faith in the region based on an appreciation of past business achievements and reasonable prospects for profitable extensions. Only residents of a province usually demonstrate this balanced view.

Mr. Chairman, out in British Columbia our early settlement was for gold in Barkerville. And we celebrated that centennial a few years ago. Barkerville in those early days was the largest centre north of San Francisco and west of Chicago, and people—investors and salesman—came from San Francisco up into Barkerville because money was flowing very freely. They tried to sell property which is now the City of Vancouver, of which we are all very proud. The old-timers tell me they would not buy any of this property which is now Vancouver because it was too far away from Barkerville.

Wherever one lives is the centre of the world. I was in New York one day to secure some money to extend the Pacific Great Eastern Railway, which is now a very profitable railway and which sparked this whole northern development of power and forests. They said, "Oh, Mr. Premier, that is too far away." There was a shortage of money in Canada at reasonable rates. Imagine Social Creditors going to Wall Street. They said, "It is so cold up there in Fort St. John and Dawson Creek." This was in January. So I went back to the hotel, phoned home and found what the weather was like in Fort St. John. I came

back the next day to see the bankers in Wall Street and said, "I agree it is awfully cold up there. You know, New York was only 10 degrees colder yesterday than Fort St. John." I got the money for the railway. I hope we get the private bank of British Columbia.

I repeat: Senior executives should be attuned to the needs of local borrowers, local opportunities for investment, and able to make decisions quickly by proximity to head office. Bankers must have a hard-headed faith in the region based on an appreciation of past business achievements and reasonable prospects for profitable extensions. Only residents of a province usually demonstrate this balanced view.

Mr. Chairman, there are also the social reasons for the Bank of British Columbia or those broadly relating to the public interest. It is in the public interest of all Canadians that the regional banking interests of British Columbia should be more adequately served and that competition between chartered banks should be increased across the nation.

We have good support for that point of view. The 1964 Porter Commission Report, at page 563, warned in the following words against concentration of private banking powers, and I quote. These are not my words; they are words found in the report:

There is a danger that competition can be weakened by collusion or excessive concentration of power. This is particularly the case with the banking institutions and we have therefore recommended in Chapter 18 that there be a prohibition on agreements between them with respect to lending and borrowing rates, and that this prohibition be supported by appropriate powers and penalties.

To prevent undue concentration in the banking and financial system we have recommended that no banking institution be allowed to acquire more than a 10-per-cent interest in the equity or voting shares of any non-bank financial institution.

That is where we get the not more than 10 per cent of the common stock of this private bank. Apparently, the banking commission in their inquiry thought not more than 10 per cent was a safe amount. We say that will be the maximum which the Province will invest either directly or indirectly in this bank.

It must be of major significance to this Committee, Mr. Chairman, that the vast majority of British Columbians support this application for a large national chartered bank based in Vancouver. The Act of the Provincial Legislature permitting the citizens of British Columbia, through their Government, to support this bank, was passed by a majority of 41 to 5. What better indication could there be of the support of British Columbians for the new bank than this democratic action?

This publicly supported application for a bank charter naturally reflects local pride. It also demonstrates the general conviction of residents of the Province that British Columbia has achieved a stature in the Canadian economy to merit a distinctive banking institution fully oriented to its financial needs as well as those of all Canada.

Until the Bank of British Columbia is incorporated under federal law, there will continue to be uneasiness and doubt that individuals, commerce, and industry in the Province are assured their fair share, at all times, of the pool of national credit available through the private banking system.

Our businessmen are also convinced that Vancouver will not develop into a fully rounded financial centre, capable of competing nationally with the more sophisticated financial services available in Montreal and Toronto, unless this large private bank is incorporated.

There can be no better demonstration of the general support of the British Columbia public for the bank than the great number of individual requests

received by investment dealers—and if anyone wants to see them and wants us to read them out we will read them out; they are unsolicited because we have sold no shares, we will wait until the charter is granted—for common stock when application for the proposed charter was announced. Other firm indications of public support of this application are the petitions that have been signed—and are being signed—by thousands of citizens of British Columbia. Nobody has paid five cents to get these signatures.

I wish to assure the committee that when this bill receives parliamentary approval—and I want to emphasize and repeat this: I wish to assure the Committee that when this bill receives parliamentary approval and before certification of the bank by the Federal Treasury Board, the name of the outstanding Canadian banker who will be president and chief executive officer will be announced by the directors. His name cannot, of course, be announced at this time, but the Treasury Board will have ample opportunity to consider his merits to operate the Bank of British Columbia.

Honourable Senators, Bill S-20 meets all the provisions of the *Bank Act*. The Government of the Province of British Columbia supports this private bank incorporation and requests the approval of the Bill by your Committee for the major geographic, economic, and social reasons I have emphasized.

The Government of British Columbia will invest in this private venture because the successful launching of the Bank of British Columbia is of vital importance to the creation in Vancouver of a complete and mature financial market for the long-run benefit of the Province and of all Canada. However, the Province, as a small minority shareholder, will certainly expect the private bank to operate free of any political influence in concert with the other chartered banks and under the supervision of the Bank of Canada.

I want to make it very clear that any government would be very stupid indeed to run a partisan bank or try to influence its operations or loans or anything else, because as soon as you gave a person a loan, he would think it was too small. The next day he would think the rate was too high, and all people who did not get loans would blame the government and the government would be thrown out of office. We may have political faults in our Government, but that is not one of them. That would be the most foolhardy thing that could happen.

The Government of British Columbia will only benefit by the setting up of this bank politically if it is run on a nonpartisan and commercial basis. If it isn't, there will be headlines, and the only way the Government will benefit is if it is run on a nonpolitical basis, as a sound private bank to increase the development of our own province and of all of Canada. That is why we are supporting this bank, because we feel that is what it will do.

Also, Mr. Chairman, the outstanding figure in the Canadian banking field to be proposed—and conversations have taken place—as president and chief officer will of course insist on strict business practice and nonpartisan operating policies. No president of any chartered bank would allow partisan political influences. He would not stay as president one moment if he did so. I am sure every senator and every Canadian realizes that. We of the Government certainly realize that. Therefore your support, Mr. Chairman, is urged. As British Columbia enters the years of greatest economic growth in its history, we urge you to support this application for a private chartered bank with its head office in the City of Vancouver.

I mentioned that our support in British Columbia is nonpartisan. I repeat that, and I say that the only partisan thing about this bank is the criticism, the political criticism of the Government's position.

Already there are over 12,505 people who have signed this petition on a voluntary basis, and thousands more are anxious to sign it. A little later

I shall give a few of the names—just a few. I do this to show you that it is nonpartisan, and to show that the businessmen, labour and agriculture, and members of all political parties support the bill, and the only criticism is political criticism on a very narrow basis. That is the reason why these people who criticize my government have always been turned down by the electorate in British Columbia, because they do not represent public opinion in our province. They do not represent the Liberals, and they do not represent the Conservatives, because these people support us. Senator Farris says that he is not a Social Crediter, but I will bet you that when he is in British Columbia he would vote for us.

Now to give you some of these names that I mentioned:

First of all there is Mr. J. R. Nicholson, Victoria Manager, Great-West Life Assurance Company; Mr. Harry Lou Poy, a Chinese merchant, probably one of the most prominent Chinese merchants in British Columbia.

Then there is Stuart Keate, a newspaper publisher. I should say that two of our most severe critics in years past have been the Victoria *Times* and the Vancouver *Sun*. And now here is the former publisher of the Victoria *Times* and now the publisher of the Vancouver *Sun* signing this petition. Later I shall read out the words of the petition.

Then there is Alfred A. Evans, a prominent Vancouver financier; John G. McIntosh, a prominent lawyer in Victoria; Mr. Gordon Cameron, a prominent lawyer. There is Mr. M. H. Mooney, a Victoria alderman. In regard to Mr. Cameron, he was former Conservative president and a federal candidate.

Then there is Lawrence Mallek, a prominent merchant, in fact one of the most prominent Jewish merchants in our province. We have Mrs. Beth Wood, former mayor of our first capital city, New Westminster; Mr. Leon Ladner, a prominent attorney in Vancouver, and in British Columbia he is known as "Mr. Conservative"; Fred D. Mathers, a prominent businessman in Vancouver, and former national President of the Canadian Manufacturers' Association. We have Mayor W. Angus, Mayor of North Vancouver; Fred J. Hume, former Mayor of Vancouver, and another of British Columbia's outstanding Liberals; Mr. Cap Capozzi, who is one of the most prominent Italians in our province; he is also a prominent businessman. And then we have George Mussallem in Haney, a prominent businessman. Those people who know businessmen in British Columbia know that he is an outstanding businessman.

We have Mr. P. J. Brennan, commissioner of the village of Squamish. We have Mr. Charles Wills, a barrister and solicitor in Vancouver. Then we have Mr. George H. Riefel, president of Alberta Distilleries, and Mr. Jack M. Straight, a barrister and solicitor in New Westminster. There is Mr. H. Enemark, who is an alderman of the City of Prince George, and a Liberal campaign manager. We have Dr. Wesley Munsie, President of the British Columbia Dental Association—all the dentists in British Columbia. There is Mr. Clarence F. Taylor, Reeve of the Corporation of Delta. And then we come to Mr. John Dunsmuir, an outstanding Vancouver businessman and past president of the Pacific National Exhibition, Vancouver. We have Mr. W. C. Mainwaring, former Vice President of the B.C. Electric Company Limited which was in private hands.

While I mention that, if anybody would like to ask questions about this subject I am here to answer such questions. I gather there was some discussion about it on second reading, and I am here to answer any questions thereon that might be asked. He is also, I understand, a director of the Laurentide Bank. Then we have Mr. Clarke Simpkins, former Mayor of the Municipality of West Vancouver, and a prominent businessman in Vancouver. There is Mr. W. J. Borrie, Chairman of Pemberton Securities and former President of the Pacific National Exhibition. He is an outstanding director of many companies in British Columbia and indeed in Canada. There is Mr. Charles Brazier,

a prominent lawyer in Vancouver and indeed one of the outstanding lawyers in British Columbia. I am sure all lawyers on the committee will know about him.

Then we have Mr. Don Cromie, former publisher of the Vancouver *Sun* and an outstanding Liberal. We have Mr. C. B. Delbridge, a Vancouver industrialist, and any Liberal knows he is an outstanding Liberal. Then there is Mr. Frank McMahon, chairman of the board and chairman of the finance committee of Westcoast Transmission Company Limited. He is an outstanding industrialist and a director of the Royal Bank. These people all signed this petition.

I read these signatures only to meet the criticism that this is a partisan political bank, and to show that this is not the case. If it were, these men would not have signed this petition. That is why I read out a few of the names on the petition.

Then we have Mr. Walter Koerner, Chairman of Rayonier of Canada (B.C.) Ltd., a present director of the C.N.R., and a present director of the Toronto-Dominion Bank. Then we have Colonel the Honourable Clarence Wallace, C.B.E., E.D., K. ST. J. He is an outstanding industrialist, a great shipbuilder, and a director of the Bank of Montreal.

Senator FARRIS: And a former Lieutenant Governor.

Hon. Mr. BENNETT: A former Lieutenant Governor of the province, and one of our great citizens. Then there is the Honourable F. M. Ross, an outstanding Canadian industrialist in my native Province of New Brunswick. He is a Liberal and a former Lieutenant Governor of the province of British Columbia, and one of the very best we have had. He signed this petition.

How can anybody say that this is a political bank? These men would not support it if it were. I have a note here containing a petition from Port Alice in the north part of Vancouver Island which is now being opened up. It contains 147 names. It would be possible to get many more but time does not allow. You will notice that a cross-section of the citizens is represented—the union president, the top management of the company, Liberal supporters, French Canadian citizens, native citizens, Chinese Canadians, New Canadians, high school principals and teachers. A petition like this should be ample proof that a good sample of the citizens of British Columbia are in favour of this move.

What did these people sign? What is the petition? This is it.

> WHEREAS: Canada is now at a stage in her development when the public interest would be better served by the creation of new chartered banks;
>
> AND WHEREAS: the establishment of a large chartered bank with its headquarters in British Columbia and with its chief interest in the economic expansion of this Province would:—
>
> —greatly assist present business and industry to expand;
>
> —encourage the development of new secondary industry;
>
> —create new jobs and generally contribute to the future growth and prosperity of the people of this Province;
>
> AND WHEREAS: a bill to incorporate the Bank of British Columbia is now before the Senate;
>
> NOW THEREFORE WE THE UNDERSIGNED do hereby petition the Senate and the House of Commons to approve the granting of a charter to the Bank of British Columbia at the earliest possible moment.

Mr. Chairman, I want to thank you and your committee for the very attentive hearing I have had. I appreciate it very much. I would ask that Mr. Bonner be now allowed to speak to you.

The CHAIRMAN: The Honourable Mr. Bonner, the Attorney General of the Province of British Columbia.

Hon. Mr. BENNETT: I will have the brief distributed now.

Senator LEONARD: Could we have Mr. Bonner's brief as well as Mr. Bennett's?

Mr. BURKE-ROBERTSON: It was proposed to distribute the briefs after both the Premier and the Attorney General had spoken.

Senator LEONARD: We would like to have them now so that we can follow Mr. Bonner.

Senator FARRIS: I would suggest that before Mr. Bonner is called upon an opportunity be given to honourable senators to ask any questions they have to ask of Mr. Bennett.

Hon. Mr. BENNETT: Perhaps the questions should be left until after Mr. Bonner has spoken, because Mr. Bonner may answer some questions that honourable senators have.

The CHAIRMAN: Yes.

Senator CROLL: I understand that the Premier had a brief. Is everything in the brief contained in the statements he has made to us, or are there other points made there?

Hon. Mr. BENNETT: Everything I said is in the brief, but I did make certain remarks "off the cuff" that are not in the brief.

Senator CROLL: Perhaps, Mr. Chairman, in the interests of clarity, and for the matter of record, it would be a good idea if we printed both briefs in the record.

The CHAIRMAN: We can do as we have done with other briefs; that is, we can have them printed as an appendix. Is it the desire of the committee to print these briefs as appendices to today's procedings?

Senator CROLL: Both briefs.

The CHAIRMAN: Yes, both briefs.

Hon. SENATORS: Agreed.

(For briefs of the Honourable W. A. C. Bennett and the Honourable R. W. Bonner, Q.C., see appendixes A and B).

Senator THORVALDSON: Senator Leonard mentioned a moment ago that it would be a good thing if we had the brief before us before it is given. I think in this committee we have always found it has been very useful to have the brief in front of us so that we can follow it, and see the print at the same time as listening to the speaker. If that is done I think it would be much easier to follow.

The CHAIRMAN: Yes, that is going to be done. Now that the briefs have been distributed I will call on the Honourable R. W. Bonner, Q.C., Attorney-General of the Province of British Columbia.

Honourable R. W. Bonner, Q.C., Attorney General, Province of British Columbia: Mr. Chairman and Honourable Senators, I am grateful for the suggestion of honourable Senator Leonard that the briefs be distributed at this time and particularly in respect of my own, because I have a number of charts and summations which can be most conveniently followed from the formal record which I trust is now fully distributed throughout the room.

Perhaps I should say at this point, having been preceded by distinguished New Brunswickers, that the committee is now to be addressed by a native British Columbian. Having said that I want to go on to point out that my family too comes from New Brunswick.

You will notice that my brief contains three parts. This is for the convenience of the committee. Part I is the original bill as introduced in the Senate.

For the information of the committee Part II is devoted to biographical sketches of the provisional directors. With respect to that part I think the extended information there will sufficiently commend itself to you that I need not take up the committee's time by reading the detail.

If it is agreed, therefore, I will turn immediately to Part III, which is a statement in support of the proposed bank. It is to be found at page 9. There may be occasion for expansion of the remarks, and I make this observation for the particular warning of the shorthand writer who may suddenly find himself without print.

The CHAIRMAN: Whenever you feel the urge to depart from your text then do so, because the reporter will get it.

Hon. Mr. BONNER: Thank you. I am grateful for this opportunity of appearing before this committee. First, I wish to associate myself entirely with the observations made on behalf of the Government and announced in great detail by the Honourable the Premier who preceded me.

It should be well known that the Government of British Columbia welcomes this opportunity to make representations to the Standing Committee on Banking and Commerce of the Senate in support of the proposed Bank of British Columbia.

From the Honourable the Premier's remarks you will have gathered that throughout the past twelve years the administration in British Columbia has sought to promote public policy designed to encourage and secure the orderly development of our province.

I would digress from my text at this point to explain a particular interest in this aspect of the Premier's development by saying that for seven years until mid-March of this year, in addition to holding the portfolio of attorney general I have had the honour of being the Minister of Trade and Industry in the province. In the particular responsibility of that portfolio I have had the opportunity of studying in great detail the economic ramifications of the province, and on occasion to make recommendations in connection with their future development.

The policies of this entire period have been variously concerned with access and resources development. The problem of access is obvious when you see how large British Columbia is, and, of course, the necessity of resource development is well understood when you realize that this is step number one in the advancement of the economy of this western maritime province.

We have been interested as well in, and have directed policy equally towards, the expansion of secondary and tertiary industry and the settlement of people. Naturally, such measures are devised in contemplation of the reasonable expectations of the future. It is with respect to these expectations that I want now to say a word.

The expansion now under way in British Columbia, in our view, will proceed without interruption for the balance of the decade which ends in 1975. I think there is no need to be modest in respect of periods beyond this, but our formal studies that have been quite extensive do go to that period.

I digress from the text in this regard to explain that I personally had the responsibility of preparing and seeing prepared the extensive material that was offered to the Gordon Royal Commission on Canada's Economic Prospects, which covered at the time of that study the period from 1955 to 1975. Therefore, our documentation of that period and the projections associated with it are basic information relied upon in respect of basic policy determination by our administration.

You will be interested to know that by 1975 the population of the province will be about 2,400,000 or 2,500,000 depending on whether you take the long or short-term bracket of projections forward. This means that there is a geometric increase in our population of from 2.8 per cent to 3 per cent per year. This is a very healthy rate of growth. For the purposes of comparison, in the 1950's this rate of growth has been more than double the national average for the whole of Canada.

This rate of growth has been more than double the national average rate for the whole of Canada, which gives you some idea. I do not refer to the 3 per cent in that context—but some of the rates reached during that period were twice the national rates of Canadian development as a whole.

In the midst of this capital development, is anticipated to rise from its present level of about $1,600 million a year to about $2,400 million a year. The investment figure to which I have referred is the combined figures of new capital and repair to existing capital and is the figure which is annually reviewed in the national Government's White Paper on The Economic Prospects for the Year. In fact, although we arrived at our studies with a large degree of independence, there is nevertheless a virtual unanimity among the provincial trade officials and national trade officials on our economic prospects. Therefore, in mentioning the rise of capital development during this period, I do so with considerable confidence that this will be the level actually reached.

At the risk of oversimplifying what has gone on in the period since the Second War began, I draw your attention to tables appearing on pages 10 and 11 of the brief which is before you. Tables have the advantage of giving a crude profile of what has gone on and what is expected. In those two tables, the first referring to population and the second to capital and repair expenditure by selected years, you see something of the measure of the development of the provincial economy. Because this committee is concerned as well with an application for a bank with headquarters in Manitoba, I have taken the liberty of inserting on page 12, a population figure relating to the three western provinces—British Columbia, Alberta and Saskatchewan, and for British Columbia in relation to those, by 1981. I trust that this information will be supplementary to the information already before the committee in relation to the Bank of Western Canada.

The interesting conclusion of course from these projections is the fact that by 1981 British Columbia alone will be at least 3,000,000 people and the three western provinces—British Columbia, Alberta and Saskatchewan—will be, in combination, something in the order of Ontario's present population. I think the effect of that will be noted a little while on in what I have to say.

The Government of the province naturally feels that British Columbia would be assisted, at this particular stage of its development, by the presence of one or more chartered banks with head offices in Vancouver.

This conclusion has been reached mindful of the contribution to their respective regional economies which banks located in eastern Canada have made—those with headquarters in Toronto, Montreal, Quebec and Halifax.

In this connection, I sought to assist the committee by compiling a table showing the state of the nation during the time when banks now in continuation in Canada were established. I draw your attention now to this combined table which appears on page 13 of the brief. The honourable the Premier has already referred to the dates at which national banks begun but the table goes on from that observation to relate the gross national product of Canada in respect of those dates, and also goes on to indicate the gross provincial product attributable to the Province of British Columbia in respect of those historic occasions. The conclusion which I suggest is proper to draw from

this table is that the economy of British Columbia at the present time is comparable, in relation to its gross provincial product, to what the economy of Canada was in 1924.

The gross national product of Canada in 1924 was $4,600,000,000. The gross provincial product of British Columbia at the present time is in the order of $4,500,000,000. Therefore, the province at the moment is about where Canada was in gross national product in 1924. You can see that the charter of Barclay's Bank and the Mercantile Bank have been added and three mergers have occurred, since 1924, to round out the picture of Canadian banks. I would trust that table would give some perspective to the relative state of the economy of our country and of the province, in the final consideration of this bill. Moreover, because many parallels may be drawn between the Province of British Columbia and the State of California, we are mindful of the great contribution to the Pacific west coast of the United States made by the Bank of America whose headquarters are in San Francisco.

In this connection particularly, the Government of British Columbia is in sympathy with representations of need and desirability advanced on behalf of the Bank of Western Canada whose headquarters would be in Winnipeg, Manitoba. I make these observations to go on to state that, whatever may be said in justification and for the commercial prospects of the Bank of Western Canada, apply with even greater force to a bank proposed for establishment in British Columbia with headquarters in Vancouver.

To assist a comparison of the two provincial economies, a number of tables now appear at pages 14, 15 and 16 of the brief. You will notice in the comparison, for example, of the labour forces of Manitoba and British Columbia, that Manitoba's labour force is 342,000, as against 577,000 for British Columbia. You will notice in relation to investment income, the total taxable income and percentage relationship, that investment in my province is $115 million as against $39 million for Manitoba.

In regard to net value of production in commodity producing industries, I regret that the 1961 figure is used, but I took that figure despite the fact that provincial figures are available for a subsequent date, because they come from federal sources, namely, the Dominion Bureau of Statistics. The entire value of production in relation to trade in Manitoba was $704 million in 1961, while in British Columbia it was $1,898,000,000. The more recent figures maintain this comparison throughout. You get some idea of the relative state of the two provincial economies in the next table, referring to value of construction in the two areas. The value of construction in Manitoba, current, is in the order of $423 million; the value of construction currently in British Columbia is in the order of $968 million.

Public and private investment in the two provinces in $693 million in Manitoba and $1,546,000,000 for British Columbia, at the current time. Then you can see as well the relative activity on the stock exchange in shares traded in 1961. These show at Winnipeg $3.7 million and at Vancouver $101.8 million, for shares.

Senator REID: Why do you pick out Manitoba?

Hon. Mr. BONNER: I only do that because whatever could be said in favour of the bank of Manitoba and the economy of that province, may be said with greater force and effect for the Province of British Columbia and a bank established in Vancouver. I make this comparison with no other purpose in mind.

I point out as well that the demand for credit granting facilities has enormously increased in both areas and to finish off the comparison I point out something which is akin to banking, namely, credit union activity, in the

two provinces, as it gives an interesting comparison. For example, the latest comparable figures, for 1961, show Manitoba had 256 credit unions in operation and that British Columbia had 327 in operation, and that the assets of the Manitoba credit unions were $50 million while those of British Columbia were $118 million.

The latest figure, I can tell you for British Columbia, shows assets in the credit union field alone at $125 million in our province.

It was with that background of these various considerations, which have been extended in the brief, that on 23rd January last the Government of British Columbia, in the Speech from the Throne, announced this policy:

> ... As a further measure of encouragement to the balanced development of our economy, it is the intention of my Government to support all positive measures which will make British Columbia, and our commercial capital of Vancouver in particular, a centre of Canadian finance. Accordingly, you will be asked at this Session to authorize my Government, on behalf of our citizens, to become a limited shareholder in a Federally chartered bank which will be established in this Province.

Subsequently, on the 7th February, an amendment to the Revenue Act of the province permitting the acquisition of bank shares, was introduced into the Legislature and was overwhelmingly approved, on a recorded vote of 41 yeas to 5 nays—as the honourable Senator Farris has previously indicated to the Senate and to this committee.

In announcing the policy of encouraging the establishment of a bank in the province, the government was not prepared for the enthusiasm and public support which appears to have followed. Although an authorization to purchase up to 25 per cent of the share capital of the proposed bank has been approved by the house, events subsequent to that legislative amendment have led the government to believe that 5 per cent to 10 per cent participation will be sufficient to encourage adequate capitalization by public subscription and maintenance of confidence thereafter without which the bank cannot succeed. It is noted in debate on the second reading a number of editorials and resolutions were cited as indicating opposition in British Columbia to the government's position. I would say with all respect to the points of view quoted, that these sources have not been invariably supporters of the present administration over the past 12 years and current criticism—

You have heard already from the Premier this morning some evidence of very substantial new declarations of support by outstanding private people in British Columbia.

My belief is that very heavy public support exists in favour of the approval of a charter for the proposed Bank of British Columbia, and investment houses in Vancouver have told me that an offering of Bank of British Columbia shares is likely to be heavily subscribed.

Why then, it may be asked, should the government seek to be a shareholder? As proposer of a B.C.-based bank intended to assist making Vancouver a centre of Canadian finance, I think the government is under obligation to take a practical position in support of its legislatively approved policy.

Secondly, a chartered bank must succeed. As a minority shareholder, the government is in a position to inspire, by this fact, public confidence in the new institution and thus encourage its success.

Thirdly, this bank should be concerned about British Columbia. Because shareholding promises to be widespread and supported in many parts of Canada, even a minority position among the shareholders which is wholly associated with the province will serve to focus the bank's basic interest upon British Columbia.

Fourthly, the bank's shares should have a relatively stable market value. The restrictions on shareholding, which are the first frankly all-Canadian ownership proposals to come before this committee, are such that trading in these bank shares is confined to a smaller market than may be said of the shares of any other chartered bank. The presence of the government as a minority shareholder, it is felt, will prove to be a steadying influence on the share market price and compensate by that fact for the lesser area in which the shares may trade.

Moreover, the government can be of practical assistance to the bank. Although the government has done business with chartered banks of Canada in the past, and will do so in the future, there are aspects of governmental activity which can properly provide business for the new bank.

Finally, the problem of professional management is the most important question confronting the bank. It is believed that the presence of government as a minority shareholder can be a positive factor of encouragement in the recruitment of top management.

However, shareholding by any particular person is actually no part of the bill before the Senate Committee.

What this bill does propose is an entirely novel restriction so far as Canadian bank-ownership is concerned. It provides that the share-ownership of the bank be confined to people resident in Canada. Inasmuch as the government of British Columbia is associated with the contents of this bill, it is noteworthy that this is the only occasion on which a Canadian government has taken a position in favour of total resident ownership of a national chartered bank.

In the final consideration of this bill, it is inconceivable that the Houses of Parliament should withhold their approval of this bank because of a legislatively approved minority shareholding by any provincial government when, at the same time, Parliament remains silent about the totally non-resident shareholding in the Mercantile Bank of Canada by the First National City Bank of New York and the Rotterdamsche Bank of The Netherlands. Criticism of shareholding by any provincial government must reduce itself to an assertion that total foreign ownership reposing in New York City and Holland is sound national policy, good for Canadian banking and constitutional, but a minority interest by a provincial government is not.

Now I would like to deal with the expression "political bank," because this expression has been used during the consideration of the Bank of British Columbia bill. It is as difficult to exorcise a ghost as it is to deal with the phantom argument of a "political bank." What is a "political bank," and when does a bank become "political"? Is a bank "political" when 5 per cent of its shares are owned by a provincial government, or is that point reached when 10 per cent or a greater shareholding is secured? Is the Bank of Canada a "political bank" when it is wholly answerable to the Houses of Parliament and, if so, may the same be said for the Industrial Bank of Canada?

Are the chartered banks of Canada "political banks" when they respond to the lead of the Bank of Canada? I think the responsible answer to all these questions is clearly "No." No chartered bank, regardless of share ownership, can in fact become "political."

Anyone who is cynical about the intentions of a provincial government in becoming a shareholder and who conjures up visions of possible governmental interference with the bank's proper operations must certainly recognize where governmental self-interest lies. The self-interest of any provincial government shareholder must be in seeing that a bank operates under law, responsive to national monetary policy, in the black, at a profit, and that its facilities be not used to cater to anyone who does not contribute to the proper and profitable operation of a bank's activities. In fact, for a provincial govern-

ment shareholder to take any other attitude toward a bank's operations would be politically most unwise. Thus, I say, if you are not convinced of the principles of a provincial administration on cynical grounds, examination of self-interest alone would dictate how a provincial government shareholder must behave.

There is, in fact, ample evidence of provincial governmental behaviour as bankers. The Royal Commission on Banking reminds us that "the business of banking" is not defined in the *Bank Act* or, for that matter, anywhere else. Indeed, while section 157 prohibits the use of the term "bank" by institutions not authorized under the Act or other legislation, it nowhere prohibits others from engaging in banking activities.* Provincial governments are, in fact, engaged in "banking" at the present time.

To facilitate examination of this assertion, on page 19 of the brief is a list of the sort of assistance and, in some cases, banking activity in which the provinces do engage. They include Alberta, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan.

Rather than to go into this in great detail, I have had the advantage of reading the April 1963 publication of the Industrial Promotion Branch, Federal Department of Trade and Commerce, describing these provincial activities in these terms:

> All Canadian provinces, with the exception of British Columbia, extend financial assistance to industry for development and expansion purposes under a variety of measures ranging from inventory assistance in Alberta to the erection of a plant on a lease-back basis in Nova Scotia. Assistance is not limited by statutory provision in a number of provinces, mainly Newfoundland, New Brunswick and Nova Scotia. However, in those provinces having statutory limitations, that total provincial funds authorized for this purpose are in excess of $300 million.
>
> Financial assistance, especially for large projects, can be provided on an individual basis. This method of financing has been used occasionally in the Maritime provinces.
>
> The majority of provinces extend direct loans or guarantees of loans. The criteria for authorizing assistance appear to vary with the circumstances, and it is impossible to generalize as to whether or not provincial agencies operate under more or less stringent rules than those of the Industrial Development Bank. In Newfoundland and New Brunswick guarantees of loans have exceeded direct loans; Ontario legislation authorizes guarantees of loans only.

Hon. Mr. BENNETT: It has to apply to business.

Hon. Mr. BONNER: That is right.

> Equity participation has not been prevalent, and financial assistance towards the installation of services such as sewers, roads, etc. is, in the main, restricted to Nova Scotia and Quebec. The recently created Société Générale de Financement in Quebec is, however, intended to participate actively in the equity field.
>
> Three provinces are active in fields other than direct loans and guarantees of loans. Alberta provides assistance to industry for the purchase of inventory stockpiles. Industrial Estates Limited in Nova Scotia is primarily concerned with the erection of plants for sale or rent. In Quebec, municipalities can be authorized to create industrial funds for financing the cost of establishing and servicing industrial parks

* Porter Commission, pages 114-115.

as well as constructing plants for industry. Manitoba and Saskatchewan are also empowered to extend this type of assistance, but so far their activities in this field have been limited.

In general, it would appear that the provinces are providing the types of financial assistance required by industry in their respective regions. Their official losses have not been great and there have been no signs of overt competition between the provinces and the Industrial Development Bank.

Some mention was made of the Ontario Loan and Savings offices. If you want to discover the location of one of them, look at page 58 of the yellow pages in the Ottawa telephone directory, under "Banks", and you will find in their midst the address and phone number of the Ontario Savings Office in this capital city.

The CHAIRMAN: That is not passing off, is it?

Hon. Mr. BONNER: I do not know what that would be. I suggest the liability for it devolves upon the phone company.

The province of Ontario savings offices were established first, actually, under an Order in Council. They now operate savings offices throughout the province.

If you want to go a little farther west and see what additional step Ontario may in time see fit to take in the direction of banking, I would draw your attention to the treasury offices in Alberta. Yesterday, Mr. Chairman, I went into the local office to see what had to be done to obtain an account and to do business with the bank. I asked for an explanatory brochure. With its historical modesty, the Ontario government does not provide a descriptive brochure of the services of the savings offices.

But in Alberta things are somewhat different. The treasury branches, in this large pamphlet which I am holding up, announce that they deal in many fields: money orders and drafts; vehicule and drivers' licences; securities bought and sold; night depositories and deposits by mail; utility bills and credit card remittances; term deposit receipts and saving certificates; savings account; current accounts; safety deposit boxes and safekeeping packages; loans; fire and hail insurance; traveller's cheques; foreign remittances and money transfers. The greater delineation of the treasury branches' activities might be a matter of separate study or of interest to this committee on some other occasion.

Additionally, I should point out that provincial governments exercise jurisdiction over banking activity engaged in by credit unions and trust companies. Trust companies are specifically referred to in the testimony of the Governor of the Bank of Canada, Mr. Rasminsky, before the Royal Commission on Banking and Finance and also in the Royal Commission on Banking and Finance's formal report to the Government. The trust companies' activities in this relationship are described as near banks.

The provincial governments exercise jurisdiction over banking activity engaged in by credit unions and trust companies and are increasingly concerned with the general operation of credit. In this respect relief against unconscionable transactions is provided in a bill in Ontario and in a bill in the Province of British Columbia, and is provided as well in legislation which I think is currently under review in the Province of Manitoba. I have reason to believe other provincial governments are concerned with this type of problem as well.

The only purpose of mentioning these activities is to point out their widespread and responsible nature and to point out, further, despite the fact that many banking and financial activities are under direct governmental control,

in some instances entirely provincially owned, the spectre of political banking —whatever that means—has failed to appear, the self-interest of the respective governments, in addition to their responsibility and principles, precluding the likelihood of such a development.

At this point I wish to anticipate and comment upon an opinion which might arise as a result of describing provincial banking and financial activity. This point might well be that it has been demonstrated that the provincial government can do a great deal of banking without getting into the chartered bank business, hence there is little need for this bill under consideration. So far as the government of British Columbia is concerned, it must be made plain that the objective is not to get government into the banking business, but to see British Columbia and Vancouver become a centre of Canadian finance. To this end, the provincial government has been authorized to assist a bank being started. The governmental financial activities which have been described cannot make any area a centre of Canadian finance. To promote the established of a western centre of finance is an aspiration as proper for a provincial government as plans to develop industry and build hydroelectric dams.

There can be no doubt in anyone's mind but that Vancouver will become a major centre of Canadian finance. The only question is when. To the extent that the Bank of British Columbia will play a part in Vancouver's development, Senate decision on this Bill will either hasten or delay Vancouver's emergence in the role of a major Western Canadian financial centre.

A number of Senators have expressed an interest in the question, "Is there need for a new bank?" The Porter Commission traces banking history in Canada in these terms:—

> At one time there were many banks in Canada, some private and some "chartered" by governments. By and large they were local institutions issuing notes which circulated in their own areas and concerning themselves very little with the affairs and requirements of other parts of the country. Although the early charters did not always clearly permit branching it was never prohibited, and as business and commerce became more national in character some of the banks began to expand their horizons. Branches were opened in the more important centres and business relations were established in other provinces. In the United States a system of local "unit" banks was deliberately fostered, but in Canada the first Dominion legislation explicitly allowed branch openings and thereby encouraged a system of national banks to develop. Following Confederation nineteen banks operated under Dominion charters, a number which increased to thirty-eight by 1886 and remained little changed until the eve of the First World War. Since then failures, amalgamations and mergers have reduced the number to the present eight, of which five have national branch systems, two operate principally in the province of Quebec, and one has branches only in Montreal, Toronto and Vancouver.

The Porter Commission, with deference, also makes a case for more competition in banking in a variety of ways. The honourable members of this committee are in study of this commission's report and, therefore, I will not attempt to cite the very many observations in this connection which are contained in that publication.

The narrow question of strict need can, no doubt, be answered by all of the present banks to the effect that they are doing a good job and they can expand the number of branches as rapidly as business requires. In fact, this same line of reply can be used to support the proposition that any single

national bank of Canada is in a position to expand as required and that competitors need not, in fact, exist to meet the national needs of banking.

I think that neither of these answers can be said to be fully in the public interest. The trend which we have witnessed in recent years of fewer national banks becoming larger, with three national banks actually dominating the entire field, is the antithesis of competition and ultimately of public service. Moreover, the question of competition is not confined solely to the consideration of interest rates and services provided by existing institutions. It must be found in regional competition as well—a feature totally lacking in Canadian banking at present.

I want to illustrate that conclusion by two observations. The first of them is a quotation from the Vancouver *Province* of June 4, 1964. Mr. J. Allyn Taylor, whom I have the privilege to know, is the president of the Canada Trust-Huron & Erie.

The article is headed:

AWARENESS OF B.C.

TRUST PRESIDENT PRAISES POTENTIAL

> J. Allyn Taylor of London, Ont., president of the Canada Trust-Huron & Erie, has made at least 25 business trips to B.C. over the years but, he says, he only properly appreciated this province in the last 48 hours.

Here is where his quotation begins:

> "It is only in the last 48 hours that I have got a proper appreciation of your potential," he said in an interview. "I flew to the Peace River to see the power project.
>
> "That power will open up the Interior in a way that people in the east don't appreciate. However, there is more awareness of B.C. in the last six months in the east than ever before".

Here he was very kind and said:

> "Businessmen are making more trips out here and your government and your premier have done a great deal to publicize B.C."

The article goes on to explain that Mr. Taylor was there for a meeting of the company's board of directors, the first to be held in B.C. It states:

> This first board meeting to be held in B.C. coincides with the opening of the company's new seven-storey office building at Pender and Hornby and with its centennial celebration.

It was a very happy occasion when the dinner was held, and I had the honour of being listed among the guests of the corporation at that dinner at which the record of that company's activities in Canada, and more particularly in our province, was examined in some detail. I think it is a matter of public record that this particular corporation has been very attentive to British Columbia and derives 20 per cent of its total national business from our province, which is disproportionately out of relationship to our apparent economic activity and, certainly, our population.

The second example is to be found in the national tours now being undertaken by national boards of directors of many companies, but notably by bank boards. In many instances such boards have visited British Columbia for the first time despite the fact that they have conducted business in our Province for more than half a century.

If a board of directors achieve something for their bank from a few days' visit once in a long while, surely a resident board and management would be

so much better informed of our Provincial potential and requirements and better able to serve. Such a board could even broaden its knowledge in time by visiting Eastern Canada to provide further regional competition to our present national banks. Regional competition cannot be effectively furnished by boards and management who reside mainly in two centres of Canada, and regional representation in such boards and management does little to correct the built-in imbalance of current Canadian banking.

Therefore, I think it more fruitful to suggest that the inquiry which ought to be made in connection with these various bank applications is the question, "Are there opportunities for new banks in Canada today?" I think the answer to this question is surely "Yes."

I would like to develop that conclusion very casually. It can be developed at great length, but I think a number of illustrations will serve to indicate what the proper conclusion must be. If you want to make an examination of the federal personal, corporation, and succession (or estate) tax collections in British Columbia and the other three western provinces, Manitoba, Saskatchewan and Alberta, you may be surprised at the contents of the table which appears on page 23.

In 1952-53 the product from these personal, corporation and succession (or estate) tax collections in British Columbia was approximately $259 million, when in the other three provinces combined it was but $280 million. Currently the product is $343 million in British Columbia, as against $456 million for the other three provinces. And in the wealth which is reflected by those tax collections, it seems to me there is ample evidence to conclude that the banking and financial activities in western Canada, and our province have many expectations of future development and success. And in this connection the table on page 24 which reviews cheques cashed at 35 clearing houses centres in the period 1958 to 1962 is set out. You will see that the total for British Columbia is very large, referring only to three centres, New Westminster, Vancouver and Victoria, totalling now about $23 million in the year 1962, whereas in the Prairie provinces it amounted to approximately $48 million. You will also see that in the period since 1938 the increase in the five regions is outlined. The Atlantic provinces had an increase of 918 per cent, that is in cheques cashed in the period 1938 to the present time. The Province of Quebec had an increase of 882 per cent, and Ontario had an increase of 985 per cent. The Prairie provinces combined had an increase of 956 per cent, and the Province of British Columbia had an increase of 1,092 per cent. There are two additional tables which show to some extent the direction in which current banking activity is going. It shows the branches of chartered banks, by province, as at December 31 for certain years 1868-1962. That is set out in the first chart at page 25. It will also be noted that bank branches have expanded to 5,332 for the period up to 1962. British Columbia has expanded from 229 in 1930 to 545. The expansion in the province has been very much larger than is the national experience.

For your further information the individual Canadian banks are set out on page 25. These are the branches of individual Canadian chartered banks, by province, as at December 31, 1962.

In conclusion I want to make it clear that in the light of all available evidence of growth, it would be a remarkable conclusion to reach that only eastern-based banks now existing are entitled to participate in future banking developments of this country.

The expectations for British Columbia during the balance of this decade—to 1970—predict a labour force rising to 729,000 from 578,000 in 1961, personal income rising from $2.9 billion to $4.5 billion, and retail sales rising from $1.6 billion to $2.4 billion in this same period.

I am hoping the Honourable Minister of Labour and Education, who will seek an opportunity to speak when I have finished, will expand on this particular aspect and on this data and give you an idea what it means to the labour force in the province.

All circumstances involving greater use of credit, greater offshore trade, and general expansion set the stage regionally for a more broadly based banking system—with western headquarters.

Finally I would like to discuss a constitutional question which has arisen in earlier remarks on second reading. In doing so I want to be the first to say that although the elements of the question are examined, this is not intended to be as definitive as you would probably wish to make it in a different arena. The question in stark terms is this, "Does the Queen, in the right of the Province of British Columbia, represented by her Minister of Finance, have the legislative right to acquire and own shares in a federally chartered bank?" What are the elements of this question?

The right to be a shareholder is the right to have an interest in personal property. Section 42 of the Bank Act defines by statute that bank shares are personal property.

That Her Majesty the Queen, in the right of any province, may own personal property is not questionable, and no constitutional query so far raised has cast any doubt upon this fundamental proposition. In this connection I am indebted to the honourable and learned members of the Senate who have already addressed themselves in detail to this question. I am grateful for the fact that the former Attorney General for Ontario has addressed himself to this question, and also a former Attorney General of the Province of British Columbia, Senator Farris, for whose opinion on constitutional law I have the greatest respect.

The next element of the question is whether the right to own personal property is diminished when the personal property is a share in a federally incorporated undertaking. Once again, no authority has been quoted to suggest any limitation on the right to own personal property in such an enterprise, and, in fact, the Queen, in the right of all provincial governments, regularly exercises this capacity in the buying and selling of bonds of companies and undertakings of this category, including those of the national Government itself. Indeed, various acts of provincial governments provide for the investment of provincial moneys not only in trustee and other securities, but extend even to the buying and selling by crown agencies of equity interests represented by shares.

I want to draw your attention to the fact that the Treasury Department Act of Alberta has already declared itself in this connection by authorizing that the Minister of Finance—that is "the Lieutenant Governor in Council may by order approve for investments under section 31 any corporation incorporated under the laws of Alberta and carrying on business in Alberta

(*a*) that has a capitalized, fixed, paid-up, and permanent stock amounting to at least five hundred thousand dollars; and

(*b*) whose main business is the manufacture, production, or conveyance of any product in Alberta, or the supplying of any service or product within Alberta."

Then we come to Nova Scotia. Section 37 of the Provincial Finance Act, S.N.S. 1962, chapter 12, sets out a very long list of securities in which the Minister of Finance may invest. Clause (g) of that section authorizes the minister to invest in

> the fully paid common shares of a corporation, that, in each year of a period of seven years ended less than one year before the date of investment, has paid a dividend upon its common shares of at least four per

cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;

There is no restriction here to provincial undertakings. I believe the precise words of the Nova Scotia statutes are in the first incorporation of the Uniformity Committee's recommendation on trustee securities by a provincial government.

It should also be noted that section 37 allows the minister to invest in the preferred shares of a dividend-paying corporation; share purchase warrants of a corporation to which the section refers; real estate; first mortgages; bonds, debentures, or other evidences of indebtedness of a dividend-paying corporation, etc.

However, the broadest incursion into the field of equity investment is to be found in the authorization of the General Investment Corporation of Quebec, established by statute July 6, 1962, which has the following powers:

(*a*) To acquire by subscription or otherwise shares, debentures, or other securities of any undertaking:

The statute itself, I think, can be consulted both with interest and with profit. The brief formally sets out the other operative provisions of that section, and describes them briefly, and I trust sufficiently to state that this corporation, in turn, is authorized to raise capital in the amount of $150 million, divided into 15 million shares of a par value of $10 each. Two and one-half million such shares are deferred-dividend shares. The remainder shall consist of common shares, unless the company issues a portion thereof in the form of preferred shares in the manner provided by Part II of the Quebec Companies Act. The total par value of the outstanding preferred shares shall never exceed the amount paid up on the common and deferred-dividend shares. The deferred-dividend shares shall be reserved for the Government of the Province, and, further, the Minister of Finance is authorized to subscribe, on behalf of Her Majesty in the right of the Province of Quebec, $5 million payable out of the Consolidated Revenue Fund for 500,000 deferred-dividend shares of the company. The company, so long as the deferred-dividend shares have not been entirely subscribed, shall grant to Her Majesty in the right of the Province the right to subscribe for such shares up to one-third of the number of common shares allotted.

Hon. Mr. BENNETT: Common shares?

Hon. Mr. BONNER: The common shares of the corporation are authorized for investment by the Government of the Province of Quebec.

Incidentally, the purpose of this legislation here was forecast at a meeting of the Provincial Governments' Trade and Industry Council when they met at St. John's, Newfoundland, from October 12 to October 14, 1961. The Quebec provincial representative speaking at that time stated that the central purpose of this company will be to channel Quebec savings into the industrial development of the province. The authority simply indicates that Quebec seemed to feel that this type of financial venture would be of assistance to the domestic requirements of that province.

The third element of the question is: "Does the exercise of an unquestionable right to become a shareholder become unconstitutional when the exercise concerns the shareholding in a federally-incorporated bank?" Anyone who argues "yes" must go on to say that banks stand apart from other federally-incorporated institutions under federal jurisdiction.

I think no one can be really concerned if provincial governments buy shares of Canadian Pacific Railway or some other federally-incorporated undertaking such as Trans-Canada Pipe Lines which was set up under a federal

statute. To distinguish a bank from these other federally-incorporated undertakings puts the burden on him who states it would be unconstitutional to invest in a chartered bank.

A chartered bank is admittedly entirely subject to federally enacted law and federally supervised regulation. I suggest in this connection that the testimony of the Governor of the Bank of Canada, Mr. Rasminsky, before the Royal Commission on Banking and Finance—which is a very lengthy testimony in a separate publication, and which I will not attempt to paraphrase—sets out in detail the control that is exercised by the Bank of Canada upon the chartered banks of this country for the purpose of securing conformity to the monetary policy and the fiscal purposes of the national Parliament.

It is not at all in question but that any bank is within this area of jurisdiction, and, quite frankly, no one would wish to see any chartered bank in any other position.

The interesting thing I would like to point out in this connection additionally, and which Mr. Rasminsky pointed out while testifying before the royal commission, is that the controls that are available and which are intended to discipline and direct by regulation the banks not only work in the field of the chartered banks, but have an immediate effect in the field of near banks, which Mr. Rasminsky specifically referred to, and all other of Canada's financial interests. Therefore, it should be repeated that a chartered bank is subject to federally enacted law and regulation.

Not only is this constitutional jurisdiction created by section 91 of the British North America Act, but the exercise of this jurisdiction is daily to be observed and, if necessary, annually to be revised by the national Parliament. No action by a shareholder, however large or of whatever identification, and no board of directors or managerial group to whom a shareholder might presume to give direction, can in any way alter the jurisdiction conferred on Parliament by the British North America Act, change Parliament's statutes which are the assertion of that jurisdiction, or modify or avoid the close regulation under which the jurisdiction is exercised. It follows that there can be no behaviour by a chartered bank of which any provincial government might be shareholder which can take place except under federal law and control.

This, I submit, is not a matter of argumentation. This must be common ground in the consideration of this general question.

I want to go on and say with the greatest of respect that it is fundamentally important, in considering constitutionality, to distinguish between proprietary or shareholder interest on the one hand and constitutional or regulatory interest on the other. The proprietary interest, even if it could act without professional management, is subject and answerable to the regulatory interest in every case which can be imagined, and the one does not trespass upon the other. A shareholder, foreign or domestic, simply does not pose a constitutional problem because he cannot and does not oust federal jurisdiction. This conclusion is self-evident in the case of the Mercantile Bank, which is wholly-owned abroad; it would be the same with the Bank of British Columbia, owned entirely by Canadian residents.

I would like now, Mr. Chairman, to summarize the material so far placed before you by placing it within the context of Government policy as enunciated by the Honourable the Minister of Finance on February 28 last. The minister stated:

> ...that the Government is not opposed to further competition in the banking field providing that any new bank is adequately financed and is supported by financially responsible people and that provision is made for retaining control in Canada.

The bill before you meets the test of Government control more rigorously than even the national Government has required, by restricting share-ownership entirely to Canadian residents.

That the bank is supported by financially responsible people is amply demonstrated, first, by the composition of the provisional directorate and, secondly, by the willingness of the Government of British Columbia to assume a minority shareholding position as a contribution toward the financial backing of the proposed institution. The further requirement of adequate finance follows from the observations which have been previously made. Here I refer to investment houses, members of the community, and the names that have been already furnished to the committee.

Indeed, this information can be sought and obtained from almost any person to whom you might speak in any part of the Province of British Columbia, and especially in the investment community which prides itself upon being knowledgeable about public response to such matters.

There is not a shadow of doubt but that a share offering by the Bank of British Columbia will be heavily supported by public subscription in British Columbia and elsewhere in Canada.

The federal Government's willingness to see further competition provided in the field of banking is demonstrably sound in the light of Canadian banking experience and the prospect of widening opportunities which are so clearly to be seen in the commercial activity of the country today. The Bank of British Columbia, however, adds a dimension to competition which not every bank proposal could add, that is, the dimension of regional competition, which is totally absent from banking in Canada at the present time.

Finally, the development and growth of financial institutions to match the development of primary and secondary industries is a proper regional aspiration which the Legislature of British Columbia has embraced, and which the proposal to incorporate the Bank of British Columbia seeks to support. The fully rounded development of the economy of British Columbia, presently the third most important sector of the whole of Canada, is a matter which I am sure is of as much concern to this committee and the Houses of Parliament as it is to the legislature and the people of British Columbia.

Therefore, Mr. Chairman, favourable consideration of the bill to incorporate the Bank of British Columbia is most respectfully sought at this time.

Mr. BURKE-ROBERTSON: Mr. Chairman and Honourable Senators, what the next two witnesses have to say will be quite brief. The first speaker is the Honourable L. R. Peterson, who holds two portfolios. He is the Minister of Labour and the Minister of Education. His submissions, which he will now make to you, are designed to show a need for chartered banks in British Columbia.

Senator LEONARD: Could we have copies of this brief, Mr. Chairman?

The CHAIRMAN: Yes. Are you distributing a brief?

Hon. L. R. Peterson, Minister of Labour and Minister of Education, Province of British Columbia: Mr. Chairman and Honourable Senators, I do not have any formal brief to present. The Honourable the Premier and my colleague, the Attorney General, have already submitted rather comprehensive briefs on this matter, and I would like this opportunity of making some oral representations on matters not fully covered, and to place this information before the committee in support of the proposal for a new chartered bank with headquarters in the Province of British Columbia.

I do not know whether it is a precedent in appearing before this committee to state your place of origin as the speakers preceding me have. But, if it is of any interest I will say I emanate from the Province of Alberta which

is a province, I might say, where there is also considerable enthusiasm in support of this bill. This is evidenced by the fact that literally hundreds of people in that province have recorded their support in writing of the proposed bill incorporating the Bank of British Columbia.

One of the major problems of concern to me in my capacity as Minister of Labour and Minister of Education in the Province of British Columbia is that of employment, and the creation of new job opportunities. The latest figures I have available are from the Dominion Bureau of Statistics which indicate that as of June 20 this year the labour force of British Columbia amounted to 653,000 men and women. This is the highest figure ever recorded in the province.

While our total employment is at a peak we are still experiencing a rather high rate of unemployment—a rate in excess of 5 per cent. As of June 20 this year the actual rate was 5.1 per cent. When you translate that into individuals it means there were 33,000 unemployed men and women in the Province of British Columbia.

The Honourable the Premier and the Attorney General have presented evidence to this committee showing that the economy of the province is growing rapidly, and it is, but, nevertheless, up to this time, at least, it has not been growing rapidly enough to provide the new job opportunities required for the number of people we have in the province. I might say as well that a good portion of the unemployed do not originate from the Province of British Columbia, because upwards of about 40 per cent of the increase in our population in British Columbia this year is made up of people who migrate from elsewhere.

The simple answer to unemployment is, of course, employment. It is important that all the unemployed are properly trained and qualified to accept jobs. In addition to those unemployed—the 33,000 that I mentioned; the people who should have an opportunity to work—the labour force of British Columbia is expanding at the rate of approximately 3 per cent per year. In other words, just to maintain the *status quo*—and that certainly is not good enough—we have to create roughly 20,000 new jobs each year in British Columbia.

By the end of this decade the labour force is expected, as the Attorney General pointed out, to reach a total of 729,000 people. This projection takes into account such things as the trend towards earlier retirement and such additional factors as increased school holding power. I might say in this connection that British Columbia has the highest schol retention rate in Canada. In other words, more of our children starting in grade I will go on to higher grades in British Columbia than in any other province in Canada.

That trend is increasing rapidly, that is, the rate of increase. Nevertheless, many of the unemployed today are young people in British Columbia. Our employment rates have been consistently higher in the younger age group and in view of the continuing trends in automation and the increasing demand for unskilled workers, the placement of the graduates from our educational system can pose a serious problem unless there is a marked increase in employment opportunities.

Last year we had more than 18,000 full time students taking university studies in our public institutions, that is, not private institutions, just public universities in British Columbia. By the end of this decade, just six years hence, we expect that figure to more than double, probably around 40,000 in our universities, and we are expanding our facilities to take care of this need.

We had but one university until July of last year. Now we have two in operation and a third will be in operation in September of next year. In addition, we have authorized the development of community colleges and

regional colleges throughout this province. Again, at the university level, more of our students enter university and more graduate from university in British Columbia than in any other province in Canada. By the end of this decade we expect about a quarter of our elementary school population actually to enter university. In addition,—and I only mention these matters briefly—there is the field of vocational and technical training, where placement—job placement—is really the key to the success of any of these programs. In this field, the expansion in British Columbia, as elsewhere in Canada, is dramatic. By 1970, or in 1970, we expect to have some 130,000 students taking vocational and technical training in the province, and the facilities to provide this kind of training are being provided.

Therefore, my submission, Mr. Chairman and honourable senators, is that it is essential that those educated and trained people—a higher proportion than elsewhere in Canada—those educated and trained people be utilized to the greatest advantage, not only of British Columbia but of Canada.

I think the greatest challenge facing the people of our province today is to increase the job opportunities by diversifying, expanding provincial economies by the introduction of new secondary industries arising out of the primary industries that presently form the backbone of our present economy.

In my view these laudable objectives can only be accomplished if, in addition to the abundant supply of low cost electrical energy, which is now assured in British Columbia, if in addition to that we also have financial and investment houses that are cognizant of the needs of business and industry in the province and are in a position to meet those needs.

In my submission, this can only be accomplished through a banking policy alert to provincial needs. Secondary industries can only be established if you have liberal bank provisions for small businesses, which are really the backbone of any economy of any country, and which can only prosper and grow if they can rely on a bank to assist them in that growth, because I think banks are really their lifeline.

I submit as well that it is extremely difficult for anyone living in eastern Canada, with financial and other interests centred there, to appreciate the excitement, the enthusiasm, the rapidity of the development of the west coast of Canada. We are in the process of emerging in British Columbia from a frontier to a highly industrial area and this emergence is literally explosive, compared with the gradual development that has appeared in other provinces of Canada in the past.

This rapidity of change, this rapidity of development, can only be appreciated by close association. To endeavour to do so from long distance, is like trying to appreciate the congestion of modern city traffic, by travelling on an isolated country road.

It is my view that a chartered bank with headquarters in the province would be immediately responsive to the pulse of commercial and industrial activity in our province, and without it there can be at least no commercial development. It can result in the province not being able to create the employment opportunities that are required. This of course would result in a chaotic condition for the skilled manpower forces which are presently receiving the benefit of training in our educational institutions. I may just say as well that I join with the premier and with my colleague the attorney general in saying that I feel the competition that would result from an additional large chartered bank with its headquarters in British Columbia, this competition would certainly be in the public interest. The history of banking in Canada has been one of mergers and amalgamations, the concentration of banking resources and control in a relatively few hands. I believe, whether it is entirely correct or not, that there is a feeling, and a fairly widespread

feeling, particularly among small businessmen and other loan seekers, that there is a tendency for the few large well established banks, in their search for corporate loans and bigger profits, which is understandable, there is a feeling or a tendency to ignore the little fellow. They get hardened to the little people who are trying to plan. A new competitive bank would, I think, be more understanding in this respect and certainly it would do much to eliminate any feeling of complacency that there may be in the banking business today.

Then, too, there is the question of the regional competition raised by the attorney general, which, I think has been well dealt with. I believe that banks do play an important role in the investment market. They are most influential in determining not only the areas in Canada in which development will take place but also the particular industries in Canada in which development will take place.

I would say as well that failure to develop industry in British Columbia will result in the emigration and loss of one of the most highly trained segments of Canadian population. We have many people migrating to the Province of British Columbia from other parts of Canada. Experience shows that, if they are unable to obtain employment in the west, then what happens? They do not leave British Columbia and go east—that is—not in large numbers. The tendency is for them to go south, to California and elsewhere in the United States and these people are a loss to Canada as a whole.

In May of this year the intra-provincial migration to British Columbia by students in our schools during the year was higher than in the past 19 years. The net figure was 596 children in the one month. The only year in which there was a net loss in migration to British Columbia was I believe in 1962 when the loss of 348 children occurred. But in that year Canada lost more children to foreign countries than it gained. There was a net loss throughout Canada—which supports I think as well the view expressed, that a loss to British Columbia is a loss for the whole of Canada; a gain perhaps for other centres to the south of us, particularly California and other states in the western part of the United States.

Finally, I would like to say a few words, Mr. Chairman, as a member of the provincial legislature, representing a constituency of Vancouver Centre, which is the downtown area of the City of Vancouver. It is the area in which the headquarters of this bank will be situated and it is probably the area where the greatest impact will be felt, if the bill before the honourable senators receives approval.

The population of the metropolitan area of Vancouver, as reported in the Canadian year book from the 1961 census, is 790,165. Now it has certainly increased substantially since then. I use this figure because it is the only national figure I have. If you add to that population the population of our capital City of Victoria, then you have a population which is 22,631 greater than the whole of Manitoba. My only purpose in using the Province of Manitoba for comparative purposes is the same as the honourable attorney general explained earlier. In other words there are 22,631 more potential customers in the two largest centres of population in British Columbia, than in the whole of the Province of Manitoba.

As far as the status of Vancouver, as a future financial centre, I would place before the record that according to the Dominion Bureau of Statistics, again in 1961, there were 7,103 people employed in financial institutions in Metropolitan Vancouver, compared to 5,337 in the whole of Manitoba. Vancouver alone, as well, has more industrial establishments in this one city than in the whole of the province of Manitoba, according to these figures. So in recent years the City of Vancouver has made great strides in its growth as a commercial and financial centre.

I would like to place on the record a resolution presented to the City Council of Vancouver yesterday. According to a telegram I received from His Worship the Mayor this morning, this resolution was approved by the City Council. It reads as follows:

Resolution:

Whereas Western Canada is experiencing rapid economic growth;

Whereas much of this growth arises from trade with countries bordering the Pacific Ocean;

Whereas the population of this trading area is expected to increase by 50 per cent adding half a billion people by 1975 but these countries at present draw only 4 per cent of their imports through British Columbian ports;

Whereas there is a tremendous potential for growth in Canadian trade with the Pacific countries;

Whereas it is essential to provide the commercial facilities and institutions needed to serve such trading interests and enable British Columbia to play its full part in the economic life of the nation;

Whereas Vancouver is Canada's major Pacific port and population centre;

Therefore be it resolved that the City of Vancouver declares its intention to support and encourage the establishment of any public and private enterprises in downtown Vancouver that will enhance the City's position as a major national and international financial and business centre for western North America and the Pacific rim countries.

I might say that from the outset the City of Vancouver, has, represented by His Worship the Mayor, been most enthusiastic about this proposed development.

The first announcement, as appears in the brief of the Attorney General, was a quotation from the speech from the throne of January 23, 1964. By January 30, just a week later, the city planning department had prepared a sketch of the proposed head office building and its location in the City of Vancouver of their own volition. I have before me an article from *The Province*. I have several photographic copies, Mr. Chairman, which may be distributed to the honourable senators, if desired. The article is under date of Thursday, January 30, 1964. The headline is "Everybody likes Tower Plan". It illustrates the proposed location of the bank facilities, and the impact it would have on the redevelopment of the downtown area of Vancouver.

Hon. Mr. FARRIS: Are you relying on the headlines in *The Province*?

Hon. Mr. PETERSON: Not completely. I think there was a completely misleading one relating to the financial position of British Columbia. Perhaps I may quote one or two paragraphs from this article:

> Mayor Rathie will lead a team of city officials to see Premier Bennett next Wednesday to discuss the provincial government's proposed $12-$14 million building to house the new B.C. Bank and provide additional court house facilities.

It goes on to express the enthusiasm of the Premier, which I do not think it is necessary for me to record here.

> The mayor and civic authorities are also enthusiastic. They say it could be the spark needed to start the city's plan for major redevelopment of the downtown area. They also say that much of the site on which the building would be constructed would be landscaped, with grass walks and benches, so the city would be getting a downtown park for nothing.

Somewhat later, I believe in March, the city prepared again, without consultation or approval of the province or the provisional directors, a bank model showing where they would like to see this development fit in with the redevelopment of the City of Vancouver.

If I can just orient myself here for those of you who are familiar with the city, you may recognize this building in relation to the Hotel Vancouver. The province is assisting in a substantial expansion of this area adjacent to the Hotel Vancouver, which of course is owned by the Canadian National Railways. Here is the block in question, bounded by Robson Street on the north, Hornby Street on the west, Howe Street on the east, and Smithe Street on the south. This building you see here is the conception of the planning department of the City of Vancouver of this $12 million or $14 million head office building for the Bank of British Columbia.

Needless to say, as far as the provisional directors are concerned, the bank location has not been chosen. No plans, not even an artist's sketch, have been prepared as far as the bank is concerned, or as far as the provincial government is concerned. However, the City of Vancouver does regard this as an integral part of the redevelopment program which is scheduled for the City of Vancouver.

I might as well place on the record a letter from His Worship the Mayor, dated July 20 of this year. In case there is a suspicion among honourable members of the committee that the mayor is a political supporter of the government, I would recall to your attention that he ran as a Liberal candidate in the recent election against the Attorney General in Point Grey. So I think the proposed bill before you goes far beyond any narrow political considerations.

The letter is directed to the honourable Premier, and reads as follows:

> As you have seen by press reports we, in the City of Vancouver, are working particularly hard to develop our downtown "Business Core Area." We are aware that British Columbia, with Vancouver as its principal city, is the key area looking to the West—the Pacific rim with its vast population and vast trading area.
>
> Our present plans envisage new office buildings, hotels, a department store and ancillary buildings, including the Coliseum, that will total well over one hundred million dollars—all private investment. Plus of course, your most welcome new Court House and high-rise office buildings. We have every indication that these plans will be realized.
>
> Our planning is, as you will appreciate, completely in harmony with your stated concept of making Vancouver "the financial centre of Western Canada." Personally, and as Mayor of Vancouver, I wish to endorse your position in this most important matter.

The letter is signed by "W. G. Rathie, Mayor"—of the City of Vancouver.

Then yesterday, a new program of redevelopment in downtown Vancouver was presented to the City Council—Report No. 5, dated July 21, 1964, which I understand from the telegram was approved by the City Council.

I would like as well to file the copy that I have with the committee for its attention. I would direct you to page 23 of this publication, which refers to this development where the proposed bank headquarters, as far as the city is concerned, will be located. It refers to the headquarters for the proposed new Bank of British Columbia; and in their opinion, at least, the size and value of this building suggests the impact it will have on the downtown area.

Then on page 6 of this redevelopment program, which is a very extensive one, you will find a photograph of a new model later than this, which takes in more territory than this one does. The model weighs some 500 pounds, so I could not bring it with me. In fact, it was in use in presenting this proposal

to council yesterday. The model shows the new Coliseum and the walkways right through to the B.C. Bank building, through Eaton's development and to the Coliseum. It is really a tremendous development for the city of Vancouver. As I have said, the development of this property is regarded as an integral part of the whole downtown redevelopment.

The CHAIRMAN: Do you mean that without the bank this development would not go on?

Hon. Mr. PETERSON: No; I would not venture to suggest that. As a member for that area, I would like to see the development take place, regardless; but of course there is a natural feeling on the part of other developers that this development would enhance and make it feasible for them to proceed as well. As a matter of fact, in this report No. 5 you will find on page 15 a statement purporting to quote the Eaton development—which owns this vacant property now; and this is the key to the whole development. I will quote from page 15, if I may:

> In March, the T. Eaton Co. released the following statement to the press: "Shoud the City and the Province proceed with the proposed development . . .

And this site here is being referred to as the "Civic Square site."

Vancouver for that purpose, and they are now selling it to the Province of British Columbia at their cost for development, along the lines indicated by myself. That deal will be consumated this month. I think the amount involved is something slightly under $2 million; but, in any event, it is the cost to the City of Vancouver for disposing of this property.

Senator REID: Is the development of that area dependent entirely on the new bank building?

Hon. Mr. PETERSON: No, not entirely, but it is part of the redevelopment. I read from the statement to the press of the T. Eaton Company:

> Should the City and the Province proceed with the proposed development of the Court House block and the Civic Square site, it would naturally have a bearing on our decision to build on our property at Georgia and Granville.

I do not say that if the bill is not approved the redevelopment of downtown Vancouver will not proceed. I think we all see it should proceed, but I do suggest this, that it could well be delayed if there is any delay in granting the approval of our bill. This whole development involves an expenditure of some $120 million. It will revitalize the downtown area of Vancouver, and that at a time when other downtown areas throughout Canada are slipping, at least to some extent. I think, including the whole development, it is a bold and imaginative plan, the implementation of which should not be delayed. Certainly, until we know, until the provisional directors know the charter is granted and they can go forward to make plans on the location of the head office in some place in this downtown area and the nature of the building, then I think major plans for redevelopment would be delayed, because the objective of the city in taking the initiative in developing these models and plans is to have the whole development in harmony and have collaboration between the city and provincial authorities as well as the private developers. It involves the changing of traffic patterns, pedestrian walkways right through the city, the lowering of Granville Street with Georgia coming over the top. I only bring it up to urge that early consideration be given to the bill before the Senate committee.

Senator MCCUTCHEON: Do the plans show where the head office of the Laurentide Bank will be?

Hon. Mr. PETERSON: Not to my knowledge, no. However, I am sure they would be welcome in the same area, and we would certainly support that development.

The CHAIRMAN: Will the Court House occupy a larger area than the head office of the proposed bank?

Hon. Mr. PETERSON: No. The Court House is conceived as a separate building on the property immediately adjacent to the existing Court house. It involves the retention and use of the existing court facilities, and it only involves expansion, and it is a small part of the expansion.

The CHAIRMAN: The tower building, I suppose it is going to be a public building with rental space?

Hon. Mr. PETERSON: Yes, a public building with rental space. That is not to suggest the province would not rent space there, just as they are renting at the present time their other facilities elsewhere.

Hon. Mr. BENNETT: Just as we have rented space in the B.C. Hydro Building to the Royal Bank.

The CHAIRMAN: I suppose the other banks, if they wanted space in the building, they could make arrangements?

Hon. Mr. PETERSON: I am sure the provisional directors would welcome such a proposal.

Senator CRERAR: May I ask the witness a question? Does he know of any instance where credit-worthy people have been refused accommodation by the existing banks? I ask it only for information.

Hon. Mr. PETERSON: Yes, I do. I would not like to submit personal instances before the committee. I merely indicate—which I think can be substantiated by anyone—that talking to the small businessmen who are trying to start up they could not raise the capital they would like in establishing their businesses, and there are many examples, if it were the wish of the committee to have them.

Senator MCCUTCHEON: Senator Crerar used the expression "credit-worthy" and was not talking about people who "want" money.

Hon. Mr. BENNETT: This large bank in Vancouver will be good for the other chartered banks. I am basically a hardware merchant and I know, and many of you men who know anything about the steel industry know that wherever you build a steel industry that becomes the competitive point. The same applies to banking. When Vancouver becomes a competitive point in banking, then the directors and managements of all the other chartered banks that have branches in British Columbia and western Canada, to meet the competition, will give more authority to their B.C. directors and management. That will be good for them as well.

Somebody suggested in the press that the Government might say, "We will not give you any timber unless you deal with this bank." That is ridiculous; the government of British Columbia never deals like that at any time; and I repudiate that sort of suggestion.

This will make for healthy competition in banking, and will be good for the other chartered banks, and they will grow in western Canada instead of going down.

Senator CRERAR: I do not quarrel with that statement, Mr. Premier, at all.

Senator LAMBERT: That is a good Liberal statement!

Mr. BURKE-ROBERTSON: The final witness intended to be called is Mr. E. M. Gunderson. His qualifications are set out at the bottom of page 5 and the whole of page 6 of Mr. Bonner's statement which is before you.

I should like to say that Mr. Gunderson is a gentleman with banking experience, and that experience together with all the other qualifications set out there will make him eminently suitable as a permanent official of this bank. He is now Executive Vice-President and director of the Pacific Great Eastern Railway Company; an Executive Director of the British Columbia Hydro and Power Authority; a Governor of U.B.C.; and Trustee of the B.C. Medical Research Foundation. He recently resigned as a director of the Canadian Bank of Commerce.

Much of what Mr. Gunderson might have said to you this morning has already been covered by the evidence already placed before you—that is to the effect that a leading Canadian banker would be available to direct the policies of the bank; and also as to the response which is anticipated will be made by the people in British Columbia.

I will ask Mr. Gunderson to rise, and I will ask one or two questions of him.

Would you care to comment, Mr. Gunderson, to the committee on the proposed financial arrangements of the company?

Mr. Einar Maynard Gunderson, F.C.A.: Yes. Before making any statement in that regard, I would like to express my pleasure at being here, Mr. Chairman and honourable senators. Also, I might say that the provisional directors were associated in the preparation of these briefs and are in full agreement with them. We approved them in total, and that is our position as far as the briefs are concerned. They are our briefs as well.

The CHAIRMAN: It is not every person who could bring here a premier of such a province as British Columbia.

Mr. GUNDERSON: No, it is quite an honour for us.

Mr. BURKE-ROBERTSON: Would you care to comment on the financial arrangements which you envisage will be made for the organization of the bank?

Mr. GUNDERSON: As soon as the charter is issued we will follow the procedures laid down in the Bank Act for the subscription for shares of the bank and the selling of them.

Mr. BURKE-ROBERTSON: I wonder whether you have anything to add to what has already been said as to the top level executive management of the bank?

Mr. GUNDERSON: All I can say in that regard is that a top level bank executive is available and will be chosen, and he will have control over the bank and will be appointing his own executive staff, training them and getting them from other banks.

Banking is a specialty, and you have to have some chap as head of a bank who has lived in it and grown up in it, and we propose to appoint a man as president and chief executive officer, and then turn it over to him to run. He will be responsible to the directors. The provisional directors at the present time are only five in number. And then when the shares are sold a shareholders meeting will be called and the permanent directors elected. This will be the same as in any other bank.

Senator MCCUTCHEON: Has any conclusion been reached as to the price at which the shares will be offered—will they be offered at par or above par?

Mr. GUNDERSON: No decision has been reached, but we propose that they will be issued above par. Our thinking is along the line that the shares will be sufficiently above par to create a reserve, and that this reserve will be comparable to the reserve position and the par value of leading Canadian banks.

Senator CROLL: The press reports indicate that the bank shares will be available first to the people of British Columbia, then to the people of Alberta, and then to us common people of the rest of the country. Have you any comment to make on that?

Mr. GUNDERSON: The shares in the bank will be made available to all Canadians. At least that is our intention.

Senator O'LEARY (*Carleton*): If the shares are oversubscribed by the public, will the Government of British Columbia insist on its 5 or 10 per cent?

Mr. GUNDERSON: I would not think so. I could not of course speak for the Government, but as one of the provisional directors our main purpose is to establish a bank in British Columbia with its head office in British Columbia.

Senator O'LEARY (*Carleton*): Well, if you can't answer that question I would like to ask the same question of Mr. Bennett.

Hon. Mr. BENNETT: What was the question?

Senator O'LEARY (*Carleton*): If the shares are oversubscribed, does the Government of British Columbia intend to insist on purchasing its 10 or 5 per cent?

Hon. Mr. BENNETT: It may be less than 10 per cent, and it may be less than 5. But I want to say very clearly that it is our intention, the intention of the Government to buy shares.

Senator O'LEARY (*Carleton*): Regardless of the subscription?

Hon. Mr. BENNETT: Yes, the higher the public subscription will be the smaller will be the amount purchased by the Government. At no time will it be more than 10 per cent. In fact it may well be less. But we intend to purchase some of the shares because we are determined that the bank shall not be taken over by a small group and amalgamated with another bank.

Senator THORVALDSON: Premier Bennett indicated that the Government would subscribe up to 10 per cent, and I notice the capitalization of the bank is $100 million. Premier Bennett, when you speak of up to 10 per cent, does that mean 10 per cent of the total capitalization, or 10 per cent of the amount subscribed?

Hon. Mr. BENNETT: Ten per cent of the subscribed amount.

Senator CRERAR: May I ask a question, and in doing so I ask it wholly for information, Mr. Bennett. You propose that the direct investment of the Government shall be limited to 10 per cent?

Senator MCCUTCHEON: Of the subscribed capital?

Hon. Mr. BENNETT: Ten per cent of the subscribed capital. That will be the limit.

Senator CRERAR: That is of course direct investment. But what about indirect investment?

Hon. Mr. BENNETT: I want to assure the committee on that point, and I am indebted to you, Senator Crerar, for bringing it up. That will be our total investment. We will have no indirect investment in the crown corporation over and above that.

Senator CRERAR: The Government does not intend to do so directly, but what about the B.C. Power Corporation or the B.C. railway—what is it called?

Hon. Mr. BENNETT: The Pacific Great Eastern—the P.G.E. It used to be called "Please go easy".

Senator CRERAR: I believe Mr. Gunderson is the head of that, and I want to congratulate him on the success of its operations. But these agencies perhaps without the co-operation of the Government might indirectly secure a substantial interest in this bank. That is not contemplated?

Hon. Mr. BENNETT: No, and as Minister of Finance I am the fiscal agent for these agencies, and I want to assure the committee that the total amount which the Government would invest will not be more than 10 per cent of the total amount subscribed. If it is oversubscribed, it will be considerably less than 10 per cent.

Senator CRERAR: I am quite willing to accept your word on that. But governments, like individuals are mortal. Since it is possible that somewhere down the road, say four or five or even ten years away, a socialist Government should come into power in British Columbia, would you be willing now to suggest that in the charter the limitation should be set at 10 per cent either directly or indirectly?

Hon. Mr. BENNETT: By "indirectly" you mean crown corporations. You do not mean by the individual citizens of British Columbia.

Senator CRERAR: That is right.

Hon. Mr. BENNETT: I would not object to that at all.

Senator ROEBUCK: You say that irrespective of whether the shares are oversubscribed or not or if they are full subscribed, in other words whether the need for money is satisfied or not, you will still subscribe on behalf of the province. Will you tell us why?

Hon. Mr. BENNETT: If we didn't we would mislead the people of British Columbia. They have some confidence in the Government of B.C. and in the legislature, and if we led them to believe we were going to subscribe and then failed to do so that would be bad faith on our part. That is the reason why.

Senator CROLL: If I may, I would like to move that we adjourn now to a later time. I do not think that bill has come over from the other place yet and so there is not a great deal of work ahead of us. Perhaps we can come back at two o'clock.

The CHAIRMAN: The only thing I had in mind was if we were close to finishing this presentation it might perhaps be better to finish it.

Senator CROLL: I thought it was finished.

Hon. Mr. BENNETT: I only hope that you would agree, Mr. Chairman, to adjourn until this afternoon. We want to answer all questions that are asked, and we want to discuss this matter fully. There was a great deal of discussion on second reading. It is unusual for a Government to come down here, and we have come a long way, and we are anxious to answer any question at all. If you would give us the time, and if the senators ask the questions we shall try to give complete answers.

The CHAIRMAN: Has Mr. Gunderson finished?

Senator THORVALDSON: Before the question of adjournment I should like to ask one more question in connection with shares. Referring again to your capitalization of $100 million, I wonder if any decision has been made in regard to how much stock you propose to offer for subscription to begin with?

Hon. Mr. BENNETT: The whole issue.

The CHAIRMAN: The suggestion I make is that we adjourn further questions on this bill and further consideration in committee until the Senate rises this afternoon.

Senator CROLL: I think by doing so we are losing time. The questions may be extensive. If we don't sit now we won't get back here until 3.30. That seems to be a considerable time. Why not come back at two and adjourn at three?

The CHAIRMAN: It is too hot a day to come back at two o'clock. I am not just expressing my own view, I am expressing the view of many members of the committee.

The Committee adjourned at 12.30 p.m.

Upon resuming at 3.50 p.m.

The CHAIRMAN: Honourable senators, I call the meeting to order. We had reached the stage of questions. Are there any questions honourable senators would like to ask?

Hon. Mr. BENNETT: May I say, Mr. Chairman, that I am very pleased to notice the fans in operation this afternoon. I think that is very considerate of you.

The CHAIRMAN: We do the best we can.

Senator ROEBUCK: Mr. Chairman, I asked a question as to why the provincial Government would subscribe for the stock of the bank in circumstances when all the necessary money was available. The answer I received was that some pledge had been given to the public that the Government would subscribe, and so the Government is carrying out its pledge. It seems to me that that answer is not good enough, if the honourable the Premier will permit me to say so.

The pledge to invest the money is one circumstance, and the fact that the money has been raised without a provincial contribution is another circumstance entirely. It seems to me that there must be some better reason than that given.

What was the reason why the Government pledged to the people that it would invest in the first instance? Why give that pledge? Was it because the authority of the Government was required in order to promote the enterprise in the first place? Is it because of the example which the Government will set, which will result in money flowing into the coffers of the bank? What was the reason in the first place? There must be some better reason than that given us.

Hon. Mr. BENNETT: I thank you again for bringing up this question. If the answer is not considered complete, then I would like to add that the Attorney General, in his brief, dealt with this question very fully. However, I will say again that this was Government policy. It was announced in the Speech from the Throne. Therefore, it was not any commitment given to the people of the province without any intention of carrying it out. It was contained in the message that the Lieutenant Governor read at the first session of the present Legislature of British Columbia. Then a bill was submitted to the Legislature which was passed by a great majority. I think I said before that it would be a lack of good faith on our part if we did not carry it through.

Senator MCCUTCHEON: Surely, Mr. Chairman, the Premier, for whom I have great respect and whom I have known for many years, is not naive enough to believe that statements in the Speech from the Throne must necessarily be implemented.

Hon. Mr. BENNETT: No. That is the reason why I say it was carried forward in a bill submitted to the Legislature of the Province of British Columbia, and which was passed by a very large majority.

Senator ROEBUCK: Then why did you put it in the Speech from the Throne? There must have been some substantial reason for initiating this thing in the first place.

Hon. Mr. BENNETT: That is right, there was. It is high Government policy in the Province of British Columbia.

Senator ROEBUCK: Why the policy?

Hon. Mr. BENNETT: The policy is for this reason, that when I left New Brunswick following the war—I might say I was not in the air force for any length of time when the war was over, and I went to the province of Alberta. I then went into private business for myself, and found it very difficult to get bank loans to help extend the business. I found this very, very difficult.

My first partner was a French Canadian, and I want to say this for the sake of goodwill across Canada, that for the two or three years we were in partnership on a 50-50 basis there was no friction and no difference of opinion between us although we were opposite in religion and politics. Not a thing came between us.

In the early spring of 1930 I sold out my interests in the businesses I owned in Alberta, and went to British Columbia. I was there during the thirties and during the whole period of the depression. I was president of the Board of Trade of the Okanagan, and we endeavoured to establish many industries there, but we always had to give long personal guarantees. When we needed credit for our business we had to give these guarantees. These are very large businesses in the Okanagan now, but I am sure that if we had had a Bank of British Columbia at that time with headquarters in the province there would have been thousands of successful businesses and industries, which we do not have. So it is my experience of business over 34 years in private enterprise. British Columbia as a private enterprise, on the front, the main street free enterprise, not one of those monopolistic enterprises but a competitive free enterprise, that we need it, because I saw it in dozens of cases, where bank credit was refused where in my opinion as a businessman it should not have been refused. I feel very strongly on this and have had this long experience in business and this is the reason why, the only reason why I went into public life was because I did not agree. I was not called upon to make a large contribution in the time of the First World War because of my age, in the Second World War I was too old, so I do not mind what anyone says about me critically in public life, because those errors are small in comparison with the bullets that other men have to face and therefore I will stay in public life as long as I have the health and strength.

Senator CROLL: And the votes of the people.

Hon. Mr. BENNETT: And the votes of the people. The people of British Columbia support this move, because they want it. British Columbia is now a great new empire in itself. Here in the Montreal *Gazette*—no, I do not think I have got it here, Mr. Chairman.

Senator CROLL: Mr. Premier, certainly you have sold the idea that British Columbia needs a bank. I do not think you have to repeat that. Let us go on from there.

Hon. Mr. BENNETT: I would say we need a bank.

Senator CROLL: You need a bank in British Columbia.

Hon. Mr. BENNETT: A large bank. No small bank will do British Columbia.

Senator CROLL: Yes; you need a large bank.

Hon. Mr. BENNETT: The only way we can get a large bank, not one with a $10 million or $12 million capital, is by the Government of British Columbia saying it has confidence in the bank and therefore is not going to duck out.

Senator ROEBUCK: I think you have given me the answer.

Hon. Mr. BENNETT: I am indebted to you for pressing the question.

Senator MCCUTCHEON: May I address a few questions? I take it from the premier's last statement that the premier would not regard Laurentide Bank

as being a satisfactory bank for the interests of British Columbia, notwithstanding the fact that we have had ample evidence here that it will be properly financed and that it will have its head office and its chief executive officers in Vancouver.

Hon. Mr. BENNETT: I would say that British Columbia welcomes the Laurentide Bank as well. It is not sufficient in itself but we would welcome it as well. When I was a free enterpriser, the boards of trade and many people tried to say we should not led in the chain stores, the mail order business house and so on. As a free enterpriser I had to say "The more competition we get the better; either you believe in genuine free enterprise or you do not." We believe in genuine competitive free enterprise, not in merchandising only but in the banking field as well. We want more than one bank in British Columbia but we want to establish this large bank, the Bank of British Columbia.

Senator MCCUTCHEON: Then I will move along. In other words, your position is that a bank with a head office in British Columbia is not what you want. What you want is this bank and, if I understand you, if other banks—

Hon. Mr. BENNETT: No, I did not say that. We want them all. We support the Laurentide as well and we need two or three more banks, one to start with in Vancouver. We would support them all.

Senator MCCUTCHEON: Let me put it this way. Supposing Parliament incorporates the Laurentide Bank, will that satisfy the aspirations of British Columbia?

Hon. Mr. BENNETT: The answer is no.

Senator MCCUTCHEON: Yes, very well.

Senator FARRIS: I would like to ask my honourable friend if he is putting the Laurentide Bank in substitution for the Bank of British Columbia.

Senator MCCUTCHEON: I made no such suggestion. I merely asked a question.

Senator FARRIS: This was what I took from the question. I want to know what it was.

Senator MCCUTCHEON: I am not here to be cross examined.

Hon. Mr. BENNETT: I am, though.

Senator MCCUTCHEON: That is right. Now, Mr. Premier, you and the Minister of Industry have referred to the difficulty of getting bank loans by so-called small businesses. At the same time you have both indicated that this is going to be a commercial bank operated as a commercial bank for a profit. Now, are you suggesting that the commercial banks today are turning down opportunities to make money?

Hon. Mr. BENNETT: The answer is yes.

Senator MCCUTCHEON: Would you like to give me an example?

Hon. Mr. BENNETT: Yes, I could give you lots of examples but they are personal friends of mine and different people in business and I would not be free to give their names, but I know dozens of cases.

Senator MCCUTCHEON: I know lots of people who apply to banks without getting the money.

Hon. Mr. BENNETT: This is a genuine experience.

Senator MCCUTCHEON: Mr. Gunderson this morning was asked about the capitalization of this bank. The authorized capital is $100 million. Under the Bank Act the shares will have a $10 par value. That means 10 million shares. I asked Mr. Gunderson if any decision had been taken as to the price at which the shares would be offered to the public. Mr. Gunderson said "no". He said

there was no decision taken but they would be offered above par and they would be offered, he thought, on a basis which would ensure that the new bank had a reserve in relation to the capital comparable to the reserve in relation to the capital of the established banks. Am I right, Mr. Gunderson? That is right? I took the opportunity, during the recess, to look up the relation of capital and reserves of other banks. The capital of the Bank of Montreal as at November 30, 1962, which is the latest figure I could put my hands on, was $66,500,000. That is small compared to the capital of the proposed Bank of British Columbia. The reserves were $243 million. If my arithmetic is right, that means that you are contemplating a bank with $100 million of capital and $400 million of reserve, if you are going to keep that ratio.

Hon. Mr. BENNETT: I think that is a little on the large side. He did not particularly choose one bank.

Senator McCUTCHEON: I did not, either. I will read some other banks. I took the Canadian Imperial Bank of Commerce. Mr. Gunderson used to be well acquainted with it. Its capital is a little larger than that of the Royal Bank. Its capital is nearly $70 million as at October 31, 1962 and its reserves were $190 million. Do not worry about my arithmetic too much. Let us say that the reserves are three times, or not quite three times. Therefore, are we contemplating a bank with $100 million and $300 million in reserves, and going to sell those shares, say, for $40 a share.

Hon. Mr. BENNETT: That is a little on the high side.

Senator McCUTCHEON: Shall I turn to some other bank. Which bank would you like me to take?

Hon. Mr. GUNDERSON: What is the average?

Senator McCUTCHEON: I have not done my arithmetic. The premier this morning tried to suggest that if you wanted to get a loan from the Bank of Nova Scotia you should go to Halifax.

Hon. Mr. BENNETT: I did not suggest that.

Senator McCUTCHEON: No, you did not, but you said that the head office is in Halifax, then you compared Nova Scotia with British Columbia.

Hon. Mr. BENNETT: No, with the four Maritime provinces.

Senator McCUTCHEON: With the four Maritime provinces. But the executive office of the bank is in Halifax, so that was a most unfair and irrelevant comparison. But I will change to another bank.

Hon. Mr. BENNETT: That makes it worse. If all the banks with head offices are all in Montreal, Toronto, that only reinforces my argument.

Senator McCUTCHEON: That may make it worse from your point of view but also makes your comparison irrelevant. I will turn to the Bank of Nova Scotia. At October 31, 1962, the capital was $27 million and $92 million of reserve, which is not four times but substantially more than three times. I think we are entitled to know on what basis you are proposing to offer these shares to the public. It is obvious you are not going to offer them at $40 a share, that you are not going to offer them at $30 a share. What are you going to offer them for?

Hon. Mr. BENNETT: I would think the fair thing—in my talks with the provisional directors they say they will not exceed $30.

Senator McCUTCHEON: I am quite certain they will not exceed $30. I am asking how much less.

Hon. Mr. BENNETT: The decision has not been made.

Senator McCUTCHEON: Will it be $12.50 or $15?

Hon. Mr. BENNETT: The decision has not been made.

Senator McCUTCHEON: We can get no information on that point?

Hon. Mr. BENNETT: We have given the full information in the presentation.

Senator McCUTCHEON: In regard to Mr. Gunderson's statement this morning regarding the reserves in relation to capital, I will go through all the banks, if you wish, but I think it would be a waste of time, because I know the ratio is going to be about what I have quoted. In other words, Mr. Gunderson's statement this morning was a little on the optimistic side.

Hon. Mr. BENNETT: I would say this, that Mr. Gunderson was speaking in general terms. The discussions I have had with the provisional directors, the position was basically what we have stated—added further thereto now is the statement that they will not exceed $30 a share.

Senator McCUTCHEON: I wonder how you can be basically correct and yet be basically wrong, but I will not pursue the matter any further. I think the point has been made.

Hon. Mr. BENNETT: The point I want to make very clear, Mr. Chairman, is that in British Columbia there is the unanimous feeling that the bank should start with adequate paid up capital, and adequate reserve as well; and we are saying that very clearly and definitely in that respect.

Senator McCUTCHEON: All I am asking, Mr. Premier, is what would you regard, for a bank with $100 million capital, which incidentally will be the bank with the largest capital in Canada, as an adequate reserve?

Mr. GUNDERSON: I would say not less than twenty nor more than thirty.

Senator McCUTCHEON: So you are contemplating a bank with a capital of $100 million and with a reserve of not less than $100 million and not more than $200 million?

Hon. Mr. BENNETT: Reserve.

Senator McCUTCHEON: Yes.

Hon. Mr. BENNETT: That is right.

Senator McCUTCHEON: And you expect to raise that money in Canada, the Province of British Columbia having agreed by its Premier this morning to limit its investment to 10 per cent or less of the subscribed capital?

Hon. Mr. BENNETT: That is right.

Senator McCUTCHEON: Mr. Premier, would you be prepared to go back to British Columbia and amend your act—I know any act of the legislature can be amended by subsequent legislation—but to limit your investment to that rather than to leave it in the position it is today?

Hon. Mr. BENNETT: Yes, if the Senate does not delay our bill—I will certainly give that commitment, yes.

Senator McCUTCHEON: The Senate has delayed no bill.

Hon. Mr. BENNETT: I do not say that it has; but if you do not delay it until the provincial legislature meets—that is what I mean; because we will not meet until January or February. We are fortunate that our session does not last all the winter and all the summer; it lasts for only eight weeks.

Senator McCUTCHEON: You are certainly fortunate. Now, I have a number of questions, Mr. Chairman. I am going to turn to what may be a rather trivial matter, and then I shall return to something of more substance.

Senator ROEBUCK: I should like to be clear on what the witness has just said. Have you said, Mr. Premier, that you commit yourself to do something? What is your commitment?

Hon. Mr. BENNETT: I committed myself this morning—I think it was Senator Crerar asked me the question, would we object or agree that if this

bill in the Senate was amended—to include the investments of not only the government of British Columbia but any of the provincial crown corporations, and I said yes. So this additional commitment includes the same thing. I committed myself this morning when Senator Crerar asked me the question, and I am glad he asked it, because I did not think that there was that doubt in your mind about crown corporations.

Senator McCUTCHEON: In other words, you will be quite happy if we write in a limitation clause to the bill?

Hon. Mr. BENNETT: Yes. I think that would be better, because Senator Crerar, or one senator, mentioned that some future Parliament might do it, and then amend this bill again; whereas if it is right in this bill itself, that is the basis on which the charter would be granted. That is the reason I willingly agreed this morning, to show that that was our genuine attitude.

Senator CRERAR: That was not quite the point, although you come close to it, Mr. Bennett. Quite obviously, the conditions that will obtain in the future for this bank are the provisions in the act incorporating.

Hon. Mr. BENNETT: Exactly.

Senator CRERAR: It then becomes like any other bank. What concerned me this morning was whether or not a legislature limiting itself to 10 per cent of the subscribed capital of the bank might not get around it indirectly by having some of its crown agencies or crown corporations take stock under its direction. Now, if I understood the Premier alright this morning, Mr. Chairman, it was that he was quite prepared to have writen into this charter a limitation that neither directly or indirectly would the government be holding more than 10 per cent of the subscribed capital. Am I correct?

Hon. Mr. BENNETT: You are correct.

Senator McCUTCHEON: Mr. Chairman, this morning the Minister of Labour and Education—and I notice that very interesting model—showed us some most interesting development plans, which I now have in front of me. He said, of course, neither the provisional directors nor the government have had anything to do with this. The impression one gets from listening to the Premier is that the Province of British Columbia is going to be a small shareholder in a very large bank, and is just there to give confidence to the people, with no idea of directing it or directing its policy. I would like to ask the Premier to comment. He or someone in his office was good enough to send me a copy of a speech which he made to the Vancouver Chamber of Commerce on April 30, 1964.

Hon. Mr. BENNETT: What page?

Senator McCUTCHEON: It is on the last page; and it has his card attached to it, with a beautiful seal of the Province of British Columbia on the card. The sentence I want to read is as follows:

> We hope, too, that it—

referring to the Bank of British Columbia.

> will make an immediate contribution to the development of the downtown business core, because, as you know, we—

this is the Premier of British Columbia speaking.

> plan to locate their head office building in the Robson, Howe, Smithe, Hornby block,—

that is the block the Minister of Labour was speaking about this morning.

> for which we are now negotiating with the City of Vancouver.

Now, the Premier has protested that even though the people of Canada will subscribe the $200 million or $300 million that is contemplated, according

to Mr. Gunderson's evidence, and the Premier's evidence, to the capital and reserve of this bank, British Columbia is still going to take shares in this bank. I don't understand why, under those circumstances; and I ask who is going to run this bank. The Premier on April 30 said that he was.

Hon. Mr. BENNETT: The Premier didn't say that. The word is "hope," and you quoted the word "hope".

Senator McCUTCHEON: No. The speech says, "We hope too that it will make an immediate contribution to the development of the downtown business core"; and listen to the rest; "because, as you know, we plan to locate it there."

Hon. Mr. BENNETT: Well, we plan.

Senator McCUTCHEON: "Hope" means nothing.

Hon. Mr. BENNETT: Certainly the hope must come into the question with the plan as well. Certainly we planned, and the provisional directors agreed with that point of view.

Senator McCUTCHEON: The hope is that it will make an immediate contribution to the development of the downtown business core.

Hon. Mr. BENNETT: That is right.

Senator McCUTCHEON: But the plan is "to locate the head office building in the Robson, Howe, Smithe, Hornby block." Now, who is going to run this bank?

Senator ROEBUCK: In other words, who is "we?"

Senator McCUTCHEON: We—the members of the British Columbia government.

Hon. Mr. BENNETT: Oh, no, we are only the servants of the people of British Columbia.

Senator ROEBUCK: Well, is not "we" the directors of the bank?

Hon. Mr. BENNETT: No directors of the bank; and I gave a commitment for the government in the legislature that no member of the government would be a director.

Senator ROEBUCK: Then is it not the directors who will make the decisions?

Hon. Mr. BENNETT: Certainly the directors will make the decisions.

Senator McCUTCHEON: Why should the Premier make the announcement then?

Hon. Mr. BENNETT: Well, the Premier is the life of the British Columbia government, you know.

Senator McCUTCHEON: I have known that for a long time.

Mr. GUNDERSON: The board of directors are not going to pay too much attention to what politicians say.

Senator CROLL: How do you think you got there?

Hon. Mr. BENNETT: I want to tell you this, that the best profession in the world is not a chartered accountant, nor a lawyer, nor a businessman. The best men are those who give their lives to public service; and politicians represent policies. All this talk in the country about people in politics—they mean partisan, a dirty type of politics; but there is nothing better than for the youth of our land then to have a proper respect for politics; and to me it is the best word in the dictionary.

Senator McCUTCHEON: As a reformed lawyer, I agree with you.

Senator CROLL: I am rather naive about this. I realize that this is an application, that this bank will in fact be a British Columbia bank and will be influenced by British Columbia policies, as indicated by the Government

in office, and I am not kidding myself that these things will not happen, but let us talk about some things that are happening now. With whom do you bank?

Hon. Mr. BENNETT: We bank with three banks: the Canadian Imperial Bank of Commerce, the Bank of Nova Scotia, the Toronto-Dominion Bank—and we do have one small account with other banks.

Senator MCCUTCHEON: Did he name the Canadian Imperial Bank of Commerce?

Hon Mr. BENNETT: Yes, that is our main banker!

Senator CROLL: In the event we charter this bank, Mr. Premier, what do you suggest will be the policy with respect to the banking facilities that will be carried on by the Province of British Columbia?

Hon. Mr. BENNETT: I think that was covered in Mr. Bonner's brief. We say very definitely that we believe a provincial Government should have more than one bank, and we will still have more than one bank. We will still have at least three banks. I am not saying how much business we are going to give them! I want to be perfectly frank before this Senate committee.

Senator CROLL: I think I knew what your answer would be. The next question I was going to ask you was this: Who is going to get the major portion of the business?

Hon. Mr. BENNETT: That is the decision of the Minister of Finance.

Senator CROLL: Let me talk about the "political" bank—

Senator MCCUTCHEON: Who is the Minister of Finance?

Hon. Mr. BENNETT: The present Prime Minister of the Province of British Columbia!

Senator CROLL: Yes, I thought that.

Mr. Premier, you did a great deal of talking about the "political" bank, and you made some explanation with respect to it. Then you were asked about the amount of shares the province would likely purchase in the bank, and you said, "from 5 to 10 per cent." I have no quarrel with that.

Hon. Mr. BENNETT: Maybe even less than 5 per cent. I do not want to give the wrong impression there.

Senator CROLL: I am not tying you down. The first thing you have to do is get a charter, and then we will see about the limitations.

Are you aware, for instance, of the British Government's ownership in British Petroleum, where the shares are non-voting in order to avoid exactly the charge that is made with respect to this bill?

Hon. Mr. BENNETT: Yes, I am aware of that, but we are going to accept the responsibility for those shares. We are not going to duck our responsibility.

Senator CROLL: You think you have to vote the shares?

Hon. Mr. BENNETT: Yes, we are not going to duck our responsibilities. It would be unfair to the people we represent in the Province of British Columbia if we did not vote them. If something happened in the bank and we were amalgamated with another bank and we did not vote the shares, our Government would go out of office. A government in this country, following the great British tradition, must be a responsible government.

Senator CROLL: What you are saying, in effect, is that one of the reasons the province should enter into the bank business is to protect it from amalgamation with other banks—is that what you are saying?

Hon. Mr. BENNETT: That is one of the reasons, and only one.

Senator CROLL: Are there any others?

Hon. Mr. BENNETT: Yes: industrial development and expansion and growth and jobs.

Senator CROLL: With respect to industrial development and what-not, you have made a case not only for the Province of British Columbia but for seven other provinces. There are only two provinces that have head offices—Ontario and Quebec.

Senator MCCUTCHEON: No, Nova Scotia.

Hon. Mr. BENNETT: I am glad you mention Nova Scotia.

Senator CROLL: Three provinces then. There are seven provinces that are exactly in your position, is that right?

Hon. Mr. BENNETT: Yes.

Senator CROLL: Then are we to treat the seven provinces in the same way?

Hon. Mr. BENNETT: No, and I want to be fair, but I would think the four Atlantic provinces—and that is the reason why we dealt with it there. You would not, perhaps, have it, for instance, in Prince Edward Island—or what we Maritimers call "the island." The five regions may have a bank—that is the point—if they choose. That is why the Dominion Bureau of Statistics does not break down its economic statistics by provinces. Senator McCutcheon knows this full well, because he was in the Government. They are all shown in five regions. Those regions are: The Atlantic region, Quebec, Ontario, the prairies provinces, and the Pacific region, which is British Columbia. There are five banking regions.

Senator CROLL: What you said this morning to us was to the effect that our banking system has failed, in effect, in that the banks are not serving the people of Canada. Let me put it to you in your way. You have lumped the prairies provinces together as a region.

Hon. Mr. BENNETT: The Dominion Bureau of Statistics and the federal Government do.

Senator CROLL: I am not talking to the Dominion Bureau of Statistics, but to the Premier of the province.

Hon. Mr. BENNETT: Yes.

Senator CROLL: And the Maritimes—

Hon. Mr. BENNETT: The Atlantic provinces, four of them.

Senator CROLL: That is two.

Hon. Mr. BENNETT: Yes.

Senator CROLL: And British Columbia?

Hon. Mr. BENNETT: Yes.

Senator CROLL: I agree with you. In those circumstances, wouldn't you think they too are in need of banking facilities?

Hon. Mr. BENNETT: I am sure that is not my responsibility: I am the Prime Minister of British Columbia.

Senator CROLL: After all, you know something about Canada, and we have to deal with that dilemma. Don't you agree with me?

Hon. Mr. BENNETT: Yes, certainly I agree with you, but it is not for me to make the decision for them. That is the free choice they have, and I do not think one province should dictate to another province. We are only trying to make this federalism work, that is all. "Co-operative federalism," they call it.

Senator MCCUTCHEON: Did you say "co-operative federalism"?

Hon. Mr. BENNETT: Yes, that is the new term, and we are trying to make it work.

Senator MCCUTCHEON: It is a novel term.

Hon. Mr. BENNETT: Yes, and it is a good term.

The CHAIRMAN: I thought you might reverse it and say, "Federal co-operation".

Senator CROLL: Under the British North America Act the federal Government has exclusive jurisdiction in banking.

Hon. Mr. BENNETT: No, the federal Parliament has.

Senator CROLL: Yes. I stand corrected.

Hon. Mr. BENNETT: Yes, exclusive jurisdiction to make the rules.

Senator CROLL: In banking?

Hon. Mr. BENNETT: Yes.

Senator CROLL: Under those circumstances, if Parliament was to grant a charter to British Columbia the western provinces, the Maritimes provinces, Ontario and Quebec—

Hon. Mr. BENNETT: No, Ontario and Quebec have them now.

Senator CROLL: Just wait a minute—

Senator BEAUBIEN (*Bedford*): Provincial banks.

Hon. Mr. BENNETT: These are not provincial banks.

Senator BEAUBIEN (*Bedford*): That is a matter of opinion.

Senator CROLL: How, then, could the federal Parliament control the monetary and fiscal policy of this country?

Hon. Mr. BENNETT: I am glad you asked that question, because I too was a student of finance for many years, long before I was a Social Crediter, and I made some reference to it this morning. Back in the thirties—

Senator McCUTCHEON: You mean when you were orthodox?

Hon. Mr. BENNETT: You know, Senator McCutcheon, when I was young and uniformed I was a Tory too, and I was a Tory of the Tories in the tradition of the Empire Loyalists of New Brunswick, and there is no tougher Tory than they are. But in the thirties, when my namesake, R. B. Bennett, thought about a central bank—and I think he will go down in Canada as one of Canada's greatest Prime Ministers—but did not have the proper machinery to handle the situation, because after the First World War the League of Nations recommended that those nations which did not have central banks should have them. In 1930 Canada did not have a central bank. In 1933 they appointed a commission to make a survey, and they did not report until 1934. They sold shares across this nation. I was a shareholder. I also—which I did not say this morning—ran as a director—and that was a long time ago, 1934—as a student of finance and banking; and the cry was that this central bank was going to be a "political" bank. That was the issue raised by my very good friends the chartered banks of the day. So Prime Minister Bennett of Canada had to make it 50-50: 50 per cent public and 50 per cent Government-owned. It was not long before Mackenzie King saw the futility of that and turned it into a straight Government bank, which it properly should be. Since that time Canada has had no bank failures at all—no retail bank failures, and that is all the chartered banks are now.

Prior to that first annual meeting of January, 1935 in this city, which I attended, the chartered banks printed all the currency, and we had a great argument at that first meeting as to whether it should be printed in French or English.

Senator McCUTCHEON: It was bilingual.

Hon. Mr. BENNETT: No, not at that time. At that first meeting, in January, 1935, it was agreed they should follow the procedure of the chartered banks: in those areas which were French it would be printed in French; and in those areas which were English, in English. Later it was changed, and it was a good

thing they changed it too, because we must have goodwill in this nation. The point is that the Pacific Region of Canada is now at a different period of expansion. Now, you do not need Government banks. We have the Government bank, the Bank of Canada, the best in the world . . . the best in the world because it was set up last and had all the experience of others to go by. What we need is more retailers and more retail business in this country dealing with banking so that we can lift the economy of this country. The economy of Canada is not growing fast enough. It is not fully employing our people. We are losing our best brains to the United States of America when we should be keeping them at home. During the tight-money year, 1962—as mentioned by the Minister of Education—loss of our provincial university people to the United States of America. What we must have is an opportunity for industry to develop and for this reason we need this financial machinery. Retail banks are the same as any other retailer.

With only one retailer in a community, say a hardware retailer, I could of course supply the community with hardware, but that would not amount to free enterprise. We are here to ask the Parliament of Canada to allow the same competition in banking as applies elesewhere and so to help lift the economy of this country. This development I mentioned about British Columbia is only one-third of the expansion we could have and would have if we had a proper banking system in this country.

Senator CROLL: I was the one who asked the question, and I should like to repeat it. I don't mind if Mr. Bonner answers it, but what I said to you was: Let us assume for the moment you are entitled to a bank charter. I am not quarrelling with you on that. I said you made a case for it, an overwhelming case, but you also made a case for a bank in the western region, in the Atlantic region, in the Ontario region and in the Quebec region if those regions sought one.

Hon. Mr. BENNETT: I agree with that.

Senator CROLL: In those circumstances I asked you if all of those regions received bank charters how could the Canadian Government, the federal Government or Parliament control the monetary and fiscal policy of this country?

Hon. Mr. BENNETT: I think it is very clear, but I shall ask the Attorney General to speak on this as well. To me it is very clear. In the Bank Act the Bank of Canada has control of the retail banks.

Senator CROLL: Who has control of the banks today? You say they can have complete control?

Hon. Mr. BENNETT: Completely. You can put the brakes on at any time you like. You can also encourage them to be expansionist and to make new loans.

Senator CROLL: But that is what you are complaining about today, that we could not make them do that.

Hon. Mr. BENNETT: If the federal Government wanted to act and to exert control they have full powers to do so through the Bank of Canada, and the Bank Act. We recognize that. And the directors inform me that this bank will co-operate with the Bank of Canada 100 per cent.

Hon. Mr. BONNER: May I address myself to this question for the assistance of Senator Croll. I referred only in passing this morning to the evidence of the Governor of the Bank of Canada before the Royal Commission on Banking, and mentioned the fact that in a great number of cases and particularly in the index, including at page index 173, the Governor described the controls available to the central bank. I mention that the Governor of the Bank of Canada in testifying before this commission outlined in great detail the controls available to the central bank, by the direction of monetary policy, the provision

of price stability, and a host of other facets of fiscal policy with which the national administration through the instrumentality of the Bank of Canada must be concerned. I pointed out as well, if you consult what I said this morning, that in his evidence Mr. Rasminsky went on to say additionally that although the controls were directed essentially for the purpose of the chartered banks they had equal influence over near banking institutions such as trust companies and also had influence in the investment market and elsewhere. He went on at one point to say that in his opinion with the administrative responsibilities presently before the country these controls were adequate. If I may say so, I think he would have been prepared to say further that if the controls were inadequate it is within the competency of the national Parliament by statute to introduce further controls. I don't think, if you would care to examine this, you would find any lack in the machinery available to the national Parliament in this regard.

Senator McCUTCHEON: Mr. Chairman, I would like to preface what I am going to say by saying, as Senator Crerar did, that I am not a director of a chartered bank although I have been in the past. I think the best evidence that the chartered banks are not concerned about additional competition is the fact that they were all notified of their opportunity to come before this committee and to speak with respect to the three bills now before us, and none of them accepted that invitation, nor did the Canadian Bankers Association. Speaking only for myself, I am not concerned about the possibility of more competition in the banking business of this country any more than I would be concerned about more competition in the brewing business.

Hon. Mr. BENNETT: Or in the pulp and paper industry.

Senator McCUTCHEON: Or in the pulp and paper industry. We probably face more in the pulp and paper business because what is happening in British Columbia is evidence that there is going to be a great deal more competition in the pulp and paper business. In my philosophy I agree with that. When we come to this question of banking I feel there are some considerations that apply in that field that do not of necessity apply in the field of brewing and pulp and paper. That is the point I want to direct myself to, and I have tried to do so, and I am not satisfied with the answers I have received.

Here we have a bank which is talking about raising $200 million minimum of capital, and $300 million maximum; the latter figure would make it the biggest bank in Canada from the point of view of paid-up capital and reserves, and the former or lower figure will make it one of the larger ones. I want to know why the Province of British Columbia feels that if, as indicated, this kind of capital is subscribed, it then needs to be a shareholder of the bank.

Senator ROEBUCK: That is the question I asked and which the Prime Minister answered at great length.

Senator McCUTCHEON: I wasn't satisfied with the answer.

Senator ROEBUCK: Oh, I see.

Hon. Mr. BONNER: May I interpose, Mr. Chairman, by referring to the remarks which I advanced on this particular question earlier today. There are certain aspects of this bank which would render it from a number of points of view somewhat different from others. I refer to the ramifications in connection with entire resident ownership. Canadian bank shares trade on an open market and at any given moment it is impossible really to say, except by an educated guess, where the larger groups of shareholdings do in fact lie.

Senator McCUTCHEON: But they do in fact lie in great majority in Canada. That is a matter of record.

Hon. Mr. BONNER: That happens to be the case, but it is not necessarily so, because purchasers from abroad can acquire Canadian bank shares without

difficulty. In relation to this particular point I refer to the relatively stable market value for a bank share which deserves to be held there.

Senator McCUTCHEON: May I interrupt you?

Hon. Mr. BONNER: Yes.

Senator McCUTCHEON: I have heard your point and I do appreciate it. The investors are not interested in a relatively stable value, but in a value that goes up. Are you saying that if the Province of British Columbia owns 2 per cent of these shares that fact will stabilize the market even if the province owns 10 per cent?

Hon. Mr. BONNER: I am suggesting that in a market confined to Canadian shareholdings the presence of a minority shareholder of some identifiable capacity will have a stabilizing influence on the market.

Senator McCUTCHEON: Well, I wish you could bring expert evidence of that.

Hon. Mr. BONNER: I might not be an expert on this, but—

Hon. Mr. BENNETT: You know what they say about an expert? He is a person who is three miles away from home, and lost. I might say that in British Columbia all the experts have said it would fail, but it has gone far beyond our expectations. The proof of the pudding is in the eating. I would like to come down here three or four years from now and discuss this with you again.

The CHAIRMAN: All the experts here today had better be careful, in view of your definition.

Hon. Mr. BENNETT: That is right.

Senator McCUTCHEON: Assuming that this capital is fully subscribed, if your interest in taking shares is limited to the fact that you will provide a stable market—and I personally do not regard that as an adequate reason—

Hon. Mr. BONNER: There are five other reasons. In the interests of time I would refer you to page 17 of my brief.

Senator McCUTCHEON: Let us be clear. Let us go on the assumption that I am not opposed to the incorporation of new banks, because I am not. Let us assume I would be happy to have a bank properly financed with proper management and with its head office in British Columbia, because I am. But, the neat question that I am putting is: If your capital is fully subscribed, or even if the whole of the $200 million or $300 million is not taken up, because you can start a bank on far less than that; if there is an adequate subscription from the public why does the Province of British Columbia insist on its right to be a shareholder?

Hon. Mr. BENNETT: Because we have provincial rights, and we have the right to own shares. We have citizenship rights in this country. Just because you are in a provincial Government that does not lessen your citizenship rights.

Senator CROLL: Mr. Premier, let me put this to you; if we decide to charter the Laurentide Bank why cannot you do exactly what you want to do, namely, acquire shares of that bank and help that bank grow?

Hon. Mr. BENNETT: The answer is: No.

Senator CROLL: Why?

Hon. Mr. BENNETT: We have considered that and turned it down. It is Government policy.

Senator McCUTCHEON: Then, Mr. Premier, let me come to the point you raised—and I point out you raised this point; I did not—

Hon. Mr. BENNETT: We raised all the points.

Senator McCUTCHEON: Very well. You raised this one. You said that it would be ridiculous to think that the province of British Columbia would invest in a bank which would be used for partisan purposes, because obviously you want the bank to be successful. With that I agree. You have instanced the difficulty you might get into if you influence loans, and so on, and from a political point of view I agree with you. It would be just as if you went into making beer, because the first bad batch you brewed would lose you a lot of votes.

Hon. Mr. BENNETT: There is a lot of bad batches now, but the Government does not get the blame for them.

Senator McCUTCHEON: That is right. I have not seen this in the press, but you said it had been suggested that people might not get forest management licences—

Hon. Mr. BENNETT: That was in the press.

Senator McCUTCHEON: —or they might not get the trees that the great industries in B.C. need if they did not deal with your bank. You repudiated that suggestion.

Hon. Mr. BENNETT: That is right.

Senator McCUTCHEON: I accept your repudiation, but what about your successors?

Hon. Mr. BENNETT: My successors? Who is going to succeed you? If a government does a good job then it stays. I want to make this very clear, that our whole record shows a nonpartisan approach from the time when we became a small minority government in 1952.

Senator McCUTCHEON: No, no—

Hon. Mr. BENNETT: I want to make a point on this. You raised this, Senator, and I must deal with it. There is this question of patronage. When we formed a government we found special lists with respect to everything, and we told them to burn them forthwith. Every single person, be he Liberal, Conservative, C.C.F. or what have you, in British Columbia since August 1, 1952 has been able to tender with respect to any supplies. And not only that—and this occurs only in British Columbia—seven days after the order is placed, which is necessary so that they cannot chisel on that order, the unsuccessful bidders or their agents can inspect the order and the other bids. Every trade group thereby automatically polices the purchase of its own commodities. The whole business of provincial government is conducted in that manner.

Patronage will defeat any government, and patronage, whether it be in logging, timber, supplies or in the appointment of people, is the cancer in the democratic system. Any government that follows that practice will be defeated.

Senator McCUTCHEON: Mr. Premier, I accept that fact. I have had no business connections in British Columbia for several years, although I used to have some. I accept the fact that that is the policy of your government, but you have misunderstood me. Supposing we get a Liberal Government in British Columbia, or supposing we get a Conservative Government—

The CHAIRMAN: Perish the thought!

Senator McCUTCHEON: Or suppose we get a C.C.F. Government in British Columbia? This is what concerns me. I still cannot understand why, if you can obtain the capital from the public, and so on—sure, you are sponsoring the bank, you are naming the provisional directors, and it is taken for granted that the directors you name will appoint able management, or you will inspire them to name able management. I am not worried about you, but I am worried about what may be the situation ten years from now when you

decide to retire and your party is defeated at the polls and some other government gets in. They will then find themselves the largest shareholder in this bank. If this bank can be financed by the public why do you want to put any money in it?

Hon. Mr. BENNETT: Mr. Bonner dealt with that at page 17, and I dealt with it—

The CHAIRMAN: Mr. Bennett, it seems to me that we have been backwards and forwards, up and down, across and through the centre, and have covered all other angles of this question. Has not enough been said at this point, or is there anything new that you can add?

Hon. Mr. BENNETT: I want to say this, that I as the provincial Premier believe in our Constitution. Our Constitution gives the right to the federal Parliament to set all the rules for banking. The government can set any rules that Parliament will pass. The Government will most likely be influenced by recommendations from the Treasury Board and the Bank of Canada. I am sorry that Senator McCutcheon appears not to have grasped this point, although I am sure he has complete confidence that the Bank of Canada is operating so well, and that Parliament is operating so well with this system of revising the Bank Act every ten years. I am sure that if a situation developed that necessitated action Parliament could act fast. I have confidence that the Parliament of Canada and the Bank of Canada can set the rules so that banking in Canada on a retail basis can be handled in the best interests of Canada. I have that confidence. If I had not that confidence then I would not be a firm believer in the federal system. I have great confidence in Canada.

Senator MCCUTCHEON: Mr. Chairman, I have taken up too much time, but I want to say one more thing. I must say I am sorry, but I am still not satisfied with the Premier's statement. It is true that the federal Parliament controls the provisions of the Bank Act. It is true that the Bank of Canada controls the monetary policy of this country under the direction of the Minister of Finance.

Hon. Mr. BENNETT: And the Inspector of Banks.

Senator MCCUTCHEON: The one thing that the Premier did not mention is that Parliament can also decide whether or not there will be another bank incorporated. I have no illusions that this bank, if it is capitalized and so on on the basis we have been told, will be successful. If I were not a Member of Parliament I would be tempted to buy shares in it when they are offered to the public. I am not concerned about the fact that the undertaking may be influenced by the government to make bad loans or good loans because politically that would be very stupid, but I am concerned about the possibility that ten years from now when Mr. Bennett and his colleagues are no longer in power and some other nameless group is in power, someone might say to me, if I were operating a large pulp and paper operation or a sawmill in British Columbia: "Now, you get your credit from the Bank of Montreal, but we will handle your foreign exchange transactions. You make your deposits with us. You carry your payroll accounts with us, and so on". Having said that, Mr. Chairman, I will say no more.

Hon. Mr. BENNETT: That is a position that the federal Parliament can deal with.

Senator CROLL: I was going to ask Premier Bennett if he would care to comment on a report which I saw recently which is surprising to me, that the board of trade had opposed the granting of a charter on the circumstances. I would call it a newspaper report. Would you care to comment on that?

Hon. Mr. BENNETT: The Vancouver Board of Trade is a very splendid board of trade and I was president of the Kelowna Board of Trade many years ago. They are a great institution because they help industry and so forth. But I say in a more friendly tone than anything else that I would tell them, because I am ex-president, that the board of trade opens its meetings by praising God and then passes the resolutions.

Senator ROEBUCK: That is what they do in the Senate.

Hon. Mr. BENNETT: I saw you in action today in the Senate. I would like to thank the Senate for the nice compliment they paid me. I was honoured and glad to be present. The Vancouver Board of Trade—that is the difficulty, in British Columbia we have a branch economy—a branch economy. Too many people are branch managers. What we want is some head offices, so that they would think more about British Columbia. Sir Edward Beatty who was a great leader of the C.P.R. said to me one day: "The trouble with branch people across the country is that if I get up in the morning I put my hat on in a certain way, every one of my lieutenants across the country will do the same." I have no quarrel with the Board of Trade of British Columbia. Although I have seen a critical letter, they say they are 100 per cent for the Bank of British Columbia to be established in British Columbia—not in the singular but in the plural. I will file the letter if you so desire.

Senator CROLL: What percentage of the capital is to be paid up before they commence business?

Hon. Mr. BENNETT: The individual share?

Senator CROLL: Yes?

Hon. Mr. BENNETT: One hundred per cent.

Senator ROEBUCK: I want to ask a further question.

Senator O'LEARY (*Carleton*): I want to ask three questions but one of them has been dealt with very fully by Senator McCutcheon, although I think I would have dealt with it in a slightly different way. I want to ask Mr. Bennett this. He said this morning, in reply to a question of mine, that the Government had changed its mind and it would now be content with 5 per cent or 10 per cent of the shares.

Hon. Mr. BENNETT: No. The government did not say it changed its mind. It said that in the bill the maximum is 25 per cent.

Senator O'LEARY (*Carleton*): You still want 5 or 10 per cent?

Hon. Mr. BENNETT: We did say that the public reaction to this bank with government participation was so great that the investment dealers—and we have letters here—say that they never had anything like this offering to buy shares in something that had not yet been submitted. We say then that we think that no more than 10 per cent will be needed.

Senator O'LEARY (*Carleton*): You say that regardless of how great it is, you still would like 10 per cent.

Hon. Mr. BENNETT: No, I did not say that. I said up to 10 per cent.

Senator O'LEARY (*Carleton*): All right. In the event of your getting the charter, do you intend to repeal the act of your legislature empowering you to take 25 per cent?

Hon. Mr. BENNETT: My suggestion was in answer to the Honourable Senator Crerar. I agreed with his suggestion that the Senate could place the limitation right in the bank charter, so that not only would it permanently limit the provincial government interest so far as the government which I lead but all future governments. If the senator wants, I would certainly give a commitment that I would recommend to the legislature that the act be changed.

Senator O'LEARY (*Carleton*): May I put the other question, then, though there may be some repetition in it? Senator McCutchon agreed with you. He took your word for it that you would not use this bank for patronage purposes.

Hon. Mr. BENNETT: He knows our background.

Senator O'LEARY (*Carleton*): I would accept your word, too, but, sir, I have lived in this city for 50 years and watched the operations of government—Liberal, Conservative and so on.

Hon. Mr. BENNETT: In the wrong city.

Senator O'LEARY (*Carleton*): And I want to tell you this, that no matter how good they were they favoured their own. It would be to deny your human nature, sir, to say here today that you would not favour your own. Certainly, there is this danger in this bill, in giving you this charter, the danger that a large segment of the public would feel and would suspect—and there would be grave danger in this itself—that you would use your power as premier, as leader of this government, vitally concerned with the success of this bank, that you would use your persuasive powers, which are very good, to make sure for example that your suppliers are contractors and other people would use this particular chartered bank in preference to others.

Hon. Mr. BENNETT: I think you made a good point there, but I would disagree with it 100 per cent. I have tried to ensure, on the purchase of supplies and on contracts, that we put up checks and balances, to stop that very thing, so that no outside pressure could be applied. We had a highway under construction, the Cariboo Highway. If anyone knows anything about contracts on the Trans-Canada Highway or any other highway they know that they are tendered on the unit basis—so much for removing rock, so much for material, and so forth. On highway contracts some bids were rejected and tendered again. On the Cariboo Highway contracts, open bidding saved the public 42 per cent and saved the taxpayer on all highway contracts many millions of dollars by abolishing patronage. This is my reputation and policy, and at 63 years of age I am not going to change that.

Senator MCCUTCHEON: Your successors may change that. That is what worries us.

Hon. Mr. BENNETT: My successors.

Hon. Mr. PETERSON: May I state a personal opinion on this subject of successors? I think it is clear that any successors would still be acting for all of the people of the province and acting presumably in the public interest. I would suggest to honourable senators that it is far less dangerous, because first of all there would not be this influence that you speak of in order to prevent their *de facto* control. When you limit the controlling to Canadian people and limit the provincial government to 10 per cent, so there could not be *de facto* government control. Secondly, there would not be this influence, but I suggest in the alternative that it is far less dangerous to give this influence to government acting on behalf of all the people, than it is to give it to any select group of private financiers with interlocking directors acting for other companies as well. I suggest that is far more dangerous than the influence you are discussing this afternoon.

Senator ROEBUCK: Mr. Premier, you read us quite a little homily on constitutional law.

Hon. Mr. BENNETT: No, I am not a lawyer. I am just a blunt businessman.

Senator ROEBUCK: Nevertheless you made a statement with regard to constitutional law. You said that the management of the banks is within the jurisdiction of the dominion Parliament, as expressed in the Bank Act, the

incorporation of banks and their control after they have been incorporated. Will you tell me, in your opinion, where the jurisdiction lies with regard to the buying and selling of bank shares after the bank has been incorporated? Is that within the dominion jurisdiction or is that within the provincial jurisdiction?

Hon. Mr. BONNER: Are you inviting the premier to give a legal opinion, senator?

Hon. Mr. BENNETT: He is my advisor.

Hon. Mr. BONNER: I venture an opinion in regard to the dealing in bank shares. As regards the Bank Act itself, it is dealing with personal property. That means that the Queen in right of the province has the same right to deal with the province as the Queen in right of Canada and to deal in shares would fall into this category. What you have in addition to this is that, so far as the Revenue Act of our province is concerned, the investment of public funds of the province, and to the extent that these public funds may be permitted by a national law to be invested in the bank which is under discussion, the regulation thereafter exerted over that investment under the Bank Act and through the machinery of the Bank of Canada becomes a direction in effect by the Queen in right of Canada over funds disposed of by the Queen in the right of the province. That I suggest is the start of the bare bones of the problem. I suggest with the greatest of deference that opinions which have been advanced on second reading, that it is within the competence of the Queen in the right of the province to buy shares is the correct constitutional view.

Hon. Mr. BENNETT: I should like to make it clear that under the Revenue Act, any surplus and other ordinary revenue of government, excluding borrowings, may be invested; that we can buy up to so much of the shares of this bank with the proposed amendment limiting provincial government investment to 10 per cent.

Senator ROEBUCK: The purpose of my question was whether we have any right to decide whether the Province of British Columbia, through its government, shall buy shares in a bank or buy shares in anything else. That is provincial jurisdiction, is it not?

The CHAIRMAN: Senator, you can discuss the expediency.

Hon. Mr. BONNER: As the Government of British Columbia we are saying that we agree to this amendment being put in this bill, therefore that is agreed by mutual consent, so we do not raise any constitutional question.

Senator POWER: Mr. Chairman, may I ask a question of the Premier. I gather from what he has expressed that he and his energetic friends have a patriotism which we might call local patriotism—British Columbia. At the same time there is, he asserts, a great deal of virtue in free competition, free enterprise. Does he not believe that when this bank is formed, the tendency in British Columbia will be for the people to leave the other banks, and that then he will be destroying to some extent free competition?

Hon. Mr. BENNETT: I do not think so at all. If I have a hardware store, and I sell heavy furniture and appliances, I cannot sell my goods for nothing, nor can I get all the business. That is something that is in human nature. It is especially so with a bank. If you are associated in the business of a bank over the years you are not going to lightly leave the bank—and here I am being a booster for the present banks—where you have had satisfactory arrangements for a long time, or even a short time; and therefore what you say is not the case. What will happen, if I may act as a prophet, is that we would have a new competition, just as in the case of the steel industry with a new plant.

Senator POWER: We have a great deal of sentimental prejudice.

Hon. Mr. BENNETT: But there is loyalty to a bank which is giving service. All my business life I have banked with one bank. I believe that the other chartered banks, being staffed by very realistic people, and very clever people as well, who live in Vancouver, British Columbia, will look upon this bank as only one bank only, and will give more authority to their regional officers and give them more seniority and positions so that they can meet this new kind of competition. I also think that 10 years from now the regular chartered banks now in British Columbia will be doing more business than they are doing today, and the largest bank will be the Bank of British Columbia.

Senator POWER: I take it that your argument is that because chartered banks are now to some extent foreigners, that is to say, they have their headquarters elsewhere than in British Columbia, they are apt to be not quite so generous in their advances to retail businesses, and that the bank which is contemplated will deal with them more generously; but do you not think that some thought should be given to a more objective view such as that given by parties who are not actually part of the local community?

Hon. Mr. BENNETT: I would say this, that the loans that have been freely granted in Toronto and Montreal have not hurt regional development. Where is the great development in Canada? Being so close to headquarters of the bank, human nature being what it is, you can talk first hand with the people, which is far different from sending in a report by remote control and waiting weeks for an answer.

Senator POWER: I am under the impression that a great many of these almost purely local banks were liable to go to the wall, probably because they are too generous.

Hon. Mr. BENNETT: No bank has gone broke in Canada since Parliament in its wisdom set up a proper banking system—supervised by the Bank of Canada.

Senator POWER: Probably because either a minister or the directors felt it was better to save their hides.

Hon. Mr. BENNETT: Are you suggesting that these mergers were arranged with the Government?

Senator POWER: I suggest that the Government must have given the advice, and pretty strongly.

Hon. Mr. BENNETT: That is Government interference much greater than in regard to this little or big bank we are thinking of starting in British Columbia.

The CHAIRMAN: Senator Thorvaldson?

Senator THORVALDSON: Mr. Chairman, I think the Premier and his associates recognize that most of us will agree that they have made out a splendid case for a Bank of British Columbia, with the City of Vancouver to be the head office of such bank. We are all aware of the tremendous economic advances which have taken place in your province, Mr. Premier. Furthermore, I am sure we all recognize that you have many important business people in British Columbia who support you in the proposal to establish such a bank in support, as indicated by the names which appear in the petition which you referred to.

My question is this. I think you understand that there appears to be a reluctance on the part of many senators and many people in Canada to create a precedent, namely, the precedent of a province becoming the owner or part owner or in control of a bank. Would it not be possible, supposing the Senate were able to see things in your light, that this bank should be incorporated under some of the conditions you specify, without the province making an investment in this bank at all. Instead, you and your associates would continue to provide leadership as you have been doing in regard to the organization

of a large bank in Vancouver, that is, having its head office there; then that you and the provisional directors you have named, as well as other persons whose names you have recounted to us, who are all prominent citizens, could continue to organize such a bank without financial participation by the province. Namely, you would have your bank without your government becoming a shareholder. That is my proposition to you. Is there any possibility of changing the situation to make this possible?

Hon. Mr. BENNETT: There is no law today to stop any provincial government in Canada from buying shares in any chartered bank in Canada; so why restrict us at this time? We can go out and buy shares in the Royal Bank, the Bank of Montreal, the Bank of Nova Scotia, or any other bank, so why restrict us to this bank?

Senator MCCUTCHEON: I will tell you why, Mr. Premier; because if you go out and buy shares in the Bank of Montreal, the Royal Bank, the Bank of Nova Scotia or the Canadian Imperial Bank of Commerce, you will have very little influence in it. I will say again, that I accept your bone fides completely, but I don't know who your successor will be. All I know is that as sure as the sun rises and sets, some day there will be a new government in British Columbia, and you will not be the premier. Now, that is what concerns me, and I want to make it as frank as that. If you want to go out and buy shares in the Canadian Imperial Bank of Commerce, or any other place, you go out and do it— I am not to be concerned about that.

Hon. Mr. BENNETT: Yes, but we don't want to prevent our province from advancing, and we do not want to be held back. It can grow three times as fast. This is a serious situation. I would not be here for the first time in history as provincial premier, and bringing ministers with me, and my financial advisers, if we were not dead earnest about this, and 100 per cent for it.

Senator MCCUTCHEON: Mr. Premier, if you can raise even $100 million you can set up a bank on a basis such as no other bank in Canada has ever had—with a foundation that no bank in Canada has ever had before. If you can do that, with this head office in British Columbia—and after all you are not one of the petitioners, the petitioners are sitting over here—

Hon. Mr. BENNETT: I am here because of the principle in the second reading of the bill.

Senator MCCUTCHEON: I know.

Senator FARRIS: I am listening!

Senator MCCUTCHEON: I say that you can start off a new bank with the broadest base by far—with $100 million—that any bank in Canada has ever had. If you can do that with these prominent British Columbia people as the provisional directors, why do you need to own one per cent of the stock?

Hon. Mr. BENNETT: Because we won't settle for second best.

Senator MCCUTCHEON: All right.

The CHAIRMAN: Any other questions? Are you through with these witnesses?

Senator CRERAR: There is a point that has bothered me, Mr. Premier. Quite obviously, if you get a charter for this bank, if the Province of British Columbia can take an interest in a bank and promote a bank, which you are doing and which you are quite entitled to do, then any other province may do the same thing.

Hon. Mr. BENNETT: That is right.

Senator CRERAR: What bothers me is the possible conflict that may arise in the future out of that act. Under our constitution certain things were definitely reserved for the federal authority.

Hon. Mr. BENNETT: The federal Parliament.

Senator CRERAR: Yes, the federal Parliament.

Hon. Mr. BENNETT: That is right.

Senator CRERAR: And among them, banking.

Hon. Mr. BENNETT: Yes, banking control; that is right.

Senator CRERAR: And the control of fiscal and monetary policy as far as any control was exerted. Now, if we visualize perhaps three banks organized in Canada with three provinces or three groups of provinces holding an interest in them, don't you think there is a possibility of a conflict arising between the provincial and federal authorities in this matter?

Hon. Mr. BENNETT: Not one per cent of the conflict as on other issues, and I have attended many, many federal-provincial conferences with two types of Government, and there has never been any conflict there. The federal jurisdiction is supreme as far as setting the rules of the game of banking are concerned, and they can change the rules. I see no conflict.

Senator CRERAR: Well, very good. But if, for example, what I indicate happened and you had three banks in Canada with provincial interests in each of the three banks—perhaps one in the Maritimes, one in British Columbia and perhaps another in Quebec—

Senator MCCUTCHEON: And Newfoundland.

Senator CRERAR: Newfoundland would scarcely support it.

Hon. Mr. BENNETT: I did not say that!

Senator CRERAR: If you had that condition of affairs and then you came to the conclusion that the Bank of Canada and the federal authority were following a monetary policy that was much too restrictive in its effects and you agitated to change it, do you think that would promote the unity of Canada?

Hon. Mr. BENNETT: I want to say this: we can advocate, every Canadian citizen, whether a provincial Premier or any other type of citizen—because we are all equal in Canada—can advocate changing Government policy on banking at all times. I was first to advocate the revaluation of the dollar. The Liberal party opposed us and said it was ridiculous and foolish, and so did the Tories; and now they are both boasting that it was their idea.

Senator MCCUTCHEON: We did it.

Hon. Mr. BENNETT: We advocated it seven years ago.

Senator CRERAR: I think those conflicts would be bound to arise.

Hon. Mr. BENNETT: No more than they are now—less, because the banks would strengthen the regional economy. What is the conflict really in Canada? It is in the areas in Quebec where there is no development; that is what makes the conflict. And the Maritimes—I came from there and had to leave because the competition was too great and because the opportunity was not there. To raise these different regions, especially in the east and west extreme regions; that is the necessity for national government policy to keep unity in this nation—and that is no threat.

Senator MCCUTCHEON: I think we should send more Maritimers out to B.C. to compete with Mr. Bennett.

Senator CRERAR: That is the one doubt I have in my mind, and I think it is a very real doubt. In this country today Confederation, as we call it, is under very severe strains and stresses.

Hon. Mr. BENNETT: Mostly because our banking fraternity have not done their job; that has a lot to do with the strains.

Senator CRERAR: I suggest the evidence is against it—

Hon. Mr. BENNETT: When you were Leader of the Progressives, when I used to follow your speeches with great interest, I followed a lot of thought along that line.

Senator CRERAR: I would like to finish, if I may. I think the evidence is against the assertion that British Columbia has been held back because of monetary policy—or any other part of Canada.

Hon. Mr. BENNETT: Yes, we have been held back.

Senator CRERAR: I do not agree with it.

Hon. Mr. BENNETT: As Premier, I know it.

Senator CRERAR: I am quite sure that the development of provincial banks —because that is what they would come to be known as—would lead to stresses and strains that would be very serious for us all.

Hon. Mr. BENNETT: I have just the other view, senator. I do not question your right to hold that view, but with all deference I disagree with it, because I think if you let these regions have some vitality then we would get more co-operation in this nation.

When I first came to British Columbia I went to see an old chap, the largest hardware wholesaler and retailer in California. He said, "Cec., don't make the mistake we made in California. Your resources in British Columbia are ten times ours. You are being held back by faulty banking policies, but I should not say that because I am a citizen of another country. We were convinced in our Chambers of Commerce and Boards of Trade of that, and everybody thought California was going ahead. I have lived to see the day where I have sold property to these easterners—"Yankees" they call them—"and the mid-west, and I have lived to see the day when I have bought the property back at 30 times my selling price. We have not the needed national resources in California and our oil and natural gas are going to run out."

British Columbia is the richest part of North America and we will be held back further if we do not receive the charter for this Bank of British Columbia. Of that I am convinced, and for that reason I am here, and for no other reason, and I believe it with every breath I draw.

Senator MCCUTCHEON: Mr. Chairman—

The CHAIRMAN: We are starting to "triple track" now. We have been over three or four times some of the things that have been said. I do not blame people for their enthusiasm in doing so, but surely we should stay close to the question, if we have any questions left. We keep going around in circles and coming back to the same point, getting additional answers which are repetitive. If the committee wants that, well, that is all right; but I think we may have reached the point of no return as far as the value of anything else that may be said is concerned. If you want to carry on in this fashion, that's fine.

Senator MCCUTCHEON: I withdraw my question.

Senator BEAUBIEN (*Bedford*): Let's adjourn.

The CHAIRMAN: If you have no further questions to ask—Mr. Bennett, I don't want you to feel I am attempting to shut out many answers or any additional evidence, but I have been sitting here and listening and I have seen this train go 'round and 'round and shop at the same station so often, and the same thing has been said again and again so often that I could repeat it from memory. Of course, it is part of the objective of the questions, because when they ask a question and you do not give the answer you are expected to give you are asked the question again in the hope that the next time you will do better on it.

Senator MCCUTCHEON: They always fail.

The CHAIRMAN: Yes. It seems to me that at some stage, unless there is additional evidence, we should call a halt. Is there anything more you want to add to anything you have said?

Senator CROLL: Just before he does, I raised the question and Senator Crerar repeated it. What is bothering the members of this committee—and I think it is in the interests of the Premier to clarify it if he can—is this: That he has made a case for a bank is beyond all question, as it affects the need in British Columbia and the western part of Canada. There is no question about it at all. But he did more than that, and I think this is the only thing that is bothering the members of the committee. He made a case for other provinces also to have banks, and that means provincial commercial banks, as I pointed out, in either eight provinces or five regions. In those circumstances, we are troubled with, as Senator Crerar puts it, the conflict that may arise in the one field we are still supreme federally in, banking. I think the Premier of the province should calmly take a few minutes to talk to us like an uncle and lay the cards on the table, as he sees it, in order to clarify that doubt in our own minds, because I think that is the only thing that is bothering us.

Hon. Mr. BENNETT: I want to say I am glad these questions have arisen. That is the reason why I wanted to come down here so that I could be questioned. A brief is one thing, but in my view the proper way to do it is to answer questions. If I wax enthusiastic it does not mean anything except that I am doing what I can with the best good will. Furthermore, in case I do not get an opportunity of saying it before the committee adjourns, I would like to express how pleased I am, and the pleasure of the group who have come from British Columbia, at the attention we have received from the committee, the courtesy and the priority extended to us. I may also say that what pleased us more than anything else were the vital and pointed questions put to us. If the members of the committee had just sat back and not put those questions to us we would not have known what was in your mind. You see our real problem is the fact that the one place in Canada today that is just bursting with growth is British Columbia. You do not have the same problems in the other provinces. For that reason the other provinces will not be knocking on your door to do the same for them. I am sure you are worrying about something that just will not happen and that will never trouble you. In British Columbia, beyond the mountains, it is difficult for people and executives to come to see us and visit us. However, when they do come they say "I wish I had known about this before." As I say, we are not like the other provinces, we are in fact beyond the mountains. And I am pleading to you to give consideration to our province and to the fact that we are in a different position, and make it easy for us to co-operate in the building up of a great nation.

Senator ISNOR: I have sat here for a long time without asking any questions.

The CHAIRMAN: You have your opportunity now, Senator Isnor.

Senator ISNOR: There is just one question I am worrying about. We have coming up sometime in the future a revision of the Bank Act, and I am wondering as to what the position of British Columbia or any other province would be if in that revision of the Bank Act there is a section prohibiting the provinces from embarking on such a venture as this.

Hon. Mr. BENNETT: I don't think it would stand up in the courts. I think it would be unconstitutional.

Senator ISNOR: What do you mean by that?

Hon. Mr. BENNETT: I feel there is a proper place to deal with this, and I think that is in the Bank Act.

Senator ISNOR: My question is what would your position be in those circumstances?

Hon. Mr. BENNETT: My position is that if you are going to deal with this question this is the only place to deal with it. Because then you are dealing with all the provinces. I am not agreeing with your point of view that it would be a good thing to do. I am not agreeing it would be constitutional, but, I do say, if you are going to do it that is the place to do it.

Senator ISNOR: The Premier says that if a revision such as that takes place the attitude of the British Columbia Government would be to take it to the court to show it is unconstitutional.

The CHAIRMAN: No, that is not what he said.

Hon. Mr. BENNETT: I did not say that. I said I would question the constitutionality of it. Outstanding lawyers in the Senate have already said that themselves during second reading. I have read the speeches on second reading.

The CHAIRMAN: I think, Premier, you are confusing two questions. What Senator Isnor said was that when the Bank Act comes up for revision, if there should be a provision in the new Bank Act which proscribes or prohibits any holding directly or indirectly of shares of a federally incorporated bank by a provincial authority, or by a federal authority for that matter, and, let us assume that in the meantime you have received your charter, the question that Senator Isnor is asking is what would your position be in relation to that.

Hon. Mr. BENNETT: If we had our charter we would not have any trouble.

The CHAIRMAN: The charter would be subject to the revisions of the Bank Act.

Hon. Mr. BENNETT: We would have our shares.

The CHAIRMAN: But you would have to conform.

Hon. Mr. BENNETT: The whole question is a constitutional question which has been brought up by Senator McCutcheon that the federal Parliament has control of banking. If the federal Parliament goes beyond its constitutional boundaries, it is the same as if a province did so and would have to stand its chances in court.

Senator POULIOT: Could I ask a question of Mr. Bennett in the friendliest manner?

The CHAIRMAN: Yes.

Senator POULIOT: I want to ask a blunt question. Are you in favour of Confederation or not?

Hon. Mr. BENNETT: If all the other provinces left Confederation, then of course we would be left by ourselves. But the point is that we believe we would be the last to leave because we believe 100 per cent in Confederation from Newfoundland to Victoria, and everything I can do as long as I am Premier to make this a great united nation I shall do. I am 100 per cent Canadian.

Senator POULIOT: You gave the answer I expected you to give.

Hon. Mr. BENNETT: Our people left a certain tea party to come to Canada. We are not going to do anything to alter that situation.

Senator CRERAR: Mr. Chairman, there is one remark I should like to make to clarify what I have already said and to remove any wrong impression that might have been left by my previous remarks. I am not opposed to giving charters for new banks where it is clear that the public interest will be served, because the public interest is paramount. However I am very doubtful about the wisdom of any provincial Government having an interest in a bank. I have already stated my reasons for this and I do not need to add anything to that.

The CHAIRMAN: We have been over all that.

Senator McCUTCHEON: I move that we adjourn.

The CHAIRMAN: May I suggest, subject to the views of the committee, that we reserve on this. Some senators will need to see the transcript and that will take a few days to prepare. It will be necessary for us to deliberate before making any decision in connection with this bill. However, that does not end the work of the committee. We have two other bank bills awaiting consideration. We are sitting again tomorrow morning.

Senator CROLL: How about tonight?

Senator McCUTCHEON: We are sitting on the Companies Act tomorrow morning.

The CHAIRMAN: Do I gather the members of the committee would be prepared to gather here at eight o'clock this evening, and not say that the chairman was a slave driver?

Senator CROLL: By all means.

Senator McCUTCHEON: I am willing to sit tonight, but not tomorrow morning, on these bank bills. If we don't get through tonight we should wait until Wednesday morning next.

The CHAIRMAN: We will adjourn the committee until eight for the consideration of the bills in connection with the Bank of Western Canada and the Laurentide Bank of Canada.

Senator McCUTCHEON: I think it will be very difficult to consider two bills in a vacuum. I suggest to the committee that we should await the transcript of today's evidence, and we should meet at 9.30 on Wednesday, July 29, to consider the three bills.

The CHAIRMAN: We are going to meet this evening at eight o'clock and we will consider at that time what is the best thing to do in the circumstances.

Whereupon the committee adjourned at 5.30 p.m.

APPENDIX A

Brief

PRESENTED TO THE SENATE STANDING COMMITTEE
ON BANKING AND COMMERCE

ON

An Act to Incorporate Bank of British Columbia

(Bill S-20, 1964)

OTTAWA, JULY 22, 1964

Submitted by
THE HONOURABLE W. A. C. BENNETT
Premier and Minister of Finance of British Columbia

BRITISH COLUMBIA

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PRESENT ON BEHALF OF THE BANK OF BRITISH COLUMBIA:

THE HONOURABLE W. A. C. BENNETT, LL.D., *Premier and Minister of Finance.*

THE HONOURABLE R. W. BONNER, Q.C., *Attorney-General.*

THE HONOURABLE L. R. PETERSON, Q.C., *Minister of Education and Labour.*

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Assistant Deputy Minister of Finance and Director of Tax Research.

W. C. BUDD,
Executive Assistant to the Premier.

MR. CHAIRMAN, HONOURABLE SENATORS:

I appreciate the opportunity to appear before your Committee on Banking and Commerce to support, on behalf of the Government of British Columbia, the application of five outstanding and experienced Canadians for incorporation of the private Bank of British Columbia.

Perhaps you are wondering why the Premier of the Province is appearing before you in support of a Bill to incorporate a private bank? I do so whole-heartedly on behalf of the people of British Columbia to assist them in obtaining a large financial institution with its head office in the Province of British Columbia.

From the beginning of the idea to form a Bank of British Columbia with head office in the City of Vancouver, the only interest of the Provincial Government in the matter has been to support the principle and attempt to ensure it is developed on a sound financial and business-like basis. To this end, the Legislature of British Columbia authorized the Provincial Government to purchase shares in a privately chartered bank with head office in the Province. As is customary in this type of legislation, a limit was imposed—in this case not more than 25 per cent of the share capital.

This authorization is not contained in the Bill under discussion to charter the bank. I mention it, however, as it has given rise to the charge that this is a "Government bank" or a "political bank." I have publicly stated on behalf of the Government—and repeat to this Committee—that in view of the tremendous support evidenced by our citizens for this bank, British Columbia will not purchase more than 10 per cent of the shares. I want to emphasize the Bank of British Columbia will be a private chartered bank. We are all aware that regulations and controls concerning shareholders and the operations of chartered banks in Canada are contained in the *Bank Act*. British Columbians recognize that the Parliament of Canada has the control of such matters and have confidence in Parliament to regulate uniformly for all Canadians.

I can assure you the Government of the Province of British Columbia has only one desire in supporting Bill S-20, and that is to see a large bank incorporated with its head office in the Province and developed and operated on sound business and financial principles. As Premier, I am convinced it is urgently required and wanted by the people of the Province.

The Bill itself contains five principles for your consideration.

One, the name—the Bank of British Columbia. It honours one of our 10 Provinces, as does the name Bank of Nova Scotia.

Two, the location of the head office in the City of Vancouver—the largest city in British Columbia and the third largest in Canada. This city has now reached a financial stature of its own, being the largest metropolitan centre west of Toronto, and is an appropriate location for the direction of a large bank dealing mainly in western matters.

Three, the capitalization of $100 million. This sum exceeds the minimum for incorporation set out in the *Bank Act* and indicates the provisional directors are convinced that the ability of the new bank to be successful, to achieve a responsible position among Canadian banks, and to avoid amalgamation depends on adequate financial resources at the start of business.

Four, the names of the provisional directors—all well-known and respected businessmen of the Province. Any information you wish concerning their background or business knowledge will be made available.

Five, the qualification that no non-resident of Canada may be issued shares in this bank, or become a director. The bank is to be owned and operated exclusively by Canadians.

In addition, the Bill stipulates very clearly the proposed bank " shall have all the powers, privileges and immunities and be subject to all the liabilities and provisions set forth in the *Bank Act.*"

Surely no Canadian can object to any of these provisions.

Honourable Chairman, the form and content of this Bill are straightforward and within the law. May I discuss, therefore, the basic implications of this Bill which explain why the Government of British Columbia supports the petition of the provisional directors for this private bank charter.

The compelling reasons for this Bill are geographic, economic, and social.

Canada has a greater area than any other country in this hemisphere and is the second largest in extent on earth. The vision of the Fathers of Confederation of a nation stretching 3,000 miles "from sea to sea" and covering almost half the land area in the northern part of the western hemisphere was phenomenal a hundred years ago —but it was achieved.

While British Columbia has 10 per cent of the national land area (17 per cent excluding the Northwest and Yukon Territories), it is the third of the Provinces in size and population and greater in land area, excluding lakes, than Ontario. British Columbia is one-sixth larger than the combined area of the United Kingdom and France and about equal to the combined areas of the States of Washington, Oregon, California, and New York.

Of more import is the fact that our major financial community of Vancouver is two-thirds of a continent away from the principal Canadian financial centres of Toronto and Montreal, where four of the head offices of our national private banks with branches across Canada are located. The fifth chartered bank with nation-wide branches has its principal office in Halifax, which is closer to London, England, or Paris, France, than Vancouver, British Columbia. In fact, Vancouver is farther from the head office of a chartered bank than any other city of comparable size in the free world.

Gentlemen, I mention these facts of geography because they are fundamental and fixed. In spite of rapid communication and trans-

portation today, the great distances between and varying local environments of the different regions of Canada influence financial decisions of our private Canadian bankers. Who will seriously question that all men are conditioned by their local environment in a widespread federal nation where each economic region is an empire in itself seeking adequate credit to achieve maximum economic growth?

Let me be more explicit. The majority of the directors of the five chartered banks with branches across the nation, their policy committees and top executives, which control day-to-day decisions and operations, are from Eastern Canada. The Government of British Columbia believes the national strength and conscience of a federal nation must flow from the sum of all its regions. This has been the historical experience in the United States, a similar continental nation. Honourable Senators will recall the history of the Bank of America, with headquarters in San Francisco, which has played a prominent part in the development of the Western United States.

The economic reasons in support of a private chartered Bank of British Columbia are strong because Canada basically has five distinct business regions. This fact is fully accepted, and the Dominion Bureau of Statistics publishes indices of business activity for each of the Atlantic, Quebec, Ontario, Prairie, and British Columbia areas. Yet there are head offices of our chartered banks in only the Atlantic, Quebec, and Ontario regions, or in three of the five.

As there is a head office of a Canadian chartered bank in Halifax, it is appropriate to compare 1963 national economic data for the Atlantic and British Columbia regions. They strongly suggest there are more business reasons for a head office of a large chartered bank in Vancouver.

Table 1 reveals that while the June 1, 1963, population of British Columbia of 1,695,000 was 263,000 or 13.4 per cent less than the combined population of the Atlantic Provinces, business activity in British Columbia as revealed by principal indicators exceeded that of

the Atlantic Provinces as follows: Labour force, 2.5 per cent, labour income, 55.6 per cent; retail sales, 21.0 per cent; capital investment (new and repair), 44.4 per cent; factory shipments, 134.1 per cent; and cheques cashed, 238.5 per cent.

TABLE 1. — 1963 POPULATION AND BUSINESS ACTIVITY IN THE ATLANTIC PROVINCES (NOVA SCOTIA, NEW BRUNSWICK, NEWFOUNDLAND, AND PRINCE EDWARD ISLAND) AND BRITISH COLUMBIA.

Item	Four Atlantic Provinces	British Columbia	Per Cent British Columbia Greater (Less) than Atlantic Provinces
Population, June, 1963 (000)	1,958	1,695	(—13.4)
Labour force (000)	601	616	2.5
Labour income ($ millions)	1,445	2,248	55.6
Capital investment ($ millions)	957	1,382	44.4
Factory shipments ($ millions)	1,052	2,463	134.1
Retail sales ($ millions)	1,560	1,888	21.0
Cheques cashed ($ millions)	7,406	25,070	238.5

Source: Dominion Bureau of Statistics.

It is one of the historical twists of fate that British Columbia did not achieve sufficient relative importance in the Canadian economy before the trend towards concentration of assets in a decreasing number of Canadian chartered banks commenced. Compared to the three eastern regions, British Columbia is a relatively young economy. When the Montreal City and District Savings Bank was founded in 1846, there was a handful of fur-traders in British Columbia. At Confederation, British Columbia with 36,000 persons had slightly less than 1 per cent of the national population. British Columbia did not exceed the population of Prince Edward Island until 1901, of New Brunswick and Newfoundland until 1911, of Nova Scotia until 1921, of Manitoba and Alberta until 1941, and of Saskatchewan until 1951. British Columbia reached 5 per cent of the total national population in 1911 and 8.9 per cent in 1961. The population of British Columbia is 50 times greater today than at Confederation,

while in the same period the population of Ontario and Quebec increased less than three and four times respectively.

Does the present level of economic activity and its more recent growth in the Pacific region as compared with progress of the nation support a charter for the Bank of British Columbia? The answer appears strongly in the affirmative.

Let us look at some comparisons as given in Table 2. In the 12 years from 1952 to 1963 British Columbia increased its share of national population from 8.3 to 9 per cent, of labour force from 8.4 to 9.1 per cent, of personal income from 9.9 to 10.1 per cent, of factory shipments from 7.8 to 8.5 per cent, and of foreign exports from 11.3 to 15.6 per cent. British Columbia retained between 1952 and 1963 its 11-per-cent-share of national capital investment and 10.2 per cent of retail sales—both well above its share of national population. For all these growth factors, the relative progress of British Columbia in 1963 exceeded that of the rest of Canada.

TABLE 2.—GROWTH IN BUSINESS ACTIVITY OF BRITISH COLUMBIA AND CANADA, 1952 TO 1963

	1952		1963		Percentage Growth, 1952/63		Percentage Growth, 1963	
	B.C.	Per Cent of Canada	B.C.	Per Cent of Canada	B.C.	Rest of Canada	B.C.	Rest of Canada
Population, June 1 (000)	1,205	8.3	1,695	9.0	41	30	2.2	1.7
Labour force (000)	447	8.4	616	9.1	38	26	2.8	1.9
Personal income ($ millions)	1,728	9.9	3,317	10.1	92	88	6.6	6.3
Capital investment ($ millions)	811	11.1	1,382	11.0	70	73	7.3	5.6
Factory shipments ($ millions)	1,332	7.8	2,463	8.5	85	69	10.8	6.6
Retail sales ($ millions)	1,177	10.2	1,888	10.2	60	60	5.8	4.8
Foreign exports[1] ($ millions)	486	11.3	1,059	15.6	118	51	13.6	9.4

[1] Export of products produced in British Columbia and exported through all Canadian customs ports.

Source: Dominion Bureau of Statistics and British Columbia Bureau of Economics and Statistics.

Of great importance to the Canadian economy is the increasing proportion of national foreign exchange earnings produced by exports of British Columbia products. Between 1952 and 1963, foreign shipments of British Columbia goods rose from $486 million to $1.06 billion, up 118 per cent, while those of the rest of Canada increased by only 51 per cent. In 1963 the 9 per cent of Canadians in the Province produced 15.6 per cent of national foreign commodity exports.

It is well known that Canada is a major world exporter of goods. However, it is less well known that 1963 British Columbia merchandise exports were equivalent to 23.6 per cent of its gross provincial product while the rest of the nation exported only 14.9 per cent of its gross product (*see* Table 3). In other words, British Columbia is 58 per cent more dependent on world markets for its livelihood than the rest of Canada.

TABLE 3.—1963 EXPORTS OF BRITISH COLUMBIA AND CANADIAN GOODS AS A PROPORTION OF 1963 GROSS PRODUCT (INCLUDING SERVICES).

Area	Value of Merchandise Exports	Gross Provincial or National Product (Including Services)	Exports as a per Cent of Gross Product
British Columbia ($ millions)	1,058.5	4,484	23.6
Per capita ($)	624.48	2,645.73	
Rest of Canada ($ millions)	5,739.5	38,523	14.9
Per capita ($)	333.67	2,239.58	
Canada ($ millions)	6,798.5	43,007	15.8
Per capita ($)	359.79	2,275.98	

June 1, 1963, population: British Columbia, 1,695,000; rest of Canada, 17,201,000; Canada, 18,896,000.

Source:—
National: Dominion Bureau of Statistics—National Accounts, 1963.
Provincial: Gross British Columbia product—Estimates, Provincial Department of Finance; foreign exports—Bureau of Economics and Statistics.

With respect to interprovincial trade, British Columbia imports of products of Ontario and Quebec have an annual value of about five times the yearly worth of British Columbia goods shipped to the central Provinces.

Thus British Columbia has basically different trade patterns than the rest of Canada and, in particular, than Ontario and Quebec, where

management of our chartered banks is concentrated. The Pacific region is a greater *per capita* exporter of its goods to open or world markets: 75 per cent of our lumber, pulp, and paper and up to 90 per cent of our minerals are shipped to foreign markets. British Columbia in 1963 was a greater earner of foreign exchange ($624.48 *per capita*)—so vital to our international solvency—than the rest of Canada ($333.67 *per capita*). British Columbia buys its manufactured goods largely from Ontario and Quebec, which are protected sources of goods for the captive British Columbia market. Anything that can be done to encourage and assist development in British Columbia greatly assists the rest of Canada.

The realities of British Columbia's international and national trading positions, which differ so much from those of Ontario and Quebec, justify the Bank of British Columbia with principal office in Vancouver to service effectively our distinctive trade needs.

Japanese businessmen refer to British Columbia as the " California of tomorrow." We say that British Columbia is the " California of Canada today." Although our economy is much younger than Eastern Canada, and as significant as our progress has been in making an increasingly worth-while contribution in recent years to the progress of Canada, British Columbia is only on the verge of making its maximum and appropriate contribution to national growth. I say appropriate because in terms of our physical resources, and the vitality and optimism of our labour force, British Columbia is now in a position to provide more for a greater Canada than California has for the United States.

Here are a few facts of our current progress. Work is already well advanced on the Peace River hydro-electric project and major contracts will be awarded by fall on the Columbia River dams, involving total outlays for generation and transmission of power over the next ten years of more than $1 billion. These two electrical projects in British Columbia will add 4.1 million kilowatts of firm electricity, being twice

installed capacity added in the last decade and 1¼ times total current provincial facilities.

In its forests British Columbia has 84 per cent of national softwood reserves of trees 10 inches and over in diameter. Provincial timber cut has climbed 74 per cent since 1952, and the forest industry is being rapidly diversified and extended in the north. 1964 federal estimates of British Columbia capital investment in plywood, pulp, paper, and lumber mills is $184 million—$½ million every day. New investment in progress or about to commence at 10 pulp and paper plants exceeds $230 million, and new pulp and paper investment proposed is a further $336 million.

In natural gas British Columbia is self-sufficient and a major exporter, while provincial oil wells are supplying 50 per cent of our refinery needs. A major natural-gas transportation pipe-line is under construction to tap proven northern fields for export.

In production of fertilizers, electrolytic pig iron, zinc, aluminum, copper, and molybdenum, major plant construction is under way. A $55 million copper development near Stewart was announced this month. In commercial fishing British Columbia is first among the Provinces. Our specialized agriculture with its efficient units is increasing output. Our manufacturing shipments increased 85 per cent since 1952. By 1975 the number of provincial residents is expected to reach at least 2½ million and exceed 10 per cent of Canadian population.

It is our view that the financial development of Canada should parallel that of the continental United States. British Columbia is in the same geographic and economic position in the Canadian economy as California is in the United States. United States banking policies permitted the California-based Bank of America to achieve first place in world assets. The Bank of British Columbia will augment the growth, competitiveness, and effective service of the Canadian banking system.

I have mentioned that three of the five national economic regions have head offices of chartered banks. What would be the view of Eastern Canadians if all the head offices of the chartered banks were in British Columbia? They would most certainly feel their vital credit needs were not receiving first-class consideration and priority. If such a deficiency existed, they would contend, and properly so, that chartered banks with head offices in Toronto, Montreal, and Halifax were essential to meet their regional financial needs. I am sure Eastern Canadians would not be fully satisfied with services provided from branches and regional offices subject to distant head-office approval.

Banking is a service industry. Bankers must have an intimate knowledge of the financial, credit, and commercial needs of regional commerce and industry. Senior executives should be attuned to the needs of local borrowers, local opportunities for investment, and able to make decisions quickly by proximity to head office. Bankers must have a hard-headed faith in the region based on an appreciation of past business achievements and reasonable prospects for profitable extensions. Only residents of a province usually demonstrate this balanced view.

Mr. Chairman, there are also the social reasons for the Bank of British Columbia or those broadly relating to the public interest. It is in the public interest of all Canadians that the regional banking interests of British Columbia should be more adequately served and that competition between chartered banks should be increased across the nation.

The 1964 Porter Commission Report, at page 563, warned in the following words against concentration of private banking powers (I quote):—

" There is a danger that competition can be weakened by collusion or excessive concentration of power. This is particularly the case with the banking institutions and we have therefore recommended in Chapter 18 that there be a prohibition on agreements between them with respect to lending and borrowing rates, and that this prohibition be supported by appropriate powers and penalties.

"To prevent undue concentration in the banking and financial system we have recommended that no banking institution be allowed to acquire more than a 10-per-cent interest in the equity or voting shares of any non-bank financial institution."

It must be of major significance to this Committee, Mr. Chairman, that the vast majority of British Columbians support this application for a large national chartered bank based in Vancouver. The Act of the Provincial Legislature permitting the citizens of British Columbia, through their Government, to support this bank, was passed by a majority of 41 to 5. What better indication could there be of the support of British Columbians for the new bank than this democratic action?

This publicly supported application for a bank charter naturally reflects local pride. It also demonstrates the general conviction of residents of the Province that British Columbia has achieved a stature in the Canadian economy to merit a distinctive banking institution fully oriented to its financial needs as well as those of all Canada.

Until the Bank of British Columbia is incorporated under federal law, there will continue to be uneasiness and doubt that individuals, commerce, and industry in the Province are assured their fair share, at all times, of the pool of national credit available through the private banking system.

Our businessmen are also convinced that Vancouver will not develop into a fully rounded financial centre, capable of competing nationally with the more sophisticated financial services available in Montreal and Toronto, unless this large private bank is incorporated.

There can be no better demonstration of the general support of the British Columbia public for the bank than the great number of individual requests received by investment dealers for common stock when application for the proposed charter was announced. Other firm indications of public support of this application are the petitions that

have been signed—and are being signed—by thousands of citizens of British Columbia.

I wish to assure the Committee that when this Bill receives Parliamentary approval and before certification of the bank by the Federal Treasury Board, the name of the outstanding Canadian banker who will be president and chief executive officer will be announced by the directors. His name cannot, of course, be announced at this time, but the Treasury Board will have ample opportunity to consider his merits to operate the Bank of British Columbia.

Honourable Senators, Bill S-20 meets all the provisions of the *Bank Act*. The Government of the Province of British Columbia supports this private bank incorporation and requests the approval of the Bill by your Committee for the major geographic, economic, and social reasons I have emphasized.

The Government of British Columbia will invest in this private venture because the successful launching of the Bank of British Columbia is of vital importance to the creation in Vancouver of a complete and mature financial market for the long-run benefit of the Province and of all Canada. However, the Province, as a small minority shareholder, will certainly expect the private bank to operate free of any political influence in concert with the other chartered banks and under the supervision of the Bank of Canada. The outstanding figure in the Canadian banking field to be proposed as president will insist on strict business practices and non-partisan operating policies.

Therefore, your support is urged, as British Columbia enters its years of greatest economic growth and trade, for the charter to this private national bank with head office in the City of Vancouver.

APPENDIX B

Statement in Support
of the
Bank of British Columbia

THE HONOURABLE R. W. BONNER, Q.C.,
Attorney-General, Province of British Columbia

BRITISH COLUMBIA

Statement in Support
of the
Bank of British Columbia

THE HONOURABLE R. W. BONNER, Q.C.,
Attorney-General, Province of British Columbia

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PART I

2nd Session, 26th Parliament, 13 Elizabeth II, 1964.

THE SENATE OF CANADA

BILL S-20.

An Act to incorporate Bank of British Columbia.

Read a first time, Wednesday, 6th May, 1964.

Honourable Senator FARRIS.

2nd Session, 26th Parliament, 13 Elizabeth II, 1964.

THE SENATE OF CANADA

BILL S-20.

An Act to incorporate Bank of British Columbia.

Preamble.

WHEREAS the persons hereinafter named have by their petition prayed that it be enacted as hereinafter set forth, and it is expedient to grant the prayer of the petition: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Incorporation.

1. Harold Barrington Elworthy, executive, William Clark Mearns, executive, and John Alfred Griffith Wallace, executive, all of the city of Victoria, in the province of British Columbia, and Frederick Hawthorne Dietrich, executive, and Einer Maynard Gunderson, executive, both of the city of Vancouver, in the province of British Columbia, together with such persons as become shareholders in the corporation by this Act created, are incorporated under the name Bank of British Columbia, hereinafter called " the Bank ".

Corporate name.

2. The persons named in section 1 shall be the provisional directors of the Bank.

Capital stock.

3. The capital stock of the Bank shall be one hundred million dollars.

Head office.

4. The head office of the Bank shall be at the city of Vancouver, in the province of British Columbia.

Qualifications of directors.

5. (1) All directors of the Bank shall be subjects of Her Majesty ordinarily resident in Canada.

(2) No issue and allotment of shares and no transfer of shares to a non-resident or to a person acting as nominee, agent, trustee or otherwise on behalf of a non-resident is valid and no shares so issued and allotted or transferred shall be registered.

(3) The directors or any person thereunto authorized by the directors shall refuse to issue and allot shares or to transfer shares unless the subscription therefor or the transfer is accompanied by a statement in writing signed by the subscriber or transferee stating

(*a*) that he is a resident of Canada, and

(*b*) whether any arrangement exists under which, in respect of any shares to be registered in his name, he will be acting as nominee, agent, trustee or otherwise on behalf of a non-resident; and the directors or such person may require that any such statement be made by affidavit or statutory declaration.

(4) The directors or any person thereunto authorized by the directors shall refuse to issue and allot shares or to transfer shares unless they are or such person is satisfied that such

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issue and allotment or registration of such transfer is not prohibited under the provisions of subsection (2) of this section.

(5) To assist them in carrying out the provisions of this section, the directors may at any time request any registered shareholder to provide a sworn statement or other evidence to show whether he is or is not a resident of Canada or whether he is or is not acting as nominee, agent, trustee or otherwise on behalf of any non-resident.

(6) In carrying out the provisions of this section the directors or any person thereunto authorized by the directors may in good faith act upon any information which they believe or such person believes to be reliable.

Definitions.

(7) In this section,

(*a*) the expression " non-resident " includes any natural person not ordinarily resident in Canada, any firm, association or other aggregation of persons any of whom is not ordinarily resident in Canada, and any corporation other than a corporation which (i) is incorporated under the laws of Canada or of any province or territory thereof, (ii) has its principal place of business in Canada and (iii) is not by any means whatsoever under the control of non-residents of Canada, and

(*b*) the expression " acting as nominee, agent, trustee or otherwise on behalf of a non-resident " includes acting as nominee, agent, trustee or otherwise on behalf of any person who is acting as nominee, agent, trustee or otherwise on behalf of a non-resident.

When section in force. 1953-54, c. 48.

(8) This section shall have effect notwithstanding anything in the *Bank Act,* unless and until otherwise provided by Parliament.

Amendment to Schedule A of *Bank Act.*

6. Schedule A of the *Bank Act* is amended by adding thereto the following:

Name of Bank	Additional name under which Bank is authorized to carry on business	Authorized capital stock	Head Office of the Bank
Bank of British Columbia	Banque de la Colombie Britannique	$100,000,000	Vancouver

Powers and liabilities.

7. Except as provided in the *Bank Act* and in this Act, the Bank shall have all the powers, privileges and immunities and be subject to all the liabilities and provisions set forth in the *Bank Act.*

PART II

THE PROVISIONAL DIRECTORS

DIETRICH, Frederick Hawthorne

Born: Vancouver, B.C., September 19, 1915. Son of Jeanette Louise Dietrich, Panorama Ridge, Surrey, B.C., and the late Frederick A. Dietrich.

Educated: Prince of Wales Public and High Schools and University of British Columbia.

Married: Elizabeth Ann Scott, Vancouver, B.C., November 1, 1947; children —1 daughter, 2 sons.

Business:
President, Dietrich-Collins Equipment Ltd., Vancouver, B.C.
President, Dietrich-Collins Logging Supply Co. Ltd.

Director:
Boys' Clubs of Vancouver.
Boys' Clubs of Canada.
Canadian Forestry Association.

Provisional director: Proposed Bank of British Columbia.

Positions held: President, B.C. Division, The Canadian Red Cross Society.

Past positions held:
President, Boys' Clubs of Vancouver.
Vice-President and Director, B.C. Lions Football Club.
President, B.C. Chapter, Young Presidents' Organization.

War service:
1941–43—Secretary, Supplies, Rubber & Timber Controls, Department of Munitions and Supply, Ottawa.
1943–44—Executive Assistant to Co-ordinator, Capital Equipment and Durable Goods Administration, Wartime Prices and Trade Board.
1944–45—Deputy Administrator, Plumbing and Heating Division, Wartime Prices and Trade Board.

Member:
Board of Governors, Simon Fraser University.
Honorary Board of Governors, Canadian Association for Retarded Children.
Charter Member, B.C. Lions Football Club.
Charter Member, B.C. Chapter, Young Presidents' Organization.
Phi Delta Theta.
A.F. & A.M. (Freemasons).
Scottish Rite.
Shrine (Gizeh Temple).

Clubs:
Vancouver Club.
Shaughnessy Golf and Country Club.

Home: 1450 Acadia Road, Vancouver 8, B.C.

Office: 890 South-west Marine Drive, Vancouver 14, B.C.

ELWORTHY, Harold Barrington

Born: Victoria, B.C., December 16, 1901. Son of Frederick and Clara Emma (Richardson).

Educated:

Public schools, Victoria, B.C., and University School, Victoria, B.C.

Married: Myrta Gladys, daughter of Albert McDonald, of Shawnigan Lake, B.C., July 18, 1921; children—1 daughter, 3 sons.

Business: Chairman of Board, Island Tug & Barge Limited; commenced career in 1918 with B.C. Salvage Co. Ltd., Victoria, B.C., which later became the Pacific Salvage Co. Ltd.; was responsible for the formation of Island Tug & Barge Limited, Victoria, B.C., in 1925, acting as Manager and Managing Director; assisted in formation of Straits Towing & Salvage Co. Ltd., Vancouver (later disposing of his interests), acting as Vice-President and Managing Director in 1942.

Director:

Imperial Inn Ltd.
Coastal Company, Seattle, Wash.

Provisional director: Proposed Bank of British Columbia.

Positions held: Chairman, Victoria University Development Board.

Past positions held:

Director, Queen Alexandra Solarium for Crippled Children, 1955–60.
Vice-President, Victoria Chamber of Commerce, 1941.

Member:

Advisory Board, The Royal Trust Company.
Board of Governors, University of Victoria.
B.C. Towboat Owners' Association.
Vancouver Merchants Exchange.
Vancouver Board of Trade.
A.F. & A.M.
A.A.S.R.
Shrine.

Religion: Anglican.

Recreation: Fishing.

Clubs:

Union Club of British Columbia.
Rotary.
Vancouver and Terminal City.

Home: 3150 Tarn Place, Victoria, B.C.

Office: 345 Harbour Road, Victoria, B.C.

GUNDERSON, Einar Maynard, F.C.A.

Born: Cooperstown, North Dakota, July 6, 1899. Son of the late O. S. Gunderson and the late Martha (Dahlin) Gunderson.

Educated: University of Saskatchewan.

Married: Margaret, daughter of the late William McConachie, December 24, 1919; children—1 daughter, 2 sons.

Business:

Senior Partner, Gunderson Stokes Walton & Co. Commercial career with firm of chartered accountants in Edmonton, Alta.; after five years entered Alberta Department of Lands and Mines in 1930; appointed Superintendent of Income Tax to organize and administer the Provincial Income Tax Act, 1932, and in 1935 administration of Sales Tax Branch was added; entered private practice as a chartered accountant in Edmonton, Alta., 1936; appointed Comptroller of Marshall Wells Canadian Companies in 1942; served for two terms as member of School Board, Edmonton, Alta.; moved to Vancouver, B.C., in 1945 and entered into partnership with G. W. Thompson & Co., income tax specialists.

Leading directorates:

International Power & Engineering Consultants Limited.
Marshall Wells of Canada Limited.
Pacific National Exhibition.
Cape Cook Fish Company Limited.
Wold Boat Co. Ltd.
Floe Bros. Fishing Co. Ltd.
Kaare Fishing Co. Ltd.

Provisional director: Proposed Bank of British Columbia.

Positions held:

Executive Vice-President and Director, Pacific Great Eastern Railway Company.
Executive Director, British Columbia Hydro and Power Authority.
Governor, University of British Columbia.
Trustee, B.C. Medical Research Foundation.

Past positions held:

Minister of Finance, Province of British Columbia, 1952–54.
Director, Canadian Imperial Bank of Commerce.
Member of Council and Chairman of Taxation Committee, Institute of Chartered Accountants of British Columbia.
President, Institute of Chartered Accountants of Alberta.
President, Pacific Northwest Trade Association.

War service: Royal Air Force, 1918.

Member:

British Columbia Ferry Authority.
Vancouver Board of Trade.
British Columbia Consistory—Scottish Rite.
Royal Order of Scotland, Red Cross of Constantine.

Religion: United Church.

Clubs:

Vancouver—Rotary, Canadian, Vancouver, Shaughnessy Golf and Country Club, University, Faculty.
Victoria—Victoria Golf, Union.

Home: 6957 Marguerite Street, Vancouver, B.C.

Office: 475 Howe Street, Vancouver, B.C.

MEARNS, William Clark

Born: Victoria, B.C., August 19, 1909. Son of William Hunter and Mildred (Baker).

Educated:

Oak Bay High School, Victoria, B.C.
Stanford University (B.A. in electrical engineering), 1932.
University of Washington (postgraduate work in engineering and business administration), 1933.
Advanced Management Program at Harvard, 1954.

Married: Loula Cary Cameron, daughter of Donnell O. Cameron, Los Angeles, Calif., January 27, 1940; children—3 daughters, 1 son.

Business: Executive Director, British Columbia Hydro and Power Authority, Vancouver, B.C., since 1962; joined British Columbia Electric Co. Ltd., 1934; Vice-President, British Columbia Electric Co. Ltd., 1958.

Director:

International Power and Engineering Consultants Limited, Vancouver, B.C.
Down Town Business Association of Vancouver.

Provisional director: Proposed Bank of British Columbia.

Positions held: Governor of the University of Victoria.

Past positions held:

President, B.C. Natural Resources Conference.
President, Victoria Junior Chamber of Commerce.
President, Victoria Electric Club.
Vice-President and Director, Victoria Chamber of Commerce, the Victoria Rotary Club, and the Pacific Northwest Trade Association.
Director, Queen Alexandra Solarium, the Victoria Community Chest, and the Victoria Y.M.C.A.

Member:

Advisory Board of the Canada Trust Company.
Professional Engineers' Association of the Province of British Columbia.
Institute of Electrical and Electronics Engineers, Inc.
Victoria Chamber of Commerce.

Religion: Protestant.

Clubs:

Union Club of British Columbia.
Victoria Golf Club.
Royal Colwood Golf Club of Victoria, B.C.
Capilano Golf Club of Vancouver, B.C.

Home: 3245 Beach Drive, Victoria, B.C.

Business: 970 Burrard Street, Vancouver, B.C.

WALLACE, John Alfred Griffith

Born: Vancouver, B.C., December 28, 1921. Son of Hubert Alfred and Gwladys (Griffith).

Educated:

Prince of Wales Public School, Vancouver, B.C., 1928–34.
Point Grey Junior High School, Vancouver, B.C., 1934–36.
Trinity College School, Port Hope, Ont., 1936–39.
University of British Columbia, Vancouver, B.C., 1939–41.

Married: Doreen Adela, daughter of R. S. Olson, Victoria, B.C., February 16, 1952; children—4 daughters, 1 son.

Business: General Manager, Yarrows Limited, shipbuilders, since 1957; joined Burrard Dry Dock Co. Ltd., 1945; commenced training programme at Yarrows Limited (subsidiary company), 1947; Assistant Yard Manager, 1949; Yard Manager, 1950; Assistant General Manager, 1956.

Director:

Burrard Dry Dock Co. Ltd.
Titan Steel & Wire Co. Ltd.
Victoria Chamber of Commerce.
Corps of Commissionaires.

Provisional director: Proposed Bank of British Columbia.

Positions held:

Executive Vice-President, B.C. Chamber of Commerce.
2nd Vice-President, Canadian Manufacturers' Association.

Past positions held:

President, Victoria Chamber of Commerce, 1963.
Campaign Chairman, Greater Victoria Community Chest, 1963.
Chairman, B.C. Division, Society of Naval Architects and Marine Engineers.
Chairman, B.C. Branch, Canadian Manufacturers' Association.

War service: Served overseas in Second World War with R.C.A.F., 1941–43; R.C.N.V.R., 1943–45.

Member:

Zeta Psi.
Society of Naval Architects and Marine Engineers.

Religion: Anglican.

Recreations: Golf, squash.

Clubs:

Union Club of British Columbia.
The Racquet Club of Victoria.
Victoria Golf Club.

Home: 661 Newport Avenue, Victoria, B.C.

Office: P.O. Box 1030, Victoria, B.C.

PART III

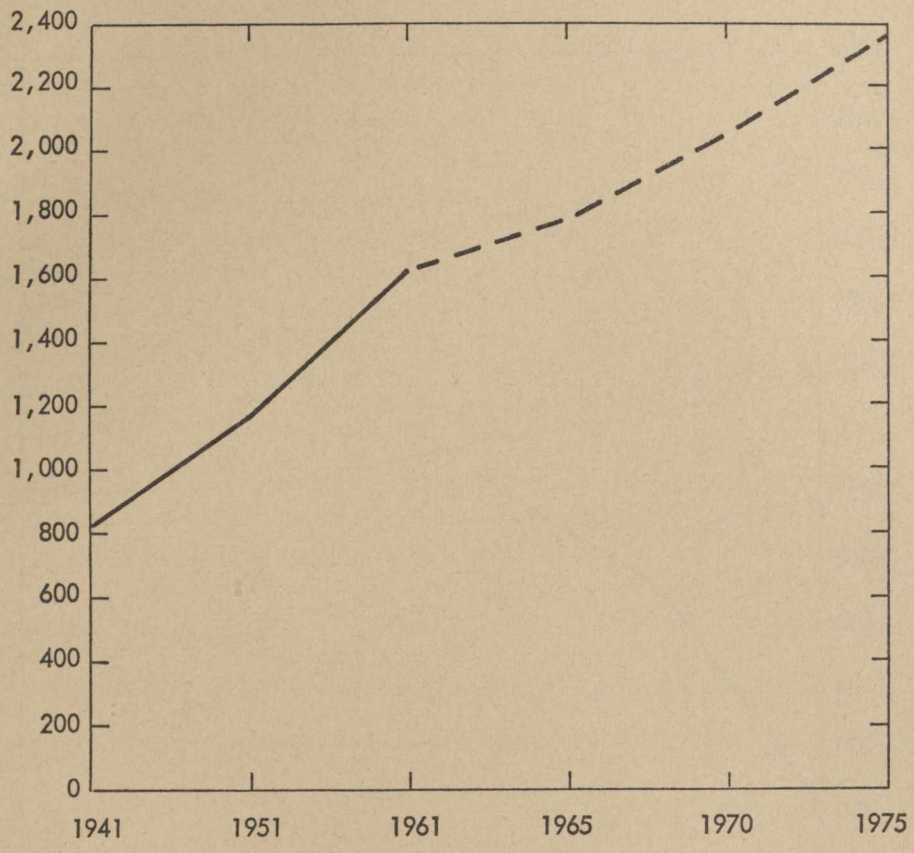
A STATEMENT IN SUPPORT OF THE PROPOSED BANK

The Government of British Columbia welcomes this opportunity to make representations to the Senate Banking Committee in support of the proposed Bank of British Columbia.

Throughout the past 12 years the administration in British Columbia has sought to promote public policy designed to encourage and secure the orderly development of our Province. These policies have been variously concerned with access and resource development, and have been directed equally toward the expansion of secondary and tertiary industry and the settlement of people. Naturally, such measures are devised in contemplation of the reasonable expectations of the future. Expectations are that the expansion now under way in British Columbia will proceed without interruption for the balance of the decade, so that by 1975 the population of the Province will be about 2,400,000 and the rate of capital investment will have risen from its present level of nearly $1,600 million a year to a figure approximating $2,400 million a year during this course of time.

BRITISH COLUMBIA POPULATION, 1941 TO 1975

(Thousands)



1941	817,861	1965	1,782,000[1]
1951	1,165,210	1970	2,050,000[1]
1961	1,629,082	1975	2,370,000[1]

[1] Estimate.

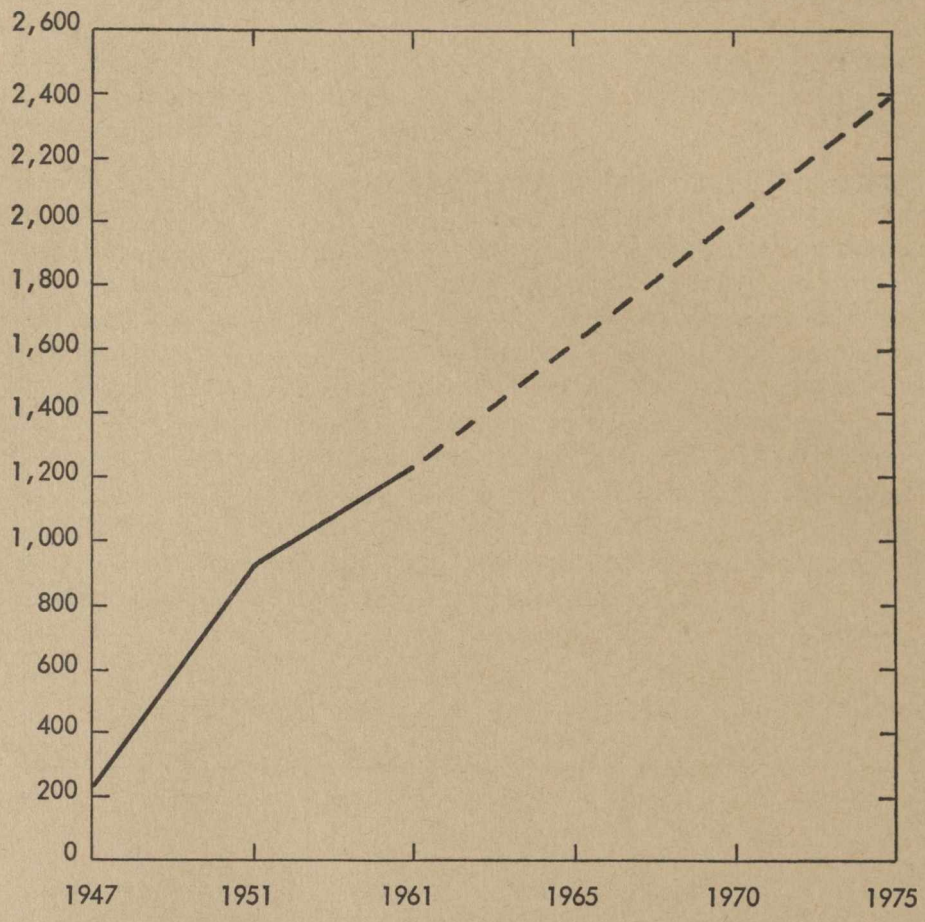
Source:—

Dominion Bureau of Statistics, Ottawa.

Estimates by Bureau of Economics and Statistics, Victoria, B.C.

BRITISH COLUMBIA CAPITAL AND REPAIR EXPENDITURE BY SELECTED YEARS

(Millions of dollars.)



1947	233.4	1961	1,240.9
1951	726.4	1975	2,400.0[1]

[1] Estimate.

1947 includes the Yukon.

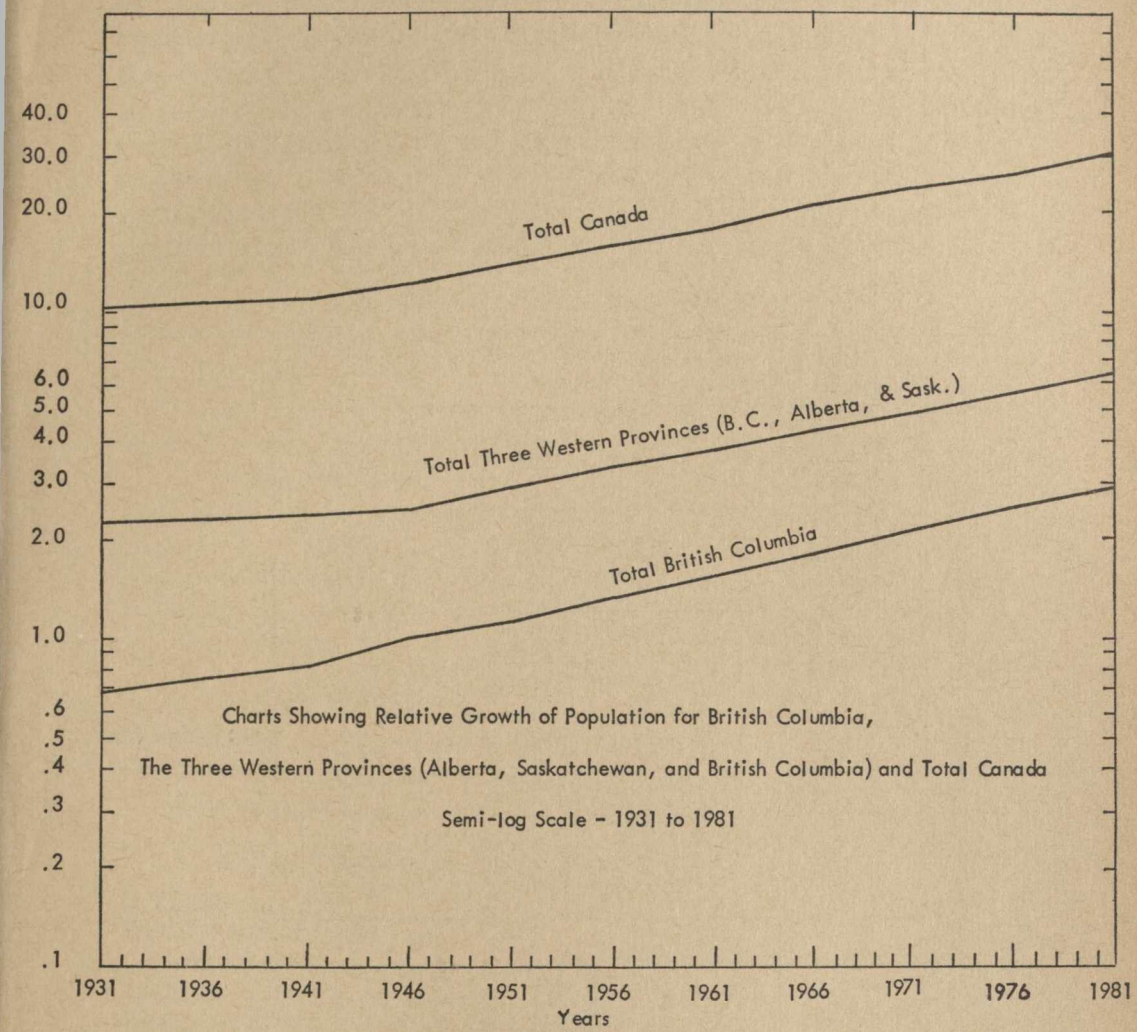
1951 includes the Yukon and Northwest Territories.

Source:—

Public and Private Investment, Dominion Bureau of Statistics, Ottawa.
Estimate by Bureau of Economics and Statistics, Victoria, B.C.

POPULATION

(In millions.)



The Government feels that British Columbia would be assisted at this stage of its development by the presence of one or more chartered banks with head offices in Vancouver. This conclusion has been reached mindful of the contribution to their respective regional economies which banks located in Eastern Canada have made with head offices in Toronto, Montreal, Quebec, and Halifax.

It is interesting to note that the various national banks now in existence began at periods of our history when provincial populations were smaller and the economies in which these banks began much less affluent than is the economy of British Columbia today.

CONTINUING BANKS IN CANADA SINCE 1822

Year	Bank Established	CANADA					BRITISH COLUMBIA				
		Population (000)	G.N.P. ($ Million)	Personal Income ($ Million)	G.N.P. *per Capita* ($)	Personal Income *per Capita* ($)	Population (000)	G.P.P. ($ Million) (Est.)	Personal Income ($ Million)	G.P.P. *per Capita* ($)	Personal Income *per Capita* ($)
1822	Bank of Montreal (Montreal)	817[1]	———	———	———	———	N.I.A.	———	———	———	———
1832	The Bank of Nova Scotia (Halifax)	1,147[1]	———	———	———	———	N.I.A.	———	———	———	———
1855	The Bank of Toronto (Toronto)	2,493[1]	———	———	———	———	N.I.A.	———	———	———	———
1867	The Canadian Bank of Commerce (Toronto)	3,463[1]	———	———	———	———	32[1]	———	———	———	———
1871	The Dominion Bank (Toronto)	3,689[1]	346[2]	———	94	———	36[1]	———	———	———	———
1875	Imperial Bank of Canada (Toronto)	3,954[1]	———	———	———	———	42[1]	———	———	———	———
1900	La Banque Provinciale du Canada (Montreal)	5,301	———	———	———	———	170	———	———	———	———
1901	The Royal Bank of Canada (Montreal)	5,371	1,130	———	210	———	179	57	———	318	———
1924	Banque Canadienne Nationale (Montreal)	9,143	4,600[3]	3,700	503	405	571	347	300	608	525
1929	Barclays Bank (Canada) (Montreal)	10,029	6,134	4,608	612	459	659	522	394	792	598
1953	The Mercantile Bank of Canada (Montreal)	14,845	25,020	18,336	1,685	1,253	1,248	2,442	1,844	1,957	1,478
	Amalgamations										
1955	The Bank of Toronto and the Dominion Bank	———	———	———	———	———	———	———	———	———	———
1956	Barclays Bank (Canada) and Imperial Bank of Canada	———	———	———	———	———	———	———	———	———	———
1961	Canadian Imperial Bank of Commerce	18,238	37,391	28,506	2,050	1,563	1,629	3,920	2,960	2,406	1,817
1963		18,896	43,007	32,771	2,276	1,734	1,695	4,500	3,380	2,655	1,994
1964		19,180[4]	———	———	———	———	1,730[4]	———	———	———	———

[1] Estimates based on partial data. N.I.A.—not available.
[2] Constant 1900 dollars.
[3] Gordon Commission estimates.
[4] April estimates.

Moreover, because many parallels may be drawn between the Province of British Columbia and the State of California, we are mindful, too, of the great contribution to the Pacific West Coast of the United States made by the Bank of America, whose headquarters is in San Francisco. In this connection particularly the Government of British Columbia is in sympathy with the representations of need and desirability advanced on behalf of the Bank of Western Canada, whose headquarters is to be in Winnipeg, Man. Whatever may be said in justification and for the prospects of this bank applies with even greater force to banks in Vancouver.

PROVINCIAL LABOUR FORCE, 1961

	Manitoba		British Columbia	
	Number	Per Cent	Number	Per Cent
Primary Industries				
Agriculture	59,301	17.3	23,290	4.0
Logging	1,328	0.4	21,068	3.6
Fishing and Trapping	1,284	0.3	4,478	0.8
Mining	5,620	1.7	8,179	1.4
Total primary	67,533	19.7	57,015	9.8
Secondary Industries				
Manufacturing	46,713	13.6	113,019	19.6
Construction	20,900	6.1	36,338	6.3
Total secondary	67,613	19.7	149,357	25.9
Support Industries				
Electricity, gas, water	4,190	1.2	6,287	1.1
Transportation, storage, communication	35,545	10.4	56,519	9.8
Trade	57,348	16.7	99,278	17.2
Finance, insurance, real estate	12,226	3.6	22,642	3.9
Service	64,042	18.7	123,782	21.4
Public administration and defence	26,523	7.7	46,001	8.0
Unspecified	7,622	2.3	16,767	2.9
Total support	207,496	60.6	371,276	64.3
Grand totals	342,642	100.0	577,648	100.0

Source: Dominion Bureau of Statistics, Ottawa.

INVESTMENT INCOME AS A PROPORTION OF TAXABLE INCOME, 1961

	Manitoba ($000)	British Columbia ($000)
Investment income	39,719	115,523
Total taxable income	924,647	2,095,591
Percentage relation	4%	6%

Source: Taxation Statistics, 1963, Department of National Revenue.

NET VALUE OF PRODUCTION IN COMMODITY-PRODUCING INDUSTRIES

	Manitoba ($000)	British Columbia ($000)
1961	704,812	1,898,301
1960	739,561	1,855,662
1960–61—change *down*	5%	*up* 2%

Source: Survey of Production, 1961, Dominion Bureau of Statistics.

VALUE OF CONSTRUCTION

	Manitoba ($000)	British Columbia ($000)
1964	423,639	968,879
1962	361,112	759,776
1962–64—change	17%	28%

Source: Construction in Canada, 1962–64, Dominion Bureau of Statistics.

PUBLIC AND PRIVATE INVESTMENT

($ Millions)

Manitoba		*British Columbia*	
1964	693.8	1964	1,546.9
1963	688.6	1963	1,381.6
Change	1%	Change	12%

Source: Public and Private Investment, 1964, Dominion Bureau of Statistics.

VALUE OF SHARES TRADED ON STOCK EXCHANGES

($ Millions)

	Winnipeg	Vancouver
1961	3.7	101.8
1960	1.6	35.3
1959	1.7	58.8
1955	2.7	56.1
1952	1.1	40.2

Source: Banking and Finance Commission, page 343.

CREDIT UNIONS CHARTERED

	Manitoba	British Columbia
1961	256[1]	327[2]
1960	240	326
1959	229	327
1950	149	223
1945	100	145

[1] Assets $50,509,000.
[2] Assets $118,835,000.
Source: Canada Year Book.

Accordingly, on the 23rd day of January this year, the Government of British Columbia in the Speech from the Throne announced its policy that—

> . . . As a further measure of encouragement to the balanced development of our economy, it is the intention of my Government to support all positive measures which will make British Columbia, and our commercial capital of Vancouver in particular, a centre of Canadian finance. Accordingly, you will be asked at this Session to authorize my Government, on behalf of our citizens, to become a limited shareholder in a Federally chartered bank which will be established in this Province.

Subsequently, on the 7th day of February, an amendment to the *Revenue Act* of the Province, permitting acquisition of bank shares, was introduced to the British Columbia Legislature and was later overwhelmingly approved on a recorded division of 41 yeas and 5 nays.*

In announcing the policy of encouraging the establishment of a bank in the Province, the Government was, frankly, not prepared for the enthusiasm and public support which followed, and although an authorization to purchase up to 25 per cent of the share capital of the proposed bank has been approved by the Legislature of our Province, events subsequent to the legislative amendment have led the Government to believe that 5 to 10 per cent participation will be sufficient to encourage adequate capitalization by public subscription and the maintenance of confidence thereafter that the bank can, and will, succeed.

It is noted that in Senate debate on second reading a number of editorials and resolutions were cited as indicating opposition in British Columbia to the Government's position. I would say, with all respect to the points of view quoted, that these sources have not been invariable supporters of the present administration during the past 12 years, and current criticisms must take their place with those made in the past.

* Section 2 of chapter 50 of the Statutes of British Columbia, 1964, states:—
"9. The Minister of Finance may, in his discretion, invest any moneys of the Consolidated Revenue Fund
"(*a*) in the debentures or other securities of or guaranteed by Canada or any Province of Canada; or
"(*b*) in the capital stock of a bank chartered or to be chartered under the *Bank Act* of Canada having or to have its head office in the Province, before or after incorporation, in an amount not greater than one-quarter of the sum paid up on the capital stock or on the subscriptions for capital stock of the bank,
or in both."

My belief is that very heavy public support exists in favour of the approval of a charter for the proposed Bank of British Columbia, and investment houses in Vancouver have told me that an offering of Bank of British Columbia shares is likely to be heavily subscribed.

Why then, it may be asked, should the Government seek to be a shareholder? As proposer of a B.C.-based bank intended to assist making Vancouver a centre of Canadian finance, I think the Government is under obligation to take a practical position in support of its legislatively approved policy.

Secondly, a chartered bank must succeed. As a minority shareholder, the Government is in a position to inspire, by this fact, public confidence in the new institution and thus encourage its success.

Thirdly, this bank should be concerned about British Columbia. Because shareholding promises to be widespread and supported in many parts of Canada, even a minority position among the shareholders which is wholly associated with the Province will serve to focus the bank's basic interest upon British Columbia.

Fourthly, the bank's shares should have a relatively stable market value. The restrictions on shareholding, which are the first frankly all-Canadian ownership proposals to come before this Committee, are such that trading in these bank shares is confined to a smaller market than may be said of the shares of any other chartered bank. The presence of the Government as a minority shareholder, it is felt, will prove to be a steadying influence on the share market price and compensate by that fact for the lesser area in which the shares may trade.

Moreover, the Government can be of practical assistance to the bank. Although the Government has done business with the chartered banks of Canada in the past, and will do so in the future, there are aspects of Governmental activity which can properly provide business for the new bank.

Finally, the problem of professional management is the most important question confronting the bank. It is believed that the presence of government as a minority shareholder can be a positive factor of encouragement in the recruitment of top management.

However, shareholding by any particular person is actually no part of the Bill before the Senate Committee.

What this Bill does propose is an entirely novel restriction so far as Canadian bank-ownership is concerned. It provides that the share-ownership of the bank be confined to people resident in Canada. Inasmuch as the Government of British Columbia is associated with the contents of this Bill, it is noteworthy that this is the only occasion

on which a Canadian Government has taken a position in favour of total resident ownership of a national chartered bank.

In the final consideration of this Bill, it is inconceivable that the Houses of Parliament should withhold their approval of this bank because of a legislatively approved minority shareholding by any provincial government when, at the same time, Parliament remains silent about the totally non-resident shareholding in the Mercantile Bank of Canada by the First National City Bank of New York and the Rotterdamsche Bank of The Netherlands. Criticism of shareholding by any provincial government must reduce itself to an assertion that total foreign ownership reposing in New York City and Holland is sound national policy, good for Canadian banking and constitutional, but a minority interest by a provincial government is not.

Now I would like to deal with the expression " political bank," because this expression has been used during the consideration of the Bank of British Columbia Bill. It is as difficult to exorcise a ghost as it is to deal with the phantom argument of a " political bank." What is a " political bank," and when does a bank become " political "? Is a bank " political " when 5 per cent of its shares are owned by a provincial government, or is that point reached when 10 per cent or a greater shareholding is secured? Is the Bank of Canada a " political bank " when it is wholly answerable to the Houses of Parliament and, if so, may the same be said for the Industrial Bank of Canada?

Are the chartered banks of Canada " political banks " when they respond to the lead of the Bank of Canada? I think the responsible answer to all these questions is clearly " No." No chartered bank, regardless of share ownership, can in fact become " political."

Anyone who is cynical about the intentions of a provincial government in becoming a shareholder and who conjures up visions of possible governmental interference with the bank's proper operations must certainly recognize where governmental self-interest lies. The self-interest of any provincial government shareholder must be in seeing that a bank operates under law, responsive to national monetary policy, in the black, at a profit, and that its facilities be not used to cater to anyone who does not contribute to the proper and profitable operation of a bank's activities. In fact, for a provincial government shareholder to take any other attitude toward a bank's operations would be politically most unwise. Thus, I say, if you are not convinced of the principles of a provincial administration on cynical grounds, examination of self-interest alone would dictate how a provincial government shareholder must behave.

There is, in fact, ample evidence of provincial governmental behaviour as bankers. The Royal Commission on Banking reminds us that " the business of banking " is not defined in the *Bank Act* or, for that matter, anywhere else. Indeed, while section 157 prohibits the use of the term " bank " by institutions not authorized under the Act or other legislation, it nowhere prohibits others from engaging in banking activities.* Provincial governments are, in fact, engaged in " banking."

Province	Lending Institution or Authority
Alberta	Marketing Services Limited.
	The Treasurey Branches Act, R.S.A. 1955, c. 344 as amended.
	The Savings Certificates Act, R.S.A. 1955, c. 301.
Manitoba	Manitoba Development Fund.
New Brunswick	Industrial Development and Expansion Act.
	The New Brunswick Development Corporation.
Newfoundland	Co-operative Development Loan Board.
	Industrial Development Loan Act.
	Tourist Development Loan Board.
Nova Scotia	Industrial Loan Fund.
	Industrial Estates Limited.
Ontario	Ontario Development Agency.
	The Agriculture Development Finance Act, R.S.O. 1960, c. 9.
Prince Edward Island	Industrial Establishments Promotion Act.
	Tourist Accommodation Loans Act.
Quebec	Municipal Industrial Funds.
	La Société Générale de Financement.
	Quebec Farm Credit Act, R.S.Q. 1941, c. 113.
Saskatchewan	The Saskatchewan Economic Development Corporation.

In April, 1963, the Industrial Promotion Branch, Federal Department of Trade and Commerce, described provincial banking in these terms:—

> All Canadian provinces, with the exception of British Columbia, extend financial assistance to industry for development and expansion purposes under a variety of measures ranging from inventory assistance in Alberta to the erection of a plant on a lease-back basis in Nova Scotia. Assistance is not limited by statutory provision in a number of provinces, mainly Newfoundland, New Brunswick and Nova Scotia. However, in those provinces having statutory limitations, total provincial funds authorized for this purpose are in excess of $300 million.
>
> Financial assistance, especially for large projects, can be provided on an individual basis. This method of financing has been used occasionally in the Maritime provinces.

* Porter Commission, pages 114–115.

The majority of provinces extend direct loans or guarantees of loans. The criteria for authorizing assistance appear to vary with the circumstances, and it is impossible to generalize as to whether or not provincial agencies operate under more or less stringent rules than those of the Industrial Development Bank. In Newfoundland and New Brunswick guarantees of loans have exceeded direct loans; Ontario legislation authorizes guarantees of loans only.

Equity participation has not been prevalent, and financial assistance towards the installation of services such as sewers, roads, etc. is, in the main, restricted to Nova Scotia and Quebec. The recently created Société Générale de Financement in Quebec is, however, intended to participate actively in the equity field.

Three provinces are active in fields other than direct loans and guarantees of loans. Alberta provides assistance to industry for the purchase of inventory stockpiles. Industrial Estates Limited in Nova Scotia is primarily concerned with the erection of plants for sale or rent. In Quebec, municipalities can be authorized to create industrial funds for financing the cost of establishing and servicing industrial parks as well as constructing plants for industry. Manitoba and Saskatchewan are also empowered to extend this type of assistance, but so far their activities in this field have been limited.

In general, it would appear that the provinces are providing the types of financial assistance required by industry in their respective regions. Their official losses have not been great and there have been no signs of overt competition between the provinces and the Industrial Development Bank.

Additionally, provincial governments exercise jurisdiction over banking activity engaged in by credit unions and trust companies and are increasingly concerned with the general operation of credit. Provincial governments are, in fact, heavily involved in a wide range of financial and banking activities.

I mention these activities to point out their widespread and responsible nature and to point out, further, despite the fact that many banking and financial activities are under direct governmental control, in some instances entirely provincially owned, the spectre of political banking—whatever that means—has failed to appear, the self-interest of the respective governments, in addition to their responsibility and principles, precluding the likelihood of such a development.

At this point I wish to anticipate and comment upon an opinion which might arise as a result of describing provincial banking. This point might well be that it has been demonstrated that the provincial government can do a great deal of banking without getting into the chartered-bank business, hence there is little need for this Bill. So far as the Government of British Columbia is concerned, it must be made plain that the objective is not to get government into the banking business, but to see British Columbia and Vancouver become a centre of Canadian finance. To this end, the Provincial Government has been authorized to assist a bank being started. The governmental financial

activities which have been described cannot make any area a centre of finance. To promote the establishment of a western centre of finance is an aspiration as proper for a provincial government as plans to develop industry and build hydro-electric dams.

There can be no doubt in anyone's mind but that Vancouver will become a major centre of Canadian finance. The only question is when. To the extent that the Bank of British Columbia will play a part in Vancouver's development, Senate decision on this Bill will either hasten or delay Vancouver's emergence in the role of a major Western Canadian financial centre.

A number of Senators have expressed an interest in the question, " Is there need for a new bank? " The Porter Commission traces banking history in Canada in these terms:—

> At one time there were many banks in Canada, some private and some " chartered " by governments. By and large they were local institutions issuing notes which circulated in their own areas and concerning themselves very little with the affairs and requirements of other parts of the country. Although the early charters did not always clearly permit branching it was never prohibited, and as business and commerce became more national in character some of the banks began to expand their horizons. Branches were opened in the more important centres and business relations were established in other provinces. In the United States a system of local " unit " banks was deliberately fostered, but in Canada the first Dominion legislation explicitly allowed branch openings and thereby encouraged a system of national banks to develop. Following Confederation nineteen banks operated under Dominion charters, a number which increased to thirty-eight by 1886 and remained little changed until the eve of the First World War. Since then failures, amalgamations and mergers have reduced the number to the present eight, of which five have national branch systems, two operate principally in the province of Quebec, and one has branches only in Montreal, Toronto and Vancouver.

The Porter Commission also makes a case for more competition in banking in a variety of ways.

The narrow question of strict need can, no doubt, be answered by all of the present banks to the effect that they are doing a good job and they can expand the number of branches as rapidly as business requires. In fact, this same line of reply can be used to support the proposition that any single national bank of Canada is in a position to expand as required and that competitors need not, in fact, exist to meet the national needs of banking.

I think that neither of these answers can be said to be fully in the public interest. The trend which we have witnessed in recent years of fewer national banks becoming larger, with three national banks actually dominating the entire field, is the antithesis of com-

petition and ultimately of public service. Moreover, the question of competition is not confined solely to the consideration of interest rates and services provided by existing institutions. It must be found in regional competition as well—a feature totally lacking in Canadian banking at present.

The need to provide for regional competition in Canada is demonstrated by two examples.

The Vancouver Province, June 4, 1964:—

AWARENESS OF B.C.

TRUST PRESIDENT PRAISES POTENTIAL

J. Allyn Taylor of London, Ont., president of the Canada Trust-Huron & Erie, has made at least 25 business trips to B.C. over the years but, he says, he only properly appreciated this province in the last 48 hours.

"It is only in the last 48 hours that I have got a proper appreciation of your potential," he said in an interview. "I flew to the Peace River to see the power project.

"That power will open up the Interior in a way that people in the east don't appreciate. However, there is more awareness of B.C. in the last six months in the east than ever before. Businessmen are making more trips out here and your government and your premier have done a great deal to publicize B.C."

Mr. Taylor is here for a meeting of the company's board of directors and its Vancouver and Victoria advisory committees, to be held Friday in the Hotel Vancouver.

This first board meeting to be held in B.C. coincides with the opening of the company's new seven-storey office building at Pender and Hornby and with its centennial celebration.

The second example is to be found in the national tours now being undertaken by national boards of directors of many companies, but notably by bank boards. In many instances such boards have visited British Columbia for the first time despite the fact that they have conducted business in our Province for more than half a century.

If a board of directors achieve something for their bank from a few days' visit once in a long while, surely a resident board and management would be so much better informed of our Provincial potential and requirements and better able to serve. Such a board could even broaden its knowledge in time by visiting Eastern Canada to provide further regional competition to our present national banks. Regional competition cannot be effectively furnished by boards and management who reside mainly in two centres of Canada, and regional representation in such boards and management does little to correct the built-in imbalance of current Canadian banking.

Therefore, I think it more fruitful to suggest that the inquiry which ought to be made in connection with these various bank applications is the question, "Are there opportunities for new banks in Canada today? " I think the answer to this question is surely " Yes."

Let me develop this conclusion. The growth of the Western Canadian economy can be judged by an examination of the product of Federal personal, corporation, and succession or estate tax collections in British Columbia and Manitoba, Saskatchewan, and Alberta:—

FEDERAL PERSONAL, CORPORATION, AND SUCCESSION (OR ESTATE) TAX COLLECTIONS IN BRITISH COLUMBIA AND OTHER THREE WESTERN PROVINCES (MANITOBA, SASKATCHEWAN, AND ALBERTA)

	British Columbia	Manitoba, Saskatchewan, and Alberta
1952–53	$259,708,170	$280,713,680
1953–54	236,283,544	304,689,347
1954–55	235,517,736	281,008,448
1955–56	254,611,414	267,120,504
1956–57	305,666,111	315,910,738
1957–58	287,022,133	351,116,436
1958–59	252,275,706	343,300,709
1959–60	298,388,828	395,354,068
1960–61	335,973,533	423,938,656
1961–62	343,217,172	456,947,858

Source: Taxation Statistics, 1957 (Table 3) and 1962 (Table 1), page 18, Department of National Revenue, Taxation Division, Ottawa.

The growth of the Western Canadian economy is to be seen reflected in recent experience of cheques cashed.

CHEQUES CASHED AT 35 CLEARING-HOUSE CENTRES, 1958–62

Clearing-house Centre	1958	1959	1960	1961	1962	Per Cent Increase over 1938
	$000	$000	$000	$000	$000	
Atlantic Provinces	4,438,573	5,119,612	5,499,101	5,876,687	6,509,096	918
Halifax	1,952,996	2,240,973	2,470,454	2,765,782	3,101,706	
Moncton	644,873	687,497	703,300	725,886	771,911	
Saint John	974,038	1,240,454	1,292,907	1,282,369	1,352,215	
St. John's	866,666	950,688	1,032,440	1,102,650	1,283,264	
Quebec	63,318,152	70,466,038	80,114,230	87,213,839	97,851,664	882
Montreal	57,779,114	64,370,687	73,203,832	78,593,811	88,211,663	
Quebec	4,994,969	5,515,388	6,285,281	7,912,527	8,818,728	
Sherbrooke	544,069	579,963	625,117	707,501	821,273	
Ontario	102,798,608	117,852,356	125,319,946	134,719,363	149,812,492	985
Brantford	611,026	692,885	688,254	693,833	791,851	
Chatham	639,883	618,778	655,467	654,195	665,473	
Cornwall	400,905	430,320	406,526	455,088	476,467	
Fort William	458,694	483,014	454,425	483,450	500,329	
Hamilton	4,681,253	5,784,746	5,730,223	5,988,206	6,709,167	
Kingston	499,922	530,388	520,401	561,700	627,367	
Kitchener	1,050,153	1,212,701	1,268,458	1,321,571	1,580,719	
London	2,756,333	3,248,221	3,438,475	3,728,758	4,184,759	
Ottawa	4,823,537	5,441,744[1]	5,428,618[1]	5,923,469[1]	6,765,125	
Peterborough	534,561	597,133	588,320	566,260	615,616	
St. Catharines	800,629	847,322	861,905	959,735	1,089,736	
Sarnia	589,935	610,219	631,965	701,576	761,867	
Sudbury	613,037	646,385	650,352	711,292	792,746	
Toronto	82,217,905	94,286,069	101,652,499	109,570,868	121,733,430	
Windsor	2,120,835	2,422,431	2,344,058	2,399,362	2,517,840	
Prairie Provinces	34,490,157	37,804,428	40,667,168	45,540,898	48,301,500	956
Brandon	229,039	247,763	255,007	269,028	271,465	
Calgary	7,646,109	8,528,838	8,773,941	10,326,214	11,415,990	
Edmonton	5,149,339	5,823,946	5,975,975	6,672,384	7,550,912	
Lethbridge	441,664	498,787	488,953	501,226	580,068	
Medicine Hat	201,480	226,498	225,390	243,630	295,133	
Moose Jaw	392,210	394,040	407,835	379,010	422,339	
Prince Albert	204,351	229,736	235,304	247,306	253,269	
Regina	3,622,192	3,859,211	4,377,349	4,869,831	5,326,695	
Saskatoon	971,924	1,085,023	1,101,592	1,170,588	1,265,700	
Winnipeg	15,631,849	16,910,586	18,825,822	20,861,681	20,919,929	
British Columbia	16,244,464	17,626,917	18,018,609	20,433,555	23,089,746	1092
New Westminster	824,007	925,926	863,876	[2]	[2]	
Vancouver	13,143,566	14,230,065	14,653,833	17,766,910	19,602,381	
Victoria	2,276,891	2,470,926	2,500,900	2,666,645	3,487,365	
Totals	221,298,354	248,869,351	269,619,054	293,784,342	325,564,498	

[1] Excludes some debits reported in preceding years.
[2] Included with Vancouver.
Source: Canada Year Book, 1963–64.

It can also be clearly seen in a comparative table of bank branch expansion by provinces. No one can argue that this remarkable rate of growth is about to end.

BRANCHES OF CHARTERED BANKS, BY PROVINCE, AS AT DECEMBER 31 FOR CERTAIN YEARS 1868–1962

NOTE.—Figures for 1920 and subsequent years include sub-agencies in Canada receiving deposits for the banks employing them; there were 768 such sub-agencies at December 31, 1962.

Province or Territory	1868	1902	1905	1920	1926	1930	1940	1943	1946	1950	1960	1961	1962
	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.
Newfoundland	----	----	----	----	----	----	----	----	----	39	71	76	81
Prince Edward Island	----	9	10	41	28	28	25	23	23	23	27	27	27
Nova Scotia	5	89	101	169	134	138	134	126	127	144	173	176	178
New Brunswick	4	35	49	121	101	102	97	93	96	100	113	117	118
Quebec	12	137	196	1,150	1,072	1,183	1,083	1,041	1,067	1,164	1,427	1,454	1,489
Ontario	100	349	549	1,586	1,326	1,409	1,208	1,092	1,117	1,257	1,785	1,869	1,916
Manitoba	----	52	95	349	224	239	162	148	151	165	234	246	248
Saskatchewan	----	30	87	591	427	447	233	213	226	238	296	301	299
Alberta	----	----	----	424	269	304	172	163	190	246	394	409	417
British Columbia	2	46	55	242	186	229	192	180	216	294	514	534	545
Yukon and N.W.T.	----	----	3	3	3	4	5	5	6	9	17	15	14
Canada	123	747	1,145	4,676	3,770	4,083	3,311	3,084	3,219	3,679	5,051	5,224	5,332

Source: Canada Year Book, 1963–64

BRANCHES OF INDIVIDUAL CANADIAN CHARTERED BANKS, BY PROVINCE, AS AT DECEMBER 31, 1962

NOTE.—This table includes 768 sub-agencies in Canada for receiving deposits.

Bank	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.
	No.	No.	No.	No.	No.	No.
Bank of Montreal	22	2	25	17	171	331
The Bank of Nova Scotia	31	8	51	40	54	259
Banque Canadienne Nationale	----	----	----	----	578	19
Banque Provinciale du Canada	----	3	----	18	315	23
Canadian Imperial Bank of Commerce	9	8	25	15	156	566
The Mercantile Bank of Canada	----	----	----	----	1	1
The Royal Bank of Canada	19	5	74	23	152	369
The Toronto-Dominion Bank	----	1	3	5	62	348
Totals	81	27	178	118	1,489	1,916

Bank	Man.	Sask.	Alta.	B.C.	Yukon and N.W.T.	Total
	No.	No.	No.	No.	No.	No.
Bank of Montreal	50	57	97	124	4	900
The Bank of Nova Scotia	19	31	50	69	----	612
Banque Canadienne Nationale	4	----	----	----	----	601
Banque Provinciale du Canada	----	----	----	----	----	359
Canadian Imperial Bank of Commerce	65	87	130	181	7	1,249
The Mercantile Bank of Canada	----	----	----	1	----	3
The Royal Bank of Canada	72	86	88	112	3	1,003
The Toronto-Dominion Bank	38	38	52	58	----	605
Totals	248	299	417	545	14	5,332

Source: Canada Year Book, 1963–64

In the light of all available evidence of growth, it would be a remarkable conclusion to reach that only eastern-based banks now existing are entitled to participate in future banking developments of this country.

The expectations for British Columbia during the balance of this decade—to 1970—predict a labour force rising to 729,000 from 578,000 in 1961, personal income rising from $2.9 billion to $4.5 billion, and retail sales rising from $1.6 billion to $2.4 billion in this same period. All circumstances involving greater use of credit, greater offshore trade,* and general expansion set the stage regionally for a more broadly based banking system—with western headquarters.

Finally, the constitutional position of a provincial government as a shareholder has been raised. The question in stark terms is this, " Does the Queen, in the right of the Province of British Columbia, represented by her Minister of Finance, have the legislative right to acquire and own shares in a Federally chartered bank? " What are the elements of this question?

The right to be a shareholder is the right to have an interest in personal property. That Her Majesty the Queen, in the right of any province, may own personal property is not questionable, and no constitutional query so far raised has cast any doubt upon this fundamental proposition.

The next element of the question is whether the right to own personal property is diminished when the personal property is a share in a Federally incorporated undertaking. Once again, no authority has been quoted to suggest any limitation on the right to own personal property in such an enterprise, and, in fact, the Queen, in the right of all provincial governments, regularly exercises this capacity in the buying and selling of bonds of companies and undertakings of this category, including those of the National Government itself. Indeed, various Acts of provincial governments provide for the investment of provincial moneys not only in trustee and other securities, but extend even to the buying and selling by Crown agencies of equity interests represented by shares.

Here are a few examples:—

ALBERTA.—Section 31 (*a*) of the *Treasury Department Act,* R.S.A. 1955, chapter 343, as amended, provides that upon the recommendation of the Treasury Board the Lieutenant-Governor in Council

* Exports from B.C. customs ports alone are greater than those of either Finland or Norway. B.C. products ex ALL Canadian ports are higher in total than exports of Mexico, Spain, Turkey, Hong Kong, or New Zealand.

may by Order approve for investments under section 31 any corporation incorporated under the laws of Alberta and carrying on business in Alberta

(*a*) that has a capitalized, fixed, paid-up, and permanent stock amounting to at least five hundred thousand dollars; and

(*b*) whose main business is the manufacture, production, or conveyance of any product in Alberta, or the supplying of any service or product within Alberta.

NOVA SCOTIA.—Section 37 of the Provincial Finance Act, S.N.S. 1962, chapter 12, sets out a very long list of securities in which the Minister of Finance may invest. Clause (*g*) of that section authorizes the Minister to invest in

> the fully paid common shares of a corporation, that, in each year of a period of seven years ended less than one year before the date of investment, has paid a dividend upon its common shares of at least four per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;

Section 39 places a maximum limit of 20 per cent of the outstanding common shares of any one corporation that may be purchased by the Minister under section 37 (*g*).

It should also be noted that section 37 allows the Minister to invest in the preferred shares of a dividend-paying corporation; share purchase warrants of a corporation to which the section refers; real estate; first mortgages; bonds, debentures, or other evidences of indebtedness of a dividend-paying corporation, etc.

QUEBEC.—The General Investment Corporation of Quebec, established by Statute July 6, 1962, has the following powers:—

(*a*) To acquire by subscription or otherwise shares, debentures, or other securities of any undertaking:

(*b*) To create and lease technical administrative and research services for itself or for others:

(*c*) To purchase treasury bonds or debentures issued or guaranteed by the Federal Government or a province and debentures of municipalities or school boards of the Province of Quebec:

(*d*) To resell the shares, debentures, treasury bonds, or other securities acquired by the company but not to traffic therein.

This corporation, in turn, is authorized to raise capital in the amount of $150 million, divided into 15,000,000 shares of a par value of $10 each. Two and one-half million such shares are deferred-dividend shares. The remainder shall consist of common shares, unless the company issues a portion thereof in the form of preferred shares in the manner provided by Part II of the Quebec *Companies Act*. The total par value of the outstanding preferred shares shall

never exceed the amount paid up on the common and deferred-dividend shares. The deferred-dividend shares shall be reserved for the Government of the Province, and, further, the Minister of Finance is authorized to subscribe, on behalf of Her Majesty in the right of the Province of Quebec, $5 million payable out of the Consolidated Revenue Fund for 500,000 deferred-dividend shares of the company. The company, so long as the deferred-dividend shares have not been entirely subscribed, shall grant to Her Majesty in the right of the Province the right to subscribe for such shares up to one-third of the number of common shares allotted.

The third element of the question is, " Does the exercise of an unquestionable right to become a shareholder become unconstitutional when the exercise concerns shareholding in a Federally incorporated bank? " Anyone who argues " Yes " must go on to say that banks stand apart from other Federally incorporated institutions under Federal jurisdiction. I submit there is neither logic nor law in support of that conclusion. A chartered bank is admittedly entirely subject to Federally enacted law and Federally supervised regulation. Not only is this constitutional jurisdiction created by section 91 of the *British North America Act,* the exercise of this jurisdiction is daily to be observed and, if necessary, annually to be revised by the National Parliament. No action by a shareholder, however large or of whatever identification, and no board of directors or managerial group to whom a shareholder might presume to give direction, can in any way alter the jurisdiction conferred upon Parliament by the *British North America Act,* change Parliament's Statutes, which are the assertion of that jurisdiction, or modify or avoid the close regulation under which the jurisdiction is exercised. It follows that there can be no behaviour by a chartered bank of which any provincial government might be shareholder which can take place except under Federal law and control.

It is fundamentally important in considering constitutionality to distinguish between proprietary or shareholder interest on the one hand and constitutional or regulatory interest on the other. The proprietary interest, even if it could act without professional management, is subject and answerable to the regulatory interest in every case which can be imagined, and the one does not trespass upon the other. A shareholder, foreign or domestic, simply does not pose a constitutional problem because he cannot and does not oust Federal jurisdiction. This conclusion is self-evident in the case of the Mercantile Bank, which is wholly owned abroad; it would be the same with the Bank of British Columbia, owned entirely by Canadian residents.

SUMMARY

Let me summarize the material so far placed before you by placing it within the context of government policy as enunciated by the Honourable the Minister of Finance on February 28th last. The Minister stated " . . . that the Government is not opposed to further competition in the banking field providing that any new bank is adequately financed and is supported by financially responsible people and that provision is made for retaining control in Canada."

The Bill before you meets the test of Canadian control more rigorously than even the National Government has required, by restricting share-ownership entirely to Canadian residents.

That the bank is supported by financially responsible people is amply demonstrated, first, by the composition of the provisional directorate and, secondly, by the willingness of the Government of British Columbia to assume a minority shareholding position as a contribution toward the financial backing of the proposed institution. The further requirement of adequate finance follows from the observations which have been previously made. There is not a shadow of doubt but that a share offering by the Bank of British Columbia will be heavily supported by public subscription in British Columbia and elsewhere in Canada.

The Federal Government's willingness to see further competition provided in the field of banking is demonstrably sound in the light of Canadian banking experience and the prospect of widening opportunities which are so clearly to be seen in the commercial activity of the country today. The Bank of British Columbia, however, adds a dimension to competition which not every bank proposal could add; that is, the dimension of regional competition, which is totally absent from banking in Canada at the present time.

Finally, the development and growth of financial institutions to match the development of primary and secondary industries is a proper regional aspiration which the Legislature of British Columbia has embraced and which the proposal to incorporate the Bank of British Columbia seeks to support. The fully rounded development of the economy of British Columbia, presently the third most important sector of the whole of Canada, is a matter which I am sure is of as much concern to this Committee and the Houses of Parliament as it is to the Legislature and people of British Columbia. Therefore, favourable consideration of the Bill to incorporate the Bank of British Columbia is most respectfully sought at this time.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-20
An Act to incorporate Bank of British Columbia.

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, SEPTEMBER 16, 1964

No. 2

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21282—1

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 9th, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Farris, seconded by the Honourable Senator Beaubien (*Provencher*), for second reading of the Bill S-20, intituled: "An Act to incorporate Bank of British Columbia".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Farris moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, September 16, 1964.

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, Cook, Connolly (*Ottawa West*), Gelinas, Gouin, Hugessen, Isnor, McCutcheon, McLean, Molson, Pouliot, Smith (*Kamloops*), Taylor (*Norfolk*), Walker, Willis and Woodrow.—(17)

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

The Chairman explained to the Committee the context of letters and telephone conversations re Bill S-20, An Act to incorporate Bank of British Columbia; and read into the record a letter from counsel for the petitioners requesting a postponement of consideration of the said Bill until the next sitting of the Committee.

The Committee agreed to defer consideration of Bill S-20 to a later meeting of the Committee.

At 10.35 a.m. the Committee proceeded to the next order of business.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, September 16, 1964

The Standing Committee on Banking and Commerce, to which was referred Bill S-20, to incorporate Bank of British Columbia, met this day at 10 a.m. to give further consideration to the bill.

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

The CHAIRMAN: This bill was on our list for hearing this morning. It had been partially heard at an earlier date. Some two weeks ago I received a letter from the sponsor of the bill (Hon. Mr. Farris), and I also received a number of telephone conversations from counsel for the applicants. To both of them I replied that this bill was on the list for hearing when the committee would resume on September 16, that is, at this sitting this morning, and that the hearing would proceed.

I indicated that it was always open to the applicants to request a postponement, if they had some reason for doing so.

It was indicated to me by telephone that the applicants did not wish to proceed at this sitting of the committee to be held today; whereupon I said that we must have a formal communication; and I have received that letter from Mr. Burke-Robertson, Q.C., of Ottawa. His letter is addressed to the Chief Clerk of Committees of the Senate. It reads as follows:

Re: Bank of British Columbia

> I have been asked by the petitioners for the incorporation of the above bank to request that the further consideration of the Bill by the Banking and Commerce Committee be deferred until its next meeting following that scheduled to be held on September 16th at 10 o'clock. I understand that the next meeting is likely to take place in about two weeks' time.
>
> I might add that the reason for this postponement is largely due to the fact that the Attorney-General who wishes to present new evidence to the Committee is required to be present in Vancouver today to take part in the ceremonies connected with the inauguration of the Columbia River Treaty.
>
> Yours faithfully,

And the letter is signed by W. G. Burke-Robertson.

This letter has been incorporated into the proceedings. What is the wish of the committee, that we delay consideration until a sitting of the committee at some future date? Is that the view of the committee?

Hon. SENATORS: Agreed.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-20
An Act to incorporate Bank of British Columbia.

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, OCTOBER 14, 1964

No. 3

WITNESSES:

Mr. W. R. Burke-Robertson, Q.C., Parliamentary Agent. The Honourable R. W. Bonner, Attorney General of British Columbia.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21284—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 9, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Farris, seconded by the Honourable Senator Beaubien (*Provencher*), for second reading of the Bill S-20, intituled: "An Act to incorporate Bank of British Columbia".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Farris moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

21284—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, October 14, 1964.

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

Present: The Honourable Senators Hayden (*Chairman*), Baird, Beaubien (*Provencher*), Blois, Bouffard, Burchill, Crerar, Croll, Farris, Fergusson, Flynn, Gelinas, Gershaw, Isnor, Kinley, Lambert, Lang, Leonard, McLean, Molson, O'Leary (*Carleton*), Pouliot, Reid, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt and White. (29)

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

Bill S-20, An Act to incorporate Bank of British Columbia was further considered.

The following witnesses were heard:
Mr. W. R. Burke-Robertson, Q.C., Parliamentary Agent.
The Honourable R. W. Bonner, Attorney General of British Columbia.

On Motion of the Honourable Senator Roebuck it was RESOLVED to report recommending that the Committee be empowered to sit during adjournments of the Senate, and that Rule 85 be suspended in relation thereto.

On Motion duly put it was RESOLVED to increase the sub-committee membership by three (3) members, namely; the Honourable Senators Choquette, Leonard and Molson.

At 10.45 a.m. the Committee postponed further consideration of the said Bill.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, October 14, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-20, to incorporate Bank of British Columbia, met this day at 9.30 a.m. to give further consideration to the bill.

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

The CHAIRMAN: Senators, it is 9.30. I call the meeting to order.

Senator GELINAS: Mr. Chairman, without unduly delaying the proceedings of the committee, I think it is desirable at this time that I should make a statement. Having recently been elected a director of a chartered bank, I hereby declare my interest and will refrain from voting on this bill.

The CHAIRMAN: This is a continuation of our hearings in connection with Bill S-20. Mr. Bonner has requested a further hearing and he has some additional evidence to offer. However, before we come to that there is a statement Mr. Burke-Robertson would like to make.

Mr. W. G. Burke-Robertson, Q.C., Ottawa: Before the proceedings commence I would like to take this opportunity of introducing Mr. Harold Barrington Elworthy and I would ask him to stand so that you gentlemen may see him. Mr. Elworthy is the one member of the provisional board of directors who was not able to be present at the hearing of July 22 when the meeting last convened. He was ill at that time and could not be here. Therefore he has come to attend this meeting today. Mr. Bonner will now address you and present some representations additional to those made before the committee on July 22.

Honourable R. W. Bonner, Q.C., Attorney General, Province of British Columbia: Mr. Chairman and gentlemen, following on the discussion of this bill on July 22 last I took the occasion, as no doubt everyone else did, to examine what was given in evidence and what was gained on question and answer. It occurred to me that two points in particular might be referred to again for the assistance of the committee and in so doing I have no intention, nor would the Chairman wish me, I think, to re-argue the material already placed before you.

I was concerned in relation to a question raised initially by Senator O'Leary (Carleton) on the matter of the participation by the Government of British Columbia in the bank's shareholding in the event of oversubscription. I thought I should refer to that point again because it seemed that both the question and responses given to that question assumed circumstances which are not fully outlined in either the question or the answer. On this point I think it should be reliably stated that the only reason that oversubscription could be contemplated, or the only reason that anyone might question the possibility of oversubscription, would be in the presence of an interest, however minor, by the Government of British Columbia, and in support of that proposition I suggest that without the particular atmosphere associated with the Government interest in the company in our province there would be no basis for the proposal of a bank of major capitalization. This committee has already seen fit to approve

two other banks whose capitalization might be regarded as more normal in the light of Canadian experience. I repeat that the only prospect of full subscription or oversubscription of the shares of this proposed bank lies in the association with this venture in this minor way by the Government of British Columbia.

The second point I thought should be elaborated arose initially out of the question posed by Senator Crerar, and I would refer to page 47 of the proceedings of July 22 last. The question goes to the interest which the province might have in the shareholdings of the banks. You concluded your question, Senator Crerar, with these words:

> ...would you be willing now to suggest that in the charter the limitation should be set at 10 per cent either directly or indirectly?

And the Premier, who was being questioned on that point, later stated:

> I would not object to that at all.

It occurred to me that matters before this committee would not be complete unless in response to that question and answer we took a positive step to place for the consideration of the committee an amendment to this bill which would incorporate this principle. If the chairman so permits I would like to circulate a draft of such an amendment to the committee so that it might be examined at this time.

The CHAIRMAN: Yes.

Senator FARRIS: While we are waiting would you comment on your answer that Mr. Bennett said that the Government's not taking shares would be a breach of faith. Would you develop that point?

Hon. Mr. BONNER: Yes, I would welcome the opportunity to develop that point. It will be remembered that the proposal that British Columbia become a centre of Canadian finance was mentioned first in the Speech from the Throne at our Legislature last spring. The principle involved in that submission received the approval of the house on the adoption of the Speech. Subsequently an amendment to the Revenue Act of the Province of British Columbia, permitting the Minister of Finance on behalf of the Government to invest in up to 25 per cent of the shares of the bank to be incorporated with its head office in British Columbia, was passed, receiving the overwhelming approval of the Legislature.

In the course of the second reading of that bill to amend the Revenue Act we endeavoured to indicate to the Legislature what we felt was a proper role for the Government to assume in relation to this bank, and it was made clear that shareholding would be made in the bank, and all proper endeavours would be made to ensure the bank's becoming a success in so far as this could be done by a shareholder.

It is a commonplace in British Columbia, as a result of the very widespread discussion in that province both in the Legislature and without, that the Government by general policy and specific authorization is to be a shareholder in some capacity in this bank. It is no doubt in reliance upon this fact that this bank enjoys—and I assure you it does—very wide popularity in my province. If shares are to go on the market with the Government's position previously stated, and sales are to take place, and thereafter the Government is to say: "We will take no part of the shares," then I think that is properly to be regarded as a breach of faith. By withdrawing from the position authorized by our Legislature, we would commit a major breach of faith if we failed to take some position in the shareholding when the bank ultimately goes to the public. It was that point that the Premier sought to make clear when he answered the question in that fashion.

I say again, because I believe in my judgment it to be a totally reliable fact, that there would be no prospect of the bank's securing major capitalization

of this sort were it not for the association in some part by our Government in the venture.

The CHAIRMAN: On that point may I say that I was looking at your amendment to the provincial statute. This was an amendment to the Revenue Act. What it does is to authorize the minister to invest. It says: "The Minister of Finance may in his discretion invest . . ."

Hon. Mr. BONNER: That is right.

The CHAIRMAN: So the legislation itself does not direct the investment.

Hon. Mr. BONNER: No, it authorizes it. But there is no doubt in the minds of anybody in our Legislative Assembly, and there has been no doubt in the minds of the public of our province, that the province proposed to take some interest in the shares when they were offered, and to withdraw from that position at this point in the event of an oversubscription, as it has been invited, would be a major breach of faith. I believe that a major subscription or an oversubscription could not happen in regard to this bank if the Government were not associated with the venture.

Senator MOLSON: I wonder if Mr. Bonner would explain that a little further. The inference is that the bank cannot be a success unless the Government is participating in it. I am wondering what is so different about the circumstances. Why should this bank not be able to be a success unless the Government is participating?

Hon. Mr. BONNER: The success of the bank is a question to which I have not addressed myself. I was talking about the prospect of a major capitalization—the success of the capitalization.

In British Columbia we have, as you know, developed a parity bond financing feature which has been heavily relied upon in the Toll Authority which is now the Ferry Authority, in the railway company, in the hydro, and so on, with the result that there is a great association by the investing public of our province with ventures in which the Government is associated, and in those instances entirely associated. There is, in my judgment, a great carryover between investors of this sort in the enterprises to which I have referred and the bank which is under discussion. I think if this carryover were not maintained in the minds of the public, the likehood of raising a par capitalization of $100 million, or, on the evidence that the shares would go above par to raise between $200 million and $300 million, would not really be in prospect. I am quite sure that a comparison of the capitalization of this bank taken alongside that of the Bank of Western Canada or the Laurentide Bank, indicates the measure of what I mean. Those banks are banks of what you might call more normal capitalization, and I am quite sure that if they felt they could raise $100 million they would have sought to do so with the concurrence of this committee.

Senator CROLL: Mr. Bonner, those parity bonds of which you speak are available to all Canadians, are they not? They are not just limited to the people of British Columbia?

Hon. Mr. BONNER: That is right, and so are the shares in this bank.

Senator ROEBUCK: May I ask you a question with regard to this proposed amendment? It says:

> No shareholder shall directly or indirectly own more than one-tenth of the total number of authorized or paid-up shares in the capital stock of the Bank.

Hon. Mr. BONNER: Yes.

Senator ROEBUCK: Now, the paid-up shares can never exceed the authorized shares, but tell me why you put one or the other. Does this mean

one-tenth of the authorized if you desire to do so, or if you desire to do so one-tenth of the paid-up shares? It may read in two or three different ways. It might be interpreted as meaning either the authorized or the paid-up shares whichever is the least, or it might be read as whichever is the greater.

Hon. Mr. BONNER: If there is any question—

Senator ROEBUCK: What do you mean by it?

Hon. Mr. BONNER: I am grateful for your having asked about that particular point. If there is any question about the lesser or the greater then I would propose an amendment which would indicate the lesser, which is really what I intend.

The CHAIRMAN: Senator Roebuck, there is another question involved here, is there not? How does one own authorized shares? Authorized shares are shares that are still in the treasury. They have not been issued.

Senator ROEBUCK: It does not say "owned." It says "one-tenth of the total number of authorized or paid-up shares."

The CHAIRMAN: No, it says:

> No shareholder shall directly or indirectly own more than one-tenth of the total number of authorized or paid-up shares in the capital stock of the Bank.

The only way in which you can get a treasury share, I suppose, is by an option from the company.

Senator ROEBUCK: Why not strike out the word "authorized" and leave it as "the total number of paid-up shares"?

Senator THORVALDSON: There is another observation I would like to make in regard to this amendment, and that is this. I see nothing in it that would prevent the Government of the Province of British Columbia owning 10 per cent of the shares of the B.C. Power Corporation, 10 per cent of the shares of the P.G.E. Railway, or 10 per cent of the shares of any other Crown corporation of the Province of British Columbia.

The CHAIRMAN: Unless "directly or indirectly" they go that far. They may not.

Senator THORVALDSON: At the moment I would say they do not, because these are entirely separate corporations.

Hon. Mr. BONNER: I want to point out in this connection that these instrumentalities to which Senator Thorvaldson refers are agencies of the Crown provincial, and no one is to be a shareholder, if there are to be shareholders in this capacity at all, except the Crown in the right of the province.

The reason I use the word "shareholders" is that I do not think the Senate or the Parliament of Canada would wish to legislate directly with respect to a provincial government, more particularly in the manner in which a provincial government might dispose of funds under its constitutional jurisdiction. Consequently, I thought the general term "shareholder" would accomplish what had been discussed earlier, it being a term of general application, without placing the national Government in the position of singling out for specific legislation the Queen in the right of any province.

Senator CROLL: Are you saying in effect, in answer to Senator Thorvaldson's question, that it is not the intention by any manner, and you are prepared to accept it, to let these other corporations reach out, as the senator has suggested.

Hon. Mr. BONNER: That is exactly what I meant. I would refer you, for further particulars on this, to the discussion between Senator Crerar and Mr. Bennett on this point specifically, on July 22 last. That evidence is to be found in many parts, but it is referred to particularly at pages 46 and 47 of the tran-

script of the date. Is it not our intention to do indirectly what we have no intention of doing directly.

Senator CROLL: You go further than that, of course, if I recall the evidence correctly. I have not seen the report lately. I think the premier said that he was prepared to take such limitations as would be imposed by the Government.

Hon. Mr. BONNER: That is right.

The CHAIRMAN: Mr. Bonner, there is a question which is inherent in what you said a few moments ago, that this legislation should not take directly a form of legislating against an investment by the provincial authority.

Hon. Mr. BONNER: In those words, yes.

The CHAIRMAN: Taking the word "shareholder," and the use of the words "directly or indirectly," if in fact the province became a shareholder and you were making a contest of it on that basis, the court might very well say that, well, "a shareholder does extend to any person in whatever capacity"; and then we are right in the middle of the problem you are projecting about constitutionality.

Hon. Mr. BONNER: I was not seeking to raise a problem of constitutionality in dealing with the question. That is a matter of law which might be the subject of a different submission entirely, that it is within the province of the Parliament of Canada to legislate generally on the subject of "shareholder" and to impose such restriction as it may see fit in this regard, provided it is a general restriction. Indeed, if I understand correctly the force of Minister Gordon's remarks at page 8315 of *Hansard* in that other place—I do not know whether I should be referring to it here or not?

The CHAIRMAN: Yes, you may.

Hon. Mr. BONNER: Mr. Gordon addresses himself specifically, on the general proposition of national government and shareholders, and he does this at the bottom of page 8315 where he deals specifically with non-resident shareholders in the proposed limitation in trust and insurance company legislation and pending bank legislation prohibiting a non-resident ownership of shares beyond 25 per cent of the total, and individual ownership by a non-resident beyond a matter of 10 per cent.

Senator CROLL: On what date of *Hansard*?

Hon. Mr. BONNER: September 22 of this year. The pages at which these principles are discussed, as an announcement of Government policy, are pages 8315 and 8316.

The CHAIRMAN: Mr. Bonner, have you thought of this? It may well be that a preferred form for this amendment might be by way of sanction, if such a situation developed, the sanction being the forfeiture or cancellation of the charter, rather than the limitation on the percentage of investment?

Hon. Mr. BONNER: I am sorry. I do not understand the implication of the question.

The CHAIRMAN: The amendment which you propose provides a limit on the investment in shares of the bank. However, an alternative might be a provision which provided a sanction, if such an event occurred. In other words, it would mean you are not prohibiting the investment but you are saying that if the investment of this kind does take place the charter is cancelled.

Hon. Mr. BONNER: Beyond 10 per cent?

The CHAIRMAN: Yes.

Senator FARRIS: Is there not a danger there from the standpoint of the existence of the bank and its relationship to the shareholders, with an axe hanging over them like that?

The CHAIRMAN: I am not looking at that.

Senator ROEBUCK: But we have to look at that.

The CHAIRMAN: These are questions we must consider, and I am going to suggest that at some later stage we refer that particular point of the proposition in regard to the question of constitutionality to our Law Clerk. There is no use in our settling a phraseology which may develop some conflict afterwards.

Hon. Mr. BONNER: The phraseology has not been suggested to cause a conflict but to resolve it. If it is the judgment of the committee that some sanction should be incorporated in the bill, to give greater force to the principle involved in the amendment, certainly no one would have any objection to that.

Senator CROLL: You can go a little too far. We are people who impose sanctions but, as Senator Farris has just pointed out, this could be a most dangerous sort of procedure for us to undertake, or even for a government to undertake. Preferably it should be limitations and notice and conditions rather than sactions. In effect, what Senator Farris said a minute ago is true, that this would be a most dangerous thing to bring about.

Senator ROEBUCK: To exercise it might be a serious injustice to a very large number of investors, both great and small. We should not contemplate such a thing.

Hon. Mr. BONNER: It could conceivably place in jeopardy 9 per cent of the shareholders. I accept that reservation, but I take it that the questions are probing the extent to which we are committed to the limitation of 10 per cent; and I wish to be clearly understood, on behalf of the Government of British Columbia, that when we say "not more than 10 per cent, directly or indirectly" that is precisely what we mean and there is no gradation of meaning in those words, so far as I am concerned.

Senator FARRIS: Surely the Senate ought to be prepared to accept the undertaking of the government as to what it will do.

The CHAIRMAN: Governments change, senator.

Senator ROEBUCK: The undertaking of one government binds another government in a matter of this kind. If we had an actual undertaking from you, Mr. Bonner, on behalf of the government, that what you intend as the government is on behalf of its crown corporations and agencies, and so on, I think we would be prepared to accept that.

Senator LEONARD: Mr. Chairman, before that is considered, I am in a little doubt as to whether or not the Crown is bound by a provision such as this of a general character in a private bill.

The CHAIRMAN: Unless the Crown is specifically named—

Senator LEONARD: Unless the Crown is specifically named.

Senator CROLL: That is why we have a Law Clerk.

The CHAIRMAN: That is right and, Senator Roebuck, on the question of accepting an undertaking, I am wondering, if you look at the particular point of view of the courts, would the courts accept an undertaking?

Senator ROEBUCK: No, but we might accept an undertaking on the part of the Province of British Columbia. I do not think they have ever broken a promise.

The CHAIRMAN: I am not suggesting they have or that they will; but when we are probing to see what may be the effect of a proposed amendment, I think we have to probe it from all angles, and because I express this viewpoint or that, it does not mean that it is my concluded view.

Senator ROEBUCK: I would agree with you that such an undertaking could not be enforced in the courts against the Province of British Columbia.

Senator FARRIS: The undertaking would never get to the courts, unless it were broken.

The CHAIRMAN: That is the eventuality I am talking of.

Hon. Mr. BONNER: May I point out that there is a practical consideration in regard to this amendment, as well as what is in the bill, in that this maximum capitalization involves raising $300 million, of which one-tenth would be $30 million—and quite frankly, even for the Province of British Columbia, $30 million is a lot of money.

Senator CROLL: That we do not believe.

The CHAIRMAN: We do not believe that, Mr. Bonner.

Hon. Mr. BONNER: I am just about to go before our treasury board, and I know the value of money. Do you wish me to proceed?

The CHAIRMAN: Are there any other questions on this point? There are none. Proceed, Mr. Bonner.

Hon. Mr. BONNER: This is basically what I wish to place before the committee, because of the discussion which took place and to which there is reference in the record of that earlier meeting. The shades of meaning to be attached to "shareholder", or the words to be employed in the delineation of this principle, are possibly the subject of further examination.

I wish to repeat, so that there will be no misunderstanding, in suggesting that this limitation be incorporated in the bill, it is for the purpose of carrying out the understanding arrived at on the questions and answers, in the first instance between Senator Crerar and Premier Bennett in the exchange of questions of July 22 last. I felt that the record for consideration of this committee would not be complete unless on our responsibility we put this proposal before you, and so leave no misunderstanding about our clear, unreserved intentions in respect to this matter.

It is very difficult for me not to act as counsel, Mr. Chairman. If there are no more questions on this point, it might be appropriate if I could sum up and trespass a little on material which had been earlier discussed.

It seems to me that in the consideration of this bill the committee might be assisted if a number of questions were posed to it, because the questions I have in mind to enunciate really bring out the heart of the bill before you, and the favourable answer to these questions, I suggest, would resolve the matter and permit this measure to go before the other place for consideration by the House of Commons.

I think the first question is: Is the committee agreeable to the organization of a large bank in Canada?

I have in mind the questions particularly placed by Senator McCutcheon on the capitalization of this measure in which, despite the fact that the board of directors have made no firm decision as to the precise value of the shares to be issued, it was nevertheless the thinking on July 22 that if the bank were incorporated at between $20 and $30 a share, at $20 you would have a $200 million capitalization and reserve, and at $30, you would have $300 million capitalization and reserve, which would make it a very large bank by all standards. I think the question the committee might feel appropriate to concern itself with is this: is the committee agreeable to the incorporation of a large bank?—and this is certainly one.

Secondly: Are you in favour of a large bank based in Vancouver?

I pose that question, particularly, because it involves the principle of regional competition in banks in Canada. Without referring at length to what I had to say during evidence in chief, I submit that regional competition among the banks in Canada would be a beneficial addition to our bank structure. I have in mind particularly that we have not in Canada addressed ourselves to the merits of the American banking system, which as you know is not a branch

banking system such as we have with highly central facilities, but a banking system by American law widely diffused, and where banks located in various parts of the United States have immediately identified themselves with the fortunes of their region and have become very active promoters of the regional interests of the country, not to the detriment of the entire economy of the United States.

The foremost example of what this regional competition may produce, I believe may be seen in the example of the Bank of California, whose presence on the west coast of the United States was regarded as being an unorthodox development at the time it began, but whose presence in time produced an immensely good dimension and a proper dimension of the American financial structure.

Senator CROLL: Is that bank not known as the Bank of America? I believe you referred to it as the Bank of California.

Hon. Mr. BONNER: Yes, the Bank of America.

The second question is: Are you in favour of a bank based in Vancouver for the regional competition which it may provide?

The third question is: Is this bank likely to succeed? That was the question which Senator Molson posed a few moments ago. I believe the answer to this question has to be asserted somewhat in faith, because you cannot assert a future proposition. But it is implicit in the questions previously raised about the possibilities of major subscription, or even oversubscription at the capitalization stage, and whether it will succeed. I have no doubt in my own mind, with the thrust of the western economy at the present time, that this bank will succeed. Indeed, the evidence of expansion of the banking business in Canada, as a matter of record, indicates that it has expanded enormously in the past, and it is not unreasonable to suggest that this expansion is about to come to an end. In posing the question, I suggest, in faith of the country, the answer to that is yes.

I come now to the question of share ownership, because this is a novelty so far as this bank is concerned. The question is: Is it desirable that such a bank be entirely Canadian resident-owned. This is a unique feature of this bank. I am not among those who subscribe to the opinion that Canadians are timid investors. I think the Porter Commission indicated in a very sweeping analysis of the question that Canadians, by and large, are very shrewd investors, and that they have an uncanny ability to go where their money is likely to make more. This makes them not timid, but shrewd. It is my way of thinking, in line with national policy, which is concerned right now with the question of non-resident ownership of many of our major institutions, that we should very clearly provide to the Canadian investing public an opportunity to come in and take on a bank which is going to be entirely their own. In fact, if this feature were not in the bank, that it be entirely a resident-owned proposition, the government of British Columbia would not be in favour of the venture, and in fact could not entertain that proposition.

Inviting your consideration of the question—is it entirely to be desired that we have a resident-owned bank?—I point out that even with the limitations upon foreign ownership which it is proposed to enact into Canadian banking legislation under the advice of the Minister of Finance, to whom I referred a few moments ago, it is still going to be open for non-residents to the extent of 25 per cent to involve themselves in Canadian institutions. Indeed, so far as the Mercantile Bank is concerned, which a couple of months ago I described as being entirely foreign-owned, that bank, I understand, has undergone alteration, with the result that the National City Bank of New York will have entire ownership in that venture very shortly, if that is not presently the case. So we have good opportunity at this point to come up for an entirely

Canadian venture. This is something I think the public of Canada will surprise many people about, when given the opportunity to get into this kind of affair.

The fourth proposition, we have already discussed. It is involved with this amendment, really, and goes to the question of whether it is desirable that these bank shares be widely held. I think it is desirable; and so far as limitation of share ownership is concerned, the limitation of one-tenth is involved in this amendment. In this respect, any shareholder in the country is being placed in the same position as the proposed national policy places non-resident owners, which limits to 10 per cent in future shareholding in various Canadian financial enterprises and institutions, and shareholdings in the British Columbia Bank would be so limited should the amendment be so adopted.

The next question is: Does the petition to incorporate this bank meet all the technical requirements of the statute? So far as I am aware, the answer to that is yes, and there is probably no one who would suggest that the technical requirements of the law are not fully met in this respect. I put the question so that it will be entirely on record that the clear answer is yes, and may be recorded in that respect.

Senator FARRIS: I think our solicitor has already passed on that.

Hon. Mr. BONNER: Yes, I think that is right.

Now, the next question is one which, frankly, I do not know how to phrase. I am wondering whether it would be the judgment of this committee that the House of Commons should be given an opportunity to examine this bill, as well as this committee. I think that should be posed as a deliberate question because of the novel features which we have already discussed in relation to this bill and the possibility of minor government ownership, the exclusive resident ownership quality, and so on. I suggest that a very proper question to this committee is: should the House of Commons likewise be given an opportunity to discuss this bill?—because I am quite aware there is a division of opinion in the house, as there may well be here.

In the light of those questions, Mr. Chairman, I would suggest that if we can in time learn of the committee's decision, be it favourable in respect of these questions, then I would respectfully suggest that the petitioners of the bank have demonstrated what they must to the satisfaction of the committee, and that, in so far as the Government of British Columbia may be associated with this venture, we likewise have discharged whatever obligation there is to make our position clear as well.

I should say before I sit down that I appreciate very much the courtesy of this committee in permitting me to come back to amplify these various points this morning, and I would trust the committee's deliberations would permit the disposition of this bill without too lengthy a passage of time, because there is great interest in this question in my part of the country. This is the question I am most frequently asked: "What is becoming of the bank?" And I reply, "That is in another arena."

I thank you for the opportunity to appear this morning to put these propositions before you and to pose these questions by way of assisting the committee to make up its mind. I would simply wish to indicate, in conclusion, that I would be willing to attempt to answer further questions, if such there are, from the committee itself.

Senator FARRIS: Mr. Chairman, would you excuse me? I have to go to the Supreme Court of Canada.

The CHAIRMAN: Yes. I understand there is no further evidence. I was going to suggest to the committee that this amendment poses a number of questions. One that concerns me is, if you allow this amendment in this form and approve of the bill, how do you enforce this section? There are a number of questions involved, including the one Senator Leonard raised as to whether

the Crown would be bound by this provision in a private bill unless specifically named. My own suggestion is that this amendment and all the points that may be involved in making it an effective amendment should be passed on by our Law Clerk.

Senator McLEAN: Is it your intention to remain a regional bank and operate solely in the Province of British Columbia, or do you intend in time to spread out across Canada?

Hon. Mr. BONNER: That decision will certainly have to be made by the bank's management, but with a bank of this kind my personal anticipation is that it would become a national bank.

Senator CRERAR: Mr. Chairman, there are a few questions I would like to ask Mr. Bonner, to explore this situation.

I may be wrong in my estimation of it, but the crucial thing, it appears to me, is not whether the Government of British Columbia owns 10, 20 or 25 per cent of the shares. Even owning 10 per cent, directly or indirectly—which this amendment proposes, and it is certainly an improvement on the original proposal—will you agree, Mr. Bonner, that the fact the Government is a shareholder to the extent of 10 per cent would place the Government in a position of influence to direct the policy of the bank?

Hon. Mr. BONNER: I think the question of influence would be simply that of an ordinary shareholder. I endeavoured to indicate what the interest of the Government would be in respect of any shareholding when I spoke on July 22 last. I think the interest of Government has to be that the bank is run strictly in accordance with banking principles, and that Government's interest go not beyond the fact of owning shares. I do not anticipate it would be a desirable development that the Government interest itself in the day-to-day management. I can think of no responsible manager who would permit such a principle to be incorporated in his administration. Frankly, I would not want to take any part in such management myself. I think the bank has to be run in accordance with good business policy, and run as an ordinary enterprise.

Senator CRERAR: I do not suggest the present Government of British Columbia would do other than follow the lines you have just suggested, but it does occur to me that the opportunity is there for the Government to exert pressure on large customers.

Let me illustrate directly. Take the big forest industries of British Columbia, the pulp and paper companies and the lumber companies that are among the largest and most successful in Canada. They are independent, outside of finance, altogether. They have intimate relations with the provincial Government over the matter of how they will exercise what I believe are called tree farm licenses.

Hon. Mr. BONNER: Yes.

Senator CRERAR: They are cutting timber off Crown lands upon which they pay stumpage to the Government. Would not it be possible the Government might—being very desirous, and not unnaturally so, to see this bank succeed—intimate to these timber companies, for instance, "Well, you had better have your account with the Bank of British Columbia. We are anxious to develop this bank and we think you should carry your business with the Bank of British Columbia"? And the timber company reflects upon that and says, "Well, if we do not do what you are suggesting, we can be hurt in other ways." So the board of directors of the timber company say, "Well, we had better fall in with the suggestion of the Government." That applies not only to timber. It could apply to mining development being made in British Columbia, which has substantially progressed and in which greater progress is going to be made in the future. It could apply to the gas and oil companies and, in fact, to the whole range of economic effort, pretty well, in British Columbia.

I do not suggest for a moment, Mr. Bonner, that your Government would do that. I am not suggesting that, but governments are mortal. Sooner or later the present Government of British Columbia will face defeat. That is inevitable, in the order of events. Supposing you got a socialist government and they said, "We are going to throw our weight around," and, consequently, indirect pressure is brought to bear that will upset the normal course of operation. That is the one objection I have to your proopsal.

Another objection is this—

Hon. Mr. BONNER: May I deal with the first one before I lose sight of it?

Senator CRERAR: Very well, and I will put my second objection in due course.

Hon. Mr. BONNER: Mr. Chairman, I am grateful that this proposition, which is an apprehension, has been stated so plainly, because it gives me an opportunity plainly to reply.

This room is replete in political experience, and I do not have to indicate to anyone in this committee or in this capital the sanction under which an elected government operates. That sanction is the dismissal from office of an unsatisfactory government. I would not, as an administration in office, wish to see my enemies so armed by the type of conduct which you describe as being possible, because I well know, and I think anyone in office well knows that he may not deal with a corporation in an unfair manner and not have this the subject of widespread discussion and comment in the clubs and in the streets of the community of which he is a part. What is involved in the apprehension is some secret pressure which somehow would never get out and for which a government would never be called to account, were it so unwise to attempt as a shareholder to influence the fortunes of this bank in the manner in which you have described.

I appreciate you were putting this question in abstract, and I am delighted you acknowledge this would not be the practice of our Government. But I want to point out that even another Government would be not less wise than ours, because I would be delighted, on the demise of this administration—which you forecast as a physical probability in due course, a day which I am working to postpone—I would be happy even on the hint of such pressure to be armed with this type of information while I am still in public life, and it would be a formidable weapon to be used against the succeeding administration. However, I do not place your possibility in the realm of a probability for that reason. Politics are played in a much tougher arena, as you know.

Senator CRERAR: I don't think you are quite as innocent as all that.

Hon. Mr. BONNER: I did not pretend innocence; I pretended wisdom.

Senator CRERAR: I have been around quite a number of years.

The CHAIRMAN: I think the reporter is having some difficulty hearing you, Senator Crerar.

Senator CRERAR: It would be most unfortunate if the reporter omitted some of my wisdom!

The CHAIRMAN: We should at least be able to perpetuate it.

Senator CRERAR: My observation of governments goes back quite a number of years, and as I see it the temptation has sometimes been irresistable on the part of government—either provincial or federal government—to, shall I say, throw its weight around a little bit. I remember many years ago that a provincial government, which I shall not specify, did that very thing. It practised the things I outlined a moment ago. While I have great faith in human nature, I do not think it has reformed to the extent that such a thing could not happen again. In the conditions in which we live today the temptation has probably increased. As I said, I have great faith in the common sense of

the people, and in the instance I mention they turned the government out. But it takes a long time to do that, and in the meantime the government can do a considerable amount of damage.

Now, I do not suggest that your Government would do that, but we are not living in the expectation that the present Government of British Columbia will be there for all time to come. Sooner or later it is going to go down the drain and we do not know what its successor may be. For that reason I hesitate to implant in legislation powers that might be exerted by a government wholly different in its attitude to these matters from yours.

Hon. Mr. BONNER: In the event that circumstances which you describe were ever to arise I suggest it is entirely within the competence of the Houses of Parliament to deal with such a matter expeditiously either by a hearing or by legislation by which shares are removed from ownership, or in some fashion which the circumstances of that day might dictate. I suggest legislation must be in contemplation that things are to be carried on in a normal and agreeable fashion. I do not subscribe to the idea, nor is it inherent in your remarks, Senator Crerar, that Parliament would be powerless to deal with such a situation should it arise. I think the Parliament of Canada would be in a most advantageous position to act on behalf of the general public should anyone, be it government or private individual, act in an improper manner.

Senator CRERAR: Suppose your Government goes out and another one comes in and seeks to deal improperly with the business community and says "You have to do this or we will penalize you." What can the federal Government do then?

Hon. Mr. BONNER: At the very least it could initiate a house committee to examine the circumstances complained of.

Senator CRERAR: What do you think would happen if in the event of that we appointed a committee of the Senate, or the House of Commons appointed a committee, to inquire into these irregularities or supposed wrongdoing? What would happen? There is a question of provincial rights.

Hon. Mr. BONNER: With the greatest respect, provincial rights would not be in question. What would be in question would be the behaviour of a shareholder of a bank holding federal incorporation.

The CHAIRMAN: I think we are getting rather far afield from the subject discussing the actions of a shareholder in a bank not yet incorporated.

Senator CRERAR: It is a point which bothers me somewhat. There is yet another one and I think it is the only one remaining for me to deal with. Under our original Constitution banking was a responsibility of the federal Government. I make no bones about that. I think it is a very wise and necessary provision that the federal Government has absolute control today over monetary policy. However we have over the last 20 years heard new ideas being voiced about monetary policy. Today we see the problem in Great Britain and other countries about such things as the balance of payments and other matters of a similar nature that can be dealt with to a certain degree by monetary policy—by raising or lowering the discount rate of the central banks. Today our central bank in Canada has very great powers, and that brings up the question that what might be good for the economy in Ontario and Quebec might not be so good for British Columbia or Nova Scotia. They are a long distance away. Consequently there is always the possibility of conflict arising there.

I believe that in the United States some 30-odd years ago they drastically reformed their banking system. They set up not only a central bank, a federal reserve bank, but they set up district federal reserve banks. I can quite understand that in British Columbia or Nova Scotia or Newfoundland there might be need and urgency for developing an easy money policy, while on the other

hand in Ontario and Quebec the conditions might be such that the dampers should be put down. In this regard I should say that in my judgment one of the greatest dangers to unity in Canada is that of sectional conflict. What would happen if the Government of British Columbia, not the present Government but perhaps its successor, was having rather an important voice in the direction of the policies of this new bank, and if it said "We want an easy money policy" and the authorities in Ottawa decided there should be a tightening up period? That applies particularly if the investment in the Bank of British Columbia is followed by others. What would be the situation if the four Maritime provinces down by the sea, which are talking about getting together, say: "We are going to have a bank and we will take 10 per cent, and we will do it on precisely the same terms as British Columbia did"? You then introduce into our whole economic structure this principle of conflict and division. Do you agree that there is a danger in that?

Hon. Mr. BONNER: I think the best evidence on the question of how far any bank may go on its own is to be found in the testimony of Mr. Rasminsky, the Governor of the Bank of Canada, on this question specifically before the Porter Royal Commission on Banking and Commerce. I had occasion to refer to this in response to a question from Senator Croll on July 22 last. Governor Rasminsky was asked to direct himself to the question of the sufficiency of the techniques and controls that were available to the central bank for the effective direction of the monetary and fiscal policy of Canada—the monetary policy, specifically. The Governor's remarks on this, I think, establish clearly that his opinion is that the central bank has all the machinery it requires to deal with these questions, and I think it may be added to what the Governor has already stated in evidence that if his machinery is found to be deficient in any way it is certainly available to the Government of Canada, acting through the Houses of Parliament, to reinforce that machinery by further legislation.

But actually at the moment the central bank's policy is almost all-pervading, dealing as it does not only with the chartered bank system but with near banks by reason of their dependence upon the chartered bank system having an immediate but not direct effect upon near banks, which were the subject of discussion in that evidence as well. I believe the technical evidence available from the Bank of Canada on this point would establish that their controls are adequate and, secondly, if they turn out to be not adequate they can be sufficiently reinforced by legislation.

On the second question about the development of banks elsewhere in the country, I think it is evident that eastern Canada—Upper and Lower Canada —is already the centre of Canadian finance, and the prospect of this developing in these parts of Canada is not to be contemplated. So far as the prospects of a bank of this type being developed in the Maritimes is concerned, I would say that the economy of the Maritimes to this moment has not demonstrated the type of capacity which would permit a bank of this capitalization to be early contemplated. This might change if there were Maritime union, but it is not a practical contemplation while the Maritime provinces remain separate.

So far as Manitoba is concerned, it has the prospect of a bank based in Winnipeg, and it is to be served. Alberta has treasury branches, and that is the development there. I suggest with deference that the only area in the position of British Columbia is British Columbia itself, and the likelihood of a similar development occurring elsewhere in the foreseeable future is extremely remote.

Senator CRERAR: There is no objection in my mind at all to a bank in Vancouver, or even two or three banks for that matter. I agree with you, Mr. Bonner, that as matters are at present the great banking centres are in the two central provinces. There is no doubt about that. There is not any

doubt either that that is a matter which raises some controversy in the more outlying parts of our country, and that is why I am wholly in favour of a bank with its headquarters in British Columbia. But the point in my mind is that with respect to having the Government interested in it. I cannot bring myself to believe otherwise but that that may lead quite conceivably and quite rightly to the development of friction between the outlying provinces and the central authority.

The CHAIRMAN: Senator Crerar, we have been over that quite a number of times. I take it that you are now expressing your view in relation to it. The point you are discussing was discussed thoroughly the last time we met. You have told us what your view is, and Mr. Bonner has said what he thinks about the point you have stated. Can we gain anything further? If you think we can then go right ahead.

Senator CRERAR: Well, Mr. Bonner seems to think it is not a very good point.

Hon. Mr. BONNER: I realize its importance, but I do not share your views.

Senator KINLEY: The witness spoke about near banks.

Hon. Mr. BONNER: Yes,sir.

Senator KINLEY: I would like to hear from the eminent counsel more specifically the difference between a near bank and a real bank.

The CHAIRMAN: Just a minute, senator.

Senator KINLEY: What is wrong with that?

The CHAIRMAN: We are not discussing near banks.

Senator KINLEY: I am a layman, and I would like to know the difference between a near bank and a real bank. What objection is there to a man of Mr. Bonner's attainments telling this committee what he thinks is the difference between a near bank and a real bank?

The CHAIRMAN: If you want that information then perhaps he should tell us what a near bank is.

Senator KINLEY: Very well.

Hon. Mr. BONNER: For the sake of brevity may I refer the report of the Porter Commission which discusses the existence of near banks very fully, but at the risk of oversimplifying the description I would say that near banks include such institution as credit unions, trust companies with savings accounts, trust companies which are probably not trust companies but loan companies, loan companies themselves, and possibly some provincial organizations that are set up for the purpose of assisting industrial development. It is the broad spectrum of institutions which take on banking functions without the benefit of charters.

Senator KINLEY: They have all the privileges of real banks?

Hon. Mr. BONNER: No.

Senator KINLEY: Where is the difference?

Hon. Mr. BONNER: Well a bank operating under a charter has certain powers to escalate credit in relation to capital deposits and reserves.

Senator KINLEY: What about the figure of 10 to 1 in circulation?

Hon. Mr. BONNER: Are you inviting me to comment on its wisdom?

Senator KINLEY: I did not catch your last word?

Hon. Mr. BONNER: I do not understand your question.

Senator KINLEY: Well, a bank can go to the Bank of Canada and deposit certain securities, and have a 10 to 1 circulation. Have the near banks that privilege?

Hon. Mr. BONNER: No.

Senator KINLEY: That is the difference?

Hon. Mr. BONNER: That is one of the differences.

Senator KINLEY: That is what I wanted to know.

Senator ROEBUCK: Mr. Bonner, I do not go along with all the politeness of my friend, Senator Crerar, when he said that your Government would not do something but that another government might come along that will. That was very pleasant on his part—

Hon. Mr. BONNER: It is an assumption that makes discussion more easy.

Senator ROEBUCK: Is it not implicit in the very situation itself that somebody who is doing business with a government that has an interest in a bank might have intimated to him from some source that it would be just as wise for him to do business with the government's bank rather than with another bank? Is it not implicit in the very situation where you have a bank in which the government is involved that those people doing business with the government should be very wisely led to patronize that bank? How are you going to meet that argument?

Hon. Mr. BONNER: Well sir, to start with I disagree that it is implicit. I want to meet that head on. I think that the manner in which a person does his banking is his own business. Banking is not compulsory with any institution. There is among banks an area of legitimate competition which presently exists. Commercial banks compete with each other for accounts, and they do so in a variety of ways, all of which are proper, and upon which I offer no criticism whatever. But, how a person dealing with the government gets a contract is subject to his tender and the tendering procedure, and is not dependent upon the institution with which he does business in financing his enterprise or, in fact, anything else of that sort.

I repeat a portion of what I tried to say earlier, that for a government to disarm itself in the face of its opponents, who are legion, to the charge that it is using influence of this sort is, in my judgment, a situation in which I personally would not willingly place myself. I give my opponents credit for equal caution.

Senator ROEBUCK: You mentioned that a contract with the government fellows tenders.

Hon. Mr. BONNER: Yes, sir.

Senator ROEBUCK: But there is a great deal of business done with the government after the tenders have been opened and the contract awarded.

Hon. Mr. BONNER: If I might explain that I will say that our tendering for supply is by public tender, and our suppliers are at liberty to examine the successful tender following its award.

Senator ROEBUCK: Oh, yes, but following the opening of the tenders, and the awarding of the contract there are then all the problems that arise out of the administration of the agreement.

The CHAIRMAN: The performance.

Senator ROEBUCK: The performance. Yes, that is the word—the performance of the agreement—the cutting of timber, the removal of brush and these other things of that nature arise, which bring up dealings between the department and the successful tenderer. It is there that I can see the implicit situation having an effect. I insist on the words "the implicit situation."

Hon. Mr. BONNER: Yes.

Senator ROEBUCK: But we will not argue about that.

Hon. Mr. BONNER: No.

The CHAIRMAN: Are there any other questions? The suggestion which I make is that these questions which are related to the amendment proposed, should be reviewed by our Law Clerk.

Senator ROEBUCK: I agree, because I think this amendment as it is drawn is not sufficiently considered.

The CHAIRMAN: I have another question that I want to put to the committee at the same time. I take it, then, that what is implicit in the proposed amendment, arising out of the discussion which we had this morning and this whole question, be referred to our Law Clerk, for his opinion.

I would suggest that further consideration of this bill be at the call of the Chair. Now, if the committee approves of that, the next suggestion I want to make is that, since there is a possibility we may have a short recess here and there in the foreseeable future, a report made by the committee to the Senate today giving the Banking and Commerce Committee permission to sit during a recess of the Senate.

Senator ROEBUCK: Why? We are not going to be here during recesses.

The CHAIRMAN: Because there may be business that we are carrying on that should be dealt with.

Senator LAMBERT: The Finance Committee is doing so.

Senator CROLL: This is a committee of a considerable number. There is a danger, as you know, in sitting while the Senate is not sitting, of not obtaining a quorum, quite legal and proper perhaps a few more than a quorum, and having to deal with it, which would be embarrassing to the committee. I think you are much better off in dealing with this very important matter with as large a number as you can possibly obtain.

The CHAIRMAN: I am not thinking only of this measure. I am thinking, for instance, of the substantial amendments to the Companies Act, which are also before us. We have a subcommittee, and the subcommittee should complete its work as quickly as possible and get it to the main committee.

Senator CROLL: Yes.

The CHAIRMAN: And we should not be held up, at that stage of consideration and report by the committee, by the fact that the Senate is not sitting. We have to move this legislation along.

Senator CROLL: With respect to the Companies Act, I think you are quite right and it can properly be done in that fashion, because it is being considered by a subcommittee in any event, to report to the main committee, as I understand it.

The CHAIRMAN: Yes.

Senator CROLL: I am satisfied that the Chair would use good judgment in that case and make it possible for the largest number of senators to express themselves.

The CHAIRMAN: That is right.

Senator ROEBUCK: I am satisfied with that suggestion.

The CHAIRMAN: Will I make a report to the Senate, then?

Senator LEONARD: I think it should be clearly understood, as far as this bill is concerned, that it should not be considered by a committee sitting during an adjournment of the Senate.

Senator CROLL: That is what I was trying to say. I leave it to the Chair. The Chair will use judgment on it.

The CHAIRMAN: I am thinking in terms of the report to be made to the Senate this afternoon. If we get authority from the Senate to sit during a recess, then you will have to rest on the judgment and discretion of the chairman as to how he proceeds, and that will be governed in a large measure by the number of senators who can make themselves available in a recess period.

Senator ROEBUCK: That is hardly a fair deal. There are some of us who will not be here but have something to say and have some interest in the proceedings.

Senator CROLL: Suppose, Senator Roebuck, we leave it to the chairman at any time when he is dealing with this bill to see that all members of the committee are informed that on such and such a date this bill will be dealt with, so that we can get here?

The CHAIRMAN: We can give you a week's notice.

Senator CROLL: And if there are not enough members here, you can rest assured that there will be screams about dealing with this bill unless there is a sufficient number.

The CHAIRMAN: Is it your wish, then, that the committee report to the Senate this afternoon, asking that permission be given by the Senate for the committee to sit during a recess?

Senator ROEBUCK: Yes, on that understanding.

The CHAIRMAN: That is carried.

Senator BURCHILL: Are you quite clear on this? Some of us regard this as very important legislation.

The CHAIRMAN: I would not say "some". I would say that all of us so regard it.

Senator BURCHILL: Some of us have to travel a considerable distance to attend a meeting when the Senate is in recess and would need several days' notice. I have strong reservations about this particular bill. The case of the Companies Act is different altogether.

The CHAIRMAN: I put the question a number of times: is it the wish that we report to the Senate this afternoon, asking for permission for the Banking and Commerce Committee to sit during the recess of the Senate?

Senator PEARSON: In other words, it be left at your discretion?

Senator KINLEY: On any bill?

The CHAIRMAN: Yes, on any bill that is before us.

Senator KINLEY: I do not like it.

Senator Thorvaldson: I am in agreement that there must not be undue delay in regard to an important matter of this kind, and I think we can leave it to the discretion of the chairman to give us ample notice when a meeting is to be held. I do not believe we should allow ourselves to be subject to the charge of delaying these matters.

The CHAIRMAN: Those in favour of such a report?

Senator CROLL: Yes.

The CHAIRMAN: The contrary, if any?

It is carried.

There is another motion. We have one more bill, but before we deal with that, I would like to take this matter before the committee. For practical reasons, when we set up a subcommittee of five of the Banking and Commerce Committee to deal, in the first instance, with the Companies Act amendments, we made it five because we thought that would be a small workable number. However, it presents problems of a quorum at times. I think that if we had a slightly larger subcommittee we could be assured of a quorum all the time. I was about to suggest an addition. The number is five at present and that includes the chairman. I would suggest we might add three more and in that

connection I would suggest Senators Leonard, Molson and Choquette, if that is the pleasure of this committee.

Hon. SENATORS: Agreed.

The CHAIRMAN: We have completed for today the proceedings in regard to Bill S-20.

The Committee proceeded to the next order of business.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-20
An Act to incorporate Bank of British Columbia.

The Honourable SALTER A. HAYDEN, *Chairman*

THURSDAY, OCTOBER 15, 1964

No. 4

Statement by the Honourable J. W. de B. Farris.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21479—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 9th, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Farris, seconded by the Honourable Senator Beaubien (*Provencher*), for second reading of the Bill S-20, intituled: "An Act to incorporate Bank of British Columbia".

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

The Bill was then read the second time, on division.

The Honourable Senator Farris moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill be referred to the Standing Committee on Banking and Commerce.

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

JOHN F. MacNEILL,
Clerk of the Senate.

21479—1½

MINUTES OF PROCEEDINGS

THURSDAY, October 15th, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Beaubien (*Provencher*), Burchill, Choquette, Crerar, Croll, Dessureault, Farris, Fergusson, Gershaw, Isnor, Kinley, Leonard, McLean, Pearson, Roebuck, Smith (*Kamloops*), and White.—(19)

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

Bill S-20, An Act to incorporate Bank of British Columbia, was further considered by the Committee.

The Honourable Senator Farris, the sponsor, was heard with respect to the said Bill.

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

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, October 15, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-20, to incorporate Bank of British Columbia, met this day at 2 p.m. to give further consideration to the bill.

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

The CHAIRMAN: Honourable senators, we have a quorum, although I am sure more senators will be coming in. We shall now resume our consideration of Bill S-20. Senator Farris, as sponsor of this bill, has asked for the privilege of making a presentation. That is why we have gathered here at this time.

Senator FARRIS: Mr. Chairman and honourable senators, I am appreciative of the courtesy extended to me in the committee's holding this special sitting on this day with respect to the bill to incorporate the Bank of British Columbia. My remarks at this time will be somewhat double-barrelled. As I explained to the committee this morning, events are so shaping that I shall not be able to be present when this bill is finally considered by the committee, and probably I shall not be present when it is reported to the Senate. When I say my remarks will be double-barrelled I mean it in this sense, that I want to speak to the members of this committee as the situation now is, and also I want my remarks to have some future application when the bill, either dead or alive, goes to the Senate.

The situation in regard to this bill, as I see it, has changed very materially since it was first introduced before the Senate. It is no longer a consideration of mere procedure as to whether the bill conforms with the requirements of the Bank Act. It is no longer limited to the problem of whether we should at this time have more banks in western Canada. It involves now not only what appears on the face of the bill but also what is behind it, and that is the fact that the Government of British Columbia was duly authorized by a majority of the Legislature, by a vote of 41 to 5, to invest in this bank. This bill now requires, in the light of developments since, the consideration of the right of the Government of British Columbia to invest under authority from its own legislature in 10 per cent of the shares fully paid up in this bank, if it is incorporated.

I would like to get going on some law, but I am reminded of the quotation in Browning's "Rabbi Ben Ezra".

> Now who shall arbitrate?
> Ten men love what I hate,
> Shun what I follow, slight what I believe
> Ten who in ears and eyes match me
> We all surmise, they this thing, I that—
> Whom shall my soul believe?

I do not know whether I can help any of you in what you should believe or not, but I will have to try anyway.

There is another peculiar thing that may develop when the vote is taken. I do not know whether the vote in this committee will be on one specific issue or whether it will be on the different issues that will be raised and that are being raised in our consideration at the present time. There are some issues on which some honourable senators may vote against this bill, but no single one of those issues would justify defeat for the bill. I cannot predict that at this stage. Whether added altogether there would be enough justification for that, but I am hopeful about this.

Again, in pondering these questions I am reminded of a story that is told about the late Senator Gillmor of Charlotte County, New Brunswick. I never knew the senator, but I did know his father who was a very fine doctor at St. Martin's. Before Senator Gillmor came to the Senate he was a member of the House of Commons for many years, representing Charlotte County. He was a most popular man, and he had reason to be. Everybody liked him, and he always had a fund of good stories and humorous pranks. It is related that at one time he said, "My constituents are divided from the State of Maine by the small St. Croix River. These constituents are all protectionists by day and free traders by night."

I think my friend will corroborate if this is a correct story. As the story goes, he was speaking at one time in the House of Commons on a subject which was not very popular, and he was not getting his usual attention. There were interruptions, and finally he said, "If honourable members of the Commons will permit me, I will tell you a story. I am reminded of the young businessman who had over-extended in his business his capital, and he was threatened with bankruptcy. When he met his creditors separately they all assured him of their support when he explained the situation to them. He said, 'My business is good and I am prosperous, but I have not the credit, and unless I get time and consideration I will go bankrupt.' So they all assured him favourable consideration. But when they all got together, each creditor looked at the other fellow and was afraid that someone might get an advantage, so they all started to crowd him out, and he saw bankruptcy facing him. He said, 'Gentlemen, individually I love you, but collectively you are a damned hard bunch.'" There is no thought, at the moment, of my present remarks being applicable to that story.

In this discussion, at this present stage, we are now faced with issues challenging the constitutional right of the province to buy shares in the bank, which is not only granted under section 92, subsection (13), of the B.N.A. Act but is also sanctioned by a vote of the legislature of 41 to five.

I want to ask the Chairman to keep in mind, and I know he will because he is very fair, that while this is a so-called private bill it has more aspects of a public bill for special consideration than almost any bill I know of brought in as a Government measure, and I hope in due course any amendment to be made will keep that in mind and that no haphazard steps will be taken to delay the final disposition of this bill.

I cannot urge too strongly the seriousness of what some senators seem to be attempting to do. If a committee of a non-elected Senate can successfully refuse to permit the elected branch of Parliament to consider this bill, I think it is a very serious responsibility for this committee and for the Senate to undertake. At this stage of Parliament, unless this bill goes to the House of Commons they will have no chance to consider it.

I checked with Mr. MacNeill and he told me that it would be possible to start in the House of Commons by brand new proceedings, but at this stage of this session it will be realized that that would now be practically impossible. For this reason the opportunity of the elected house to deal with this bill and with this proposed bank depends absolutely on what a non-elective branch of Parliament decides to do. I have no hesitation in saying—and I

have spoken to some of my honourable colleagues—that if this non-elected body at this time refuses to send this bill to the House of Commons it will be another cause to set the heather on fire in Canada in regard to the dispute between the provinces and the dominion, and this non-elective body, the Senate, which is none too popular at any time.

I do not mind that, since we know we are right, but I say it would be a great mistake at this time to kill this bill so that the Commons would not have a chance to discuss it. We must keep in mind that they are the elected body. To do so would be questioning the right of British Columbia on the majority vote of its Legislature to decide whether they are entitled to buy shares in the bank or not, and we should remember that this would amount to only a few shares.

I was greatly interested yesterday when members of this Senate committee took such an interest in seeing that our solicitor checked up on the form of the undertaking to ensure that this participation would only be to the extent of 10 per cent. I take it that that interest was an indication that the senators who were interested were not trying to kill this bill but were interested in giving it a chance to go to the House of Commons with the amendment that the ownership would be limited to 10 per cent of the actual paid-up capital of the bank if it is allowed to be incorporated.

Now I want to consider some constitutional questions because they deal not merely with the solution of the problem or what the law is, but they also have a very serious bearing on the policy of the non-elected Senate in dealing with matters that ordinarily should and would go to the House of Commons for consideration there.

As you know, if at the end of the discussion there is a diversity of opinion between the House of Commons and the Senate, a joint committee can be appointed and some other solution can be arrived at. In this connection I want to refer not merely to the challenge as to the soundness of the law as it is, but to refer to one or two aspects of this whole question including Senator Hugessen's constitutional argument that Premier Bennett's proposal to seek a limited control by the province in the purchase of shares up to 10 per cent of the paid-up capital of the bank is unconstitutional as an attempt to do indirectly what cannot be done directly. With all deference and modesty, I am surprised that a distinguished member of the Quebec Bar should advance such a proposition. I agree with the law that a province cannot do indirectly what it cannot do directly, but I disagree entirely with the suggestion that the province is doing anything indirectly. What the province is doing here is a direct attempt to buy shares in a federal bank. This power is given under section 92(13) of the British North America Act, which has handed the exclusive jurisdiction relating to property and civil rights to the province.

Shares in a bank are as much "property" as shares in the C.P.R. or in Spencer's Limited. In fact, the Federal Banking Act, section 42, expressly declares that the shares in a bank are personal property. The British Columbia Legislature in its recent session passed an act authorizing such a purchase, by a majority of 41 to five. Let me point out this. In the British Columbia Legislature the government holds a majority, in the policy of Social Credit. British Columbia and Alberta both adhere to that policy. There is not a single member of the Social Credit party in this Senate and there is not a single member of any party in this Senate except Liberals and Conservatives, and one who I understand is an independent if that word is understood. I was not going to use that word, because we do not often come across it.

I state that the indirect procedure is not what Senator Hugessen says, but is the attempt by some senators to refuse incorporation to this bank. If it is true, it would be to sell up the camp, to refuse incorporation of what British Columbia claims, would be to prevent British Columbia exercising

its constitutional power. Unfortunately this indirect performance, if it exists, cannot be remedied by a mandatory injunction, as it could in the case of ordinary citizens. It cannot compel senators to grant a charter. The only method the public has of dealing with this matter would be by a new constitutional measure restricting the powers of the Senate, or to abolish it altogether. These are days when we need to be a little bit on our toes, in view of what is going on amongst the attorneys general in this same city at the present time about the Constitution.

Honourable senators, I cainnot press too strongly my belief in the serious effect which would result from a successful refusal to grant incorporation of this bank. First, it would be discrimination. Is there any reflection about that? To have put through these other two banks and deny a bank having representation of the people of British Columbia, is an unqualified discrimination.

In the next place, it is an attempt, if it is made, to deprive British Columbia from its constitutional power, based on section 92(13) and backed up 41 to five in the legislature.

The next thing and perhaps from the point of view of senators the most serious, is what is our responsibility if we prevent this bill going to the House of Commons. There is a good deal of undercurrent of criticism of the Senate as an institution that is not elected by the people. Within its intended jurisdiction, within the powers for which it was created, I think every man here is prepared to stand up and fight for the soundness of the existence of our Senate.

I submit that in the Parliament of Canada, we as a non-elected body have the duty to preserve Parliament on such occasions as this. There is not a Social Creditor, not one to take part in the discussions—

The CHAIRMAN: Senator, may I ask you a question? Is the proposition you are putting, in simple language, that we should pass this bill in order to be sure of keeping our jobs?

Senator FARRIS: No. I don't think it is fair to put that inference on what I am saying. I am saying that our job requires that we perform it in accordance with the Constitution for which it was created, and it was never created for an issue of this kind to stand in the way of the House of Commons giving fair consideration to it—and not a single member of the parties that are concerned in British Columbia, socialists and Social Creditors, are members of this Senate. I am glad you brought that up, if you had that in mind.

The CHAIRMAN: That seemed to be the conclusion to come to.

Senator FARRIS: Well, I disagree with that entirely. So far as I am concerned, at my age and time of life, I do not care whether I control my job in the Senate or not, but as long as I hold my job in the Senate I do care that I do my part to see that we live within the constitutional limitations that intentionally were imposed upon us, and properly so, in contrast with an elected body which historically, constitutionally and entirely is a wider-functioning institution than the Senate was ever intended to be.

Now, some of the slogans going around ought to be considered. One of them is: "We don't want a political bank." Mr. Chairman, I approach you with great deference, sir, notwithstanding your misguided comments.

The CHAIRMAN: Shall we argue that point?

Senator FARRIS: If I had time I would enjoy doing so, but I have already telephoned home to say that I will arrive there by plane at 11 o'clock tonight.

"We don't want a political bank." Now, that is a slogan—

Senator ISNOR: Whose slogan is that?

Senator FARRIS: Well, I have heard it around these buildings for some weeks. That slogan takes me back to my very much younger days when there

was another slogan. In the days when Sir Wilfrid Laurier was Prime Minister, Mr. Fielding, who was Minister of Finance, consented in the negotiating of a reciprocity agreement with the United States. Looking back, I think that would have been one of the most beneficial things that happened to Canada. Everybody was for it—the Conservatives, Mr. Borden, and everybody. However, somebody started the slogan, "No truck nor trade with the Yankees." That took across Canada like wildfire, and the welfare of Canada suffered to the extent of millions of dollars, in my humble opinion.

Senator HORNER: I think you are mixing your aces. I am with you, but not on that.

Senator FARRIS: I think a great many Conservatives right in the Senate can look back and agree on the fact that that slogan had an unfortunate effect on the welfare and progress of Canada.

Senator KINLEY: It was a hundred patriots from Toronto who did that.

Senator FARRIS: I do not want to get into too much of a controversy. There may be a survival of those to whom it is still popular to say, "No truck nor trade with the Yankees." But I submit that both parties now looking back would think that that is not a good slogan, and yet it spread like a plague right across Canada. I recall that until that time both parties were congratulating Mr. Fielding on the success he had in negotiating that agreement. I believe Senator Crerar will remember that as a fact. He nods his head.

Political patronage has been mentioned in a way that was intended to cast reflections on the Government of British Columbia with respect to its owning 10 per cent of the shares of the bank. The suggestion is, as I understand it, that we do not want Bennett to have the power of abusing his relationship with that bank, and to carry on political patronage with respect to it. I should like to make reference to the proceedings of the meeting of this committee on July 22. At page 20 Mr. Bennett said this:

> The Government of British Columbia will invest in this private venture because the successful launching of the Bank of British Columbia is of vital importance to the creation in Vancouver of a complete and mature financial market for the long-run benefit of the Province and of all Canada. However, the Province, as a small minority shareholder, will certainly expect the private bank to operate free of any political influence in concert with the other chartered banks and under the supervision of the Bank of Canada.
>
> I want to make it very clear that any government would be very stupid indeed to run a partisan bank or try to influence its operations or loans or anything else, because as soon as you gave a person a loan, he would think it was too small. The next day he would think the rate was too high, and all people who did not get loans would blame the government and the government would be thrown out of office. We may have political faults in our Government, but that is not one of them. That would be the most foolhardy thing that could happen.

Now, whatever may be said about Mr. Bennett—and I am no supporter of his —any fair-minded and independent Liberal should recognize that he is a sound businessman. He owns and operates, and has for years, five hardware stores scattered over the province. I am told that hardware is a tough business to be in. Mr. Bennett successfully operates those stores. He is not a wealthy man in the larger sense of the word but he is independent in a financial way. I think his ambition is to head a government that will be recognized, and in which he will be recognized as a man of standing, of decency, and a man having in his heart the interests of the province.

Then, I would like to read what Senator McCutcheon had to say. Judging from his remarks I would think that Senator McCutcheon is probably one of the most active opponents of this bill, and I would think that that is probably so because he has more interest in it than any other senator. I have great respect for Senator McCutcheon. His name is Wallace and my name is Wallace. However, I have the right, as he knows, to take exception to things that he says. After cross-examining Mr. Bennett, after Mr. Bennett had made the statement I have just read, Senator McCutcheon said this, and it is to be found at the bottom of page 61:

> Or suppose we get a C.C.F. Government in British Columbia? This is what concerns me. I still cannot understand why, if you can obtain the capital from the public, and so on—sure, you are sponsoring the bank, you are naming the provisional directors, and it is taken for granted that the directors you name will appoint able management, or you will inspire them to make able management. I am not worried about you, but I am worried about what may be the situation ten years from now when you decide to retire and your party is defeated at the polls and some other government gets in. They will then find themselves the largest shareholder in this bank. If this bank can be financed by the public why do you want to put any money in it?

Then, again, at the bottom of page 62:

> The one thing that the Premier did not mention is that Parliament can also decide whether or not there will be another bank incorporated. I have no illusions that this bank, if it is capitalized and so on on the basis we have been told, will be successful. If I were not a Member of Parliament I would be tempted to buy shares in it when they are offered to the public. I am not concerned about the fact that the undertaking may be influenced by the Government to make bad loans or good loans because politically that would be very stupid,

—he is absolutely agreeing.

> but I am concerned about the possibility that ten years from now when Mr. Bennett and his colleagues are no longer in power and some other nameless group is in power, someone might say to me, if I were operating a large pulp and paper operation or a sawmill in British Columbia: "Now, you get your credit from the Bank of Montreal, but we will handle your foreign exchange transactions. You make your deposits with us. You carry your payroll accounts with us, and so on". Having said that, Mr. Chairman, I will say no more.

In other words, Senator McCutcheon, representing, I think, quite a group of the thinking people in the Senate, has assured Mr. Bennett that as long as he is there he has no worries about the bank, but he has worries about what will happen 10 years form now. I submit, honourable senators, that that is a philosophy of despair. Has it come to the stage that senators will deny public responsibility to public officials supported by their government and their legislature, in the fear that sooner or later somebody may get into power who will not be honest and will take advantage of such a situation? I say that is a philosophy of despair. It is not worthy of Senator McCutcheon, and I do not think it is worthy of us in the Senate to accept any such philosophy.

I cannot too strongly press my view on the seriousness of what the Senate may be attempting to do, if they are attempting to deny the Commons the right to pass on this legislation. Here is a committee of non-elected senators —and I was assuming when I prepared this that this was after the committee

had reported and had reported against the bill. If that were so, here is a committee of a non-elective Senate refusing to permit the elective branch of Parliament considering the justification of denying to British Columbia its constitutional power, backed by an almost unanimous vote of the legislature, to purchase shares in a chartered bank and in going the length of denying incorporation to accomplish that purpose. If a majority of the Senate is opposed to a province owning 10 per cent of the shares in a chartered bank, it seems to me that their first duty is to see that the Commons have a chance to discuss this matter and have their opinion in connection with it.

Senator KINLEY: Do not the amendments say that neither the Government or anybody else can hold more than 10 per cent?

Senator FARRIS: That is the new amendment.

Senator KINLEY: I do not think anybody can hold more than 10 per cent.

Senator FARRIS: As a matter of fact, honourable senators, how far can there be an obstruction of policy with a 10 per cent ownership in the bank? I quite agree that 20 or 25 per cent ownership would have much more effect. I quite agree there may be times when you can exercise an influence with 10 per cent. But I say this, with 90 per cent of the shares held by private investment, if some other government comes in in the future that is crooked enough to try to use this as a pattern of deceit, how long would it take those men to get together to swamp that 10 per cent? It is one thing to assume that in the ordinary run of business 10 per cent vested in one shareholder can exert quite an influence. It is an entirely different thing to say that if that shareholder attempts to abuse his interest and use his patronage in that connection to the disadvantage of the bank, it would not take very long for the other 90 per cent to get together to see that did not happen.

Senator PEARSON: If some other political party came into power in five or ten years' time, could not they create a run on the bank and force their shareholders to get rid of their 90 per cent? And who would absorb that 90 per cent?

Senator FARRIS: I don't know.

Senator PEARSON: Supposing the Government wanted the bank to make a heavy loan to the province and there was a run on the bank?

Senator FARRIS: That might happen in regard to any bank. I don't know. Is my friend assuming that the Conservatives are going to get in next time?

Senator PEARSON: I am not assuming that. From what you said in your speech apparently you gathered that Senator McCutcheon assumed there would be a socialist government.

Senator FARRIS: There is a socialist Opposition at the present time and they have supported Mr. Bennett in this legislation. If the people of British Columbia elect a socialist government—and in fact we may have a socialist government here in 10 years—I think it would be quite a lot for the Senate to take on its shoulders to say that we are going to prevent that by blocking the constitutional right of the people of British Columbia to have 10 per cent interest in the bank. I think in fact that would be about the strongest thing that could happen to disrupt the whole sentiment of the people of this country with regard to the position and the usefulness of the Senate. It might not make any difference to some members of the Senate; some may have fairly good law practices and so could get along quite well whether in the Senate or not. But while we are here we must recognize that constitutionally and historically the powers of a non-elected Senate have been limited.

There is another question and, I think my friend Senator Crerar is concerned about this. It is the question of precedents. We must remember that precedents do not go only one way. Certain precedents may well be established

by refusing a charter to this bank. Certain precedents may also be established if the policy of the Senate without the sanction of the Commons should be that they are justified and right in preventing the incorporation of a bank under those circumstances at this time.

I am quite puzzled at times to know what is the worry about these precedents. If a bank with ownership such as this, by its own efforts is successful, and so successful that the other provinces will want to have banks of their own, I do not see how we can prevent that. If, however, history proves to the other provinces that the bank now being incorporated is not a success, then I don't think there will be anything more heard of this precedent. This precedent can only turn out to be a bad thing if the bank is unsuccessful.

Senator PEARSON: What about taxation?

Senator FARRIS: Well, that is always a question in this country. Is the Senate so successful and so confident of its own wisdom that it proposes to protect the other provinces from their own folly? If this bank with a percentage ownership by the province is such a good thing that the other provinces will demand the same treatment, well that to me indicates that the bank must be very successful. On the other hand this question of precedent can be exaggerated very much. You heard Mr. Bonner here yesterday. Mr. Bonner pointed out that this bank in British Columbia was to meet a situation peculiar to the western provinces. I think that peculiarity applies not only to British Columbia but also to the Province of Alberta. If that is so, the policy as laid down for the establishment of this bank, claimed by Mr. Bonner yesterday, was to give to Vancouver a financial centre such as there is today in Montreal and Toronto, so that the area around it will get, not a second hand consideration after the local manager says "I will wire the head office to see what is going to happen," but a condition similar to what is illustrated in California in the Bank of America.

Supposing British Columbia gets its charter, gets its 10 per cent shares and the influence of those shareholders, including the 10 per cent of the province, results in a bank that grows and prospers on the principle of the development as the American banks do. I certainly would not want to see them follow all the principles of the American banks but to follow them in so far as that question of development is concerned. I am afraid there are a lot of persons here who do not yet have a full appreciation of the possibilities lying immediately ahead for the Province of British Columbia. If you read what Mr. Bennett has said on that, if you have your own information on that, you know that this bank will be properly represented by able management. Mr. Bennett says " I cannot reveal to you whom I have in mind to suggest as manager, because that would destroy him in his present position, but I have in mind a man I know will accept the position in the bank, and certainly he is an outstanding man with whom I know the public will be satisfied." If you have that kind of man in the bank, if you have behind it the power and authority of the Parliaments of British Columbia, Alberta and probably Saskatchewan, if you have the operations continue under these conditions, my submission is, honourable senators, that you will have a condition that no eastern province can ever have, in demanding the same kind of treatment.

Certainly, Ontario cannot. I do not think Quebec can, because they have their central financial interest in Montreal and Toronto and they have there what we are seeking to have in the west. The Maritime provinces have such a bank today in the Bank of Nova Scotia. I do not think they will be concerned to demand another bank under the guise of what has been sought for British Columbia.

Somebody said "Look at what happened in Newfoundland." If they are serious in that suggestion, I ask how possibly could Newfoundland put up a case such as Mr. Bonner and Mr. Bennett are able to put up, as reasons why this should be done in British Columbia.

Gentlemen, as far as political precedents are concerned there is nothing easier anywhere than to head people off if that is what you want to do. There are enough differences that we can see right now. If the banking authorities that have power on the question of incorporation see that danger from these other banks and their dissimilarity from the present one, and do not wish to be bound by that precedent, it is mighty easy to do it. I think Senator Crerar has had enough experience in politics to know how easy it will be to have that done.

Ladies and gentlemen, that is all that I should say at this time. I am speaking to the committee with what I feel are fair warnings and from my conception of what might happen if they are led aside by slogans or by misunderstandings of the real merits of this bill. I have come into the promotion of this bank with a general view that it is sensible and fair. With further study of it, that attitude has grown, and today I am absolutely convinced that for the Senate to be misguided enough to refuse this bank on the ground that Bennett cannot be trusted, or that if he can be trusted somebody ten years from now cannot be trusted, is not right. Can the Liberals be trusted and the Conservatives be trusted? Can the Social Creditors, other than Bennett, be trusted? Who knows what the future may hold?

The Minister of Public Works in British Columbia is building roads to the extent of millions of dollars. We don't hear any complaint about patronage; yet he has had plenty of opportunity in that job to exercise patronage if he wanted to do so, and if his government would allow him to do so. In any event, it would be possible.

Today, that government is entrusted with millions of dollars in its great treaty with the United States, and with the cooperation of the Dominion Government, in regard to the Columbia River and the Peace River dams. Millions of dollars are coming into this country. Is anyone worried? I heard Senator Hugessen's great speech on this matter discussed. There was no suggestion there that they were taking chances in dealing with Bennett in these connections.

The basis of success in the future of this country does not lie in pessimism about the honesty of our public men. It rests in the higher standards year by year resulting from the demands that are made of public men. I am proud to be associated with such a political opponent, and give to him the credit that what he is doing is in the interests of the Province of British Columbia and of the Dominion of Canada.

Senator ROEBUCK: May I make a request of Senator Farris? I understand that he will be going west later, and may I request him never again to repeat the statement he made to us with regard to our right to decide on a question of this kind, nor to make any suggestion that if we vote in favour we are doing it because of some fear that is in our minds of what may happen to us in the Senate.

Senator FARRIS: That is what Senator McCutcheon stated.

Senator ROEBUCK: I don't care who said it. I am asking you to refrain from that argument in the future, either in private or public; because I am going to deal with this question on its merits, perfectly fearlessly both as far as I am concerned or the Senate is concerned, and with one objective only, that is, to promote the interests of the people of the Dominion of Canada, including, of course, British Columbia. It is our right to decide this thing irrespective of the Commons, or whatever clients have submitted to this tribunal. When you came here, and not to the Commons, you placed your reliance upon our good judgment along the lines I have mentioned, that is, the interests of Canada at large.

I would be very regretful indeed if, having decided in your favour, later anyone should be able to say that we did it because of a lack of confidence

in ourselves, because we were not elected or because we were afraid of our own hides, or because we thought that the judgment of the Commons was better than ours, or any such consideration as that. We will deal with this bill on its merits, I assure you, and I for one will not be influenced in any way by any statements as to what we should do in our own interests or because of any deficiency that we feel in our own right to decide a question which you yourselves have laid before us. Please do not use that argument again.

Senator FARRIS: I would say that the bill should be dealt with on its merits.

Senator ROEBUCK: In that case, if I misunderstood your argument, I apologize.

Senator ISNOR: Mr. Chairman, I had made a note for the same reason, and I was going to take more or less exception to what Senator Farris has said and his approach to the matter. I looked around and saw at least half a dozen senators who at one time had been elected to the House of Commons and who had served that body for many, many years. I was first elected 36 years ago, and served for 22 years as a member of the House of Commons, and have spent the remaining 14 years as a member of the Senate. I would vote exactly the same today as if I were an elected member of the House of Commons. I do not think it is fair to say there is a difference between the non-elected and the elected members of Parliament.

I do not want to be unkind, but I thought the honourable senator, with his knowledge of human nature, should have chosen other premises upon which to advance his argument. Surely, he does not begin to size up a situation of this kind, and say that this one is going to vote for this bill and that one is going to vote against it. I might have made up my mind along certain lines, and changed it since that time, but that is for me to decide. I do not think we should be told these things upon the premise that the Senate as a whole is against this bill, and then have the matter argued from that point of view.

I just wanted to get that off my chest, Mr. Chairman. I am going to ask the honourable sponsor of this bill why, when there was the choice as between the House of Commons and the Senate, he chose to introduce it in the Senate.

Senator KINLEY: I want to say just a few words, Mr. Chairman. I do not agree with all that the honourable senator has said, but perhaps he has over-accentuated what he thinks the Senate should do. I should like to ask this question: Are there any people against this bill? Are any witnesses from the commercial interests of Canada going to appear before us in connection with this bill?

The CHAIRMAN: We have no knowledge of any witnesses.

Senator KINLEY: I am surprised to find little or nothing in the press about this bill. I am wondering if the press is being represented at these meetings.

Senator BEAUBIEN (*Bedford*): They are not excluded. They can come here if they want to.

Senator KINLEY: It would be nice for those of us who have to live with this to know whether we are going to hear from people who are for or against the bill.

The CHAIRMAN: There is no indication of that. We shall proceed in accordance with the proposal made yesterday, namely, that the committee adjourn to the call of the chair. Is that agreed?

Hon. SENATORS: Agreed.

The committee adjourned.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-20
An Act to incorporate Bank of British Columbia.

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, NOVEMBER 4, 1964

No. 5

APPENDIX:

"C" Memorandum from Mr. E. Russell Hopkins, Senate Law Clerk and Parliamentary Counsel.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21554—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 9, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Farris, seconded by the Honourable Senator Beaubien (*Provencher*), for second reading of the Bill S-20, intituled: "An Act to incorporate Bank of British Columbia".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Farris moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

21554—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 4, 1964.

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

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Blois, Bouffard, Burchill, Choquette, Cook, Crerar, Croll, Davies, Fergusson, Gershaw, Hugessen, Irvine, Isnor, Kinley, Leonard, Molson, Pearson, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Walker, White and Woodrow.—(26).

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

The Chairman read to the Committee the opinion of the Law Clerk with respect to Mr. Bonner's proposed new clause to Bill S-20, An Act to incorporate Bank of British Columbia.

It was AGREED to print Mr. Hopkin's Memorandum as Appendix "C" to this day's proceedings.

At 10.15 a.m. the Committee proceeded to the next order of business.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 4, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-20, to incorporate Bank of British Columbia, met this day at 9.30 a.m. to give further consideration to the bill.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: Senators, I call the meeting to order. Before we proceed with other business I should like to make a brief reference to Bill S-20, to incorporate the Bank of British Columbia.

It will be recalled that on the last occasion we met to consider this bill an amendment was proposed by the Attorney General for British Columbia, and that amendment was referred to our Law Clerk for his opinion because some doubts were expressed as to its validity. I now have a memorandum from the Law Clerk setting out his opinion, and I suggest that it be printed in the record today.

Hon. SENATORS: Agreed.

The CHAIRMAN: I might mention some of the highlights of this opinion. There were three challenges, if I may call them that, made by members of the committee to the amendment. One was to the effect that since the Crown in the right of the province was not specifically mentioned, the amendment would not be effective as against, and neither would it impose any obligation on, the Crown in the right of the province. In relation to that the Law Clerk says:

> In my opinion the proposed amendment would bind the provincial Crown by implication, and the words "directly or indirectly" would apply not only to the provincial Crown, but to all the Crown agencies and instrumentalities thereof.

That is his conclusion, but before stating it he sets out his reasons in support.

Then, on the point of the limitation of a 10 per cent holding of shares in relation to the total number of authorized or paid-up shares, the question was raised during the hearing that nobody can hold authorized shares. Authorized shares are unissued shares. The Law Clerk says with respect to this:

> A second question raised by several Honourable Senators was that there was a certain confusion and confliction as between "authorized" and "paid-up", and that the expression "own" is not an apt expression in relation to "authorized" shares. I agree with this criticism.

He goes on:

> I note further that the provincial (B.C.) statute involved limits investments out of the consolidated revenue fund of that province to "an amount not greater than one quarter of the sum paid up on the capital stock or on the subscriptions for capital stock of the bank".

The third problem raised was as to what happens if some person through inadvertence or otherwise acquires more than 10 per cent of the shares, because

there is no sanction in this respect in the bill. On this point our Law Clerk has this to say:

> A further problem appears to be raised by the fact that the amendment makes no provision as to the legal result should a shareholder acquire, either deliberately or inadvertently, as through a succession, shares in excess of the authorized percentage. If no legal consequences are to follow, the amendment would appear to be abortive as a matter of law. On the other hand, if certain legal consequences are intended to follow, what are they?
>
> My opinion is that, while such a clause would be within the legislative competence of Parliament to enact, it would require substantial re-drafting in order to constitute an acceptable amendment.

Senator CROLL: Mr. Chairman, I suggest that this be conveyed to the Attorney General of British Columbia before the printing of the minutes, because that takes a few days.

The CHAIRMAN: I have provided their counsel, Mr. Burke-Robertson, with a copy and, of course, he was here during the course of the hearing.

That closes this chapter of our consideration of the bill. If there is to be a further amendment proposed I suspect we shall hear in due course.

(For text of memorandum of the Law Clerk and Parliamentary Counsel of the Senate, see Appendix "C").

The committee adjourned its consideration of Bill S-20.

APPENDIX C

OTTAWA, October 29th, 1964.

Memorandum for
Honourable Salter A. Hayden,
Chairman of the Standing Committee of the Senate
on Banking and Commerce.

At the meeting of the committee held on October 14th, 1964, the Hon. R. W. Bonner, Q.C., Attorney General of British Columbia, suggested as an amendment to Bill S-20, An Act to incorporate Bank of British Columbia, the following text:

"Amend by renumbering sections 6 and 7 as sections 7 and 8 respectively and by inserting the following as section 6:—

'6. No shareholder shall directly or indirectly own more than one-tenth of the total number of authorized or paid-up shares in the capital stock of the Bank.' "

In explanation of the amendment, the Attorney General stated as follows:

"The question goes to the interest which the province might have in the shareholdings of the banks. You concluded your question, Senator Crerar, with these words:

'...would you be willing now to suggest that in the charter the limitation should be set at 10 per cent either directly or indirectly?'

And the Premier, who was being questioned at this point, later stated:

'I would not object to that at all.'

It occurred to me that matters before this committee would not be complete unless in response to that question and answer we took a positive step to place for the consideration of the committee an amendment to this bill which would incorporate this principle."

A number of questions were raised by Honourable Senators concerning the adequacy and effect of the proposed amendment, and I was asked to give my opinion on these questions and on the amendment itself.

One question raised was that, since the amendment did not in express terms purport to limit the Crown in the right of a province, the Government of British Columbia and its agencies and instrumentalities would not be bound by its terms, which would of course defeat the central purpose of the amendment.

Section 16 of the federal Interpretation Act reads as follows:

"16. No provision or enactment in any Act affects, in any manner whatsoever, the rights of Her Majesty, her heirs or successors, unless it is expressly stated therein that Her Majesty is bound thereby.

R.S., c.1, s.16."

If these words are given a broad interpretation, the expression "Her Majesty" would include Her Majesty in the right of a province. The decided cases, however, have placed a narrower construction on the expression: it has held that such provisions—there are similar provisions in provincial Interpretation Acts—refer only to the Crown in the right of the jurisdiction enacting the statute, in this case the Crown in the right of Canada. In a federal statute,

therefore, the Crown in the right of a province may be bound, as at common law, by necessary implication; i.e., where the clear purpose of the legislation would be frustrated if it were not so bound. (*See* the Canadian Abridgement, vol. 4, p. 14, and the cases there cited.)

In my opinion the proposed amendment would bind the provincial Crown by implication, and the words "directly or indirectly" would apply not only to the provincial Crown, but to all the Crown agencies and instrumentalities thereof.

A second question raised by several Honourable Senators was that there was a certain confusion and confliction as between "authorized" and "paid-up", and that the expression "own" is not an apt expression in relation to "authorized" shares. I agree with this criticism. I note further that the provincial (B.C.) statute involved limits investments out of the consolidated revenue fund of that province to "an amount not greater than one quarter of the sum paid up on the capital stock or on the subscriptions for capital stock of the bank".

A further problem appears to be raised by the fact that the amendment makes no provision as to the legal result should a shareholder acquire, either deliberately or inadvertently, as through a succession, shares in excess of the authorized percentage. If no legal consequences are to follow, the amendment would appear to be abortive as a matter of law. On the other hand, if certain legal consequences are intended to follow, what are they?

My opinion is that, while such a clause would be within the legislative competence of Parliament to enact, it would require substantial re-drafting in order to constitute an acceptable amendment.

Law Clerk and Parliamentary Counsel.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To which was referred the Bill S-20
An Act to incorporate Bank of British Columbia.

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, NOVEMBER 25, 1964

No. 6

WITNESS:

Mr. W. G. Burke-Robertson, Q.C., Parliamentary Agent.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21672—1

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 9, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Farris, seconded by the Honourable Senator Beaubien (*Provencher*), for second reading of the Bill S-20, intituled: "An Act to incorporate Bank of British Columbia".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Farris moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

21672—1½

MINUTES OF PROCEEDINGS

WEDNESDAY November 25, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.00 p.m.

Present: The Honourable Senators: Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Bouffard, Brooks, Burchill, Cook, Crerar, Croll, Davies, Flynn, Gershaw, Gouin, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, McLean, Molson, O'Leary (*Carleton*), Paterson, Pouliot, Power, Reid, Roebuck, Taylor (*Norfolk*), Thorvaldson, Vaillancourt and White.—(35)

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

Bill S-20, "An Act to incorporate Bank of British Columbia", was further considered.

The following witness was heard:

Mr. W. G. Burke-Robertson, Q.C., Parliamentary Agent.

On the Motion of the Honourable Senator Hugessen that the Committee do now report that the Preamble to the said Bill had not been proved; the Honourable Senator Flynn moved that consideration of the said Motion be deferred to Dec. 2, 1964.

The amending Motion was resolved in the affirmative on the following division:

YEAS—16 NAYS—10

At 3.15 p.m. the Committee adjourned until Wednesday next, December 2nd at 9.30 a.m.

Attest:

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 25, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-20, to incorporate Bank of British Columbia, met this day at 2 p.m. to give further consideration to the bill.

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

The CHAIRMAN: I call the meeting to order. We are continuing our hearings in respect of Bill S-20. We have now reached the stage where Mr. W. G. Burke-Robertson, representing the promoters of this bill, is proposing another draft of an amendment to be made to the bill to deal with this question of the limiting of the interest of the province to 10 per cent. Do you wish to present this now, Mr. Burke-Robertson?

Mr. W. G. Burke-Robertson, Q.C.: Mr. Chairman, honourable senators, on October 14 when I last had the pleasure of appearing before you, you will recall that an amendment was proposed limiting the holdings of any shareholder to 10 per cent of the total number of authorized or paid-up shares in the capital stock. It was pointed out that the word "authorized" was perhaps not appropriate in the wording of that amendment, and on October 29 the Law Clerk reported by way of memorandum to this committee, at the request of the chairman, on the validity of that proposed amendment limiting shareholders to 10 per cent. The one point which remains to be dealt with and with respect to which I would like to offer an amendment today appears in the final page of this memorandum in which he says—

> A further problem appears to be raised by the fact that the amendment makes no provision as to the legal result should a shareholder acquire, either deliberately or inadvertently, as through a succession, shares in excess of the authorized percentage. If no legal consequences are to follow, the amendment would appear to be abortive as a matter of law. On the other hand, if certain legal consequences are intended to follow, what are they?
>
> My opinion is that, while such a clause would be within the legislative competence of Parliament to enact, it would require substantial re-drafting in order to constitute an acceptable amendment.

Well, the first proposed amendment is only about four lines long. It did require substantial redrafting, and the redraft, gentlemen, is now before you. I will just explain what the sections mean rather than read the whole thing. Subsection 1 is merely a formality. Subsection 2 provides that the bank shall refuse to allot shares or allow transfers where the allotment or transfer would increase the total number of shares held by a person, and that includes his agent or nominee, to the extent where it would exceed 10 per cent of the issued and outstanding shares of the stock. Then subsection 3 provides that default in compliance with subsection 2 does not affect the validity of the allotment or transfer, but it does provide that such a failure to comply with

the act would result in the director responsible being punished on conviction by a fine of $5,000 or imprisonment. That is the penalty imposed by that subsection. Subsection 3 goes on to say that any shares allotted or transferred in contravention of that section would still be valid. It would be a valid transfer. Subsection 5 provides, however, that no voting rights shall be acquired by any person acquiring shares in contravention of the act and any shares that are acquired will be disposed of within six months of the allotment or transfer.

In going through this I overlooked the point that shares acquired inadvertently, that is by way of gift or by way of succession may be validly transferred on the books of the company and have no penalty attached to them except that they must be disposed of by the holder six months after the time of allotment or transfer.

Now the requirement that the shares be disposed of applies whether the shares have been voluntarily transferred or allotted or whether they have been acquired by other means, by gift or by way of succession.

There is one further subsection, subsection 6, which provides that this section shall have effect notwithstanding anything in the Bank Act unless and until otherwise provided by Parliament. That subsection is similar to the subsection that appears at the bottom of the section dealing with the prohibition against foreign ownership of stock. Both those subsections shall continue in effect unless Parliament expressly otherwise provides.

I would be very glad, gentlemen, to answer any questions you may have with respect to the amendment. I think those submissions that were intended to have been made with reference to the bill in other respects have already been made.

Senator CROLL: Is this satisfactory to our Law Clerk?

The CHAIRMAN: Yes.

Mr. BURKE-ROBERTSON: I omitted to mention that it has been produced to the Law Clerk.

The CHAIRMAN: Senator Hugessen.

Senator HUGESSEN: I wonder whether we are spending our time usefully in considering amendments to the wording of the various sections of this bill, or in paying attention to phraseology of certain parts when it seems to me that what we really need to consider is the basic principle with which we are faced in connection with this bill.

We have considered the bill for quite a long time, and I think we should now be prepared to come to a decision on the basic principle which really faces us in connection with it. For that purpose I intend to propose a motion, but before doing so, and in order to make quite clear to honourable senators the implications of the motion and the way in which it is phrased, I would like to remind the committee of Rule 126 of our rules. This rule provides:

> When the Committee on any Private Bill report to the Senate that the Preamble of such Bill has not been proved to their satisfaction, they must also state the grounds on which they have arrived at such decision; and no Bill so reported on shall be placed on the Orders of the Day, unless by special order of the Senate.

I would emphasize the words "When the Committee on any Private Bill report to the Senate that the Preamble of such Bill has not been proved to their satisfaction, they must also state the grounds on which they have arrived at such decision;".

I am proposing the following motion:

That the committee do report to the Senate with respect to Bill S-20, an act to incorporate the Bank of British Columbia, as follows:

In the opinion of your committee, the preamble to this bill has not been proved, for the following reasons:

At the hearings before the committee, the Premier and other Ministers of the Government of the Province of British Columbia appeared in support of the bill and stated that, if the bill were passed, the government of that province would subscribe for up to 10% of the shares to be issued by the bank; so far as your committee is aware, there is no precedent for the ownership by the government of a province of a substantial proportion of the shares of a chartered bank operating under the provisions of the Federal Bank Act; this could involve the effective control of a federal chartered bank by the government of a province, a situation which would raise important questions of public policy and of constitutional law; your committee is of the opinion that these are matters of general policy which should be determined by the Parliament of Canada in the forthcoming revision of the Bank Act, and that pending such determination this bill should not be proceeded with.

Honourable senators, I have spent a considerable amount of time in the last few days trying to devise the wording of this motion. I think it epitomizes the trouble that has faced us all the way through in consideration of this bill. The trouble has been that while this has been in the form of a private bill, it nevertheless raises very important questions of public policy and constitutional law, and I think this committee would be perfectly justified in saying that these are questions which under the circumstances, and in view of the forthcoming revision of the Bank Act in the next few months, we should not be called upon to deal with pending this revision of the Bank Act.

Senator Thorvaldson has kindly consented to second this motion.

Senator THORVALDSON: Mr. Chairman, for reasons which I would like to outline briefly to the committee I wish to second the resolution introduced by Senator Hugessen.

I shall give the first of those reasons. Very obviously the Senate has been placed in a very difficult position in regard to this bill. As Senator Hugessen has mentioned, this is a private bill and ordinarily it would go from here to the Private Bills Committee of the House of Commons. Nevertheless it involves problems of great importance. It involves questions, as referred to in the resolution, of public policy, and of constitutional law.

As Senator Hugessen has stated, the question of public policy is whether it is in the public interest of this country that a province should be a substantial holder of shares in any bank incorporated under the Bank Act in light of the fact that banking is stated in the British North America Act to come under the federal jurisdiction. If we pass this bill the Senate will then have acknowledged that every other province has a right to become an incorporator of a bank, whether its shareholding is limited to 10 per cent or more.

Secondly, there is here a clear issue of constitutional law. That has bothered me greatly ever since this bill came before the Senate. I am personally of the view that eventually this question may have to be referred to the Supreme Court of Canada and such action would, of course, entail a great deal of delay in getting the proposed bank under way.

Then there is the further consideration that makes it undesirable, to my mind, that these questions should be decided by the Senate, namely, the forthcoming revision of the Bank Act and the consideration by the House of Com-

mons, in the first place, no doubt, of the report of the Royal Commission on Banking and Finance.

Consequently, it is my opinion that it is inappropriate that these problems should be considered at this time in a forum which cannot give a final decision on them, and that the more appropriate place in which these two problems should be decided first is the House of Commons upon the pending revision of the Bank Act. For these reasons, Mr. Chairman, I second this resolution.

Senator HORNER: Mr. Chairman, I cannot vote in this committee, but when the bill is before the chamber I can vote. The Senate has passed the other two bills incorporating banks, and because of that fact I am going to vote in favour of this bill when it is before the Senate, where I have a right to vote.

Senator CROLL: This bill will not go before the Senate if this motion is carried.

Senator HORNER: Then that is wrong. This committee has no business passing this motion. I can tell you this much, that you are not going to prevent Mr. Bennett from entering the banking business. With respect to the Laurentide Bank we were told how very clever some of the men behind it were. There is also a man in Newfoundland who seems to have made a lot of money very quickly. The Senate has passed two other bills setting up banks for which there was no need. Mr. Bennett put up a great argument. I would go along with Senator Hugessen's motion if the other bills had not been passed, but how can you pass two other bills and not this one. You cannot do it.

Senator BROOKS: Mr. Chairman, I do not know how the other members of the committee feel—I personally did not know anything about this amendment until I came into the room a few minutes ago—but it does seem to me that it would be very unfair of this committee to carry a resolution of this kind at the present time when the sponsor of the bill is not present. I should like to ask if the sponsor knows of this amendment, and also if the petitioners know.

In all fairness to the sponsor of the bill and to those who are advocating the passage of this bill I do not think a resolution of this kind should be passed until they have had a chance of appearing before us. The petitioners, when they were before us, could not give evidence on this preamble because at that time they knew nothing about it.

I agree with my honourable friend, Senator Horner. We have already passed two bills which were objected to on the ground that there was no need for new banks. I remember some honourable senators speaking in the chamber who convinced me that there was no need for further banks in this country. We have twice as many branch banks as has the United States.

I am sorry for not being able to attend all of the meetings of the Standing Committee on Banking and Commerce, but my good friend Senator Leonard made an excellent speech in which he said it was not the business of this committee to be concerned with who the shareholders were as long as the bill conformed to the banking laws as we have them today. He said that so far as the bill he was sponsoring was concerned, and also the other bill, the Senate should send them to the other place.

Honourable senators, I know we all want to be fair in this matter. I agree with Senator Horner that there is no need for more banks. I would not care if all three bills had been turned down. But, we have voted for two and it is my opinion that there should not be discrimination as far as the Bank of British Columbia is concerned.

We are basing our objection on the fact that the provincial government is to be a shareholder. It has reduced its percentage of shareholding from 25

to 10, more or less to suit the members of the Senate committee, and here we are trying to pass another motion that will have the effect of embarassing them and throwing their bill out. I think that to do this will be unfair to the people of British Columbia. I am opposed to the adoption of this motion today. If we are to hear further evidence, and if the sponsor is allowed to speak again, and everything is done in what I consider a regular way, then I will make no objection at all, but I do not think this resolution should carry today.

Senator ROEBUCK: Mr. Chairman, may I express an opinion very much in accord with what my friend who has just spoken has said. I think it would be very unfair and very unwise for us to pass a resolution such as this. The least we can do is to allow it to go before the Senate, and let everyone vote on it, rather than decide a question of this kind ourselves.

Senator Hugessen has said that there is no precedent for a charter of this kind. Let me say, gentlemen, that there is no precedent—absolutely none—for refusing a charter on the grounds stated by Senator Hugessen. Furthermore, the grounds upon which he bases his position—that is to say, that someone may buy the stock later on—is not within the constitutional jurisdiction of this Parliament. That is a matter of civil rights to be decided by the Legislature of the Province of British Columbia. The right to say who shall buy and who shall sell shares of a bank, or any other company, is not within our jurisdiction, and it should not be within our jurisdiction, and we should not assume that jurisdiction in the present instance.

Senator Hugessen has said that the policy has never yet been decided in matters of this kind. I take issue with him on that statement. We have a Bank Act that has been considered every ten years for the last several generations, and on every one of the revisions we have known that there were provinces in Canada—nine of them most of the time, and now ten—in which anyone had the legal right to buy bank shares, including provincial governments. We did not legislate upon that question. If we legislated at all, it was negative legislation. We left the provinces with that power in their hands, over and over again. How can you say that we have never decided a policy as to whether a provincial government shall buy banking shares, when we have continually allowed them that privilege or that right?

Perhaps it is beyond our power to refuse it but we have allowed them that right in the revisions of the Bank Act when we did not prohibit them from doing so.

The question of a general policy of this kind is something for the entire Parliament of Canada: it is not the function of this committee, on considering an application for incorporation, to decide broad questions of policy such as is proposed in this resolution. This is something that has never been done before. We have never refused incorporation on such grounds. The sponsors of this bill have satisfied all the legal requirements—and I think our legal advisor has told us so—all the legal requirements now in existence which would justify an application for the granting of a charter.

The place to decide this question is of course when we revise the Bank Act but that probably will be a year from now, when one considers what is going on in the other place. But for us to run in ahead of the revision of the Bank Act and make new decisions of policy, such as, have never before been made is certainly not our function at all. Our function, when an application for incorporation is made to us, is to see that the parties are, if you like, Canadian citizens, not criminals, that the application is in order according to the report of our solicitor, and that sort of thing. If so, I submit to you that the citizens making the application have the right to have it approved;

and we should not bring in general policies of this kind that should be decided when we are revising an act that applies generally rather than when we are granting a charter to certain individuals.

I have said this and I repeat it, that the question of buying and selling shares is not within the jurisdiction of this Parliament. It is Civil Rights; it is Property and Civil Rights and the people who are to decide that is the government of the province, in this case of the Province of British Columbia and their responsibility is not to us, it is to the people of the Province of British Columbia.

When this matter came before us first, when I made my first tentative decision in connection with it, my decision was to vote in favour of this application. My reason for it was, not the detailed reasons that are now advanced but the broad general reason that, if we here in the central part of Canada throw road blocks in the way of progress in the outskirts, I know no way of busting up Canada more effectively than that. That would be a very much more potent argument why British Columbia should secede than any other argument that I can imagine. If we here stop them doing the business that they wish to do, in the way that they desire to do it, which is legal according to the laws of Canada, I can fancy nothing which could be used by separatists there more effectively to make them decide to separate from Canada and perhaps join the United States. North and south is their natural trading direction. Nothing could be more effective than that.

I think it would be a very bad move on our part to insert ourselves in this way and to say that the Province of British Columbia shall not invest in a bank, that being its right according to law. I think we would make a very serious mistake indeed were we to pass this resolution.

The CHAIRMAN: Honourable senators, before anybody else speaks, in view of what Senator Roebuck has said, I want to point out that the motion which has been made is completely in order. It is provided for in the rules, it was moved on another occasion when Senator Roebuck was on the other side of the question, a couple of years ago, in the "Coyne" case.

Senator CROLL: I do not think—

The CHAIRMAN: Yes, the motion that the preamble be not approved. We gave the reasons, and that was the report that went back to the house.

Senator CROLL: The report that went back to the house was then adopted in the house.

The CHAIRMAN: This one will be.

Senator CROLL: No, it will not.

The CHAIRMAN: It certainly will.

Senator CROLL: No, unless a certain order of the Senate is made. There has to be special order of the Senate for it to be debated. If it is to go to the Senate to be debated, I am quite prepared to go along with it.

The CHAIRMAN: The report has to be debated.

Senator CROLL: Not unless by special order of the Senate. I am just reading the rule. If the majority here decide to vote against it, then they can very well vote against it in the Senate, decide not to hear it and then we do not get a chance at all.

The CHAIRMAN: Would my friend read Rule 34?

Senator CROLL: I am reading Rule 126.

The CHAIRMAN: You should read Rule 34 as well.

Senator CROLL: There is no reference to Rule 34. I do not know these rules as well as some people may know them. Rule 34 says:

> A senator may speak to any question before the Senate; or upon a motion, or an amendment to be proposed by himself; or upon a question or order arising out of the debate; but not otherwise, without the consent of a majority of the Senate, which shall be determined without debate.

That does not help us. The sidenote of Rule 34 is "Limit in debate". We do a lot of things in the Senate by way of debate that are not strictly according to the rules.

The CHAIRMAN: If my friend wants to interpret the rules that is his concern, but I am pointing out the rule.

Senator CROLL: Rule 126 says:

> When the Committee on any Private Bill report to the Senate that the Preamble of such Bill has not been proved to their satisfaction, they must also state the grounds on which they have arrived at such decision; and no Bill so reported on shall be placed on the Orders of the Day, unless by special order of the Senate.

The CHAIRMAN: The report has to get there.

Senator CROLL: "No bill so reported on . . ."

Senator ROEBUCK: Excuse me, I did not attack that feature at all; but I must go out.

Senator MCCUTCHEON: The report must be debated. If the majority of the Senate do not like the report, they will turn it down.

The CHAIRMAN: They will send it back to the committee for reconsideration.

Senator CROLL: The rule says "No bill so reported on" that is when the report come in, "—shall be placed on the Orders of the Day, unless by special order of the Senate." All we have is the bill.

The CHAIRMAN: No, you have the report, first, of the committee.

Senator CROLL: On the bill.

The CHAIRMAN: The report is the thing to be considered.

Senator CROLL: You differentiate between them?

The CHAIRMAN: Of course, there is all the difference in the world.

Senator CROLL: Then you say the matter will be debated, without question?

The CHAIRMAN: There is no question about it.

Senator MCCUTCHEON: We sent back a report of the committee on the Companies Act, as I recall it. There was a debate on the bill in the house.

Senator CROLL: That was by agreement.

Senator MCCUTCHEON: Not by agreement at all.

Senator CROLL: There was no one opposing it.

The CHAIRMAN: It would have been adopted, then.

Senator LAMBERT: It is quite clear that the proceeding in this matter has been adopted in other cases. Our decision here is not the final decision. It is the decision in the Senate as a whole that counts. There have been occasions in the past when the Senate has reversed a decision of this committee.

I would like to point out that I believe Senator Roebuck was not present here at the last meeting of this committee when Attorney General Bonner appeared and presented a modification in the proposed legislation, with a very enlightening, clear and lucid explanation of his point of view, by reducing a proposed percentage of interest to 10 per cent.

Finally, in that session it remained for my respected colleague Senator Crerar to ask him quite frankly and plainly about the political implications of this change in the Province of British Columbia itself. In my thinking, I came

to the conclusion that he revealed the real reason why this committee should not approve this bill at this time. It was based entirely on the idea that the committee should not only report, but give consideration to the statement already made not only in this committee but in other places in Parliament, that possibilities of persuasive influence associated with this bill in the Province of British Columbia existed; that the Government of British Columbia might take advantage of the establishment of this proposed bank in British Columbia by influencing, directly and indirectly, possible customers of the bank and those who were promoting important businesses and industries in that province. That was the first time that that aspect of the thing had been fully placed on the table here.

In response to that question which Senator Crerar raised, Attorney General Bonner satisfied himself, I think, by repudiating any suggestion that he personally would be party to any sort of pressure which might be brought to bear on the affairs of the Bank of British Columbia. However, he did not in any way, in my opinion, clarify that situation to the satisfaction of those who are here and charged with the responsibility of considering the interests of the Province of British Columbia as well as the interests of the rest of Canada. For that reason, I have come definitely to the conclusion that the Senate as a whole is not competent to pass final judgment on this bill by way of approving it, because it raises the question of approval by the whole of Parliament, and of the policy of the Government of Canada in relation to the broad field of an early revision of the Bank Act, involving the whole federal system of banking in its constitutional aspects. Therefore, I think it would be very inadvisable for this committee, as well as the Senate as a whole, to approve the bill as finally amended, that is, by giving approval to something which should require a declaration of policy by the Parliament of Canada as a whole, based on the initiative of the Government of Canada.

For that reason, honourable senators, I favour the resolution which has just been suggested by Senator Hugessen, supported by Senator Thorvaldson.

Senator HORNER: If I may be excused, your argument would get us to the place—

The CHAIRMAN: Senator Horner, one of our rules, which has always existed here, is that two senators shall not engage in argument. You can speak to all the senators, but you cannot engage in argument with one particular senator.

Senator HORNER: Of course, my remarks will be addressed to all senators present. The argument to prevent people from buying stock in the banks would open up a field whereby every individual senator who held shares or directorships in companies would be personally interested. I see no weight in that argument at all.

The CHAIRMAN: Senator Croll, before this escapes my mind, I sent for the record of the hearing of what we call the "Coyne bill". I see at one stage in the proceedings you made the motion that "the committee recommend that this bill should not be further proceeded with, and that the committee finds that the Governor of the Bank of Canada did not misconduct himself in office".

Senator CROLL: Is that right?

The CHAIRMAN: Yes.

Senator CROLL: See how quickly memory fades! In the circumstances, you must admit it was a wise thing to do at that time. However, let me say frankly that I had forgotten about it. I don't know why we did it, but it seemed the right thing to do. Then it went to the house. I had forgotten that.

The CHAIRMAN: And it was debated in the house.

Senator CROLL: Oh, yes. The motion made by Senator Hugessen deals with the question of public policy and constitutional law. My friend Senator Lambert in the course of his speech says that we are not capable of dealing with it—

Senator LAMBERT: I used the word "competent."

Senator CROLL: Of course, I do not agree with that. As I understand it, Senator Farris said much the same thing some time ago in the course of discussion.

The CHAIRMAN: That is right.

Senator CROLL: And there was hell to pay for a little while from the other senators; at least, there was serious objection. It is my view that whenever we are satisfied that any bank bill before us is in proper form and is in conformity with the Bank Act and that the application is financially sound, we ought not to vote it out for reasons extraneous to the bill.

The CHAIRMAN: If you read the debate which took place in the Senate, quite a number of senators suggested it was in conflict with the provisions of the present Bank Act.

Senator CROLL: There was never any serious challenge here in committee when people competent in that line were present, or we would have had an opinion from our Law Clerk saying this is unconstitutional. No such opinion was given, and no such suggestion was made. We have passed the bills to incorporate the Bank of Western Canada and also passed the Laurentide bill. In my opinion we ought to pass this bill now.

Senator MCCUTCHEON: We should not have passed one of those bills you mentioned, senator. Do not make two mistakes.

Senator CROLL: You do not reflect upon the judgment of the Senate.

Senator MCCUTCHEON: I can reflect upon the judgment of the Senate at any time.

Senator CROLL: You can do so, but it may not make sense. In so far as participation of banks is concerned, that is a matter of general policy which is to be enacted. It is all in the Bank Act. If there is a general law restricting investment in banks, the proper place to provide for it is in the Bank Act, and the matter of degree of provincial or foreign investment is one of general financial policy, which I am sure we will be called upon to deal with in due course. As a matter of fact, I raised this question on almost the first day of the debate. In theory there is nothing to prevent the Government of British Columbia, under its existing provincial legislation, from acquiring up to 25 per cent of the stock of the Laurentide Bank, or any other bank, with its head office in British Columbia. There is nothing to prevent it from doing so at the present time, and in fact it could do so tomorrow. Therefore, we cannot be standing on the ground of some principle in regard to this bill.

On the other hand, I think we should not impose an embargo, for British Columbia came to us in candour and forthrightness. There is nothing in the law, I repeat, which would have prevented the incorporation of the Bank of British Columbia and the Government of the Province of British Columbia thereafter acquiring shares under provincial legislation. The Government of British Columbia should be congratulated for its forthrightness in coming today and placing its problem before us. The fact that we pass the bill does not give them a charter of incorporation. There are further steps to take. I do not think we should leave ourselves in the position where we are accused of throttling progress and holding up the development of any single part of the country. We expect great things in British Columbia. I do not think we should put ourselves in the position where the Senate can be accused standing alone in the path of further progress.

We ought to send the bill to the Commons in the same way as we send other bills; and I see no legal or procedural reason, and no departmental reason, why we should hold up the bill.

The CHAIRMAN: Are you ready for the question?

Senator O'LEARY (*Carleton*): May I say two words, Mr. Chairman. I think I should say that first of all I opposed this bill and would have voted against it had it come to the Senate. I am paired with Senator Farris on what he called "all material facts" affecting this bill. However, I am completely in favour of the amendment as proposed here this afternoon by Senator Hugessen.

I dislike disagreeing with my distinguished leader, and some others of my distinguished colleagues, but I think they put this question on the wrong ground. Senator Brooks said we passed the other two bills and why should we not pass this one. The answer to that, surely, is that this proposed bill is in an entirely different category. In my view—and I say this not as a constitutional lawyer, but as an ordinary layman—this bill proposes to introduce into our banking system a new and revolutionary concept, a new and revolutionary principle. You cannot say to me, as some senator mentioned a moment ago, that this committee should not be prepared to say what it thinks about this bill lest some province of Canada should think of seceding. If we in this Senate or in this committee are going to consider legislation brought before us in the light of the dangers it presents of secession by some of the provinces, then we may as well close shop. This is a good bill or a bad bill for Canada, according to our respective judgments. I believe it is a bad bill and so I am in favour, as Senator Hugessen proposes, of sending it or letting it go to the committee of Parliament which is to revise the Bank Act.

If in the changing world the people who are revising the Bank Act consider that changed economic, political and other conditions in Canada warrant a bank of this kind, well and good, and they can take the necessary precautions in the revised Bank Act.

Somebody mentioned delay. Does any senator here today seriously hold the opinion that Canada is going to the dogs simply because there will be a six-, eight- or 10-month delay in the application of this bank? Surely, honourable senators, this is nonsense. I have talked to people from all over this country about this bill and they said they have no objection to it except that they dislike the principle or the concept of the government of a province holding shares in a bank which they can use to influence that bank.

For that reason I am against this bill in every respect, and I shall vote in favour of the amendment proposed by Senator Hugessen.

Senator FLYNN: Mr. Chairman, I am in agreement with the motion but at the same time I am in agreement with my leader on the substance of this submission.

The CHAIRMAN: That is a nice tightrope.

Senator FLYNN: I do not think so. There is one obvious thing I would point out. The evidence presented to this committee was to the effect that the Government of the Province of British Columbia will subscribe for up to 10 per cent of the shares. I remember when I asked the Premier whether if the subscription of the province was not necessary it would be made just the same, and he said yes. Therefore I suggest that it is not proven that this bank needs the support of the Province of British Columbia, and I cannot subscribe to the argument of my esteemed colleague Senator Roebuck that we would be against British Columbia if we failed to pass this. If this bill had been in the form or had been presented in the same manner as the other two we have passed, I would support it. There is certainly a very dangerous principle involved in the subscription of shares of a chartered bank by the government of a province. By passing this bill we would be approving this principle.

In my view it is no more dangerous to say we are in favour of a province subscribing shares of a chartered bank than to say we are not prepared to approve this, as the motion suggests.

It is right, I think, to say that there is no precedent for the ownership by the government of a province of a substantial proportion of the shares of a chartered bank. In my view it is much more dangerous to pass this bill than to refuse to say what must be said and to approve this principle at this time. I think it is wise to wait until the Bank Act has been revised. I would be prepared to vote for this bill if there was a provision or an amendment in it to the effect that no shares of the bank would be subscribed by the Province of British Columbia until the Bank Act is revised. If the Bank Act is revised in such a way that the province may subscribe, well, then, very well. Otherwise I think this motion is sound in principle. However, I must say that I would like the sponsor of the bill to be present. I would like also to hear representation by the proposers of the bill if they have something to say in connection with the principle involved in the motion.

Therefore, my suggestion is that we adjourn consideration of this bill and the motion of Senator Hugessen to the next sitting in order that Senator Farris and any others who want to submit their views on this motion will have an opportunity to do so.

Senator POULIOT: Mr. Chairman, in the first place I was inclined to share the views expressed by Senator Croll, Senator Roebuck, Senator Brooks and Senator Horner. I find it rather difficult to understand Senator Flynn's point of view, but now I must tell you, Mr. Chairman, that I have been convinced by Senator O'Leary (*Carleton*) that this motion should be passed. Therefore, I have no hesitation in supporting and voting for it.

Senator BURCHILL: Mr. Chairman, I am one hundred per cent in favour of Senator Hugessen's motion, but I am wondering whether, in view of the remarks of Senator Brooks, it might be the better part of wisdom to allow the sponsor and any other interested parties to come before the committee before we finally put the question on the motion now before us. I agree with the suggestion of Senator Flynn, that we adjourn for a week. That appears to me to be rather sound.

Senator CRERAR: And it must be for only one week. After listening to Senator Roebuck a doubt arose in my mind concerning the powers of the federal Government. I am not a lawyer—not even a bush lawyer—but when our Constitution gave exclusive jurisdiction on banking to the federal authority, did that give the federal authority the power, for example, to say who could buy and who could not buy shares in a bank?

Senator MCCUTCHEON: Yes, certainly.

Senator CRERAR: Senator Hugessen says "No". If that is the case then what power has the federal Government to limit any shareholder to 10 per cent of the stock. That is a matter, surely, of property and civil rights. Have we power to say in any bank charter that no individual can hold more than 10 per cent of the stock? Are we not there treading on property and civil rights. If we are, this provision will be of no value in the end.

It does seem to me—and this is only the suggestion of one who is not even a bush lawyer—that there may be here a question of jurisdiction that should be cleared up. There is no doubt that the provinces have jurisdiction over property and civil rights, but was it the intention when exclusive power over banking was given to the federal Government that they should control it in all of its aspects? If that is so—and a doubt certainly exists in my mind about it—then there should be a question settled first in the courts as to the extent of the jurisdiction of Ottawa.

Senator McLEAN: Mr. Chairman, I read the British North America Act very carefully the other evening. Although I am not a lawyer I should like to say that I am of the opinion that commercial banking is completely in the hands of the federal Government, and that there seems to be no precedent for any province holding a substantial shareholding in any chartered bank. Both the Bank Act and the British North America Act are up for revision very shortly, and I do not think it is good policy for us in this house to start a precedent in deciding that provinces—not only British Columbia—can go into commercial banking. That is a different kind of banking from the operation of savings banks, in which business I spent a good many years.

I am not against British Columbia having a bank. I know that bills have passed this house concerning banks but there was nothing said in those bills about a province taking a large share of the stock. If the province wants to hold stock in a bank, then probably it will have more than any director. We are starting a precedent which I think should be started in the other place. Revisions of the Bank Act and of the British North America Act are not very far ahead. That is where I stand.

The CHAIRMAN: Are you ready for the question?

Senator HUGESSEN: I want to say, in relation to what Senator Brooks said, that I have no desire to push this, in case anyone thinks that unfair to the sponsor of the bill. But I should point out what Senator Farris said the last time he was here—I was not here—that he did not intend to come back for the balance of this session.

The CHAIRMAN: That is right. Honourable senators, are you ready for the question?

Senator ISNOR: Before the question is put—I know it is late, but others have spoken.

The CHAIRMAN: Senator, you are on your feet, you have the floor and you are entitled to speak, so go ahead.

Senator ISNOR: I am inclined to say that we should defer action on this for one week, as suggested by Senator Brooks. I would like to read the evidence. We have listened to the pro and con on this question, and I think you generally know my position in matters of this kind. I want to do what is right and I want to do what is right for the reputation of the Senate. I feel we are justified in seeking an opportunity to read the evidence before we make a final decision in regard to this amendment.

Senator PATTERSON: Honourable senators, I am opposed to this bill and I will vote for Senator Hugessen's resolution. First of all, the reason that I am opposed to this bill is that Premier Bennett has never had much regard for vested interests in his treatment of British Columbia Electric shareholders and he has not earned the right to this legislation. Secondly, if it is granted to this province as a charter, there is no reason why Premier Manning of Alberta or Premier Lesage of Quebec or Premier Joey Smallwood should not come in and get the same thing. If you have 10 provinces all plucking the business—and they will pluck the business, as they handle the natural resources—you will have pandemonium. This is a very dangerous bill and I do not think the Senate has a right to pass it at present.

The CHAIRMAN: Are you ready for the question?

Hon. SENATORS: Yes.

The CHAIRMAN: Those supporting Senator Hugessen's motion—

Senator CROLL: A recorded vote, please.

Senator FLYNN: Honourable senators, I suggest that in all fairness the motion should be to adjourn consideration of the bill, and I so move. Many

have expressed the idea that it should be deferred, and I think the question should be put in that way.

The CHAIRMAN: Senator Flynn, having regard to our rules, I cannot accept a motion to adjourn, not in that langauge.

Senator FLYNN: I am willing to move it in the way you suggest.

The CHAIRMAN: If you suggested, as an amendment to Senator Hugessen's motion, that we adjourn to a specific date, I could accept that motion. I cannot under the rules accept your present motion.

Senator CROLL: It has been made by Senator Flynn. He has just made it.

The CHAIRMAN: Tell me what the date is.

Senator FLYNN: The Senate is coming back on Tuesday. Our adjournment could be two weeks, but I think one week would be sufficient.

The CHAIRMAN: Next Wednesday morning at 9.30?

Senator FLYNN: Yes.

The CHAIRMAN: There is an amendment. Honourable senators, are you ready to vote on that amendment by a show of hands first? Those supporting the amendment please raise their hands.

Hon. Mr. BEAUBIEN (*Bedford*): What are we voting on?

The CHAIRMAN: To adjourn consideration of Senator Hugessen's motion for one week, to Wednesday, December 2, at 9.30 a.m. Those in favour? Opposed? I declare the motion to adjourn is carried by a vote of 16 to 10. We shall meet again Wednesday morning next at 9.30.

The committee adjourned.

Second Session—Twenty-Sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To which was referred the Bill S-20
An Act to incorporate Bank of British Columbia.

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, DECEMBER 2, 1964

No. 7

WITNESS:

Mr. W. G. Burke-Robertson, Q.C., Parliamentary Agent.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21694—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—50.
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 9, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Farris, seconded by the Honourable Senator Beaubien (*Provencher*), for second reading of the Bill S-20, intituled: "An Act to incorporate Bank of British Columbia".

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

The Bill was then read the second time, on division.

The Honourable Senator Farris moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill be referred to the Standing Committee on Banking and Commerce.

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

JOHN F. MacNEILL,
Clerk of the Senate.

21694—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, December 2nd, 1964.

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

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Blois, Bouffard, Brooks, Burchill, Crerar, Croll, Davies, Fergusson, Flynn, Gershaw, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, Molson, O'Leary (*Carleton*), Paterson, Pearson, Pouliot, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), White, Willis and Woodrow—33.

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

Bill S-20, "An Act to incorporate Bank of British Columbia", was further considered.

The following witness was heard:

Mr. W. G. Burke-Robertson, Q.C., Parliamentary Agent.

On Motion of the Honourable Senator Croll it was RESOLVED to defer consideration of the Motion of the Honourable Senator Hugessen; (see Proceedings of Nov. 25, 1964) until Monday, December 14th, when the Senate rises that day.

At 10.05 a.m. the Committee adjourned until Monday December 14th, when the Senate rises.

Attest:

F. A. Jackson,
Clerk of the Committee.

ERRATUM:

Re: Proceedings of Nov. 25, 1964. *Page 176:* Line 39 should read as follows: "have twice as many branch banks *per capita* as has the United States."

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, December 2, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-20, to incorporate Bank of British Columbia, met this day at 9.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: I call the meeting to order. Honourable senators, the consideration of this bill, S-20, was adjourned last week until today. That information was gathered at the time by Mr. Burke-Robertson, who was here on behalf of the promoters of the bill, and I think he has a statement to make this morning. Mr. Burke Robertson.

Mr. W. G. Burke-Robertson, Q.C., Ottawa: Mr. Chairman, honourable senators, I have spoken to Senator Farris since the committee last met, and have found that he is unable to be present here today by reason of the fact that this evening the Bar of the Province of British Columbia is tendering a dinner in his honour, either to celebrate his sixtieth anniversay at the Bar or the commencement of the sixtieth year—I am not sure which. That dinner takes place this evening.

The CHAIRMAN: And tomorrow is his birthday.

Mr. BURKE-ROBERTSON: The chaiman informs me that tomorrow is Senator Farris' birthday, so I suppose this anniversary marks either the beginning or the end of his sixtieth year at the Bar. In addition to which, gentlemen, the Premier of British Columbia has advised me that he personally wishes to attend before the committee to make representations directed to the grounds upon which Senator Hugessen's motion is based. It is not the premier's intention to come before you to reiterate what he already said on July 22, but to make representations which will be confined to the motion which Senator Hugessen has made. The premier will be here on other matters on Monday, December 7, so the request that I make to the committee this morning is to defer consideration of Senator Hugessen's motion until next Monday, the 7th.

The CHAIRMAN: While you are still on your feet I might as well tell you we will not be sitting on the 7th.

Mr. BURKE-ROBERTSON: The Senate or the committee?

The CHAIRMAN: Both.

Mr. BURKE-ROBERTSON: Oh!

Senator POULIOT: Mr. Chairman, could I be allowed an observation? Then I would like to ask a question. My observation to you, Mr. Burke-Robertson, is that you have done exceptionally well as solicitor for the bank, and Mr. Bennett should be satisfied with you and Senator Farris should not have anything to worry about when you are here.

Now, in this matter the evidence is quite complete and I wonder what new argument you could bring to elucidate the matter any more than it has been elucidated from the start. The evidence or testimony given by Mr. Bennett and by Mr. Bonner was very complete, and what you had to

say was listened to very carefully by my colleagues and myself. Personally, I have done more than that. To be honest with myself I have read the entire evidence from start to finish and I find it complete except that there is one question remaining that I want to ask you, if you don't mind.

Mr. Burke-Robertson, as a lawyer of experience, do you think that ownership and management are one and the same thing?

Mr. BURKE-ROBERTSON: My answer to that is no, I do not.

Senator POULIOT: You do not believe it is the same thing.

Mr. BURKE-ROBERTSON: Not necessarily.

Senator POULIOT: Thank you. This is an honest answer, and the answer I expected from you. You know the bank can possess anything, and on that I agree with those who have spoken. A bank can possess bank shares and can take possession of a shoe factory—as has happened in Saskatchewan—although it may seem rather strange. However, the power of ownership of a province is limited; I think you'll agree with me on that, will you?

Mr. BURKE-ROBERTSON: In this case it was certainly considered by the Government of British Columbia that special authorization was required in order to enable the Government of British Columbia to own stock in a chartered bank and that is why the Revenue Act was amended to permit that.

Senator POULIOT: Yes, and the province—any province—has the right to own bank shares just as well as anybody else. You agree to that?

Mr. BURKE-ROBERTSON: I am not prepared to agree to that. In this case the Government of British Columbia thought it necessary to amend its Revenue Act to authorize the investment of moneys in the Consolidated Revenue Fund in a chartered bank.

Senator CROLL: In British Columbia.

Mr. BURKE-ROBERTSON: Yes.

Senator CROLL: Don't forget that.

Senator POULIOT: You have gone further than I asked you. I had not asked you. I had not asked anything other than this; do you not agree that the province has the right to own bank shares?

Mr. BURKE-ROBERTSON: Yes, I do.

Senator POULIOT: You do. Now, you said a moment ago that management and ownership are not the same thing.

Senator MCCUTCHEON: "Not necessarily," he said.

Senator POULIOT: Not necessary—that is right. They are not necessarily the same thing. I asked that question of Mr. Bennett and he answered very well. I wonder if you were here at the time. You may not remember that question because it was a routine question. I ask him: "Mr. Bennett, are you in favour of Confederation?" or something similar to that. I don't know that it was exactly in that form, but you will find it in the report of the meetings. At any event my question was directed to find out if he were in favour of separatism and he said he objected to separatism and that he believed in Confederation. You remember that?

Mr. BURKE-ROBERTSON: Very well indeed.

Senator POULIOT: Well, Confederation is the B.N.A. Act at the present time. And the Government of Canada and the Parliament of Canada and the provincial legislatures are respectively governed by the B.N.A. Act. Is that not right?

Mr. BURKE-ROBERTSON: Yes.

Senator POULIOT: You are familiar with the B.N.A. Act?

Mr. BURKE-ROBERTSON: Yes, reasonably so.

Senator POULIOT: All experienced lawyers are. Did you notice in the B.N.A. Act the exclusivity of power of the Parliament of Canada on the one hand and of the provinces on the other? What is the meaning of the word "exclusive"? It means that if you can do something exclusively, I cannot do it; and if I can do something exclusively you cannot do it. That is my understanding of the words "exclusive" and "exclusively".

Mr. BURKE-ROBERTSON: I think that is what is intended, yes.

Senator POULIOT: You agree.

Mr. BURKE-ROBERTSON: Yes, I do.

Senator POULIOT: And the B.N.A. Act says banking belongs to the Parliament of Canada exclusively. It is in section 91 of the B.N.A. Act. How can we, as members of Parliament, who have followed the example and who have read the Constitution, allow such legislation as this whereby the province becomes a banker in spite of and against the Constitution of this country? This I cannot understand. Can you explain it to me, please?

Mr. BURKE-ROBERTSON: I think a great deal has been said on and around this subject throughout our various attendances and the various meetings of this committee, but the reason the petitioners have come to Parliament is for the passage of a bill incorporating a bank, recognizing that the federal Government has exclusive jurisdiction in that regard. The bill is before the house now and it does not make any reference to the participation by the Government of British Columbia in the shareholding in the bank. But it was common knowledge; it was in the press and it was so well understood long before it came before this committee that it was the intention of the Government of British Columbia to invest in shares that that has been really the main subject of discussion before the committee. This was not because it was in the bill, but because it was known to be the intention of the Government of British Columbia. It was known that it was the Government's intention to own shares in the bank, limited to something up to 10 per cent, as the Premier said.

The ownership of shares of stock, I submit, is a matter of property and civil rights, a subject matter coming within the section of the B.N.A. Act which delineates the powers of the provincial governments. I submit there is no conflict there. In any event if there is in the opinion of Parliament anything improper or illegal or irregular in connection with the participation of or the ownership of stock by a provincial government, then it lies within the power of Parliament to amend the Bank Act to prevent any ownership of shares by the province or by any province.

Senator POULIOT: But, Mr. Burke-Robertson, I find that the question of property and civil rights relates to ownership which is not discussed. You can discuss it. I agree with you on the ownership, but the question is not on ownership. The question is about management, and when the Constitution says that banking is exclusive to the federal Government it means that the Government of Canada and the Parliament of Canada will have every power concerning banking, and it is not free to delegate its powers to the provinces, because its powers are exclusive.

If it is not unethical for the members of the Cabinet of British Columbia, and if it was not contrary to any provincial legislation of British Columbia forbidding cabinet ministers to own shares and to hold directorships of banks, then I will go as far as saying that I would have no objection to any one of the cabinet ministers of British Columbia or of any other province promoting legislation setting up a bank in which they would act not in an official capacity as cabinet ministers but as private individuals, or as Canadian citizens. That would be entirely different. According to human rights and fundamental freedoms, a man who is a cabinet minister should not be deprived of the right to act as any other citizen.

When Premier Bennett comes here he does not come as Mr. Bennett of Victoria but as the Premier of British Columbia. Mr. Bonner did not come here as a private individual, as Mr. Bonner of Victoria; he came here as Mr. Bonner, Attorney General of the Province of British Columbia, which is entirely different.

I hope the members of the committee realize what is my point of view. I have the best possible disposition towards the members of the cabinet of the Province of British Columbia. I wanted to make my position clear about it, and I thank you for the information you have given and I will meditate again upon it.

The CHAIRMAN: Senators, we have before us a request for a further adjournment. I think the first item we should consider is whether we are going to grant that request. I should point out that the earliest possible date on which the Senate would meet when it adjourns this week is December 14.

Senator CROLL: Mr. Chairman, I move that the matter be adjourned until some time on December 14—perhaps in the evening—for the purpose of hearing Mr. Bennett and Mr. Bonner. We shall probably be here for two days after that date.

Senator ASELTINE: Is that a Monday?

Senator CROLL: Yes, it is a Monday.

Senator ASELTINE: I thought the 16th would be a better day.

The CHAIRMAN: No, the adjournment is going to be until December 14 in the evening. If this hearing is going to be adjourned I would think we should resume the hearing on the very day we return so that we shall not run out of time. We have a motion to adjourn before us. Do any honourable senators wish to speak on it?

Senator HUGESSEN: There is one thing I wish to say about the motion to adjourn. It arises out of something Mr. Burke-Robertson said at the beginning. He said that Premier Bennett and the attorney general wished to appear again before this committee, not to give further evidence but to discuss the resolution that is before the committee. We have to think about that. Normally we do not have witnesses appearing before the committee to discuss a resolution that is being considered by the committee. Surely, that is a matter that should be left entirely to the members of the committee themselves. I would not want any witness to come here and tell us about a resolution.

Mr. BURKE-ROBERTSON: May I interpose a remark, Mr. Chairman and gentlemen? I do not think the word I used there was "discuss". I believe I said it was the desire of the premier to appear before the committee to make further representations directed to the subject matter of the motion which you made, sir.

Senator HUGESSEN: Is not that the same thing?

Senator CROLL: Not quite.

Mr. BURKE-ROBERTSON: I would not have thought so myself. I should add that the attorney general would also wish to be here, and one or more of the petitioners. I thought that was within the ambit of Senator Flynn's motion. He stated at page 183 of the transcript of the last meeting:

> Therefore, my suggestion is that we adjourn consideration of this bill and the motion of Senator Hugessen to the next sitting in order that Senator Farris and any others who want to submit their views on this motion will have an opportunity to do so.

And then after further discussion, during which the chairman pointed out that a motion in that language was not admissible and that a fixed date had to be set, it was determined that the meeting would take place today.

Senator HUGESSEN: I just wanted to put before the committee this rather important question as to how far we should allow witnesses to go in talking about motions that are really only the subject matter of discussion between ourselves.

The CHAIRMAN: Might I suggest this, that when witnesses appear before this committee—say, at the next meeting or at any time they do appear—we do not settle in advance guide lines for their testimony. If they put forward what we think is inadmissible or irrelevant material then the Chair will rule against it, and the committee will support the ruling of the Chair or not as it wishes. I think we would be a little premature if we box in what they say when they come here. They would be subject to what I regard as a proper interpretation of the rules in the circumstances.

Senator BROOKS: Mr. Chairman, have we already decided we will grant an adjournment?

The CHAIRMAN: Yes, at the request of Mr. Burke-Robertson.

Senator BROOKS: No, we decided at our last meeting that we would give an adjournment.

The CHAIRMAN: Yes, until today.

Senator BROOKS: Well, the time was set for today in the expectation that they might be here, but I think when we gave them an adjournment we did not so on the understanding that it would be at their convenience only, but that it would be at the convenience of both parties. It is not convenient for them to be here today. Someone suggested that the meeting be adjourned until next Monday, but that is not convenient to us. I think what we have to decide is a time that is convenient to both parties.

The CHAIRMAN: Within limits it has been the policy of this committee to try to suit the convenience of those who want to make representations, as well as the convenience of the members of the committee so that we shall have as large an attendance as possible.

Senator BROOKS: Yes, it is a matter of courtesy.

Senator MCCUTCHEON: Is there any reason to believe that if we adjourn until December 14, Mr. Burke-Robertson's witnesses will be here?

The CHAIRMAN: I do not know.

Senator MCCUTCHEON: Should we not have an indication from him?

The CHAIRMAN: Mr. Burke-Robertson is the one who has to make a statement on that. I am pointing out that December 14 is the earliest date that we as a committee can meet.

Mr. BURKE-ROBERTSON: I have not discussed that date, of course, because I had no idea what date, if any, would be put forward by the committee. I can find that out today and advise the chairman. I have no reason to think that it is not satisfactory from the point of view of those who are coming.

Senator LAMBERT: Mr. Chairman, is there any reason to assume that if this additional opportunity for the presentation of views on this bill is given that there will be presented to the committee anything in the way of new material, or material that we have not heard before?

The CHAIRMAN: There is this assurance, that if it is a repetition of what we have heard already the Chair may decide that we have heard enough. It will then be up to the committee to decide whether or not it supports the Chair's ruling.

Senator LAMBERT: But there is no indication as to the agenda for the next meeting?

The CHAIRMAN: Except Mr. Burke-Robertson's assurance that it will not be repetitious.

Senator LAMBERT: May I say that I had the privilege of speaking on second reading of the bill and of supporting Senator Farris' application to have this bill read the second time and thus afford the opportunity for its going before this committee for further inquiry. That was the extent to which I committed myself at that time. It was so that Senator Farris' representations could be referred to this committee for further inquiry. That was over a month ago, and we have since had three or four meetings. I feel personally that all the evidence that could possibly be adduced in connectiion with this bill has been submitted, and that the petitioners have been given a very fair hearing, and their views have received adequate consideration.

The CHAIRMAN: Did you say that that was over a month ago, senator? I would point out to you that it is over five months since we first received this bill.

Senator LAMBERT: I am willing to yield to the extent of a month or two. However, if this bill is before us for another five months, then that will be a little too long.

Senator LEONARD: I suggest that Senator Croll's motion be amended to provide that we adjourn to December 14 when the Senate rises on that day. That would give the applicants the earliest opportunity of going ahead with the matter and would also give us an opportunity of using Tuesday, December 15, for further consideration, if further consideration is then necessary. I think Mr. Burke-Robertson could wait until Senator Farris or the premier will be here on the Monday night.

Senator FLYNN: I should like to point out that, when I moved the adjournment last week, my intention was specially to give Senator Farris, the sponsor of the bill, an opportunity to discuss, as he can, the motion of Senator Hugessen.

On the other hand, I mentioned something on which I would like to have the views of Mr. Burke-Robertson. I said that if the Government of British Columbia were willing to withdraw its disclosed intention of subscribing for shares of this bank, until the Bank Act has been revised, and then to act in accordance with the new act, the committee, I suggest, might take another view than that which is expressed in Senator Hugessen's motion.

I would be interested to hear from Mr. Burke-Robertson whether there is any possibility that at the next meeting of the committee, if we adjourn the consideration of this bill to another meeting, the Government of British Columbia would express another view than it has up to now with regard to its intention to subscribe shares in this bank.

Mr. BURKE-ROBERTSON: My understanding, Senator Flynn and members of the committee, is that the Government of British Columbia does desire to exercise the right to own some shares of stock up to 10 per cent, and that they are not prepared to withdraw from that position because they believe that the question of constitutional law on which Senator Hugessen's motion is partly based is one that should be resolved in their favour, that legally they are perfectly correct in appearing before Parliament here to have the bill passed in this form, and that they are perfectly justified in owning stock. Preference will be made at the next meeting, if there is one, by those who come, to that point, senator.

Senator FLYNN: I was not so interested as to the views of the Government of British Columbia on the constitutionality of subscribing shares, as to whether it would change its mind and decide not to subscribe shares and would wait for the revision of the Bank Act. I have my views on the constitutionality of certain

questions, but this is not the point. The fact is that the committee can decide now, I think, if the Government does not change its mind about what I have discussed.

Senator O'LEARY (*Carleton*): Mr. Chairman and senators, the first thing to do here is to get our priorities right. I think that the convenience of a committee of Parliament must take precedence over the convenience of witnesses coming here. We come here today and they find they cannot keep the appointment, for certain reasons. I think that we should do them the courtesy now of setting another date, a date convenient to this committee; and if they cannot come here on that date, I would think that Senator Hugessen's motion should be passed.

The CHAIRMAN: Are you ready for the question?

Senator KINLEY: There is a new aspect to this whole thing. In *Hansard* of the House of Commons, November 27, the Minister of Finance gave notice for the revision or extension of bank charters, as follows:

> Hon. Walter L. Gordon (Minister of Finance) moved that the house go into committee at the next sitting to consider the following resolution, which has been recommended to the house by His Excellency:
>
> That it is expedient to introduce a measure to provide for the decennial revision of the Bank Act and the extension of the charters of the existing chartered banks till July 1, 1975, and to provide further for certain changes in connection with the administration of the act.

Of course, it will be some time before this gets consideration in committee in the other place, in view of the proceedings there; but a well-informed member of the Senate told me that it was announced that information about the Bank Act would be in the press. I suppose it is like flying a kite to test public opinion on the merits of the changes which are proposed.

It seems to me that we should keep this bill alive. The advocates of the bill have spent time and money on it. We heard an able presentation by the Attorney General of British Columbia and by others.

The CHAIRMAN: Senator, the motion to which you are speaking now keeps the bill alive.

Senator KINLEY: I agree it keeps the bill alive. However, I am informed that Senator Hugessen's motion would kill the bill.

The CHAIRMAN: The motion before this committee this morning is that we adjourn further consideration of Senator Hugessen's motion until December 14 when the Senate rises.

Senator KINLEY: That will keep it alive until that date.

The CHAIRMAN: That is the only matter before us.

Senator KINLEY: This is a private bill but I am informed that Senator Hugessen's motion puts it in the realm of a public bill. I am speaking in compliment to Senator Hugessen. He says:

> . . . there is no precedent for the ownership by the government of a province of a substantial proportion of the shares of a chartered bank operating under the provisions of the Federal Bank Act; this could involve the effective control of a federal chartered bank by the government of a province, a situation which would raise important questions of public policy and of constitutional law...

If that is true, this is scarcely a private bill: it is a private bill with other implications. As we can expect to have information in a few weeks on the

terms of the new charter as proposed by the Government, it would be as well to adjourn this discussion until we have received that information, probably until after the Christmas vacation.

The CHAIRMAN: Let us take it a step at a time. There is Senator Hugessen's motion. There was amendment to it which brought the adjournment until today. I understand that your motion, Senator Croll, is by way of amendment to Senator Hugessen's motion. This amendment would bring about a further adjournment, and I take it that this one is peremptory until December 14 when the Senate rises. Are you ready for the question?

Senator KINLEY: Just a moment. The point was raised here that we should not have a repetition of argument when these people come. I say in compliment to Senator Hugessen's resolution that it does raise new problems for this committee and it does propose new conclusions, so that there is something new to come before this committee. I quite agree with Senator Croll's motion, adjourning discussion to December 14, as it gives time for thought. We should work with knowledge, wherever possible. By that time we should be aware of the intentions of the Minister of Finance in regard to the policy respecting Government ownership and property and civil rights, which will be factors in deciding this matter.

The CHAIRMAN: Are you ready for the question?

Hon. SENATORS: Yes.

The CHAIRMAN: Those in favour of the amendment, to adjourn, as a peremptory adjournment?

Some Hon. SENATORS: It is agreed.

The CHAIRMAN: It is carried. We adjourn until Monday, December 14, when the Senate rises. I verified that before I made this statement. The meeting is adjourned until December 14 when the Senate rises.

The committee adjourned.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-20
An Act to incorporate Bank of British Columbia.

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

MONDAY, DECEMBER 14, 1964

No. 8

WITNESSES:

The Honourable R. W. Bonner, Attorney General of British Columbia;
Mr. W. G. Burke-Robertson, Q.C., Parliamentary Agent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21744—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—50.
Gelinas	O'Leary (*Carleton*)	

(Quorum 9)

Ex officio members: Brooks; and Connolly (*Ottawa West*).

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 9, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Farris, seconded by the Honourable Senator Beaubien (*Provencher*), for second reading of the Bill S-20, intituled: "An Act to incorporate Bank of British Columbia".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Farris moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

21744—1½

REPORT OF THE COMMITTEE

MONDAY, December 14th, 1964.

The Standing Committee on Banking and Commerce to which was referred the Bill S-20, intituled: "An Act to incorporate Bank of British Columbia", has in obedience to the order of reference of June 9, 1964, examined the said Bill and now reports that in the opinion of your Committee the preamble to the said Bill has not been proved for the following reasons:

At the hearings before the Committee, the Premier and other Ministers of the Government of the Province of British Columbia appeared in support of the Bill and stated that, if the Bill were passed, the government of that province would subscribe for up to 10% of the shares to be issued by the bank: so far as your Committee is aware, there is no precedent for the ownership by the government of a province of a substantial proportion of the shares of a chartered bank operating under the provisions of the Federal Bank Act; this could involve the effective control of a federal chartered bank by the government of a province, a situation which would raise important questions of public policy and of constitutional law; your Committee is of the opinion that these are matters of general policy which should be determined by the Parliament of Canada in the forthcoming revision of the Bank Act, and that pending such determination this Bill should not be proceeded with.

All which is respectfully submitted.

T. D'Arcy Leonard,
Acting Chairman.

MINUTES OF PROCEEDINGS

MONDAY, December 14th, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.50 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Blois, Burchill, Crerar, Croll, Davies, Dessureault, Fergusson, Flynn, Gelinas, Gershaw, Gouin, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, Macdonald (*Brantford*), McCutcheon, Molson, O'Leary (*Carleton*), Paterson, Pearson, Pouliot, Power, Roebuck, Smith (*Kamloops*), Thorvaldson, Vaillancourt, White and Willis.

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

Bill S-20, "An Act to incorporate Bank of British Columbia", was further considered.

After discussion, the following witnesses were heard:
The Honourable R. W. Bonner, Q.C., Attorney General of British Columbia.
Mr. W. G. Burke-Robertson, Q.C., Parliamentary Agent.

The Honourable Senator Hayden having vacated the Chair it was agreed that the Honourable Senator Leonard act as Chairman.

The Committee resumed from December 2nd, consideration of the Motion of the Honourable Senator Hugessen that the preamble of the said Bill has not been proved.

The Honourable Senator McCutcheon having moved, in amendment, that consideration of the said Motion be deferred until December 22nd, it was Resolved in the negative, on the following division: YEAS, 10; NAYS, 14.

The Honourable Senator Pearson having moved, in amendment, that consideration of the said Motion be deferred until December 17th, it was Resolved in the negative, on the following division: YEAS, 8; NAYS, 13.

The question being put on the Motion of the Honourable Senator Hugessen that the Committee do now report as follows:

In the opinion of your Committee, the preamble to this Bill has not been proved, for the following reasons:

At the hearings before the Committee, the Premier and other Ministers of the Government of the Province of British Columbia appeared in support of the Bill and stated that, if the Bill were passed, the government of that province would subscribe for up to 10% of the shares to be issued by the bank; so far as your Committee is aware, there is no precedent for the ownership by the government of a province of a substantial proportion of the shares of a chartered bank operating under the provisions of the Federal Bank Act; this could involve the effective control of a federal chartered bank by the government of a province, a situation which would raise important questions of public policy and of constitutional law; your Committee is of the opinion that these

are matters of general policy which should be determined by the Parliament of Canada in the forthcoming revision of the Bank Act, and that pending such determination this Bill should not be proceeded with.

It was Resolved in the affirmative on the following division: YEAS, 19; NAYS, 7.

At 11.10 p.m. the Committee adjourned to the call of the Chairman.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Monday, December 14, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-20, to incorporate Bank of British Columbia, met this day at 10 p.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: Honourable senators will recall the adjournment from the previous meeting until tonight for the specific purpose of hearing any representations which the Government of British Columbia may wish to make in respect to this bill. The Honourable R. W. Bonner, Q.C., Attorney General of British Columbia, is here and has a statement to make. But I have been looking at the clock, which now records about 10 minutes to 10. I was going to suggest, for the consideration of the committee, that possibly 10 o'clock tomorrow morning would be a better time to sit, rather than continue tonight.

Senator CROLL: No, sir.

Senator LAMBERT: Yes.

Senator CROLL: I am speaking now.

The CHAIRMAN: Order! The senator should speak to the Chair, not to another senator.

Senator CROLL: I am objecting to a 10 o'clock sitting tomorrow morning.

The CHAIRMAN: This is the time for expressions of opinion.

Senator CROLL: I am expressing it now. There have been committees laid on for weeks in advance—the Committee on the Canada Pension, the Committee on Consumer Credit. Many people have been asked to come from various parts of the country, particularly in one committee—

Senator MCCUTCHEON: The witnesses before the Committee on Pensions are from Ottawa.

Senator CROLL: The Committee on Consumer Credit witnesses are coming from Quebec. We have had to use rooms in the West Block, which happen to be equipped with simultaneous translation facilities. For that reason, I do not think we ought to go on with this matter until the other committees are out of the way. Tomorrow afternoon it will be quite possible. On the Committee on Consumer Credit there are at least half a dozen members of the Senate—I do not know whether they are all members of this committee—and at least four or five members of the Senate are members of the Committee on Pensions. That committee will be sitting tomorrow morning, and for that reason I do not think we ought to go on with the present matter at 10 a.m. tomorrow.

Senator ROEBUCK: Mr. Chairman, it may take us only a few moments, and I would suggest that we go ahead and hear Mr. Bonner and Mr. Burke-Robertson. Then, if it looks as if it may take longer than that, someone might then move a motion to adjourn. In the meantime, let us hear the witnesses.

The CHAIRMAN: What is the wish of the committee? So far as I am concerned, I may say that I have asked Senator Leonard to take over in my place, if this meeting should go beyond 10 o'clock.

Senator CROLL: Mr. Chairman, you can make no progress, because if you go on with the meeting tomorrow in my absence, I will wait until the minutes are ready and I will take an opportunity in the house to discuss it more fully, rather than discuss it here but I would rather discuss it tonight.

The CHAIRMAN: That is your privilege. I am not trying to dictate to any person. All I want is to get the view of the committee. You must remember that Mr. Bonner was invited two weeks ago.

Senator ROEBUCK: And he has waited here all day.

The CHAIRMAN: Senator Leonard can take the Chair if it is necessary.

What is the wish of the committee? Do you wish to hear Mr. Bonner tonight and then adjourn the meeting?

Some hon. SENATORS: Agreed.

The CHAIRMAN: I take it there are many senators who do not wish to spend too much time here this evening. Is it agreed to hear Mr. Bonner?

Senator ROEBUCK: We will hear Mr. Bonner.

Honourable R. W. Bonner, Q.C., Attorney General, Province of British Columbia: Mr. Chairman, may I once again record my appreciation of the courtesy extended by this committee to hear a representative of the Government of British Columbia, whose position in the consideration of Bill S-20 appears to continue to occupy an important position in the minds of many here.

I have in mind particularly, Mr. Chairman, that the committee is directing its attention to a motion which was offered on November 25 last. It was in relation to this motion, offered by honourable Senator Hugessen, that it was thought desirable that an opportunity be extended to the representative of the Government of British Columbia to say a few words here tonight.

The CHAIRMAN: Yes, Mr. Bonner. Please do not discuss the merits of the motion. I understand you have a statement to make.

Hon. Mr. BONNER: That is right. I was referring to the background. It was in relation to that motion, the merits of which I am not at liberty to debate, that I wish to offer a statement to the committee tonight.

In view of the fact that the proposed share ownership of the Government of British Columbia occupies the focal point of this motion and would appear to be of concern in the general matter of approval or disapproval of the bill in this committee stage, I have been authorized to offer an undertaking on behalf of the Government of British Columbia which I trust will be useful, so that the merits of the bill itself may be considered apart from any possible future position of the Government, in relation to the matter contained in the bill.

If I may, I should like to read a letter signed by the Premier and Minister of Finance of the Government of British Columbia, directed to the chairman of this committee. It is as follows:

Senator Salter A. Hayden, Q.C.,
Chairman,
Banking and Commerce Committee,
The Senate,
Ottawa, Canada
Dear Sir:

Re: Bill S-20

Bank of British Columbia

My attention has been directed to the objections to this bill set forth in Senator Hugessen's motion appearing on page 175 of volume 6 of the proceedings of your committee.

I appreciate and join in the desire expressed to see questions of general policy arising out of proposed share ownership determined by the Parliament of Canada in the forthcoming revision of the Bank Act.

Concern in this regard, however, need not hold up the approval and passage of this bill in Senate and its subsequent consideration in the House of Commons.

To assist the fullest examination by Parliament of the questions raised by Senator Hugessen, I have no hesitation to undertake, on behalf of the Government of British Columbia, that no subscription for shares of stock in the Bank of British Columbia will be made, directly or indirectly, by or on behalf of the Government of this province, until the next revision of the Bank Act has gone into effect.

I would be grateful if this letter were communicated to your committee.

Yours very truly,
W. A. C. Bennett,
Premier and Minister of Finance

I have pleasure, sir, in handing the original to you and I have a number of copies, if any member should like to have one.

In view of the lateness of the hour, I do not think there is anything I could say which would elaborate on that undertaking. However, as on previous occasions, I am at the pleasure of the committee in attempting to answer any questions which may be put arising out of it.

The CHAIRMAN: Are there any questions?

Senator ROEBUCK: As I understand the purport of the letter, it is that the Province of British Columbia will not subscribe for shares in this bank until after the revision of the Bank Act comes into effect.

Hon. Mr. BONNER: That is correct, sir.

Senator POWER: Does that mean that this bank will not begin its operations until the Bank Act revision comes into effect?

Hon. Mr. BONNER: Whether or not the bank will come into operation will depend on the approval of this bill here and in the other house, and I do not think anyone can forecast on that matter.

Senator POWER: I take it there is no indication that the bank will not bring in those operations?

Mr. BONNER: No; and there is no indication that the bank will be incorporated by that time either, sir.

The CHAIRMAN: May I interrupt for a moment? I have asked Senator Leonard if he will take over, and continue as Chairman for the rest of the evening, if the committee will agree.

Hon. SENATORS: Agreed.

(*Senator T. D'Arcy Leonard in the Chair.*)

Mr. BONNER: Mr. Chairman, would it assist the committee if copies of this letter were distributed?

Senator CROLL: It would be much better. Have you copies?

Mr. BONNER: Yes.

The ACTING CHAIRMAN (*Hon. Mr. Leonard*): The Clerk will distribute them, Mr. Bonner. Are there any further questions to Mr. Bonner?

Senator CROLL: I would like to see this letter first.

Senator MCCUTCHEON: While the letter is being distributed, let me say that we are in this position: Had the petitioners appeared here this evening and said that they would not proceed until the new Bank Act had come into force, that is, until the measure had passed the House of Commons and the Senate and received the royal assent, I might have been able to assent, although I am not committing myself. We have heard various statements, as, for instance, that the Province of British Columbia will not subscribe to these shares, unless and until this bank is incorporated, or the Bank Act is passed. We have to go back to the evidence. I am sorry, Mr. Bonner, that I haven't it with me but I think in essence it indicated that the province considered its subscription was necessary in order to make this bank successful.

After all, they are talking about an initial capital of $300 million or over, which is far larger than the initial capital and surplus of any bank ever organized in Canada. To leave the petitioners in a position where they can go out and seek subscriptions and, in effect, gamble on the provisions of the Bank Act, is a position, Mr. Chairman, which is quite unacceptable to me. If the petitioners were here I would be quite happy to give them an opportunity to give a little broader undertaking than is given here. That is one thing. Otherwise, Mr. Chairman, I think we are in the same position that we were in when another bank came to us, to whose incorporation I took exception, that we are permitting speculation on what Parliament is going to do.

Mr. W. G. Burke-Robertson, Q.C.: Mr. Chairman and gentlemen, I think I can answer, in part, Senator McCutcheon's question. I have sent out to the West, addressed to the Chairman, a proposed letter, which has been discussed, and am authorized to say that the letter is on its way and will be sent to the Chairman authorizing or advising the committee that the petitioners, or the bank as and when incorporated, will not issue any shares of the capital stock to the Government of British Columbia. So that in that way, the petitioners will not sell and the government will not subscribe to the shares. I realize that does not completely answer the question.

Senator MCCUTCHEON: It certainly does not.

Senator CROLL: What is unanswered, Mr. Burke-Robertson? The petitioners say they will not sell and the government will not buy. What is left, what is still bothering someone?

Mr. BURKE-ROBERTSON: To my mind, nothing, sir. It seemed to me that what appeared to be bothering the minds of some of the members of this committee was the question of public policy, and the further question of constitutional law, which the investment by the government of British Columbia in the capital stock of the bank appeared to raise. The undertaking which is now before the committee is designed to overcome those objections until the revision of the Bank Act goes into effect. The burden of the motion of Senator Hugessen was that the bill not be proceeded with until the revision of the Bank Act, so the objectionable features in the mind of some members of the committee are sought to be overcome in the manner now described to you.

Senator MCCUTCHEON: Mr. Chairman, Mr. Burke-Robertson knows that he has not answered my question. The position is simply this: The situation, as presented to us, is that it has been suggested that the Province of British Columbia is an essential factor in order to finance this bank on a scale at which no other bank in Canada has ever been initially financed.

Senator ROEBUCK: Are you afraid of competition?

Senator MCCUTCHEON: I am not afraid of anything. I am not a director of a chartered bank, and I resent that statement. You will just listen to me from now on. As it stands, it has been represented to us that it requires the backing

of the Government of British Columbia to obtain a terrific amount of money to finance this bank. All right. All I am saying is that if the Province of British Columbia is not going to subscribe for shares in this bank pending the revision of the Bank Act, then, unless the petitioners are prepared to say that they will not sell shares to anybody, that they will not go out and organize the bank pending that revision, I think we should have them come back here and tell us, as other petitioners have done, how they propose to finance this bank.

I thought we were going to get some different undertaking tonight. As far as I am concerned, this is far too narrow an undertaking. If the petitioners want to come and either tell us how they will finance the bank without the backing of the Province of British Columbia, or undertake not to take any steps until the Bank Act is revised, then I will revise my views.

The ACTING CHAIRMAN: Any further questions of Mr. Bonner?

Senator PEARSON: I was wondering how the Bank of British Columbia will be able to function if the Government of British Columbia will not have a chance to buy or own any of these shares?

The ACTING CHAIRMAN: Are you directing that question to the witnesses?

Senator PEARSON: Yes.

Mr. BONNER: I would anticipate, that with the apparent rate at which business is going in the other place, that the Bank Act revision would not be long delayed before being introduced in the House of Commons. If I may refer to expressions which have emanated from the other place, a view does exist in the minds of a number that no bank bill should pass until the Bank Act revision itself takes place. I think it must be acknowledged I would have to speculate on the conditions existing elsewhere to attempt to give you a finite answer, but it would be my expectation, which is purely a matter of judgment, that the Bank Act revision and the passage of the various bills affecting the banks presently in the other place and here might go along hand in hand, but I admit that is a stab in the dark.

Senator PEARSON: Supposing this bill goes to the other place and receives approval in the other place, but in the meantime the Bank Act revision has not come into effect; and then, say the Bank Act revision comes into effect which says that no province or government shall own shares in a bank—how do you propose to proceed then?

Mr. BONNER: I think the petitioners would certainly have to give consideration to their position at that point.

Senator MCCUTCHEON: That is all I want the petitioners to do, to delay their consideration.

Mr. BONNER: The impression is abroad, and has been suggested, I think, here, that this bank needs no Government support whatever. Now the implication is that without Government support it cannot get started at all. It seems to me one of those two positions cannot stand.

Senator MCCUTCHEON: I asked that question and I was told, "No, we are going to take a position in the bank no matter if we raise $600 million." That is on the record.

The ACTING CHAIRMAN: Senator Aseltine?

Senator ASELTINE: I just want to know if we are about to vote on Senator Hugessen's motion.

The ACTING CHAIRMAN: As I understand it, we have not yet finished questioning the witnesses.

Senator ASELTINE: I want to say something on that motion before we vote on it.

The Acting CHAIRMAN: We have not come to that yet.

Senator ROEBUCK: I want to point out that the objection so far to this incorporation has been the suggestion made by the Government of British Columbia that they would subscribe to a certain number of shares.

Senator MCCUTCHEON: Not *"suggestion"* but *"assertion"*.

Senator ROEBUCK: I am making the speech.

Senator MCCUTCHEON: You objected to me.

Senator ROEBUCK: And you objected to my interference.

The ACTING CHAIRMAN: Order!

Senator ROEBUCK: That has been the only objection taken so far. Other than that, this is an ordinary incorporation of a bank—no special provisions, nothing out of the way, nothing different from other banks we have incorporated. Now the objection is switched over to this idea that they want this bank, but it is not to do any business whatsoever until the Bank Act has been revised. A former speaker has said they are going to have to speculate on what the Parliament of Canada may do. Every bank is speculating on what the Parliament of Canada may do in the revision of the Bank Act, and every bank must conform to what the Parliament of Canada says when we do revise the Bank Act.

So far as not being able to sell the shares, that would be too bad. I know that will be a matter of great regret on the part of my friend, but that is something for the incorporators to consider. No one has asked any previous applicants for incorporation for an undertaking with regard to the sale of shares. That is a matter that should follow after the incorporation takes place. I do not see any reason why we should require these people either to undertake not to sell shares after the incorporation has taken place or for any guarantee that they can sell the shares or will sell them. That is a matter for them to consider; and if they cannot sell them that is their bad luck. It is not a reason for refusing the incorporation or delaying it indefinitely, as apparently some people would like. So, I think we are all in the clear at the moment, and I am ready to move that we report the bill.

The Acting CHAIRMAN: I think perhaps we should clear the position at which we are now. There is a motion before the committee, that of Senator Hugessen. Consideration of that has been standing in order to give an opportunity for these witnesses to appear. They are here now, and at the moment we are really engaged in finding out what they have to say and in asking them questions. We will come to the matter of what we do with the bill after we are through with the witnesses.

Senator Croll?

Senator CROLL: I defer my questioning for the moment.

Senator FLYNN: I was going to mention the fact there are two questions. There is the question of the motion by Senator Hugessen. Then, after it has been disposed of, assuming it is voted down for the purposes of argument, I think the point raised by Senator McCutcheon would then be in order.

As far as the motion of Senator Hugessen is concerned, I would like to hear from him now whether he thinks his motion can stand after the assurance given by Mr. Bonner.

The ACTING CHAIRMAN: Before we call on Senator Hugessen—

Senator BURCHILL: Mr. Burke-Robertson, I did not get what you said about a letter that was on the way.

Mr. BURKE-ROBERTSON: What I said was that I had discussed with the petitioners in the west the position disclosed to the committee tonight, that which is being taken by the Government, and the petitioners are

quite willing to say to the committee, and put it in writing, that they will not issue any shares to the Government of British Columbia. So it is a two-way undertaking, as it were,

Senator BURCHILL: If that letter arrived and we have the assurance from the bank they will not subscribe and from the petitioners they will not issue any stock—

Mr. BURKE-ROBERTSON: I am authorized to undertake on behalf of the petitioners that such a letter and such a written undertaking will be provided to the committee.

Senator O'LEARY (*Carleton*): Might I ask a question, just as a layman? If the Government of British Columbia undertakes not to buy shares until the Bank Act is revised, and if the petitioner says they will not sell them until the Bank Act is revised, what is the interest of the Government of British Columbia in coming here? Surely, it is the petitioners and not the Government of British Columbia that should be here tonight. If you are washing your hands of the thing, why are you here?

Mr. BURKE-ROBERTSON: I am here representing the petitioners.

Senator O'LEARY (*Carleton*): I really directed that question to Mr. Bonner.

Mr. BURKE-ROBERTSON: And Mr. Bonner is here because an opportunity was given by this committee for persons to attend to make representations —I think it was described as, "interested persons to appear"—to the objections set out in Senator Hugessen's motion, which stemmed from the fact the Government of British Columbia proposed to invest in the bank. That is why Mr. Bonner came, since the Premier, who had been expected to come and who could have come on December 7, was unable to do so today. Mr. Bonner came to give that undertaking in person on behalf of the Premier and to present to the committee the Premier's letter. He came here for that express purpose, to answer objections which have been raised to participation by the Government of British Columbia.

Senator MCCUTCHEON: Senator Roebuck, I think, said that we had not inquired of any other bank petitioners as to how they were going to finance—

Senator POULIOT: Can I ask a question?

The ACTING CHAIRMAN: Senator McCutcheon has the floor, then Senator Croll, and then you, Senator Pouliot.

Senator POULIOT: Thank you.

Senator MCCUTCHEON: Senator Roebuck said we had not inquired of other bank petitioners as to how they proposed to accomplish their financing.

Senator ROEBUCK: Sell their shares.

Senator MCCUTCHEON: Or sell their shares—it is the same thing.

Senator ROEBUCK: Not quite.

Senator MCCUTCHEON: I think that on reflection Senator Roebuck will recall we had several days' discussion with the petitioners for the Bank of Western Canada on that matter, and we had at least one day's full discussion, and I think two, with the promoters of the Laurentide Bank.

I accept this undertaking completely and I accept Mr. Burke-Robertson's undertaking on behalf of the petitioners. All I say is that the petitioners should now come before us because it is obvious that they hope—and I do not blame them for this—to get the bill through at the present session. Let the petitioners come and tell us how they propose to finance the bank, just as the other petitioners have.

Senator CROLL: If I recall—and I can be corrected if I am wrong—one of the banks, and I think it was the Bank of Western Canada, sold shares or sold rights.

The ACTING CHAIRMAN: Trust certificates.

Senator CROLL: Trust certificates—call it what you like. But they did exactly what Senator McCutcheon says ought not to be done. Now, whatever the name may be, I suggest that we treat them all in the same way. We did not raise any fuss about that, and I don't think we ought to raise any fuss now.

Senator MCCUTCHEON: There was quite a fuss raised about it; the Senate was divided.

Senator CROLL: In any event there was a decision of the Senate. So why do you raise it now again? I have no idea why it is being done.

Senator MCCUTCHEON: If you want me to make an hour's speech about it I can.

Senator CROLL: I will speak about it as long as I think I should and then you can take your turn. What I am saying is we ought to treat this bill in the same way as we treated the other bills. We are not doing this when we raise the point about selling in advance what you referred to as trust certificates. They ought to be permitted to deal with this in the very same way. That is my point at the moment, but I shall have more to say on it later on.

The ACTING CHAIRMAN: Senator Pouliot.

Senator POULIOT: Mr. Chairman, I have just read the letter from Premier Bennett, and I agree, to a limited extent, with what Senator Croll has just said. We have no reason to give special treatment to any bank. I agree with him on that, provided that the conditions are similar. In this case we have the letter of Premier Bennett, and I want to be corrected if I am wrong or if I am misrepresenting this or giving a false interpretation of it. My understanding of this letter is that the bank will not operate until the next revision of the Bank Act goes into effect. If the bank operates without shares being sold to the public, it will operate with the money supplied by the Government of British Columbia for the purchase of shares.

Senator CROLL: No.

Senator POULIOT: No? The letter says:

> To assist the fullest examination by Parliament of the questions raised by Senator Hugessen, I have no hesitation to undertake, on behalf of the Government of British Columbia, that no subscription for shares of stock in the Bank of British Columbia will be made, directly or indirectly, by or on behalf of the Government of this province, until the next revision of the Bank Act has gone into effect.

Then does it mean that the bank will sell shares until the Bank Act is revised and will operate under that condition without any subscription from the Government of British Columbia?

The ACTING CHAIRMAN: You are asking the witness that question?

Mr. BURKE-ROBERTSON: The bank will be free to sell shares once the act is passed by both houses—to the public.

Senator MCCUTCHEON: You are giving no undertaking not to sell shares.

Mr. BURKE-ROBERTSON: No, I am not.

Senator POULIOT: You will sell shares to the public?

Mr. BURKE-ROBERTSON: I said the bank when incorporated would be free to sell shares.

Senator POULIOT: You do not say the bank will sell shares?

Mr. BURKE-ROBERTSON: No.

Senator POULIOT: We are not sure that the bank will operate.

Mr. BURKE-ROBERTSON: There are many considerations that will have to guide the directors of the bank, when incorporated, as to when they will commence the sale of shares.

Senator POULIOT: Mr. Burke-Robertson, those questions were just preliminary, but my question which follows is this: are you in a hurry to have this bill passed?

Senator CROLL: Reasonably.

Mr. BURKE-ROBERTSON: Well, senator, I don't think it could be said that the petitioners of this bill have been unduly impatient. It has gone on for many months so far, and it is their earnest hope and prayer that its passage will not be long delayed.

Senator POULIOT: We will understand each other very well and without any difficulty. I did not quite catch what you said. Did you say the Government of British Columbia is not in a hurry to have this legislation passed?

Mr. BURKE-ROBERTSON: I am speaking for the petitioners and they are anxious to get on with the bill. They would like to see it passed by the Senate and the House of Commons.

Senator POULIOT: If the Government of British Columbia is not subscribing for shares now, why is it interested in having the bill passed now by the Senate and by the House of Commons? Do you understand my question?

Mr. BURKE-ROBERTSON: Yes. Well, the petitioners are anxious to have the bill passed. The Government desires to invest in the bank, but have undertaken to this committee to withhold any subscription for shares until after the Bank Act has been revised.

Senator POULIOT: If the Government is ready to withhold any subscription for the purchase of shares, it means that the Government of British Columbia is not in a hurry to buy shares or to subscribe for shares.

Mr. BURKE-ROBERTSON: They would like to subscribe for shares as soon as the Bank Act is revised.

Senator POULIOT: Do you know what the revision will be?

Mr. BURKE-ROBERTSON: No, and neither do the other banks.

Senator POULIOT: How can you make a guess about it when you don't know what it will be? You do not know that there will not be a provision in the Bank Act to forbid a province to buy shares in the bank.

Mr. BURKE-ROBERTSON: We are in the same position as the other two banks with respect to the contents of the new Bank Act.

Senator POULIOT: You see here Premier Bennett has said:

> ...no subscription for shares of stock in the Bank of British Columbia will be made, directly or indirectly, by or on behalf of the Government of this province, until the next revision of the Bank Act has gone into effect.

You don't know what the next Bank Act will provide. You don't know it, I don't know it, and nobody in this room knows. Somebody may bring in an amendment which could change the nature of the law. You know that as an experienced lawyer.

Mr. BURKE-ROBERTSON: Yes.

Senator POULIOT: Therefore, I find the passage of this legislation under these conditions is premature, and we must wait to see what the Bank Act will be before proceeding with this.

Mr. BURKE-ROBERTSON: May I say that the bills which have been considered already for the other two banks, or for the petitioners for the other two banks, are precisely in the same position as we are. They don't know either. Our position is the same as theirs. Ours is an ordinary incorporation with the elimination or the temporary elimination of the Government of British Columbia.

Senator BAIRD: Temporary?

Mr. BURKE-ROBERTSON: Yes, temporary elimination. Until the passage of the revision of the Bank Act our position is the same as theirs. This is a perfectly normal incorporation. It seems to me that they are entitled to be dealt with on the same basis as the others have been.

Senator POULIOT: I regret, Mr. Burke-Robertson, to have to differ from you, because for me the conditions are not the same.

The ACTING CHAIRMAN: Thank you, Senator Pouliot. Senator Cameron?

Senator ROEBUCK: May I ask a question? Mr. Burke-Robertson, if the Bank Act prohibits the purchase of shares by a provincial government will you then submit to the law and not purchase shares?

Mr. BURKE-ROBERTSON: I am sure of that.

Senator ROEBUCK: That is an answer.

Senator CAMERON: I think the problem that raises in the mind of a few senators is that assuming this charter were granted what effect would that have on other provinces making application to establish their own banks—for example, my own Province of Alberta might apply for permission to convert its treasury branches and come under the Bank Act. If this is the case for Alberta or any other province, is there any plan to call the Governor of the Bank of Canada before this committee to give us his views as to what effect the establishment of these several provincial banks would be on the national monetary policy?

Senator CROLL: Is not that a matter of Government policy? It is not the function of the Governor of the Bank of Canada to say that.

Senator DAVIES: Suppose in the revision of the Bank Act there is no reference at all to the buying of shares in any bank by provincial governments. Would we not then be in the same position as we are now?

Mr. BURKE-ROBERTSON: Except this, that when the revision of the Bank Act is dealt with by Parliament all these matters will then be considered. I think that is the purpose of Senator Hugessen's motion—that the question of public policy that is in the mind of so many senators, and also the constitutional point of law that appears to be raised, can then be dealt with.

Senator DAVIES: Do you think it will be mentioned in the revision of the Bank Act?

Mr. BURKE-ROBERTSON: It will be dealt with when the Bank Act is revised, but whether it appears in the act or not depends upon a great many considerations.

Senator HUGESSEN: I do not like looking a gift horse in the mouth. I am quite sure that the Premier of British Columbia intends to go very far in meeting the wishes of this committee, but I am afraid that this language leaves me a little doubtful. He says in his last paragraph:

> I have no hesitation to undertake, on behalf of the Government of British Columbia, that no subscription for shares of stock in the Bank of British Columbia will be made, directly or indirectly, by or on behalf of the Government of this province, until the next revision of the Bank Act has gone into effect.

Well, what he is suggesting is that we pass this bill now and let the bank go into operation. Then, he says, he will not subscribe for any shares of the bank until the next revision of the Bank Act has gone into effect. It is conceivable that when that happens, even if there is a prohibition in the future against provinces subscribing to the shares of chartered banks, this bank will not be subject to that provision. It will have been incorporated before that provision came into effect. I am a little suspicious. Seeing that we are faced with this question now as to whether the province should invest in the shares of a chartered bank I would much prefer to hold this whole matter over, and have it dealt with after the Bank Act has been revised.

The ACTING CHAIRMAN: Senator Crerar?

Senator CRERAR: There is one point, Mr. Chairman, that interests me. It seems to me clear that if an amendment is made in the next general revision of the Bank Act which has the effect of barring any Government—and I include the federal Government—from holding stock in a chartered bank, then that would effectively bar the province of British Columbia from holding shares in this bank, or any other bank. I think that that follows. Now, if such a prohibition is not made in the revision of the Bank Act, and we grant this charter subject to the provisions of this letter—which I have not the slightest doubt will be lived up to—then in the absence of such an amendment to the Bank Act this charter will be valid, and the Province of British Columbia could go on and have its investment.

I should put it this way: If that happens then I would feel we had been out-manoeuvred a little bit, if I may use that term, because I have a definite objection to any provincial government or a federal government owning shares in a chartered bank, and for the reasons that I have already placed on the record of this committee's proceedings. Could I get some information on this? Supposing the federal Government drops out of this, Mr. Bonner, would you expect that private individuals in British Columbia, or elsewhere, would come forward and take up subscriptions in the bank so that it could do business? I am wondering about that.

I should like to make it clear that I have not the slightest hesitation in suporting an application for a charter for a bank with its head office in British Columbia. I have no hesitation in saying that. My objection is to the provincial government, for reasons already stated, holding stock in a chartered bank. If the members wait for a general revision of the Bank Act, I would say that the Government of British Columbia would probably be out for all time.

Hon. Mr. BONNER: On the question of establishing the bank and the degree of support it might receive, the government are not far off. There has already been testimony, and I may say this because it has also been raised by Senator McCutcheon.

As recently as last week I attended the opening of the new Vancouver Stock Exchange. People in the industry in Vancouver assure me that they have a very substantial number of orders on an "if, as and when" basis. Apparently there is a great deal of interest in the proposition that a Bank of British Columbia be formed and there is quite a great deal of evidence to suggest that it will be heavily subscribed.

It is a matter of judgment whether it will be subscribed to the extent of $300 million, with or without government participation.

In any event, the government took the position, in response to the authority of the legislature, in January, February and March of this year, and the government has not deviated from the undertaking it gave to its legislature in that respect.

However, since that time there have been a number of meetings of this honourable committee. At the last preceding meeting I felt it was fortunate that honourable Senator Hugessen placed in a motion a crystallization of the objections which he at least felt towards the approval of this bill at this time. I will not trespass on your time to read the motion, but it does relate in its preamble that the premier and members of the British Columbia Government have appeared here and have indicated with all candor what they have been authorized by the legislature to do in connection with this bill.

I refer to this specifically because, particularly Senator O'Leary (*Carleton*) asked why I was here at all. I am here at all because I speak for the Government of British Columbia and Mr. Burke-Robertson speaks for the petitioners. If I may say so, sir, the committee has directed more attention to the Government of British Columbia than it has to the petitioners. The petitioners have been here on a number of occasions and I think that on only the first occasion were they asked a question at all.

The purpose of the undertaking here tonight, sir, was to meet the specific objection to the present consideration and approval of this bill by this committee, crystallized by Senator Hugessen's motion. As I understand it, and as the clear wording of the motion implies, important questions of public policy are involved as long as this committee has before it the immediate intention of the government to participate in share ownership, as we have been authorized by our legislature to do.

So as not to hold up the passage of the bill further and to permit the examination of the questions of general policy and public policy, which are referred to by Senator Hugessen, we have understaken—in what I submit, with deference to Senator Pouliot, is unmistakable language—not to subscribe for shares in this bank, or offer to subscribe for shares in this bank, until the Bank Act has been revised and the opportunity given to the houses of Parliament to consider those questions of policy which are apprehended by Senator Hugessen.

Now, if with the full examination by the Houses of Parliament this question of share ownership is not touched upon—and it is not touched upon, sir, in the existing act—when I suggest that what is proposed by British Columbia is in order. We are anxious that the petitioners, and the public of our province are anxious, that this affair be not prejudiced by an authority given by our legislature, and we have undertaken publicly to withhold acting upon that authority until the Houses of Parliament have in the fullness of time had an opportunity to pronounce either positively, or by meeting to pronounce negatively on one or two questions bothering this committee. I suggest that is a very candid position to put before you at this time.

The Acting CHAIRMAN: Senator Croll?

Senator CROLL: There are two things I wanted to say about Senator Hugessen's statement. First, that the statement made in the letter by the Premier of British Columbia and augmented by the Attorney General, certainly should be taken for their true value. It is an act of faith on their part, to put it in writing, and to come here and tell us what they are going to do.

Now on the point raised by Senator Hugessen as to the possibility of passing the act, then the Bank Act being revised. Their petitioners taking the position at that time that having passed the act we are bound to proceed and give them their licence. Let us look at that for a moment. The granting of a charter is not the granting of a licence for a bank. The only advantage they obtain from a charter is a right to go to the Treasury Board for a licence. They have got to satisfy dozens of requirements, in the normal way, and they have to satisfy the law as it appears on that day—not what it was or is to be but as it

appears on that day. So that anything that we do now does not prejudice—and particularly in the light of this letter—the Government in any way with respect to this particular charter.

We have already had it from Mr. Burke-Robertson, I think, that whatever the law is they will obey it. We expected that answer from him. Therefore the request being made here seems to me to be a very sensible one.

The Acting CHAIRMAN: Any further questions of the witnesses?

Senator KINLEY: Is this proposal an amendment?

The ACTING CHAIRMAN: Are you asking about Senator Hugessen's motion?

Senator KINLEY: Is it an amendment

The ACTING CHAIMAN: No, it is a positive motion.

Senator KINLEY: And this would kill the bill?

Senator CROLL: Yes.

The Acting CHAIRMAN: It is a report of this committee.

Senator CROLL: It would not kill the bill; it would murder it.

The Acting CHAIRMAN: It is a motion as to the report of this committee to the Senate.

Senator KINLEY: That is, as far as the committee is concerned, it will have killed the bill.

Senator CROLL: That is right.

The Acting CHAIRMAN: Well, they will have done whatever is said in the motion.

Senator KINLEY: Whether stopped or just delayed, I think it kills the bill.

Senator ROEBUCK: It kills the bill.

Senator KINLEY: Do we need to do that, in the light of all that has been said; or should we not keep it alive? I think it should be kept alive.

The Acting CHAIRMAN: The motion is that the preamble of the bill has not been approved.

Senator KINLEY: That is a matter of argument, too.

The ACTING CHAIRMAN: Any further questions of the witnesses?

Senator PATERSON: Mr. Chairman, may I say a few words, at the risk of repeating myself? Senator Croll made the statement that the petition for this bank should be treated like the other two petitions which came before us. I would like to point out that this is a totally different proposition from a private bank. This is a question of granting a charter to people who own very valuable natural resources and control them. It puts a weapon in the hands of somebody that might be to disadvantage. If this charter were granted, we would be establishing a precedent for the whole of Canada. If we give this charter to the Province of British Columbia, why should we not give nine other charters to nine other provinces? If we do that, and they all control their natural resources, and all use them as weapons, we have endangered the economy of the whole of Canada. I say this is too dangerous a proposition.

Mr. BONNER: Mr. Chairman, I realize that in the observation I am about to make I am receiving generous treatment from the Chair. It has been suggested that this bank is different. With this I agree. This is the only time that the Houses of Parliament have been asked to approve an all-Canadian bank. This is the only bank which has ever come before the Houses of Parliament, to my knowledge, sir, which has restricted share ownership in its entirety to resident Canadians. In that sense, it is a very different bank from others.

As to those who may own the bank, 90 per cent are going to be residents of Canada, and up to 10 per cent may be representatives of the government of British Columbia, in the person of the Minister of Finance. I felt I could not allow that comment to go unpassed, without making some observation about it.

Senator LAMBERT: May I ask a question with relation to the final paragraph of this letter. Having due regard for the complete change of position and some of the previous revisions, does that in any way affect the intention of the Province of British Columbia to share in the stock of the company to the extent of 10 per cent of the holdings, that is, pending the revision of the Bank Act? I do not see anything in this leter to offset the statement that has already been made in that respect. Supposing this committee passes the bill, does that still imply that the Province of British Columbia will have a potential interest of 10 per cent, to that extent?

Mr. BONNER: The short answer is, yes.

Senator CROLL: Well, although the answer is yes, I think the answer has already been given—if the law permits.

Mr. BONNER: That is right.

Senator CROLL: Then say so.

The ACTING CHAIRMAN: Any further questions?

Senator MOLSON: Mr. Chairman, Mr. Burke-Robertson is appearing for the petitioner. As Mr. Bonner said a little while ago, the intention seems to be directed almost entirely to the government and very little to the petitioners. As a representative of the petitioners, would Mr. Burke-Robertson mind telling us how, in the event of the passing of this bill, the petitioners intend to proceed. This is something we have not heard.

Mr. BURKE-ROBERTSON: I think it has been treated fully in the proceedings of July 22, Mr. Chairman and gentlemen.

Senator MOLSON: I don't think that is true, because the conditions have changed, Mr. Burke-Robertson.

The ACTING CHAIRMAN: Senator Molson, is your question directed to how are they going to proceed if the Province of British Columbia is not buying shares?

Senator MOLSON: Senator Croll said that every bill should be treated alike, and I am sure that every member of this committee thinks so. The original premise of the bill was, when it came to us, and as at that time was so well stated by the Premier of British Columbia and Mr. Bonner, the government intended to have a 10 per cent participation. Now that situation has changed. Do the petitioners, or the representative of the petitioners, say under these circumstances how they intend to proceed? Because this is what the other petitioners of banks have told us—what they were going to do.

Mr. BURKE-ROBERTSON: Even in July, in fact, all the way through, senator, it has been the intention of the petitioners to secure subscriptions for 90 per cent of the stock, so there is no change there at all.

Senator MCCUTCHEON: But up to that time they had an undertaking the government would purchase up to 10 per cent of the shares. Now they have no undertaking. When are they going to offer these shares, and at what price?

Mr. BURKE-ROBERTSON: That evidence is already in the record of July 22, senator.

Senator MCCUTCHEON: I would be very happy to have the petitioners back to tell me what they are going to do between now and the final revision of the Bank Act, with respect to their financing of this bank. That is what all

the other petitioners did. Here is a situation which has completely changed. The representatives of the government told us that even if the offering of shares was oversubscribed they were going to take up their subscription. The whole emphasis has been that the government is going to do this, and it doesn't matter how many hundreds of millions of dollars it will need.

That comes back to what I said originally. If the petitioners said, "We will take no steps pending revision of the Bank Act", even then I would like to know how they propose to finance it, because we do not like to see charters just floating around in the air.

Mr. BURKE-ROBERTSON: With regard to the interest of the Government of British Columbia in this whole undertaking, whether they actually have money in it or not, you may remember when the Premier was here he said not that the Government of British Columbia would invest 10 per cent, but up to 10 per cent. He said at one point it may be as low as 2 per cent; but the measure of interest and support which the government has with reference to this bank was certainly indicated. The government is interested in the bank mainly for the development of the province and the resources of the province. From that point of view, it will stimulate business within the province enormously, in the opinion of the government.

Senator CROLL: Mr. Burke-Robertson, if the committee is prepared to accept the word of the Premier and his Attorney-General that they will wait until the Bank Act is revised, and abide by it and act in the light of it, what is your objection to bringing the petitioners before the committee to tell us, as the others did, how they will finance the new bank?

Mr. BURKE-ROBERTSON: I do not think, senator, I expressed any objection to bringing them before the committee. Our only interest is in getting on with the bank and getting the bill passed.

Senator CROLL: Well, this bill is not going anywhere anyhow at the moment. You know that as well as I do. If the committee narrows it down to just that, then you are ahead of the game; because if you get the bill over to the House of Commons tomorrow, it is going no place, so there is nothing to be gained. On the other hand, you can bring the applicants for the charter to the committee to tell us how they will obtain the money, and then the whole thing is settled.

Mr. BURKE-ROBERTSON: That is very true.

The ACTING CHAIRMAN: Any further questions of the witnesses? If not, are you ready to have Senator Hugessen speak to his motion?

Senator CROLL: Mr. Chairman, isn't there a suggestion the petitioners be given an opportunity to come before the committee?

The ACTING CHAIRMAN: The motion is before the committee. This is a late night in Parliament.

Senator FLYNN: Mr. Chairman, I am worried about the motion as it is now. I have expressed the view it does not stand any more because it is based on the principle that the Government of the Province of British Columbia is going to subscribe. This has changed. I do not know how we can vote on a motion that is based on a fact that has disappeared. I suggest we may vote on the principle of the bill itself; but on the principle of the Government of British Columbia subscribing for shares, this is not before us any more.

Senator LAMBERT: Sure it is.

Senator FLYNN: I think this motion does not stand on the facts any more. The next time this principle for a government of a province subscribing for stock will come before Parliament, I suggest, will be when the Bank Act is revised. Then we can discuss that. But at the present time we would be invited to vote on something that is not a fact.

Senator McCUTCHEON: Mr. Chairman, I would move an amendment to Senator Hugessen's motion, that further consideration of this bill be postponed until the next sitting of the committee, to enable the petitioners to appear and give us further evidence.

The ACTING CHAIRMAN: Perhaps we had better clarify this motion. Rule 44 states:

> When a question is under debate, no motion is received, unless to amend it; to commit it; to postpone it to a certain day; . . .

I take it your motion is really for a postponement?

Senator CROLL: Fix a date.

Senator McCUTCHEON: I would move that consideration of this motion be postponed until December 22.

Senator KINLEY: Then there will be nobody here.

Senator McCUTCHEON: We will be here on the 22nd December. I do not want to be, but I will be.

Senator CROLL: He knows.

The ACTING CHAIRMAN: Senator McCutcheon is moving the motion.

Senator McCUTCHEON: —until December 22 in order to permit the hearing of further witnesses.

The ACTING CHAIRMAN: A seconder for that motion?

Senator CROLL: I second that.

Senator FLYNN: For clarification purposes, I would like to know if the further witnesses will be on the subject matter of the motion of Senator Hugessen or on the substance of the bill itself. I think this confusion has existed since the beginning.

The ACTING CHAIRMAN: Senator Croll, this motion is debatable, so we are debating now the motion to postpone the hearing until December 22.

Senator CROLL: He moved it and I seconded it.

The ACTING CHAIRMAN: The motion is to postpone consideration of Senator Hugessen's motion until December 22, which is a week tomorrow.

Senator CRERAR: I think that is a mistake. I think we ought to settle this thing now.

The ACTING CHAIRMAN: Any further discussion on Senator McCutcheon's motion?

Senator LAMBERT: Am I right in assuming that if we adopt this suggestion of the witnesses, then really we are taking action on a conditional understanding, a conditional undertaking? Surely, if this letter means anything at all it means there will be no action taken in British Columbia until after the revision of the Bank Act.

Senator BLOIS: No.

Senator LAMBERT: No action taken by the Government of British Columbia until after the Bank Act revision? If we agre to that and pass this bill on that condition, I submit very definitely we are probably exerting a certain prejudicial influence that should not be exerted before the time comes for the revision of the Bank Act. I think the revision of the Bank Act which might establish a new policy in connection with this thing should be cleared up first.

Senator KINLEY: Does he expect us from Nova Scotia and the west to come here on December 22?

The ACTING CHAIRMAN: You have the right to vote against it.

Senator KINLEY: I cannot vote against it in Nova Scotia. I can do as I like now.

The ACTING CHAIRMAN: I take it you are not in favour of the motion.

Senator KINLEY: I would like to see it postponed, but I do not like the 22nd of December.

The ACTING CHAIRMAN: Any further discussion on Senator McCutcheon's motion? Are you ready for the question?

Senator ASELTINE: We are not dealing with Senator Hugessen's motion now?

The ACTING CHAIRMAN: The question is that the consideration of Senator Hugessen's motion be postponed until December 22 for the hearing of further witnesses.

All those in favour of the motion of Senator McCutcheon for adjournment to December 22?

Senator BAIRD: What is the motion?

The ACTING CHAIRMAN: The motion is for the adjournment of the hearing until December 22.

All those in favour?

Contrary?

The motion is lost.

Are you ready now for the consideration of Senator Hugessen's motion?

Senator ASELTINE: Is the motion to adjourn lost?

The ACTING CHAIRMAN: Yes.

Senator ASELTINE: Before we deal with the motion, I would like to make a few remarks in order to make my stand clear.

I have given a lot of consideration to the suggested amendments that were made a couple of weeks ago which would prevent the Province of British Columbia holding any more than 10 per cent of the shares or stock in the bank. I have come to the conclusion any such amendment or amendments should not be made to Bill S-20 at all but should rightly be made to the Bank Act itself. Otherwise it would be discriminatory legislation. There is nothing in the Bank Act as it stands to prevent any province holding shares in any chartered bank, and if anything like that is to become law, the Bank Act itself should be amended.

Now with regard to the reasons not to approve the preamble, I should say that the motion and the reasons therefor came as quite a surprise to many of us, and I am sure to some others also. The motion that Bill S-20 should not be further considered until the Bank Act is revised does not hold water, as we have already passed the other two bank bills and did not ask them to wait.

I also wish to say that last September I spent a week or more in the Province of British Columbia, and I interviewed many people of all political shades of view. A few did not like the idea of the province being a shareholder, but the majority of those interviewed did not mention that, and did not seem to care. Everyone wanted this bank. People of all shades of political opinion wanted it. They said that British Columbia was on the verge of great expansion and growth. They quoted the Peace River and Columbia River projects and other developments, and considered that British Columbia just had to have this bank in order to keep in stride with large provinces like Ontario and Quebec.

Personally, I do not like the idea of a province being in the banking business, but neither do I feel like killing this bill.

Senator FLYNN: I have already expressed my views on the motion, but I want to clarify one point. After this motion is voted on, as I expect and hope it will be, if any honourable senator wants to adjourn the debate for further evidence on the part of the petitioners to form the proposed bank without the concurrence of the Province of British Columbia, I will support such a motion. In the meantime I repeat that this motion stands on nothing.

Senator BURCHILL: I agree with the last speaker. I voted against the motion to defer because I did not like the idea. You say we have to specify a date. Can we not put a motion through to defer it until the petitioners can come?

Senator FLYNN: This has been voted down. We are on the motion now. I have been trying to make my position clear that we are mixing the problems.

The ACTING CHAIRMAN: By unanimous consent we can certainly adjourn to any date at all or to an uncertain date. But any other motion has to be to a specified date.

Senator CROLL: If the motion is turned down, as Senator Flynn is trying to say, we can adjourn until we can hear the petitioners.

Senator ROEBUCK: We only turned down the motion to adjourn to December 22. It is perfectly in order to have another motion to adjourn to another date.

The ACTING CHAIRMAN: Another motion is in order, but unanimous consent is needed to adjourn to an unspecified date.

Senator BURCHILL: I have no date in mind.

Senator CROLL: You have to fix a date under the rules.

The ACTING CHAIRMAN: We can adjourn indefinitely by unanimous consent.

Senator PATERSON: We can adjourn it until the Bank Act is revised.

The ACTING CHAIRMAN: Even that could be done by unanimous consent.

Senator KINLEY: I would like to move that we adjourn until Parliament reassembles after Christmas.

The ACTING CHAIRMAN: I would have to rule that out of order. You would have to fix a date unless there was unanimous consent.

Senator CROLL: The rules provide that you must fix a date, but it can be any date you like.

Senator PEARSON: I would move that we adjourn until December 17.

An hon. SENATOR: 1966.

The ACTING CHAIRMAN: That motion is in order. Senator Pearson moves that further consideration be adjourned until December 17 for the purpose of considering this matter. All in favour of adjournment until December 17 please signify by a show of hands.

All those against?

The motion is lost.

Are you ready for the question on Senator Hugessen's motion?

Senator ASELTINE: Mr. Chairman, I think you should put the question again on the first motion. There was some confusion about it.

The ACTING CHAIRMAN: Senator Aseltine would like the vote to be held again on the motion to adjourn until December 17, Thursday of this week. All those in favour of Senator Pearson's motion to adjourn until December 17 please signify by a show of hands.

Now all those opposed? The motion is lost.

The question is now on Senator Hugessen's motion. I may just give the salient features of it. The motion is:

> That the committee do report to the Senate with respect to Bill S-20, an act to incorporate the Bank of British Columbia, as follows:
>
> In the opinion of your committee, the preamble to this bill has not been proved, for the following reasons:

At the hearings before the committee, the Premier and other Ministers of the Government of the Province of British Columbia appeared in support of the bill and stated that, if the bill were passed, the government of that province would subscribe for up to 10% of the shares to be issued by the bank; so far as your committee is aware, there is no precedent for the ownership by the government of a province of a substantial proportion of the shares of a chartered bank operating under the provisions of the Federal Bank Act; this could involve the effective control of a federal chartered bank by the government of a province, a situation which would raise important questions of public policy and of constitutional law; your committee is of the opinion that these are matters of general policy which should be determined by the Parliament of Canada in the forthcoming revision of the Bank Act, and that pending such determination this bill should not be proceeded with.

Are you ready for the question?

Hon. SENATORS: Yes.

Senator CROLL: A recorded vote, please.

The ACTING CHAIRMAN: All those in favour of Senator Hugessen's motion?

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Honourable Senators

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Beaubien (*Bedford*)	Hugessen	Power
Blois	Irvine	Smith (*Kamloops*)
Crerar	Lambert	White
Davies	Lang	Willis—19.
Dessureault	McCutcheon	
Fergusson	Paterson	

NON-CONTENTS

Honourable Senators

Aseltine	Flynn	Roebuck—7.
Burchill	Kinley	
Croll	Pearson	

Senator MOLSON: Mr. Chairman, I did not vote for reasons previously stated.

The ACTING CHAIRMAN: There are 19 for and 7 against. The motion is carried.

The committee adjourned.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-22, intituled: "An Act to amend the Companies Act".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, MAY 27, 1964

No. 1

WITNESS:

Mr. Louis Lesage, Director, Companies and Corporations Branch, Department of the Secretary of State.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20903—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 20, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Vien, P.C., seconded by the Honourable Senator Bradley, P.C., for second reading of the Bill S-22, intituled: "An Act to amend the Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, for the Honourable Senator Vien, P.C., seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

20903—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, May 27, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.10 a.m.

Present: The Honourable Senators: Hayden (*Chairman*), Beaubien (*Bedford*), Blois, Bouffard, Cook, Crerar, Fergusson, Gershaw, Hugessen, Kinley, Lang, Leonard, McLean, Molson, Reid, Smith (*Kamloops*), and Woodrow.—17.

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

On Motion of the Honourable Senator Bouffard, it was RESOLVED to Report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-22.

Bill S-22, intituled: "An Act to amend the Companies Act", was read and considered.

The following witness was heard:

Mr. Louis Lesage, Director, Companies and Corporation Branch, Department of the Secretary of State.

After discussion, the Clerk of the Committee was directed to inform certain organizations and associations that the Committee would entertain representation at their meeting of Wednesday, June 3, 1964, in Senate Committee Room No. 256-S, at 9.30 a.m.

At 12.20 p.m. the Committee adjourned until Wednesday, June 3, 1964, at 9.30 a.m.

Attest:

F. A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, May 27, 1964

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, to amend the Companies Act, met this day at 11.15.

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

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

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

The CHAIRMAN: We have here today from the Companies and Corporations Branch of the Department of Secretary of State, Mr. Louis Lesage, the director; and Mr. J. W. Ryan from the Legislation Section, Department of Justice. This was planned in this way by the chairman. We have had requests from a number of organizations—such as, a section of the Canadian Bar Association, at least one person from Winnipeg and, I would expect, also the Chartered Accountants Association—to make representations. I thought possibly we should fix a day when we would hear them so that if they attended in Ottawa on that date they would know they would be heard. I think possibly we should fix next Wednesday, if that meets with the views of the committee, as the date on which we would hear the outside parties who want to make representations on the bill. We would notify them accordingly, so they would have lots of time to prepare their material. Is that agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: Today I thought we might get the viewpoint of the departmental officers, particularly Mr. Lesage, and whatever Mr. Ryan, from the legislation section of the Department of Justice, may want to add. Are you going to deal with this in the first instance, Mr. Lesage?

Mr. LESAGE: Yes.

The CHAIRMAN: I just want to throw out this idea to the committee. Ultimately we will have to go through this amending bill section by section. I thought possibly what Mr. Lesage might prefer to do this morning would be to highlight the sections that contain important changes.

Senator REID: What position does he hold?

The CHAIRMAN: Mr. Lesage is director of the Companies and Corporations Branch of the Department of the Secretary of State.

Mr. Louis Lesage, Director, Companies and Corporations Branch, Department of Secretary of State: Gentlemen, a few years ago it was felt by the department that it would be rather difficult to continue the administration of the Companies Act, which had not been amended in the last 30 years, without bringing into

it a few amendments, mostly of a procedural nature. Therefore, our department presented a brief to the Cabinet, and it was then decided that an inter-departmental committee, with the assistance of three outside lawyers—one from Toronto, one from Ottawa, and one from Montreal—should study the amendments prepared by the department. But at that time, when we presented that memorandum to the committee, it was never intended to make it a full review of the Companies Act, because we were under the impression it was almost an impossible task for civil servants, with all their other duties, to try to bring before Parliament an entirely new Companies Act. However, because of the urgent need we submitted to the Cabinet a few recommendations, and the committee which was set up added other recommendations. We had also received in the department some briefs, and I would say that the main one was from the Canadian Institute of Chartered Accountants.

There was also a draft uniform Companies Act which was prepared by a committee of the Canadian Bar Association, but this draft uniform act, although it has many good points, presents some drastic changes in our corporate law system. We do not think that as civil servants we can in any way make a recommendation to Parliament to adopt or turn down the recommendations of the draft uniform act. Nevertheless, we worked on Bill S-22 in the committee having in view the draft uniform act, and we brought into this bill the sections which could be embodied without changing the basic structure of the act.

We also borrowed from the Ontario Act and, to a large extent, from the brief submitted by the Institute of Chartered Accountants. That might be the reason why you will receive and you will see from those outside organizations pressure for some amendments which were not adopted by our committee because they would have the effect of changing the basic principles of our Companies Act. For instance, many of them might have an adverse effect.

This draft uniform act was mostly prepared with the help of representatives of provincial authorities, and I wonder if sufficient consideration was given to the differences between the legislative authority of the Parliament of Canada and the provinces, because there might be some constitutional difficulties involved therein.

If I could mention only one problem here, it is the matter of the redemption of preferred shares and common shares out of capital. In the Ontario Act they have already adopted this for the redemption of preferred shares by way of a decrease of the preferred capital stock without the issue of supplementary letters patent. The draft uniform act went further and even suggested that common shares in a company could also be redeemed and that the capital be so reduced. This is a system which would change, I would say, all the philosophy which is underlying our Companies Act and our corporate law system as it is at the moment.

It is an item which we felt we were not prepared to deal with on a departmental basis. This is one of the reasons we have not gone as far as the draft uniform act or as far as other organizations' recommendations.

In that connection I can say that a few years ago we received from the Metropolitan Toronto Board of Trade a memorandum which stated that at the moment they could not see any good reasons for changing drastically our Companies Act and the structure of our corporate law system, as they did in Ontario and as it is proposed in the draft act, and that they would rather suggest only amendments of a minor nature, and it is along those lines that we have proceeded. For those reasons, gentlemen, I could perhaps within a very few minutes outline what we have done and the reasons why.

The first deals with the name of the act. I think that the name of the act is a matter of convenience to the Canadian public and others dealing in corporate

law. So it was suggested that we submit the name "Canada Corporation Act" to make it distinctive from the Ontario Companies Act, the Manitoba Companies Act, and the Quebec Companies Act, and adopt the distinctive word "Canada" so that no one could be misled. We have changed the word "Companies" to "Corporation" because the Act is not dealing exclusively with joint stock companies but is also dealing in Part II, III, IV, V and VI with other corporations which are not joint stock companies. If the title embodies the word "companies" it might be misleading, and for that reason we felt that the word "corporation" would be the better in the title, and so we ended with the name "Canada Corporations Act".

In section 3, a minor amendment was brought up to clarify the definition of courts, and we have added "and in the Northwest Territories, the Territorial Court." This was an omission from the act.

In 1953 Ontario revised entirely its Companies Act, and adopted from the English Companies Act the term "special resolution" instead of "by-law" to define a by-law which is not of a permanent nature, but which terminates by the issue of supplementary letters patent confirming it. It is a by-law which is passed and then confirmed by the shareholders before it is submitted to the department for the issuance of supplementary letters patent, and in order to distinguish between this type of by-law and the permanent by-laws of a company or corporation they use the term "special resolution."

Since Ontario has adopted that and in order that everyone could be understood we have suggested that within the meaning of sections 17, 26, 48 and 49 the word "by-law" may be referred to as a "special resolution." That is only permission to use other language. It is rather minor in itself. It is only to accommodate those lawyers practising in Ontario who understand or have a better understanding of the distinction between the terms "special resolution" and "by-law." We could not see any objection.

Clause 4 is only to implement the word "irregularity" by adding the word "insufficiency." Sometimes we receive applications which are not sufficient, and to make sure that the letters patent which would correct that insufficiency would be issued on a completely legal basis we thought that the addition of the word "insufficiency" would cover the departmental authorities when issuing the letters patent as they would add something to the petition itself.

The CHAIRMAN: Mr. Lesage, it would appear that you are going to proceed to deal section by section with the bill at this time. I had thought that since you are so familiar with this you might pick out the sections that are more important and tell us the why and wherefore of them and later when we hear all the representations we will deal with it section by section.

Mr. LESAGE: The first important one we can see in the bill is regarding the application for incorporation itself. As you know, an application for incorporation had to be accompanied by a memorandum of agreement, signed by the applicants, before the application could be made. Furthermore, both documents had to be signed. Following Ontario we felt we could insert in the application the only part in the memorandum of agreement which was really distinct from the application itself, that is to say the subscription for shares by the provisional directors. Of course this brings a number of consequential amendments.

Mr. DAVIS: What section is that?

Mr. LESAGE: Clauses 6, 7 and 8 of the bill. Another amendment which has been brought in subsection 4 of section 5 of the act is the power given to the Secretary of State to ask the Attorney General of Canada to seek before a court the dissolution of a company in three more instances. It is at the top of page 3 of the bill.

> If a company fails for two or more consecutive years to hold an annual meeting of its shareholders....

It is a sanction to enforce section 100 of the Companies Act. As it stands section 100 has no specific sanction. We have to tie up section 100 and the sections dealing with the deposit of financial statements together. Financial statements are due only 14 days prior to holding an annual meeting, and if the company is not holding an annual meeting we would not, under section 100, have any provision to compel the defaulting company to file its financial statements.

Senator LEONARD: Are there any clauses of that kind in respect to the cancellation of club charters?

Mr. LESAGE: Yes, we had something there. We made section 5 applicable to Part II. As you will see at the moment there is no provision in the Companies Act to bring an application before a court to dissolve corporations without share capital, and section 5 was not applicable to Part II, but we made it applicable.

Senator LEONARD: If it is in there perhaps we will come to it in due course.

Mr. LESAGE: Yes, of course it is. It is clause 41 on page 40, which amends section 147. It reads:

> 147.(1) The following Provisions of Part I apply to corporations to which this Part applies, namely...

and underlined in paragraph (a) is "subsection (4) of section 5." That is the way we brought in the amendment.

Senator LEONARD: Thank you very much.

Mr. LESAGE: Thereafter, the other major matter we dealt with was the deposit of the financial statements and the annual summaries. We have experienced difficulty in obtaining compliance with those provisions of the act with respect to many companies. As a matter of fact, I would say that almost 300 companies a year fail to file their annual return. Four or five years ago we tried to cut down on the number of defaulting companies. We had a temporary success, but it was not a complete success because we had not sufficient power to enforce those provisions. The only power of enforcement we had was to ask a court to fine those companies $20 a day. Everyone knows that if we had sued a company before the courts for default in filing its annual return it would have been sentenced to a fine of $20, and it would have complied in the meantime, and the whole matter would have cost the Government a lot of money—

The CHAIRMAN: In lawyers' fees?

Mr. LESAGE: —in preparing the case, and hiring a solicitor for the Department of Justice, and so on. For that reason we have brought in a clause which provides that we can ask for the dissolution of those corporations. We have, at the same time, asked for an easier way for those companies to surrender their charters. Many of those companies do not comply because they are not operating, or because although they were incorporated they were never organized. Some of them were not complying with section 29, which deals with the surrender of charters, because it was too expensive. So, we have, I would say, opened up section 29 to permit an easy way of surrendering charters for those companies who do not want to comply for any reason, but at the same time we were careful to protect the rights of the creditors, if any.

Senator KINLEY: May I ask a question, Mr. Chairman?

The CHAIRMAN: Yes.

Senator KINLEY: With regard to this question of company defaults, does the section put any obligation on the directors? Is the financial position of a company affected if there is default in respect of these sections?

Mr. LESAGE: The department would not accept the surrender of a charter if a company has debts or other liabilities.

Senator KINLEY: Yes, but are the directors of the company personally responsible if the company does business in default of its obligations?

Mr. LESAGE: Of course, they are. The directors are personally responsible. They were responsible before, and they are still responsible.

Senator KINLEY: They are not responsible if it is an incorporated company, but does default under the statute put any responsibility upon them?

Mr. LESAGE: We cannot proceed until after two years, and then because of the provisions of section 30 of the act we have to give the creditors another year in which to sue the company or the directors of the company.

Mr. KINLEY: As long as you do not revoke the charter they are in the clear?

Mr. LESAGE: Yes. We thought also that the requirements of section 125 of the Companies Act were really too cumbersome so we tried to limit to a bare minimum the requirements with respect to the information we need from companies. We have reduced the information required to the name of the company, the postal address of its head office, and the names and addresses of its directors. As a matter of fact, in practice the only information which is needed by solicitors or requested from the public is where the company is located, and the names of the responsible officers. In the ten years I have spent in the Companies Branch I can assure you gentlemen that that has been the only information required by the public. Having regard to that we could see no reason why we should ask for details of capital structure, or for information which we otherwise already have, or for some other information that is now given under the Corporations and Labour Unions Returns Act.

This is a duplication. But, at the same time we have adopted from the Ontario Act a new section 125A, which appears to be giving a little too much power to the Secretary of State. If you will permit me I will read it because I think it was questioned by an honourable senator when the bill was introduced in the Senate:

> The Secretary of State may at any time by notice require any company to make a return upon any subject connected with its affairs within the time specified in the notice, and on default in making such a return every director of the company is guilty of an offence.

The reason the section is borrowed word for word from the Ontario act, and from the draft act . . .

Senator HUGESSEN: Was that what might be called a catch-all provision?

Senator LEONARD: Is not that the province in which there was a bill to create a police state?

Mr. LESAGE: Yes. You see, gentlemen, if we are going to reduce the returns from the 13,000 companies we have to administer in the Companies Branch to a bare minimum, there might be a time when they will be requesting supplementary letters patent and we will need some more information. We will make use of section 125A for that purpose.

The CHAIRMAN: But, Mr. Lesage, if you are going to impose a liability on a director in the circumstances of section 125A then the request for information should go not only to the company but to the directors.

Mr. LESAGE: I think so, sir.

The CHAIRMAN: It does not say so here.

Senator LEONARD: Should it not be qualified in relation to some of the provisions of the act itself, to give a foundation for the Secretary of State requiring some return?

The CHAIRMAN: There may be matters in respect of which a director would not have any particular knowledge.

Senator BOUFFARD: Apart from that, I do not think the directors have any remedy. They cannot make the return themselves. Even if you send a notice saying the company has not made any return how can a director make a return? Why should he be responsible?

The CHAIRMAN: He could be responsible and could comply in this case by entering his knowledge against each item. It may be that his answers to some questions are: "I have no knowledge".

Senator BOUFFARD: If a director is asked to make a return as to what he knows, then that should be sufficient to relieve him of any liability.

Mr. LESAGE: Of course, but in practice, as you know, the Companies Branch has never prosecuted any director for a breach of this nature. This is a power which we do not have at the moment, and it is only a power to seek more information. But, if a director says: "I do not know", then we have the information that he does not know and so he cannot be held responsible.

Senator BOUFFARD: It should be stated in the law.

The CHAIRMAN: Mr. Lesage has seen what our viewpoint is. When we come to consider the bill clause by clause I am sure he will have some suggestions to make.

Mr. LESAGE: Yes. As I say, this was copied word for word from the Ontario act.

Senator LEONARD: In your experience have you run into a need for such information?

Mr. LESAGE: No, but there is going to be a need for it if we are going to run into instances of small private companies not filing financial statements, or not giving any information under the corporations and labour unions return Act. In such a case we would be allowed to ask a private company to give us more information.

The CHAIRMAN: We will have a look at that.

Senator MOLSON: This says: "Make a return about any subject connected with its affairs". Surely those should be subjects which come under the act and are required to be reported upon in some form. The present phrase seems broad.

The CHAIRMAN: It should not be broader than the requirements to furnish information or reports.

I think Mr. Lesage has some idea of what our views are.

Mr. LESAGE: Yes.

The CHAIRMAN: Do senators wish to suggest particular sections? Mr. Lesage, you have introduced material changes in dealing with the filing of prospectuses.

Senator LEONARD: On Section 29, page 17, could you tell us something about that?

Mr. LESAGE: The prospectus sections we had in the Companies Act were first enacted in 1908 in London as an Imperial statute and they were introduced in Canada about 46 or 47 years ago, in 1917. Since then we have always kept those prospectus sections, which I would say are to a great extent outdated now.

At the time they were introduced in Canada in 1917, no province had any organization like a securities commission. There was no means of controlling the issue of shares or other securities of any company.

In 1917 Canada could not do anything better than borrow from England the 1908 statute they had there. This was left and kept in the Companies Act without any change. I understand that in the last 25 or 30 years in the United States and in other countries and in at least the major provinces in Canada, securities commissions have developed. As a result companies have to file their prospectuses either in New York, Montreal or Toronto and so on, according to the laws; and they have to submit those prospectuses to agencies which are very effective. The filing of those prospectuses in the department by companies becomes only a nuisance, I would say.

We should declare ourselves satisfied with the filing of certified copy of what is required in another jurisdiction, because our department is not organized and never has been organized to supervise and study those prospectuses and this work has always been done by the securities commissions. I think it would be a relief for those companies which are offering their shares and securities to the public. They would only have to file with the Department of the Secretary of States a certified copy of what they have to file with the other jurisdiction.

On the other hand we are not suggesting the entire deletion of those prospectus sections, because some of the provinces do not have the same problem, and therefore have not to be so completely organized in that respect.

I can see that before a company goes to a foreign country to sell its shares, it tries to find out the province where the laws will not be sufficient, or the government organization will not be sufficient, to study those prospectuses; and so they might very well try to change the site of their head office from Montreal or Toronto to a place like Yellowknife in the Northwest Territories. Then they would comply with the ordinances of the Northwest Territories and they could go to the German, French or Italian market and say: "We have complied with the Canada Corporations Act".

For that reason we are suggesting keeping in the act those requirements so that if a company tries to avoid the scrutiny of a serious organization like the Montreal, Toronto or Winnipeg Securities Commission we would be in a position to force those companies to comply with the old sections.

The mere fact that we are keeping them there will act as a safety valve but I do not think that we will ever have to use them. If we do not keep them, it would be dangerous, as some companies might try to do that.

Senator HUGESSEN: I think that is one of the most valuable sections in your bill. As matters stand now, with the requirements for offering securities in the major provinces, in the Ontario Securities Commission and the Quebec Securities Commission, it seems to me that the purchase of securities is amply protected and the fact that they would have to file a prospectus at the same time is not protection to the shareholder and is just a nuisance.

Mr. LESAGE: That is right.

The CHAIRMAN: In reading the section dealing with the information that must be presented to shareholders in the balance sheet, etc., I note that these sections cover in all from pages 20 to 28 of the bill. In checking it with the requirements in the Ontario act, you seem to have gone into much greater detail in two categories, one is in the balance sheet and the other in the notes to be appended to the balance sheet. Would you care to make some comment on that?

Mr. LESAGE: It is done at the request of the Canadian Institute of Chartered Accountants. After all, those sections are not administered by the department. They are for the internal administration of the companies. The department has very little to do with the content of the financial statement. In the way the Chartered Accountant Institute has drafted it, it appears to be cumbersome for small companies; but if the subsections do not apply, they do not impose a further burden. It is drafted in a way that would be simple to file or prepare

an annual financial statement from those principles which are outlined therein. They prepared that themselves because they have the experience of the income tax requirements. They had before them the Ontario act and the draft act. That is the reason why they suggested the insertion of those details and of all those notes.

The CHAIRMAN: Thank you, Mr. Lesage. If we feel that there are too many requirements listed, our questioning on that should be to the chartered accountants and not to you.

Mr. LESAGE: That is correct.

Senator MOLSON: May I ask the witness if these sections are in the bill precisely as recommended by the Canadian Institute of Chartered Accountants; or is there any variation?

Mr. LESAGE: There are a few variations. The variations would be on the appointment of auditors. There would be very few. We have agreed on that. There are very few requirements which we have kept from the present Companies Act.

The CHAIRMAN: Have you had an answer to that, Senator?

Mr. LESAGE: It is in section 124 on page 34 of the bill. It is a sort of a protection of the auditors, and also the shareholders at the same time, that the board of directors cannot force the appointment of a new auditor without the matter being submitted to the shareholders and without giving an opportunity to the retiring auditor to ask the reasons. This is to protect the auditors —and mainly to protect the shareholders.

The CHAIRMAN: That is not new.

Mr. LESAGE: No, it is not new. There is already some reference to it in the act. This was not in the brief of the chartered accountants, and I was asked whether it was a departure; I said, yes, that there are a few departures.

Senator BOUFFARD: In the financial statement of Caisse Populaire La Prairie, they must mention it if they are adding to the reserves. Is a company compelled to say why the reserve is added, and to give the reasons why they have added to the reserve, unless on account of expenditure, in which case it will be all right? Let us suppose there is to be quite an additional increase to the reserve, is there an obligation to add a note to say why the reserve has been increased to a certain extent, in the new act?

Mr. LESAGE: The reason for that, Senator, as I can see it, is that it is for the protection of the shareholders, if there is evidence that a reserve is being created. We have some of that type of administration nowadays, but we had more of that during the war for those companies who wanted to avoid the high income tax rate and waited until after the war.

Senator BOUFFARD: Supposing a company has been sued for $1 million, perhaps for material it has sold, or on account of a contract it has not performed, and the directors decide to put in a reserve to meet that obligation, if they have to do it. If that reserve appears on the balance sheet, that will have quite a bearing before the courts, and by having admitted the reserve, they will have recognized the obligation to a certain extent; but it might be highly detrimental to the shareholders if a court should take that into consideration and take it as an admission of liability, or if a jury should do so, on account of the fact that the company had already put up a reserve to meet the obligation and had admitted it.

Senator HUGESSEN: As I read the requirements of section 119(z) on page 26 of the bill, all a company has to do is to show a reserve, showing the amounts added thereto and the amounts deducted therefrom during the financial period. They do not have to give a reason for doing so.

The CHAIRMAN: No.

Senator LEONARD: Section 119(2) goes on to say:

> Explanatory information or particulars of any item mentioned in subsection (1) may—

Also, section 120, subsection (e) states: contingent liabilities, stating their nature and, where practicable, the approximate amount involved.

Subsection 3 says:

> Where applicable the following matter shall be referred to in the financial statement or by way of a note thereto.

The CHAIRMAN: You will notice that it says "shall", which I assume is obligatory.

Senator BOUFFARD: Yes.

Senator LEONARD: Yes; and that seems to cover the kind of case Senator Bouffard has referred to. The company might have to say why it is setting up a reserve.

Mr. LESAGE: But the way I take it, Senator Bouffard, you will find that our courts of justice might be influenced.

Senator BOUFFARD: They might be.

Mr. LESAGE: I do not speak of our learned judges; but a jury might be influenced.

Senator LEONARD: As a practical application.

Senator BOUFFARD: It might be highly detrimental to the shareholders.

Mr. LESAGE: I cannot offhand find the reference, but there are in those provisions some reliefs whereby a company can apply to a judge for permission not to disclose certain information. I think that is with regard to subsidiaries. However, I think as the result of your suggestion we could very well, in those instances, arrange that if a company has a reason, like the one you mentioned, it could apply to a court or to a judge in chambers, for permission not to disclose that reason; because this might have a bearing on a decision by a court.

Senator BOUFFARD: There should be some remedy, because, as I have said, in many cases it might be detrimental.

Mr. LESAGE: I agree.

Senator LEONARD: If this suggestion came from the chartered accountants, you might ask them.

The CHAIRMAN: Yes.

Mr. LESAGE: Also, it is copied from the draft act. Of course, I have to take some responsibility for what is in the bill but I do not think I can take the responsibility for the details of those requirements.

The CHAIRMAN: I understand that you agree with the point of view?

Mr. LESAGE: With the point of view of Senator Bouffard, yes; and I think we can correct that by giving authority to a company to cover those special cases.

Senator BOUFFARD: Thank you.

Senator REID: Mr. Chairman, is it intended to pass this bill today?

The CHAIRMAN: No.

Senator REID: I am wondering if there is a quorum.

The CHAIRMAN: Yes, there is a quorum.

Senator REID: It is a very important bill.

The CHAIRMAN: For that reason, I did not intend to continue much longer. However, I should like to get the reaction of Mr. Lesage to some of the new provisions. For instance, there is a provision with regard to amalgamation of companies.

Senator HUGESSEN: Before you start with amalgamation, Mr. Chairman, just as a matter of interest, although it is not terribly important, section 117 requires that a company shall place before an annual meeting to shareholders its statement of profit and loss, and so on. Under the old section the company is required every year also to give a statement, for instance, of its directors and legal fees. I see that has been dropped from section 117. Is there any special reason for that?

I think the committee should consider if it should not be entitled to receive that information about the fees paid each year, as in the past.

The CHAIRMAN: Yes, I agree. This is a matter that should be considered. It is a departure.

Senator HUGESSEN: It is a departure.

The CHAIRMAN: Except that I think they were lumped together before.

Senator HUGESSEN: Yes.

The CHAIRMAN: That is, directors and legal fees. Could we go to a new item, for which I think you are to be commended in having included it in the federal act, that is, the provisions in relation to amalgamation, except that there is one thing on which I would like to get your view. After the shareholders of both companies have approved of the plan of amalgamation, I think the provision here is that you then have to go to the court the same as you do under a scheme of arrangement.

Mr. LESAGE: Yes.

The CHAIRMAN: I am wondering, at the stage of amalgamation, when all the information is set out, there is the agreement of amalgamation and it goes to the shareholders. If the shareholders approve by a substantial majority, why then should you go to the court? I find the court sort of setting itself up as the censor or the person entitled to scrutinize the merits and the propriety of the amalgamation. They do it in relation to schemes of arrangement, but why should they do it in relation to amalgamations?

Mr. LESAGE: Why they should not do it, that is what I wonder. It is because there you will always have minority shareholders, and those minority shareholders, having placed their investment in a type of company, they are being forced by a big majority into another company. They had invested their money in that particular company for specific reasons. Now this company, which is rather small, is amalgamated with a very large company in which the small shareholder perhaps has no interest. I think only a judge can determine whether the rights of this dissenting shareholder could be protected.

The CHAIRMAN: But "amalgamation" is something which strikes me as being different from a scheme of arrangement. A scheme of arrangement which is presently covered in the statute, is where you are going to various classes of shareholders and you are propounding a plan under which you are asking them to give up or change or vary the rights they presently enjoy. Even when the requisite majority of the shareholders of a particular company approve that, you then have to go to the court to get the sanction of the court, and their practice has been that they do look at the merits and bona fides. But an amalgamation means where two independent companies sit down and try to work out a basis on which they will become an amalgamated company carrying on just as though the two companies were carrying on in one uniform instead of having two. All their rights are laid out as to the movement of assets and the rights of the shareholders in relation to the

amalgamated company. I am wondering why in that scheme of amalgamation, once the shareholders have approved by the requisite majority, the courts should be given authority to examine it on the merits. To me, there seems to be such a difference that minority rights do not come into contest in the same way.

Senator HUGESSEN: Mr. Chairman, I do not know I altogether agree with that. In the case of a re-organization, where you have to go before the court, what you are asking a shareholder to do is to accept something quite different. This is what you are doing in the case of an amalgamation. You are asking the shareholder to accept shares of a newly amalgamated company on such basis as may have been agreed on by the two amalgamating companies. I think for the protection of the minority shareholders the courts should have a chance to look into that. In any event, it seems to me valuable to have that provision in here because it will hinder majorities of two companies which wish to amalgamate from oppressing a minority shareholder.

The CHAIRMAN: "Amalgamation" is dealt with under section 128A:

> "(1) Any two or more companies incorporated under this Act, including holding and subsidiary companies, may amalgamate and continue as one company."

That is the purpose of amalgamation. My view of an amalgamation is not one which takes away from the rights of the shareholders of specific classes of shares.

Senator HUGESSEN: It might or might not.

The CHAIRMAN: They are translated into shares of the amalgamated company.

Senator KINLEY: Can you amalgamate on a simple majority?

The CHAIRMAN: No, three-quarters.

Senator KINLEY: Seventy-five per cent?

Mr. LESAGE: Yes.

Senator LEONARD: I would have thought that the application to the court should take place on the application of dissenting shareholders rather than in every case, in most of which 99 per cent of them form the majority and agree.

Senator HUGESSEN: I would agree on that, but I think the protection should be there in some form.

Mr. LESAGE: Yes, the protection should be there in some form because you are affecting existing rights.

Senator LEONARD: Instead of a company having to apply for a court order, there should be a stay of 30 days, say, during which period a dissenting shareholder could apply to the court.

Mr. LESAGE: Because of the same principle, we have in this bill suggested to amend section 12 and especially section 17, so they would not have any effect on changes in the capital structure of the company, and that any change in that respect must be made under section 48, or section 49 for alteration or reduction in capital, because section 17 was abused, I would say, in a way that sections 48 and 49 were losing all their meaning. We have closed section 17, but we have opened, when unanimous consent is reached, section 48 to all cases. But when there is no unanimous consent, let us say, for instance, in the case of a change in the rate of dividend, then there is no other way than to proceed under section 126 before a court of justice. It is in order to avoid that abusive application of section 17 we have had to open section 48 and leave a very few cases to the courts under section 126, so there would not be left in the hands of civil servants an authority which, I think, is really too great.

Senator COOK: You have to be very careful with regard to this dissentient aspect, because if the dissentient makes an application, and he takes an application to the courts, he could be penalized for costs and the company could even take the case to the Supreme Court.

The CHAIRMAN: Some shareholders are always dissenting because they are looking to create a nuisance value in certain circumstances. This is based on experience. What they want is a special deal, and when they get it everything is all right, and when you are giving them a right to go to the courts I think they should certainly be under the penalty of costs, and if there is any doubt as to their ability to take care of costs I think they should have to provide security for costs.

Senator BOUFFARD: Apart from that, here you have also the fact the court may vary the agreements that may have been made. I do not means the reorganization of the company because this is not the result of an agreement, but here the court may vary, and if they do vary the agreement I do not think the companies can change that. They have to abide by the court order, and it will not be submitted again to the majority of the shareholders.

The CHAIRMAN: Yes, I think we have to watch that. Are there any other particular headings you want to refer to today?

Senator LANG: Mr. Chairman, generally on the operation of this act, have you noticed any relative decline in the incorporation of companies under the Dominion Act as opposed to the total incorporated under all acts in Canada in recent years?

Mr. LESAGE: No. In recent years, in the last two or three years, we have had a slight increase in the number, which is a normal increase, but we do not have the increase the provinces have, for the very reason that mining companies, oil companies, all those companies which are of a local nature, those development companies, are rather incorporated on a provincial basis for the reason that mining and oil companies have special legislation in the provinces.

Senator HUGESSEN: They are dealing with provincial resources.

Mr. LESAGE: And with other development companies you also have the question of mortmain. According to the last figures I have seen in our department they are not decreasing, but instead are increasing slightly and slowly. There is always some increase, a gradual increase, but not at the same rate as the provinces. We don't expect that to come because of the reasons I gave a few minutes ago.

The CHAIRMAN: We have the comparison in the case of provincial corporations connected with natural resources. Taking that comparison I think it would be fairly even.

Senator FERGUSSON: Earlier in the presentation Mr. Lesage says that in drafting this bill provincial authorities were consulted, and it was done with the help of provincial authorities.

Mr. LESAGE: No, with outsiders, with lawyers in the practice. But the draft act was drafted by provincial representatives although the federal Government had representatives on the board. The draft act was prepared for the most part by representatives from some of the provinces but not all. This draft uniform act has not received the unanimous consent of those who were present. It was drafted in the way that if a majority of those sitting around the table were for a particular amendment it was inserted in the draft act. That is where I say this draft act presents some danger. Although it is very good, of course, I would be very careful in dealing with the draft act and especially with the principle underlying that draft act because the way it was drafted is subject to question, and even at Banff last September at the Bar convention many of

the sections of the draft act were not accepted by the representatives of the Canadian Bar. We can see that from the report.

Senator BOUFFARD: The Canadian Bar is to appear before the committee and so are the chartered accountants?

The CHAIRMAN: That's right.

Senator FERGUSSON: That was not the point of my question. My question was who was consulted in this bill. The only provinces you mention there are Quebec and Ontario. I wanted to know if there were any other authority from other provinces.

Mr. LESAGE: No. They were people hired by the department.

Senator FERGUSSON: Why Quebec and Ontario?

Mr. LESAGE: I think the only reason is they were closer to home. There is of course another reason and that is that five of the provinces are operating under a different system of law, they are incorporating their companies under memorandum of agreement. Only five provincial jurisdictions are operating under the letters patent system, as we are here in the federal system.

Senator FERGUSSON: You said there were five operating under each?

Mr. LESAGE: We had three gentlemen, one from Toronto, one from Ottawa and one from Montreal.

The committee adjourned.

Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-22, intituled: "An Act to amend the Companies Act".

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, June 3, 1964

No. 2

WITNESSES:

Mr. Ronald C. Merriam, Secretary, Canadian Bar Association; Mr. Irwin Dorfman, Q.C., (Winnipeg), Canadian Bar Association; Mr. Louis Lesage, Director, Companies and Corporations Branch, Department of the Secretary of State.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20905—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine
Baird
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Blois
Bouffard
Burchill
Choquette
Cook
Crerar
Croll
Davies
Dessurealt
Farris
Fergusson
Flynn
Gelinas
Gershaw
Gouin
Hayden
Hugessen
Irvine
Isnor
Kinley
Lambert
Lang
Leonard
Macdonald (*Brantford*)
McCutcheon
McKeen
McLean
Molson
Monette
O'Leary (*Carleton*)
Paterson
Pearson
Pouliot
Power
Reid
Robertson (*Shelburne*)
Roebuck
Smith (*Kamloops*)
Taylor (*Norfolk*)
Thorvaldson
Vaillancourt
Vien
Walker
White
Willis
Woodrow—(50).

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 20, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Vien, P.C., seconded by the Honourable Senator Bradley, P.C., for second reading of the Bill S-22, intituled: "An Act to amend the Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, for the Honourable Senator Vien, P.C., seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

20905—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, June 3rd, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.45 a.m.

Present: The Honourable Senators: Hayden (*Chairman*), Blois, Cook, Gelinas, Hugessen, Irvine, Isnor, Lang, Leonard, McCutcheon, Molson, Reid, Smith (*Kamloops*). (13).

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

The Committee resumed consideration of Bill S-22, intituled: "An Act to amend the Companies Act".

The following witnesses were heard:

Mr. Ronald C. Merriam, Secretary, The Canadian Bar Association.

Mr. Irwin Dorfman, Q.C., The Canadian Bar Association.

Mr. Louis Lesage, Director, Companies and Corporations Branch, Department of the Secretary of State.

At 12.40 p.m. the Committee deferred further consideration of Bill S-22.

Attest:

F. A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 3, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, to amend the Companies Act, met this day at 12 noon.

Senator SALTER A. HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: Honourable senators, we have now for consideration the amendments to the Companies Act. We carried on with this legislation at our last meeting, and then we notified the Canadian Bar Association. I understand that Mr. Ronald Merriam is representing that association today, together with Mr. Irwin Dorfman.

Mr. Ronald C. Merriam, Secretary, Canadian Bar Association: Mr. Chairman, honourable senators, the Canadian Bar Association appreciates this opportunity of speaking to Bill S-22, which is an act to amend the Companies Act; and we are particularly happy to see this effort being made after 30 years to bring the federal Companies Act more in line with the modern practices and concepts.

I am sorry, Mr. Chairman, we have not had an opportunity to prepare a formal brief in the time available to us. However, Mr. Irwin Dorfman and myself have some rough notes to which we will be referring.

During the last number of years the Canadian Bar Association has been most active in working in connection with the draft uniform Companies Act, with which I am sure all honourable senators are familiar. When Bill S-22 was prepared, in large measure it was a question of applying the thinking that had been developed over the years in connection with the draft act to the provisions of Bill S-22.

In addition, Mr. Irwin Dorfman, Q.C., of Winnipeg—who is the chairman of our commercial law section, which is the one primarily responsible for matters affecting company law—has also been most active in recent months in connection with an amendment presently before the Manitoba legislature in connection with their Manitoba Companies Act.

Sir, without anything further by way of opening, with your permission I would like to ask Mr. Dorfman if he would speak to this act on behalf of the association; and, if in the course of the discussion any questions arise we should, of course, be delighted to discuss them with honourable senators.

The CHAIRMAN: Mr. Dorfman?

Mr. Irwin Dorfman, Q.C., Winnipeg, Canadian Bar Association: Thank you, Mr. Chairman. I should say that perhaps an act in modern times should have three qualifications, to my mind. Firstly, it should facilitate to departmental officials the proper administration of the Companies Act. Secondly, it should be workable and flexible, and although regulatory not so restrictive as to prevent companies, which are usually the medium for carrying on trade and commerce in this country, from carrying on business. Thirdly, I think in modern

thinking it should give to minority shareholders, not the right to obstruct but at least the opportunity to make inquiries and receive information as to their rights. From that point of view the uniform Companies Act does endeavour as a whole to deal with a new company law, and that was the concept behind it.

In examining Bill S-22 there are several sections to which I respectfully direct your attention. Firstly, clause 4 dealing with section 4 of the act. There is one word there underlined—"insufficiency". It is respectfully submitted that if it is intended to broaden the scope of section 4 a term that is more definitive and limited in application should be used. "Insufficiency" is so vague it might almost apply to any possibility.

The CHAIRMAN: Is there anything that could not be grouped under the word "irregularity" and if so, what is it?

Mr. DORFMAN: That is a question that perhaps the departmental officials might answer. I notice the purpose of the amendment is said to be to broaden the scope; but "insufficiency" certainly would create a doubt as to just what this refers to.

The CHAIRMAN: As a matter of law, I thought if you succeeded in obtaining the incorporation of a company—and Senator Hugessen may be able to give the answer to this—that if you succeeded in getting a charter you were then in possession of something, and no matter whether the presentation of material was adequate or sufficient or insufficient, you still had a charter and the department could not reach out and take it back from you.

Senator LEONARD: Did not Mr. Lesage give an explanation of this when he was here before us last week? I do not know whether we have the printed record of when Mr. Lesage was here. It was a case, as I recall, where there was a complete lack of some information rather than irregularity.

The CHAIRMAN: The last day Mr. Lesage said:

> Clause 4 is only to implement the word "irregularity" by adding the word "insufficiency." Sometimes we receive applications which are not sufficient, and to make sure that the letters patent which would correct that insufficiency would be issued on a completely legal basis we thought that the addition of the word "insufficiency" would cover the departmental authorities when issuing the letters patent as they would add something to the petition itself.

I am wondering as a matter of law just how inadequate the powers were. If you get letters patent who can take them back from you? The Crown has acted, and if the letters patent are issued, what can be done about it? Have you any comment on that, Mr. Lesage?

Mr. LESAGE: The comment I have is this: The main reason for the addition of the word "insufficiency" is to cover cases where in petitions for letters patent and also for supplementary letters patent which petitions are predicated upon the by-law of the company and to permit the officials of the department to complete something which would be missing in the petition itself, and even to implement to a certain extent an insufficient by-law in the case of the issue of supplementary letters patent.

As a matter of practice in the department we have always brought those corrections in with the consent of the solicitor of the applicants, or of the company in the case of supplementary letters patent, but you will understand the speed at which we have to work—we often have to rely to bring those corrections in only on a telephone conversation with the solicitor or in many instances on correspondence. Otherwise, if we had not acted that way and if we were not covered by the authority to implement an insufficiency in a petition we would have to return all the material received from the solicitor, acting on behalf of the applicants, or acting on behalf of a company, and

the reaction of the solicitor or the applicants and of the companies is very bad when we have to send back the material which was received in the department for a correction, or for an addition which they would consider minor.

The purpose of the amendment is to allow the officials of the department to work at the speed, I would say, of the world of finance, and the speed of the practising firms, and to give them an adequate service. You will appreciate that some damage might be done to a company if supplementary letters patent were not issued within a very short delay.

The CHAIRMAN: What you are saying is that in the interests of co-operation and expedition you think that the addition of the word "insufficiency" would make you feel more comfortable in being co-operative.

Senator HUGESSEN: I can see the sort of thing you mean. If a petition for supplementary letters patent comes to the department with a request for urgency, and if the secretary of the company has omitted to sign the by-law certificate attached or something like that, then, in such an instance, you would like to be covered.

Mr. LESAGE: We have always done it that way. We proceed anyway and phone the interested firm and ask them to send us a signed document, but we don't hold the petition for that reason, for a minor reason of that nature which would only be an omission.

The CHAIRMAN: That might be an irregularity.

Mr. LESAGE: That would be right. If we come to a substantial matter in a by-law, for instance a change in the capital structure, something which is not acceptable or which would be irregular if implemented in supplementary letters patent, then we have to get the consent of the solicitor or from the company, and if we do not have that authority to correct insufficiencies we have to send back the material.

Since a by-law is involved, the by-law would have to be re-enacted by the board of directors, and a new meeting of the shareholders would have to be reconvened to sanction the by-law, and a new petition would have to be sent to the department, and you can appreciate the damage which would be done in sending back the material. We have to use a lot of discretion in using that authority. I think we have exceeded our authority in covering ourselves only on the word "irregularity", but by adding the word "insufficiencies" we are going to continue, and I am sure my successors, just like my predecessors, will continue to use the same careful means of administration.

Senator LEONARD: Has the explanation satisfied Mr. Dorfman?

Mr. DORFMAN: I agree with what has been said. My only interpretation is that "insufficiency" might be changed to a more definitive word.

The CHAIRMAN: What word would you suggest?

Mr. DORFMAN: I cannot suggest a word. I leave that to you, gentlemen.

The CHAIRMAN: We appreciate the point.

Mr. DORFMAN: The next is clause 5, subclause 2 dealing with the additions of sections (*d*), (*e*) and (*f*) of subsection 4. Mr. Chairman, the effect of this amendment is to authorize the unnecessarily harsh sanction of winding up with serious consequences to the shareholders in order to enforce what primarily is the responsibility of the officers or directors of the company.

Subsection 4(*d*) relates to the failure to hold an annual meeting for two consecutive years, and subsection 4(*e*) to the failure to mail a copy of the financial statement and auditor's report 10 days or more before the date of the annual meeting, in the case of a public company, and to the failure to furnish these copies to a shareholder on demand in the case of a private company and also to the failure to furnish such copies to the holder of debentures of a public

company on demand. That is what these relate to. Section 4(*f*) relates to the failure of a company to file with the Secretary of State its annual summary as required by section 125.

We submit that sanctions for failure to comply with these requirements should be imposed on the directors rather than the shareholders, since the primary responsibility for ensuring such compliance should rest on the directors.

The CHAIRMAN: If you stop there for a moment, the shareholders have rights now to convene a general meeting of shareholders if the directors do not see fit to call an annual meeting.

Mr. DORFMAN: Yes, they have, but why impose the sanction of winding up, or have it at all?

The CHAIRMAN: Yes, why have it at all if the shareholder has a remedy?

Mr. DORFMAN: If it is assumed that the department wishes to exercise some regulatory function, and these sections are to stand, then the directors should be made liable for neglect or failure primarily. I would direct your attention to the draft uniform companies act, of which section 190 reads as follows:

> (1) A corporation that commits an act contrary to or fails or neglects to comply with any provision of this Act is guilty of an offence.

Subsection (2) reads:

> Where a corporation commits an act contrary to or fails or neglects to comply with any provision of this Act every director or officer of the corporation or person acting on behalf of the corporation who authorizes, permits or acquiesces in the act, neglect or default is guilty of an offence.

Subsection (3) reads:

> Every corporation and every person who is guilty of an offence under this Act for which a penalty is not otherwise provided by this Act is liable on summary conviction to a fine of not more than two hundred dollars.

Relief from the penalty provided by such section in the draft act would be made available upon application to the court, if a director acted honestly and reasonably and is entitled to be excused. I direct your attention to section 192 of the draft act, and respectfully suggest that it might be followed. It reads:

> Where, in any proceeding under this Act for breach of or noncompliance with any of the provisions of this Act by any person, it appears to the court hearing the case that that person is or may be liable in respect of the breach or noncompliance, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the breach or noncompliance, the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

Senator LEONARD: But those section are not relevant to the purposes of this particular amendment. The purpose of this particular amendment is to enable another method of winding up the company.

Mr. DORFMAN: I suggest that the purpose of this section is to see to it that companies hold annual meetings, or send out financial statements, and that the winding up is a penalty or a sanction to enforce that simple administrative matter in the business of the company. The primary thing is that evidently there is to be some sanction to ensure that meetings be held every two years, or within two years, that annual summaries be filed, and that annual

statements be delivered on demand to a shareholder of a private company, or be mailed at least ten days prior to the annual meeting of a public company. That is the objective, I submit, of this section.

Senator LEONARD: Again, that was not my understanding. I thought when Mr. Lesage was before us his explanation was that this was a method to enable a winding up to take place where companies have been in default, and have not the money to proceed to winding up, and that this is a procedure whereby that can be done.

The CHAIRMAN: Yes, this is the death penalty.

Senator LEONARD: That is right. It clears off the books . . .

Mr. DORFMAN: I submit the winding up is not the method because there is another method set up in section 125, subsections (9) to (12). This is a method that can be very simply used. It is on page 36. If a company does not have sufficient funds with which to proceed to surrender its charter, or to wind up, all it has to do is to fail to file annual summaries for three years, after which the Secretary of State is empowered to dissolve the company.

I point, sir, that these subsections (9) to (12) of section 125 are in direct conflict with subsection (4)(*f*), because under subsection (4)(*f*) for the same thing, if you are in default for only six months, the company is liable to be wound up, whereas under subsections (9) to (12) it is given up to four years to file the same thing.

Senator COOK: It has to be ordered by the court. You have to make an application, and the court has to order the winding up.

The CHAIRMAN: I suppose it depends on what the situation is in a particular case. If the shareholders want a meeting then there are ample provisions in the Companies Act as it now stands for the shareholders to obtain an annual meeting of the company where the directors fail to call one. Section 100(2) of the act as it exists provides:

> Where default is made in holding any annual meeting as aforesaid the court in the province in which the head office of the company is situate may on the application of any shareholder of the company, call or direct the calling of an annual meeting of the shareholders.

If you are looking at it from the point of view that you want the annual meeting to be held then there is a lot of machinery in the act for doing that. The question here is if you want to provide a method for companies that can no longer serve, or are not serving, any function to be wound up, and you want to let the Attorney General of Canada carry the ball in doing it, why this is a method for doing that.

Senator LEONARD: That seems to me to be what the idea of the amendment was. It seems to me that rather than require to call annual meetings, and so forth, this was a method whereby these companies could be wound up in cases where there was nobody any longer interested in carrying them on.

The CHAIRMAN: Except that the proposed wording does not indicate those are the circumstances in which this remedy might be used. I wonder what would happen if the Attorney General was moving under this proposed section, and a shareholder was moving before the court to have a date fixed for an annual meeting.

Senator HUGESSEN: Frankly, Mr. Chairman, I do not think this section would be used, but I think it has, perhaps, some value by way of a threat to a company which fails to call an annual meeting. The Secretary of State writes to it and says: "You are in default here, and if you do not comply with the requirements of the act in this respect I will ask the Attorney General to wind up the company".

The CHAIRMAN: For instance, suppose there is a receiver and a manager and the books and records, therefore, are not available to the directors. In those circumstances it would be impossible to call an annual meeting of shareholders. I suppose in those circumstances, if the attorney general made application to the court, the court might refuse it.

Senator HUGESSEN: Yes, it is up to the court to determine.

Senator COOK: The court will say who is to be served.

The CHAIRMAN: I think we understand your point, Mr. Dorfman. What is your next point?

Mr. DORFMAN: However, I would stress again that paragraph (*f*) seems to be in direct conflict with subsections (9) to (12), because if you have four years in which to file a return then subsection (4) (*f*), providing for only six months and a penalty of winding up, seems to be in conflict.

The CHAIRMAN: We will take a look at that, Mr. Dorfman.

Mr. DORFMAN: Yes. The next point, Sir, deals with clause 6. Clause 6 repeals section 7 of the present act, and substitutes a simplified procedure in applying for letters patent in keeping with the practice in respect of letters patent in provincial jurisdictions. Generally, it adopts section 22 of the draft uniform companies act.

It is noted, however, that in the new section 7(2)(*i*) prohibitions may be attached to a class of shares. In the draft uniform companies act, sections 29 and 30 provide also for classes of common and preference shares which may be given no voting rights. It has been found useful and convenient, for example, to encourage employees by permitting them to acquire nonvoting but otherwise fully participating preference shares. Gifts of such shares to employees have also facilitated estate planning.

As the intention of clause 6 of the bill is to make the requirement of the application more in accord with modern corporate administration practice the inclusion of the word "prohibitions" is welcome. It is suggested that its effect is rendered nugatory by subsection 5 of Clause 10.

Senator HUGESSEN: Of the bill or the act?

Mr. DORFMAN: Of the bill. This subsection 5 relating to subsections 14 and 15 of Section 12 of the present act is designed to prohibit the issuance of any class of nonvoting shares whether common or preferred. I think if you read that you will notice that that is the test to be applied. It is designed to prohibit the issuance of any class of nonvoting shares, whether common or preferred. By Clause 10 the prohibition is now to be extended to private as well as to public companies.

It is respectfully submitted that Section 72(i) of the bill requires that the rights, restrictions, limitations or prohibitions that are attached to any class of shares be fully set out in the application for letters patent and presumably will be included in the actual letters patent itself; and since, by virtue of Section 23 of the bill, a company no longer will be able to create preference shares by by-law, there is no valid reason for depriving federal companies, including private as well as public, of a class of shares which in recent years has been found useful by companies incorporated under provincial jurisdiction.

Senator HUGESSEN: You want to include the power to issue shares with no voting powers whatsoever?

Mr. DORFMAN: I suggest you give serious consideration to it, if you want to modernize the act, as I understand is the intention. That has been the practice in Ontario for many years and now has been adopted in Manitoba; and I believe there are some nonvoting shares in Quebec also.

The CHAIRMAN: On nonvoting shares, I notice it reads, the voting rights are limited—to the exclusive right to control management, etc.

Would not that be the case where you had some shares that were voting exclusively for the election of directors? You might have other shares that were voting in relation to other aspects of corporate management. Would this preclude issuing shares without any voting rights at all?

Mr. DORFMAN: I would suggest, sir, that the effect of subsections 14 and 15 would be to prevent you from having any class of shares with no voting right, because I feel the result would be that other classes of shares would have the exclusive rights.

The CHAIRMAN: You mean exclusive shares under the present act with no voting rights?

Senator LEONARD: With respect to public companies.

Mr. DORFMAN: You cannot issue any nonvoting shares by by-law, although theoretically you can issue nonvoting shares by letters patent.

The CHAIRMAN: I notice you say "theoretically".

Mr. DORFMAN: Theoretically, yes.

The CHAIRMAN: Has the department done it?

Mr. DORFMAN: One may ask that question of the department. I have never been able to get one through. In respect to preference shares with any nonvoting qualification, we have to go to its provincial jurisdiction.

The CHAIRMAN: Perhaps Mr. Lesage could answer.

Mr. LESAGE: If a share which is a nonvoting share—the only case where a so-called nonvoting share would be nonvoting is in the case of dividends. That is, for a period of two years or so. If the affairs of the company become so bad that it cannot even pay dividends to its shareholders, or if the directors of the company pay themselves such high salaries that there is no money left to pay dividends to those so-called preference shareholders, I would think that the word "share" loses all its meaning, and if we do not give any statement within that, containing an authority for voting rights, if the dividends are paid out, I think those so-called shares are not even worth being called "shares". They are not shares at all. They are a sheet of paper which can be the ratifying to some employees that they have a share of the company, while they have nothing in their hands.

Senator HUGESSEN: In other words, your department does not issue shares with no voting rights of any kind.

Mr. LESAGE: With no voting rights of any kind in them—definitely—voting rights.

Senator HUGESSEN: Restricting certain conditions, dividends and so on.

Mr. LESAGE: Otherwise, my understanding of the word "share" in the stock company would become a bit of paper which is not even worth the designation of the word "share".

The CHAIRMAN: That question is not exactly before us. The question is whether we continue the subsections 14 and 15 of Section 12, or whether we go for the changes or additions thereto proposed in the new Sections 14 and 15. In the present act, subsection 14 of Section 12 says:

> In no case shall shares of a public company of any class or any subdivision of any class, whether with or without par value, be issued and allotted to which shall attach any exclusive right to control the management of the business or affairs of the company by the election or removal of the board of directors thereof or otherwise.

Then in subsection 15 there is an exception provided that that is not to affect preference shares with preferential voting rights, on a stated event only. That

is the general law as it is now and I suppose under that general law Mr. Lesage feels he has full authority for the position he has taken.

Senator HUGESSEN: Is Mr. Dorfman suggesting to us that the new act should make provision for completely nonvoting shares?

Mr. DORFMAN: Yes. I suggested now because you are allowing the word "prohibitions" in your act, so that you are incorporating half of what is in the draft act but not the rest of it. I suggest that once you have public notice through letters patent that a share may be nonvoting, that the concept of a nonvoting share might seriously be incorporated, to keep this act in line with what we have in provincial jurisdiction.

The CHAIRMAN: We have a note of that. What is the next point?

Mr. DORFMAN: Clause 7(3) of the bill. It adds a new subsection 5 to Section 8 of the present act. Since this subsection is included for the convenience of applicants, it is submitted that the authority given to the Secretary of State to make alterations in the application be exercisable only with the consent and approval of the applicants.

I think that this is the intention, but I think it should say so. It does not say that the alterations are made with the consent and approval of the applicants.

The CHAIRMAN: We have noted that. I do not see any debate on that. We have to make a decision one way or the other. What is the next clause?

Mr. DORFMAN: Clause (h) substitutes a new subsection 10 broadening the power of the Secretary of State to correct defects in letters patent. That is by subsection 2 of Section 10. It is evident that this correction may even depart materially from the original text. Any correction to be made to the letters patent would be retroactive to the date of the letters patent and there is no time limit within which such correction may be made.

It is respectfully submitted that the correction of a defect which results in a material change should not be made without supplementary letters patent. It is conceivable that rights acquired in the intervening period based on original letters patent may be affected.

Senator HUGESSEN: I can see your point there. Perhaps we might envisage a case where the Secretary of State comes across something that is wrong and corrects, and ten years later the shares have been approved, and so on.

Mr. DORFMAN: Precisely.

The CHAIRMAN: What you are suggesting is some time limit?

Mr. DORFMAN: Some time limit at least for the correction. Really, there are two suggestions; either a time limit, or that if there is a correction representing a material change that should be done by supplementary letters patent.

The CHAIRMAN: Except that it is significant that section 10, subsection 1, says if the letters patent contain any misnomer, mis-description, clerical error or other defect. I take it the adjustment rule would apply there. So that it would not be a matter of substance.

Mr. MERRIAM: Except that subsection 2 obviously contemplates the possibility of a material change.

The CHAIRMAN: But I do not know how it can.

Mr. DORFMAN: Well, there is the conflict. The next is clause 10, section 12, which is amended. It is submitted that it is not clear whether reference to an alteration of the capital of a company in the seventh line, is intended to mean authorized capital or paid up capital.

The CHAIRMAN: What do you suggest, the insertion of the word "authorized"?

Mr. DORFMAN: I think it should be "authorized" sir.

The CHAIRMAN: If you are going to interfere with the rights of issued shares would you not have to do it by a scheme of arrangement?

Mr. DORFMAN: Yes, you would.

By clause 14, section 17 of the present act is amended, and again there is a reference to alteration of capital—I think it is line 44—the same point being made.

The CHAIRMAN: It that the only item there?

Mr. DORFMAN: That is the only item there, sir.

The next is clause 15, on page 12, that is subsection 3(b). This amendment requires that if the company has a name consisting of a French and English form, the company shall show on its seal both the French and English forms of its name. It is submitted that this requirement would involve a corporate seal of an inordinate size.

The CHAIRMAN: Why not say "may"?

Mr. DORFMAN: That is one suggestion. The other is that the company should be permitted to have either the French corporate name or the English corporate name on its seals; in other words, two seals, and use either one.

The CHAIRMAN: What is the next item?

Mr. DORFMAN: Clause 17 of the bill. This clause is intended, presumably, to insure that a holder of a share receives full information as to the rights and conditions attached to such a share. It is recognized that it is often difficult to properly summarize lengthy and involved rights and conditions. Any prejudice caused by a material omission would give rise to a claim.

Furthermore, the practice is now developing of printing certificates in both French and English. In every case the share certificate would have to be of an impractical size to set out in full all rights and conditions, and would make obsolete expensive machinery and equipment in which transfer companies have invested to issue and transfer share certificates. The authority to attach a writing permanently to the share certificate would, therefore, be helpful if practical.

The CHAIRMAN: The word "legible" there I suppose, is the word; because I have seen where conditions have been extremely lengthy, and they appeared on the back of the certificate, but the print has been reduced in size by a photographic process so that you could get possibly ten, 15 or 20 pages of conditions on the back of one certificate and not take up the whole page. It depends on what "legible" means. The conditions would be legible, of course, if you had a magnifying glass large enought.

Mr. DORFMAN: We agree this is an improvement, but it makes companies, however, issue shares which require several pages to set fully the rights and conditions attaching to them, and affixing these pages to a share certificate may present or create other problems. Recently, an amendment was made to the Quebec Companies Act which permits a summary to be incorporated on the certificate together with a statement that the whole text of the preferred or special rights, conditions and limitations would be arranged because of demand.

The CHAIRMAN: What you are saying is that if you give notice there are these conditions, you have done enough to put the person on the alert?

Mr. DORFMAN: Yes. There is a better example of this in the State of New York in an amendment to its corporation law, effective September 1, 1963. Section 508 of the business corporations law of New York now reads as follows:

> Each certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corpora-

tion will furnish to any shareholder upon request and without charge a full statement of the designation, relative rights, preferences and limitations of the shares of each class authorized to be issued, and, if the corporation is authorized to issue any class of preferred shares in series, the designation, relative rights, preferences and limitations of each such series so far as the same have been fixed and the authority of the board to designate and fix the relative rights, preferences and limitations of other series.

I think this is worthy of consideration, sir.

The CHAIRMAN: What is the next item?

Mr. DORFMAN: Clause 19 of the bill amends section 48 by adding subsection 5. It is submitted that to require unanimous approval may give a very small minority of the shareholders the power to veto what the overwhelming majority of shareholders approve. Therefore, it is respectfully suggested that approval be only required from nine-tenths of the shareholders affected.

The CHAIRMAN: In other words, you suggest 90 per cent?

Mr. DORFMAN: Ninety per cent.

The CHAIRMAN: Instead of "unanimous"?

Mr. DORFMAN: Yes. Clause 25 provides a revised wording of section 61 of the act. The bill preserves the principle that purchases or redemptions by a company of its shares must not be effected from capital. It should be noted that in Ontario the purchase or redemption of shares is not so restricted and may be acomplished by a return of capital. Greater flexibility in corporate organization and practice has resulted without any apparent detriment to the public. The experience of Ontario has prompted the Province of Manitoba to adopt a new provision, now being debated in its legislature. While it still may be argued that the purchase or redemption should be accomplished only from net profits or the profits under fresh issue of shares, no explanation is given in the bill whether the net profits must be available as liquid assets. Presumably, liquid assets would be interpreted to be cash and marketable securities. Inventory would not be certified as liquid assets. A company is thus prevented from borrowing moneys to effect a purchase or redemption even though the capital of a company would not thereby be impaired.

The CHAIRMAN: We have noted that.

Senator LEONARD: I take it that your suggestion is that we should use the section in the Ontario Companies Act with respect to the redemption of preferred shares, rather than this section?

Mr. DORFMAN: I say that this section does not modernize the act, it prefers the original principle and is intended to bring the act up-to-date; but perhaps you might seriously consider adopting the Ontario provision.

Senator HUGESSEN: I think the original provisions about redemption of net profits, and so on, which came into the act in, I think, 1936, were taken from the English act, and that was many years ago.

Mr. LESAGE: 1934.

Mr. DORFMAN: I think they were, but the experience in Ontario has indicated redemption on that basis does not provide any detriment to the public.

Senator HUGESSEN: I have sometimes wondered whether the principle is correct, I must say.

Mr. DORFMAN: There is the question as to whether you follow Ontario, and what are "liquid assets"? I limit it to liquid assets, in any event.

The next one is clause 29 of the bill. This adds section 76A which contains a most useful provision waiving the prospectus requirements of the act where a

company has filed a prospectus in any province or foreign country. This section does not provide, however, for the case where a company is exempted from filing a prospectus in any jurisdiction. For example, no prospectus would be needed to be filed on the sale of a debenture where the sale is limited to institutions.

The CHAIRMAN: I think maybe we should take a good look at that. Where the Securities Act in various provinces exempt them from filing a prospectus, we should give serious thought to whether, in those circumstances, you should have to file under the Companies Act.

Senator HUGESSEN: I can think of a case in the province of Quebec where securities issued by a public utility are subject to the Control of the Quebec Electricity and Gas Board but are exempt from registration under the Securities Act.

Mr. DORFMAN: The next sections are 115 to 125 in the act.

Mr. Merriam has brought to my attention, with respect to clause 29, that I overlooked the fact that subsection 2 of section 76A requires that the copy to be filed with the Secretary of State be certified by the public authority with which it was originally filed within 10 days after such filing. That might provide some difficulty. If it has to be certified by the public authority and filed within 10 days it is submitted that perhaps even a longer period of time be permitted or a notarial or sworn copy be accepted.

Sections 115 to 125—

The CHAIRMAN: Of the bill?

Mr. DORFMAN: No, this is clause 34 of the bill. This deals with sections 115 to 125 of the act which have now been repealed or are to be repealed by clause 34, and they substitute a number of sections. Generally these sections follow sections 92 to 105 of the letters patent Draft Uniform Act. While it is desirable that a minority shareholder in a private company, as in a public company, be entitled to full disclosure—and it is noted that now these conditions are to apply equally to private companies as well as to public companies—and it is desirable that a statement present fairly the results of a company's operations, in the case of a private company all these detailed requirements may be unduly burdensome, unnecessary and not desired by small private companies owned by one or a few shareholders. It is, therefore, submitted that the bill be amended by adding a provision similar to the following which has been included in the bill to amend the Manitoba Companies Act. These provisions were also made applicable to private companies, and we added this subsection, section 96(4) in Bill 39 respecting the Manitoba Companies Act, which has had second reading already. This subsection provides:

> With the consent in writing of all shareholders,

—it must be unanimous—

> —a private company may dispense with the requirements under sections 97-100—

—and that would be comparable to the sections here—

> —in respect of any particular financial statement specified in the consent, except that the financial statement shall be drawn up so as to present fairly the results of the operation of the company for the period covered by the statement.

In other words, in the case of small companies, let the shareholders decide unanimously whether or not they would have a briefer statement which would not be as expensive, perhaps, to prepare?

Senator HUGESSEN: I think that is rather a valuable suggestion. Where would you suggest we put that in?

Mr. DORFMAN: I think that would go in, sir, following—

The CHAIRMAN: Where private companies are mentioned.

Mr. DORFMAN: Yes, I think it would follow section 116, or be a subsection to section 116. Yes, it would be a subsection to section 116.

The CHAIRMAN: Do you mean on page 21?

Mr. DORFMAN: Yes.

Senator HUGESSEN: It would not affect the profit and loss or surplus statements?

Mr. DORFMAN: It would include all sections from section 117 on.

The CHAIRMAN: That is the section which says, "The application of the following sections". You suggest that that provision in relation to private companies furnishing the information be added on page 21 in new section 116?

Mr. DORFMAN: Yes.

The CHAIRMAN: All right. What is next?

Mr. DORFMAN: It is further submitted that the requirement in the proposed new section 117(1)(a) that statements show the amount of sale or gross revenue derived from the operations may adversely or unfairly affect those companies which deal in one product only, since competitors selling diversified products would only be required to disclose the total sales of all their products and not of each product. The subsection provides for an application to the Chief Justice or Acting Chief Justice for an order to omit such information if its disclosure would be detrimental to the interests of the company.

The CHAIRMAN: This is certainly whittling down very substantially the discretion of directors as to what should be disclosed.

Mr. DORFMAN: That it does.

The CHAIRMAN: However, we have a note of that.

Mr. DORFMAN: May I just suggest the application must only be made, according to the wording, to the Chief Justice or Acting Justice, and no power of delegation by the Chief Justice is even present in this bill. It is submitted that if this subsection is to be retained it should be amended to provide that the application may be made to any judge of the Superior Court of that province.

The CHAIRMAN: If we have finished with that portion of it, perhaps we should adjourn. We have lost our quorum. We are going to meet again at 2 o'clock on this other bill. If Senator McCutcheon gets the answers to his questions or finds the answers are not available within less than the hour, we will carry on with you until 3 o'clock.

Mr. DORFMAN: Thank you, sir.

The Committee adjourned further consideration of Bill S-22.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-22, intituled: "An Act to amend the Companies Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 3

TUESDAY, JUNE 9, 1964.

WITNESSES:

Mr. Louis Lesage, Director, Companies and Corporations Branch, Department of the Secretary of State; Mr. Ronald C. Merriam, Secretary, Canadian Bar Association.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

20966—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault,	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 20, 1964.

"Pursuant to the Order of the Day, the Senate resumed debate on the motion of the Honourable Senator Vien, P.C., seconded by the Honourable Senator Bradley, P.C., for second reading of the Bill S-22, intituled: "An Act to amend the Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, for the Honourable Senator Vien, P.C., seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20966—1½

MINUTES OF PROCEEDINGS

TUESDAY, July 9th, 1964.

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

Present: the Honourable Senators: Hayden (*Chairman*), Beaubien (*Bedford*), Bouffard, Burchill, Choquette, Connolly (*Ottawa West*), Crerar, Dessureault, Fergusson, Flynn, Gershaw, Gouin, Irvine, Isnor, Lang, Leonard, McCutcheon, McLean, Pouliot, Reid, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt, Walker and Willis. (26)

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

The Committee resumed consideration of Bill S-22, intituled: "An Act to amend the Companies Act".

The following witness was heard.

Mr. Ronald C. Merriam, Q.C., Secretary, Canadian Bar Association.

On motion of the Chairman it was RESOLVED that a Sub-Committee be appointed, composed of 6 or eight members of the Committee to study the suggested changes after all representations have been heard.

At 9.15 p.m. the Committee adjourned until Thursday, June 10th, 1964, at 9.30 a.m.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, June 9, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, to amend the Companies Act, met this day at 8.00 p.m. to give further consideration to the bill.

Senator SALTER A. HAYDEN (*Chairman*) in the chair.

The CHAIRMAN: Honourable senators, we now come to deal with Bill S-22, an act to amend the Companies Act. On the last occasion when we were discussing this bill we had Mr. Dorfman tell us about this. We had hoped he would be here this evening but we find that he has to be in some other place. However, Mr. Merriam is here and he will continue where Mr. Dorfman left off. Mr. Merriam, would you care to pick up this evening where Mr. Dorfman finished the last day?

Mr. Ronald C. Merriam, Q.C., Secretary, Canadian Bar Association: Mr. Chairman and honourable senators, when we adjourned last Wednesday we were discussing section 117 (1) (*a*) of Bill S-22.

The CHAIRMAN: It is on page 21.

Mr. MERRIAM: And we had pointed out that under that section a company is required to show the amount of sale or gross revenue in its financial statements, and suggested that that requirement could easily be prejudicial to a company which was engaged in the sale of one product and competing at the same time with another company which is engaged in the sale of not only that one product but in the sale of a number of other products as well. The information that would be contained in that balance sheet or in the financial statement with respect to the one-product company might be of great interest to the company in the diversified field. We recognize that the company can be relieved of that requirement by an application to the Chief Justice or Acting Chief Justice of the province in which the head office is situate, but there would seem to be no logical reason why the application must be made to the Chief Justice. We felt that if the section is to remain as it is, consideration could be given to allowing that application to be made to any judge of the Superior Court. I think in that connection it is well to bear in mind that the section as now worded confers no power of delegation on the Chief Justice, so it is the Chief Justice and no other, and this can be restrictive in certain circumstances.

The alternative approach to that particular section might be to reword it so that instead of making it obligatory in all circumstances to provide this information except when relieved by the court that it would only be required when a percentage of the shareholders, say, 10 per cent for the purpose of discussion, request or demand that it be included in the financial statement. If the intention is to provide information basically for the shareholders it seems one might look at it in this way—as long as the shareholders don't want it there is no need for it, but if 10 per cent of the shareholders require it then it should be disclosed.

Senator McCUTCHEON: May I interrupt you here? I am not at all impressed with your reason for not requiring companies to report gross sales or gross revenues. The general thinking is that that is the type of information that shareholders and the financial community are entitled to. To suggest that 10 per cent of the shareholders present a memorial to the board saying they want this is not, to my knowledge of shareholders, a really practical approach at all. Now why would any company be afraid to publish gross sales and gross revenues?

Mr. MERRIAM: Well, Senator McCutcheon, I was hoping that I was making it clear that that was simply an alternative on the assumption, and it may be a false assumption, that the intention of this paragraph or this section is simply to provide information to the shareholders if they want it. If that is not the intention, that alternative, of course, is not considered.

Basically, what we are suggesting, sir, is that it is too restrictive to require that any application for relief must be made to the chief justice. If he does not happen to be available then there is no way around it. The chief justice or a judge of the superior court is not going to exercise that discretion except for a very good reason, and I agree with you that it is not going to be exercised too frequently.

Senator McCUTCHEON: I misunderstood you. I am willing to go along with the idea that the chief justice or anyone he delegates to exercise—

The CHAIRMAN: Or any judge of the superior court of the province.

Senator McCUTCHEON: I would go along with that.

The CHAIRMAN: Then Mr. Merriam's comment, as I understood it, was restricted in this sense, that he was talking only about cases where there would be just one product, and where you would be giving full disclosure to your competitors.

Senator McCUTCHEON: If there is only one product then I suggest your competitors would know all about it, and you should disclose all the information to the shareholders and the general public.

The CHAIRMAN: I agree with you in that they would have a pretty good idea.

Senator McCUTCHEON: That is right. I was never confused about that.

Senator WALKER: In any event, substituting "any justice" would solve the problem.

The CHAIRMAN: Yes, and if you could make out a case you would get the relief.

Senator BURCHILL: Is this a new section?

Mr. MERRIAM: Yes, sir.

Senator LEONARD: Where did it come from?

Mr. MERRIAM: It came from the draft uniform act, Senator Leonard.

Senator CRERAR: No doubt this has received very careful consideration, but is it desirable to bring the chief justice of a province into—

The CHAIRMAN: He is not suggesting that. He is suggesting that it be any justice of the superior court.

Senator CRERAR: Well, my objection applies to any justice.

Mr. MERRIAM: It is not without precedent under the act, as it has been worded for many years. There are occasions when a company may want to go to the court for certain relief or direction under a number of sections of the act. That particular principle is not new.

The CHAIRMAN: I should point out, Senator Crerar, that at this time we are not making a decision as to what, if any, changes we will make in this

particular section. We are hearing the representations and noting them. At a later stage, when we have heard all of the representations we will sit down and discuss them and weigh them.

Senator CRERAR: We will argue about it later?

The CHAIRMAN: That is right.

Mr. MERRIAM: Mr. Chairman, if I may, I would like to draw the attention of honourable senators next to section 119(1)(*g*) and 119(1)(*h*) which are to be found at page 24 of Bill S-22. By those paragraphs certain information with respect to shares or securities and so on is required to be given. Basically, this again follows the draft uniform act, and we suggest that in addition to the information suggested in Bill S-22 the cost to the company should also be required to be disclosed. We submit that that information—that is, the price the company paid for these securities—may well be of interest to the shareholders in order that they may compare it with the market value. The market value by itself is not too significant.

The CHAIRMAN: Wait a minute.

Senator MCCUTCHEON: Which section are you referring to?

The CHAIRMAN: Paragraph (*g*) and (*h*), on page 24.

Senator WALKER: Where would you make that amendment?

Mr. MERRIAM: In (*g*) after the words "stating their nature" add the words "and cost". That is the way the draft uniform act reads.

The CHAIRMAN: Just a minute, if it says "and the basis of valuation thereof" is not the answer "market" or "cost"? Is not it in there now?

Senator WALKER: "And the basis of valuation thereof"?

The CHAIRMAN: Yes, so you put them in at a certain dollar amount, and this asks you to state the basis of valuation, and you answer that by "cost" or "market".

Senator WALKER: Would the basis of cost be the market or the cost valuation at the time?

The CHAIRMAN: The cost would be the cost at the time you acquired them, but . . .

Senator WALKER: I thought Mr. Merriam said it would be helpful for the shareholders to know what the company was doing—in other words, to know what these shares cost as well as what their market value was.

Mr. MERRIAM: The basis of valuation is contained in the section, but if the basis is market, and that market happens to be 50 per cent below what was paid for those shares or debentures, or whatever they are, then our submission is that that latter figure, for purposes of comparison, would be of interest to the shareholders.

Senator LEONARD: Would it not have to show up? If the market value of those shares is less than the cost price would not that show up on the profit and loss statement as a loss?

Mr. MERRIAM: Not necessarily in the profit and loss statement, Senator?

Senator MCCUTCHEON: What are you suggesting, Mr. Merriam?

Mr. MERRIAM: We are suggesting that the draft uniform act be followed in each paragraph. We are suggesting in paragraph (*g*) at line 15 on page 24 after the word "nature" put in "and cost", and in paragraph (*h*), at line 21, after the word "stating" . . .

Senator MCCUTCHEON: What are you saying there?

Mr. MERRIAM: . . . put in "the cost and" so that it reads "stating the cost and the basis of valuation".

The CHAIRMAN: That will not give you everything you want, Mr. Merriam, because in paragraph (*g*) if you put in "and cost" and then go on to say that the basis of valuation is the market value—does that give you everything you want?

Mr. MERRIAM: If we put "and cost" in, yes.

The CHAIRMAN: What you are saying there is "stating their nature and cost"?

Senator FLYNN: I think you need "cost and market value".

Mr. MERRIAM: If we have the cost and the basis of valuation then the shareholders know precisely what has happened with that investment over the period of time.

The CHAIRMAN: Yes, I follow that. What is your next point?

Mr. MERRIAM: The next section is section 120(1) which is to be found on page 26. That again is in general in the same terms as the uniform companies act. This was considered at some length in connection with the amendments being made to the Manitoba Act, to which Mr. Dorfman referred recently, and it was noted that the particulars of any change in accounting principle or practice which might be mentioned are those which affect comparison with the immediately preceding period. There was a suggestion that this might be rather narrow—that it could be interpreted narrowly—and after considerable consideration the following suggestion was implemented in Manitoba, or is in the process of being discussed there. It would mean changing Section 120(1):

> There shall be stated by way of a note to each financial statement, (*a*) particulars of any material change in accounting principle or practice of in the method of applying any accounting principle or practice that was made during the period covered and (*b*) the effect, if material, of any such change upon the profit and loss for the period.

The only purpose there is this. It does seem to be somewhat wider in application than merely restricting it to the "immediately preceding period".

Senator MCCUTCHEON: Is this a fair question to ask? Have the views of the auditors, reputable chartered accountants, in Ontario and Canada been found out and are they in agreement with the suggestion you make?

Mr. MERRIAM: It is a perfectly fair question, senator, but I have not got the answer, I just do not know.

Senator MCCUTCHEON: The normal accounting certificate, I think you say, today is "in accordance with the wording of the act" plus "and that the normal, the same accounting principles are applied as were applied in previous years". I think that is the normal accounting practice today. What you are suggesting is that it be incorporated in the act?

Mr. MERRIAM: In fact, yes, sir, except that we say, instead of "the immediately preceding period"—we take that out in effect and suggest that any change in accounting principles or practice made "during the period" must be noted in the financial statement.

Senator MCCUTCHEON: Any material change?

Mr. MERRIAM: Any material change.

The CHAIRMAN: You cannot talk about change unless you are referring it to something.

Senator MCCUTCHEON: I think you have to refer it to the previous year.

The CHAIRMAN: Yes.

Senator WALKER: What we have to change is the word "material".

Mr. MERRIAM: The next item is in Section 121E on page 32. Subsection (3) gives to a debenture holder the right to require a copy of the financial

statement but it is restricted to those financial statements which have been placed before the "last" annual meeting of the shareholders preceding the demand. This could easily result, in interpretation of that section, in a debenture holder requesting a copy of a statement five days before an annual meeting, that statement having already been circulated to the shareholders under one of the other sections of the act and become public knowledge. And compliance with this section could be fully handled by the company, by simply sending him a copy of a statement a year old. We suggest that that be amended so as to provide that the debenture holder is entitled to a copy of the last financial statement and auditor's report made available to the shareholders.

The CHAIRMAN: Why should a debenture holdler get it before the shareholders have approved of it?

Senator ISNOR: That is not unusual, is it? Sometimes we do send out a printed report.

The CHAIRMAN: To the shareholders, yes, but why should the debenture holders get it before the shareholders have approved of it? That is what I am asking.

Senator FLYNN: One may be available only at the annual meeting or five days before the annual meeting.

Mr. MERRIAM: I do not think so, sir. Under section 121E(1), the company is required to mail to its shareholders, at least ten days before the holding of any annual meeting, a copy of its financial statement and auditor's report. I suggest that at the time when that mailing takes place, these statements are available to the shareholders. However that is a matter to be discussed.

Senator MCCUTCHEON: Under this section the debenture holder will have to wait until the day after the annual meeting. Why should he have to wait?

Senator FLYNN: Because it is not approved by the shareholders.

The CHAIRMAN: It is not the financial statement of the company until the shareholders approve it.

Senator MCCUTCHEON: That is semantic.

The CHAIRMAN: It is a little more than semantics.

Senator MCCUTCHEON: I agree with the point Mr. Merriam is making. That is all I wish to say.

The CHAIRMAN: Otherwise you impose on a company that has debenture holders that they must send out the financial statement to the debenture holders as well as to the shareholders in advance of the annual meeting. It is all very fine if you want to do that. But it is an additional expense.

Senator MCCUTCHEON: Why not do it?

The CHAIRMAN: It could be done only on request.

Senator MCCUTCHEON: What is in the Uniform Act?

Mr. MERRIAM: If it is in the Uniform Act, I do not know what section it happens to be. It seems to us that there is no reason why one of those statements which have gone to the shareholders and have been made public, should not go. We do not see why the debenture holder should be misled by being handed a statement that is a year old; or, alternatively, that the company within a period of 14 days for instance has to make two mailings to that man if he demands them.

Senator BOUFFARD: Could he not write ten days later to get it?

The CHAIRMAN: The act Section 121(1)(*b*) at present says:

> any holder of debentures of the company is entitled to be furnished by the company on demand without charge with a copy of such balance sheet

and that refers back to the earlier statement, that it includes the balance sheet and statement of income and expenditure and statement of surplus—

> . . . aforesaid that have been laid before the company at the last annual meeting preceding such demand.

Therefore, all he does is write in and asks to be mailed a copy of the material which has been sent to the shareholders and then he can get that statement. If he does that, it is covered.

Senator McCUTCHEON: He could write before the meeting.

The CHAIRMAN: He could write before and he might not get it until after, but he could write any time and say "I want it".

Senator McCUTCHEON: You are right, always right.

Senator LEONARD: Mr. Merriam's point is that he should get the latest available statement.

Senator WALKER: By inserting the word "last".

Mr. MERRIAM: I do not think the reference should be to the "last" annual meeting preceding the demand, but I think it should be the "last" financial statement.

The CHAIRMAN: We have your comment on that. What is the next one?

Mr. MERRIAM: Section 124(5) on page 35. This section applies to public and private companies. It entitles the company's auditors to notice of "any" meeting of shareholders. This is again a departure from the draft Uniform Act, Section 94(5), which gives the auditor that privilege and that right in respect of any meeting at which accounts on which he has reported are to be placed before the meeting. In other words, if that meeting is going to consider something that is of interest to him as an auditor, he has every right to attend and be heard.

Senator McCUTCHEON: Which one are you referring to?

Mr. MERRIAM: Subsection (5) at the top of page 35, Bill S-22. This would mean that even in a small private company, if for instance you wanted to change the number of directors, you would either have to have your auditor at the general meeting of shareholders to confirm that by-law or alternatively obtain a waiver from him. This seems to add some unnecessary complications and cost, particularly to the operation of the small private company; and we are submitting that subsection (5) be deleted and the following substituted.

The CHAIRMAN: Do you mean the substitution of the present language in the present act?

Mr. MERRIAM: No, sir. We are suggesting the following—

Senator WALKER: Is this new, or from the uniform act?

Mr. MERRIAM: This is from the Manitoba act, which is considering the wording of the uniform act, making certain amendments to that. We are suggesting the following:

> (5) For the purpose of making any statement or explanation with respect to accounts that have been examined or reported on by him
>
> (*a*) that he desires; or
>
> (*b*) that he is requested by any shareholder to make; the auditor of a company is entitled to receive notice of and to attend any meeting of the shareholders of the company at which any such accounts are to be laid before the shareholders.
>
> (6) With the consent in writing of all the shareholders,

And this is only applicable, really, in the case of a rather closely held private company, because of course, you would not get it from a public company.

a company may dispense with notice to the auditor in respect of, and his attendance at, any particular meeting specified in the consent.

If those submissions commend themselves to the members of this committee, then of course the present subsection 6 of section 124 would be subsection 7.

Our next submission is with respect to clause 35, again on page 35 of Bill S-22, and particularly section 125. This section deals with the content of annual returns. As honourable senators will readily notice the information that is to be included in annual returns under the proposed act is materially reduced from the information that we have been accustomed to provide. In effect, the information now required is primarily information which has been compiled or has been obtained from records which are generally either maintained or prepared under the supervision of the company's solicitor. There is no financial information whatever now to be required in the annual return. In these circumstances, it is our submission that there is no valid reason for requiring the auditor to certify as to the accuracy or authenticity of that annual return. In fact, what he would be asked to do would be to certify as to the correctness of the records maintained by the company's solicitor, and we submit that the certification of a director or an officer of the company should be sufficient as it now is.

Senator McCUTCHEON: How would he know where the directors lived?

Mr. MERRIAM: The auditor?

Senator McCUTCHEON: Yes.

Mr. MERRIAM: This is exactly the point.

The CHAIRMAN: I do not see any value in putting the auditor there, when an officer of the company is the proper person.

Senator WALKER: An officer in most cases.

Mr. MERRIAM: As at present and for many years an officer or director is satisfactory.

The CHAIRMAN: What is the next point, Mr. Merriam?

Mr. MERRIAM: The next point is subsection 10 of section 125, on page 36. Honourable senators will note under that section the Secretary of State may, if the company is in arrears in filing its annual returns for three years, give notice of his intention to dissolve the company. We do not quarrel with the intent; but under subsection (11) it is to be noticed that notice of the intention to issue such an order may be given either by mail or by publication in the *Canada Gazette*. We submit that if a company's corporate existence is to be dissolved by executive order, then every effort should be made to communicate direct with the company before issuing that order, and that therefore subsection 11 should require the notice to be mailed by registered mail to the company at the last address known to the Secretary of State and . . .

Senator McCUTCHEON: Yes, "and" is the operative word.

Mr. MERRIAM: And published in the *Canada Gazette.*

Senator LEONARD: Registered, in other words.

The CHAIRMAN: Yes.

Mr. MERRIAM: This, sir, is our final submission, and is in connection with clause 36 at the top of page 37—the new section 125A. This one we make with the very strongest energy at our command. This proposes to add a new section to the Companies Act, which would give the Secretary of State unlimited and uncontrolled power to demand information with respect to any aspect of the company. He need not explain or justify his demand. It need not be reasonable that the information be supplied. There is no way the company has any right of

recourse. The courts have no ground of authority whatever for reviewing it. There is no restriction on the manner in which the information is to be used or the purpose for which it is or may be demanded.

The Canadian Bar Association has always strongly opposed this broad, unrestricted and uncontrolled discretionary power being delegated to administrative authorities, because it is opposed to the fundamental principles of justice and law.

In this instance, we respectfully but forcefully submit that clause 36 of Bill S-22 should be deleted in its entirety.

Senator WALKER: That is like the police state bill.

Senator CRERAR: What are you trying to get at in section 125A?

Mr. MERRIAM: We are opposed to it very strongly, because we do not know what they are trying to get at. Our feeling is that if there is a piece of information that should be available to the Secretary of State it should be spelled out affirmatively in the act.

Senator MCCUTCHEON: The real point is that if that section goes in, no one will incorporate a dominion company.

Senator WALKER: Just a minute. Isn't this in the Ontario act?

Mr. MERRIAM: I think it is, and I submit that is not—

Senator WALKER: That is true, I appreciate that; but a senator over here was suggesting that nobody would incorporate under dominion charter; but they are incorporating under the Ontario charter under this section here, and is this the first time that it has been noticed?

Mr. MERRIAM: It is the first time it has ever been proposed to be included in the dominion act.

The CHAIRMAN: I notice the first part says that the Secretary of State may by notice require the information. The real problem is, of course, what happens if they don't get the information, and this certainly seems to go too far. If the Secretary of State persisted in wanting the information, it may be that on notice to the company he could go to the court and get an order; and I don't know if I would even subscribe to that procedure, but at least it would not be so police like as this.

Senator CRERAR: I would like to ask the witness, Mr. Chairman, what difficulty he is endevouring to meet by this section, because it is a very sweeping section. Are you trying to reach companies that don't make returns, for instance?

Senator LEONARD: He is trying to get rid of the section.

Mr. MERRIAM: We are opposing it most strenuously; we don't want that section in.

Senator CRERAR: Well, it certainly ought to be changed. If you are aiming at a company that is not operating, that is defunct, and does not make returns, then specify that.

Mr. MERRIAM: There are other provisions which authorize the Secretary of State to wind it up.

Senator CRERAR: A man may be wholly innocent, and you may order a company to make a return, and if it fails, then he is guilty of an offence and will be punished. That is absurd.

Mr. MERRIAM: That is our position exactly.

Senator CRERAR: Positively absurd.

The CHAIRMAN: I would say that when we get to hearing the representatives from the department of the Secretary of State, this is one section in which they will have to show cause, judging from the way this meeting is going.

Senator WALKER: This follows the Ontario act; at least, a great many of the new clauses do. We are all agreeing with you, not arguing with you, Senator Crerar.

Senator LEONARD: It might not be a bad idea if we struck it out now.

The CHAIRMAN: I think it is in the Corporations Information Act of Ontario.

Senator LEONARD: Mr. Lesage gave us the section I believe. Was it section 104, Mr. Lesage?

The CHAIRMAN: I think it is in the Corporations Information Act of Ontario.

Mr. Louis Lesage, Director, Companies and Corporations Branch, Department of Secretary of State: It is in both the draft act and the Ontario Corporations Information Act; and it was through a majority composed of Ontario people who had knowledge of the Ontario act and the draft act, but I must say I strongly opposed that section, and I think this really needs to be amended. In the case of private companies, when supplementary letters patent are requested, some detailed information which would appear only on the financial statement of the company is required and I think this would be entirely sufficient. But at the time our Companies Act came before the Interdepartment Committee, it was said that it would be very easy to insert this provision as 125A; but I disagree with that section as it is drafted.

The CHAIRMAN: So we have the work of revision there.

By the way, Senator McCutcheon, it is section 4 of the Corporations Information Act of Ontario.

Senator MCCUTCHEON: What page of your copy is that on?

The CHAIRMAN: Page 176.

Senator ISNOR: Would you read that, please, Mr. Chairman?

The CHAIRMAN: Section 4 of the Corporations Information Act of Ontario is at page 176 and reads:

> The Provincial Secretary may at any time by notice require any corporation to make a return upon any subject connected with its affairs within the time specified in the notice, and on default in making such return every director of the corporation, and, where the corporation is an extra-provincial corporation every person acting as its representative in Ontario, is guilty of an offence and on summary conviction is liable to a fine of not more than $200.

Senator MCCUTCHEON: That is why we set up Mr. Justice McRuer to hear these things.

The CHAIRMAN: That is one of the reasons.

Mr. MERRIAM: Mr. Chairman and honourable senators, that completes our submissions. Thank you very much.

The CHAIRMAN: Just before we adjourn, I might mention we have invited the Institute of Chartered Accountants to appear because there are quite a lot of sections here that seem to refer to them, and the information required would appear to be in some cases contributed at the suggestion of the chartered accountants. So, at our next sitting we will have them.

Can I take just one minute and give you the benefit of an idea I have in the back of my head? I thought when we have heard all the recommendations we might appoint a subcommittee of six or eight members of this committee, and we would sit down and work out the suggestions, and see why we accept or reject them or want to make changes. Having done all that, we would come back to the main committee and say, "Here are our suggestions" —and we would discuss them and reach a conclusion much sooner.

Hon. SENATORS: Agreed.

Senator ISNOR: Mr. Chairman, I want to make this comment about section 125. I know all the experts differ from me, but does not this section grant to the Secretary of State just the same authority to obtain information regarding the statement as is given to the Department of National Revenue in the case of income tax returns?

The CHAIRMAN: As I understand it, the objection to this section was not to the Secretary of State being able to ask for information, but it was the penalty if he does not get the answer.

We will adjourn until tomorrow morning at 9.30.

The committee adjourned.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-22; intituled: "An Act to amend the Companies Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 4

THURSDAY, JULY 16, 1964

WITNESSES:

Mr. G. P. Keeping, Chairman, Committee on the Companies Act, Canadian Institute of Chartered Accountants; Mr. T. A. M. Hutchison, member, Canadian Institute of Chartered Accountants; Mr. D. I. W. Bruce, Chairman, Legislation Committee, Canadian Manufacturers Association; Mr. H. J. Hemens, Q.C., Chairman, Sub-Committee on Companies Act. Canadian Manufacturers Association; Mr. D. H. Jupp, Honorary Treasurer, Board of Trade of Metropolitan Toronto; Mr. A. C. Crysler, Legal Secretary, Board of Trade of Metropolitan Toronto.

APPENDICES:

"A" Letter from Osler, Hoskins & Harcourt, Barristers etc.
"B" Letter from O'Brien, Home, Hall etc., Barristers etc.
"C" Letter from Campney, Owen & Murphy, Barristers etc.
"D" Letter from Campbell, Godfrey & Lewtas, Barristers etc.
"E" Brief from Mr. A. Graydon of Blake, Cassels & Graydon, Barristers etc.
"F" Brief from the Board of Trade of Metropolitan Toronto.
"G" Brief from the Canadian Institute of Chartered Accountants.
"H" Brief from The Canadian Manufacturers Association.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21041—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 20, 1964.

"Pursuant to the Order of the Day, the Senate resumed debate on the motion of the Honourable Senator Vien, P.C., seconded by the Honourable Senator Bradley, P.C., for second reading of the Bill S-22, intituled: "An Act to amend the Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, for the Honourable Senator Vien, P.C., seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21041—1½

MINUTES OF PROCEEDINGS

THURSDAY, July 16, 1964.

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

Present: The Honourable Senators: Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Bouffard, Burchill, Brooks, Cook, Connolly (*Ottawa West*), Crerar, Fergusson, Gouin, Hugessen, Irvine, Isnor, Kinley, Lang, Leonard, McCutcheon, Molson, Paterson, Pearson, Pouliot, Power, Smith (*Kamloops*), Thorvaldson, Willis and Woodrow.

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

Consideration of Bill S-22 "An Act to amend the Companies Act", was resumed.

On Motion of the Honourable Senator Cook it was RESOLVED to print as appendices to today's proceedings the following:

"A" Letter from Osler, Hosking & Harcourt, Barristers etc.

"B" Letter from O'Brien, Home, Hall etc., Barristers etc.

"C" Letter from Campney, Owen & Murphy, Barristers etc.

"D" Letter from Campbell, Godfrey & Lewtas, Barristers etc.

"E" Brief from Mr. A. Graydon of Blake, Cassels & Graydon, Barristers etc.

"F" Brief from the Board of Trade of Metropolitan Toronto.

"G" Brief from the Canadian Institute of Chartered Accountants.

"H" Brief from the Canadian Manufacturers Association.

The following witnesses were heard:

Mr. G. P. Keeping, Chairman, Committee on the Companies Act, Canadian Institute of Chartered Accountants.

Mr. T. A. M. Hutchison, member, Canadian Institute of Chartered Accountants.

Mr. D. I. W. Bruce, Chairman, Legislation Committee, Canadian Manufacturers Association.

Mr. H. J. Hemens, Q.C., Chairman, Sub-Committee on Companies Act, Canadian Manufacturers Association.

At 11.00 a.m. the Committee adjourned further consideration of Bill S-22 until later this day.

At 11.30 a.m. the Committee resumed consideration of Bill S-22.

The following witnesses were heard:

Mr. D. H. Jupp, Honorary Treasurer, Board of Trade of Metropolitan Toronto.

Mr. A. C. Crsler, Legal Secretary, Board of Trade of Metropolitan Toronto.

The Committee postponed further consideration of the said Bill.

At 12.55 p.m. the Committee adjourned until Wednesday, July 22, 1964, at 9.30 a.m.

Attest:

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, July 16, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, to amend the Companies Act, met this day at 9.30 a.m. to give further consideration to the bill.

Senator SALTER A. HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: This is a continuation of the hearings on the proposed amendments to the Companies Act. We have three groups here this morning to be heard, and we also have a public bill before us, an act to amend the National Defence Act. Our plan is that we should carry on with the evidence in connection with the Companies Act amendments until about 11 or 11.10, about which time the Minister of National Defence will be coming in. At that time we shall break and deal with that bill. This may well take an hour. When we are finished with that bill we will return to the hearing of witnesses on the amendments to the Companies Act. I think that will probably take us through until one o'clock. If we have not finished hearing the witnesses at that time I would suggest we might reconvene at two o'clock to hear the remainder of the witnesses who are coming by appointment. At the time we made the appointments we did not realize that we would have a public bill intervening in the hearings. Is that agreed, honourable senators?

Hon. SENATORS: Agreed.

The CHAIRMAN: The first thing I want to do in connection with the Companies Act amendments is to get the permission of the committee to print some of the submissions made to the chairman in the form of letters from various legal firms in Canada. The easiest way to distribute them, and the best way to ensure that they will be before you, is to have them printed as part of the proceedings.

The first letter I have is dated July 7, 1964, from Osler, Hoskin & Harcourt. Would you like me to read them?

Senator THORVALDSON: Could you summarize them?

The CHAIRMAN: Mr. Mockridge deals with subsection 3 of section 123 as it is to be enacted by clause 34 of the bill. It appears on page 34 of the bill. I think it is in fact an error of which we can take due notice when we get down to the business of checking these sections. There it says:

> (3) A person appointed as auditor under subsection (2) shall indicate in his report to the shareholders on the annual financial statement of the company that he is a director, officer or employee of the company or an affiliated company or a partner, employer or employee of the director, officer or employee.

What Mr. Mockridge says is that

> Subsection (3) provides that a person appointed as auditor under subsection (2) shall indicate in his report to the shareholders that he is

> a director, officer or employee of the company or an affiliated company or a partner, employer or employee of the director, officer or employee. It seems to me that the underlined word "the" should read "a" and that the words "of the company" should be added at the end of the subsection.

I think that is an intelligent objection, and we can have a look at it in due course.

We also have a letter from the firm with which Senator Campbell was connected. It is the firm of Campbell, Godfrey & Lewtas in Toronto. They refer to section 11 of Bill S-22. And this is a point which has to do particularly with mutual funds. It has to do with the changes in the language which is used with the use of the word "surrender" whereby when these funds have been incorporated and a shareholder is given the right to present his shares and the company must take them up the language used in the letters patent is "to redeem his said shares for cancellation at the asset value of such shares". He thinks we should stick to the known language so that it will not create any confusion.

Senator BOUFFARD: It is usually a sale.

The CHAIRMAN: Yes, but the language in the amending section is "surrender".

Senator THORVALDSON: On the same point I know that there are other objectors to the language of the section who might like to be heard later on.

The CHAIRMAN: I think if we deal with it in accordance with this letter they will be happy to accept that and not to have to appear.

Senator WILLIS: The firm is Campbell, Godfrey & Lewtas?

The CHAIRMAN: Yes.

Senator THORVALDSON: In regard to that I would point out that Mr. Godfrey is dealing with the same point as has been discussed.

The CHAIRMAN: There is a letter from O'Brien, Home, Hall, Nolan & Saunders, a well known firm of lawyers in Montreal, signed by Mr. Hall. It deals with subsection 3 of section 5 of the act. They suggest that while certain amendments are proposed in the bill in relation to other subsections of section 5, concern is principally with subsection 3, that is the subsection that says things that a company cannot do when it gets its charter. This is one of the things it cannot do. It says:

> (3) Nothing in this Part shall be construed to authorize the company to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance.

There have been all kinds of problems over the years in giving opinions to companies issuing short term loans as to what they are to do, and whether they are caught by this language, and what they have to do to avoid the apparent conflict. One question is whether the language "intended to be circulated as money" is descriptive of any promissory note or applies to any note payable to a bearer. I know in some instances where lawyers have been very firm in their opinions, and companies have had notes registered to the payee of the note to avoid difficulties.

Senator LEONARD: What is his suggestion? How does he think it should be dealt with?

The CHAIRMAN: He says:

> If it is not too late might I make the suggestion that consideration be given to amending subsection (3) by deleting the words "any note

payable to the bearer thereof or". If this deletion could be made it should clarify matters and still prohibit the issuance of notes, whether bearer or otherwise, intended to be circulated as money. Obviously this clause was inserted in the Act to prohibit Letters Patent Companies from engaging in the business of banking. The amendment suggested above would in no way alter that prohibition. However, there would seem to be no good reason why a company should not be permitted to issue bearer notes so long as they do not circulate as money if it can issue bearer bonds or debentures.

I had an idea as to the language that you might use because this seems to be a duplication—a note and a promissory note. Well, a note is a note: it is a promise to pay. The thing that might come the closest to looking like money would be if you had a note payable on demand. If the prohibition here were in respect of the issue of a note payable on demand, maybe that would do the job.

We are not making any final decision on it here. I am pointing out to you what the presentation is and, in due course, we will have a look at it.

We also have a letter from Mr. Campney of the firm of Campney, Owen & Murphy, a well-known firm of lawyers in Vancouver. He deals with a number of sections in the bill, and I think it is unnecessary to deal with them in detail at this time.

One other thing. We have had a brief submitted to us by Mr. Allan Graydon of the Blake firm in Toronto. We have copies which could be distributed, but notwithstanding that, my suggestion is that we include in the motion this morning that it be printed as part of the appendix to today's proceedings, so you will have it in a form that can be permanently before you. Is that all agreed to?

Hon. Senators: Agreed.

The CHAIRMAN: We have The Canadian Institute of Chartered Accountants before us, and I was proposing to call them first of this list of witnesses this morning because we invited them to attend at a previous hearing and then we ran out of time and they were not heard. I said, "If you would be good enough to return when we tell you we are sitting, while we may not be able to guarantee you can finish you will get the first chance of starting, subject to what the committee says."

The representatives of the Canadian Institute of Chartered Accountants here this morning are: Mr. G. P. Keeping, chairman of the committee on the Companies Act; Mr. C. L. King, who is also in that category; Mr. R. D. Thomas, who is the executive secretary; and Mr. T. A. M. Hutchison.

Would the delegation representing The Canadian Institute of Chartered Accountants come forward, please?

Who is going to be the leading spokesman?

Mr. KEEPING: I am going to lead off. Mr. King is not with us.

The CHAIRMAN: You are Mr. Keeping?

Mr. KEEPING: Yes.

The CHAIRMAN: Then there is Mr. Hutchison whom we all know very well; he has been before us before; and then Mr. Thomas.

We have received only half a dozen copies of your brief. Have you any more for distribution?

Mr. KEEPING: No, I am afraid not.

The CHAIRMAN: Do you propose to read your brief?

Mr. KEEPING: No, not unless you so wish.

The CHAIRMAN: My suggestion is that the motion include putting in the appendix today a copy of the brief of The Canadian Institute of Chartered Accountants. Is that agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: And with that as the background perhaps you would address us.

Mr. KEEPING: We could make additional copies available.

The CHAIRMAN: No, that is all right, we will print it as an appendix to today's proceedings.

Mr. G. P. Keeping, Chairman, Committee on the Companies Acts, The Canadian Institute of Chartered Accountants: Mr. Chairman, honourable senators, we are exceedingly grateful for this opportunity to appear before you.

The subject of company law is one very close to the hearts of accountants, and for many, many years The Canadian Institute of Chartered Accountants has felt strongly that the Companies Act of Canada is outmoded, particularly in so far as the provisions of dealing with disclosure in the annual statement submitted to shareholders is concerned.

Our activities as an institute in this field go back for many years. In fact, in 1939, only some five years after the enactment of the 1934 act, the committee was very active and made submissions to a federal-provincial committee on uniform company law at that time. In 1946, immediately after the war, the post-war planning committee of The Canadian Institute made extensive study of the subject and submitted a report or recommendations to the federal Government. In 1950 another committee was set up of which I was chairman, and that committee is still in existence. Mr. Hutchison, who is with us today, and was and still is a member. That committee prepared a report which was presented to the federal Government in 1953, and at that time, also, while this committee was studying this subject, the Ontario government took steps to amend its Companies Act, and this particular committee changed its hat and became the committee of the Ontario Institute and made recommendations to the select committee of the Ontario Legislature. A large number of these recommendations were included in the Ontario Corporations Act of 1953.

I might say that the recommendations that this committee came up with in 1953 are, in essence, the recommendations that we have made to the federal Government as recently as last year, and are, in large measure, incorporated in Bill S-22, in so far as the disclosure of financial statements is concerned.

We hope before you, sir, to point up one or two items that appear in the submission we have made to your committee; and, at the same time, we will be only too happy to answer any questions that may be directed to us by your committee.

There is one section of the act that I would like to deal with perhaps in some detail, a section to which we take exception—and there are not many to which we do take exception. This is section 61 of the existing act, which is the section dealing with the redemption of preferred shares.

Senator CRERAR: What page is that?

The CHAIRMAN: In the bill?

Senator LEONARD: Page 15, section 25 of the bill.

Mr. KEEPING: To put it bluntly, sir, we are of the opinion there is no need for barriers to be placed in the way of redeeming preferred shares, provided that such redemption takes place when the company is solvent and the redemption is not such that it would render the company insolvent.

The fact that preferred shares are redeemable is set forth in the balance sheet of the company. That is standard practice. Therefore, any grantor of credit should be put on guard that those shares are redeemable. Just as a prospective grantor of credit is able to see from the balance sheet the amount

of accumulated earnings, he knows they may be distributed by way of dividend, and he is therefore put on guard in that respect. We therefore strongly recommend that clause 25 of the bill be amended to give effect to our recommendation in this respect.

The CHAIRMAN: Your recommendation would produce a section, say, in line with the procedure in the Ontario act?

Mr. KEEPING: That is correct, sir.

Without leaving the subject I would like to say that we find the present section 61 quite unsatisfactory, and we find the proposed new section 61 even more unsatisfactory, from our point of view.

In the first place, both of these sections refer to a surplus arising from redemption. Now, in the minds of accountants, if a redemption is made at the par value of the shares no surplus arises from a redemption. The only time that a surplus arises from a redemption is when shares are purchased for cancellation or redeeming at less than their par value. Then a surplus arises in the amount of the difference between the par value and the redemption or purchase price.

Now, this expression which is used in both the old section and the proposed new section has been interpreted as meaning an amount equivalent to the par value of the preferred shares. If that is what is really meant, and your committee does see fit to recommend something along the lines of the present section 61, then we think that that point should be adequately clarified.

The CHAIRMAN: Section 61 of the present act presupposes the existence in liquid form of earnings that could be immediately earmarked for the redemption of those shares. Once you do that then that is the way it is proposed you create a capital surplus.

Mr. KEEPING: That is right, but I think it reads that the surplus resulting from a redemption or purchase for cancellation shall be designated as capital surplus.

The CHAIRMAN: Following the principle in this section, once you accomplish a redemption by using that method then you have the money that was paid in on those shares, but what are you going to call it? You have to call it something.

Mr. KEEPING: Yes. I am quarreling more with the terminology.

The CHAIRMAN: My quarrel might go a little deeper.

Mr. KEEPING: I have already stated that we do not agree at all with section 61 and the proposed new section 61, but I am pointing out some of our objections to both the new and old sections 61. With respect to this question in which you referred to liquid assets, both sections require that net profits be available as liquid assets. Now, I defy any accountant to say that net profits are available as liquid assets. Net profits come into a company and they are merged in the flow of other funds such as borrowed money, and to be able to identify certain net profits as being represented by liquid assets is, I think, quite impracticable.

Also, these sections refer to the term "capital surplus". In modern Canadian accounting practice the term "capital surplus" has no accepted connotation. If it were decided to include some similar provision we would suggest that serious consideration be given to changing the terminology.

The CHAIRMAN: What suggestion would you make?

Mr. KEEPING: I would like to come up with one later on, if I may.

Senator THORVALDSON: On this point might I ask if any reference has been made to this section by the representatives of the Canadian Bar Association who were here some time ago? Unfortunately, I was not able to be

present at that time. Or, was any reference made to it by other persons who appeared before the committee?

The CHAIRMAN: That is some time ago, and I do not recall.

Mr. KEEPING: If I may be permitted to speak, my recollection is that the Canadian Bar Association made a similar recommendation.

The CHAIRMAN: Yes, they had something to say about it, but I do not recall exactly what it was. That brief has been filed and is now in our record of proceedings.

Senator MOLSON: Mr. Chairman, has Mr. Keeping any suggestion as to how the section should be worded?

The CHAIRMAN: I think his idea, if I understand him correctly, is to strike it out.

Senator LEONARD: I understood him to say that he would be satisfied with a section similar to that in the Ontario act dealing with the redemption of preferred shares.

Mr. KEEPING: That is right. We would be extremely happy with that. We would be extremely unhappy if the existing section 61 was left in and if the proposed new section 61 in Bill S-22 was adopted. But, if it was considered that something with the same philosophy behind it of setting aside as untouchable, if you like, an amount equivalent to the redemption of the preferred shares is considered necessary then we would not want to see it in the form in which it is now, or in its proposed form.

Senator HUGESSEN: I gather you would prefer to leave in subsection (1), and cancel the other subsections?

Mr. KEEPING: We would like to see something identical with that in the Ontario act.

Senator HUGESSEN: What does the Ontario act say?

Mr. KEEPING: I have the Ontario act here, and section 27(10) reads:

> Preference shares shall not be redeemed or purchased for cancellation by the company if the company is insolvent or if the redemption or purchase would render the company insolvent.

That, of course, is prefaced by a positive power to redeem earlier on in the section.

Senator HUGESSEN: So you would simply have the present subsection replaced by a subsection similar to that which you have read?

Mr. KEEPING: That is right, yes.

Senator THORVALDSON: Did the former Ontario act have a clause in it similar to the present section 61 before the amendment in 1954?

Mr. KEEPING: Being a resident of Quebec, I am not too certain.

Mr. T. A. M. Hutchison, Executive Secretary, Canadian Institute of Chartered Accountants: I would say no.

Senator BOUFFARD: You would have to refer to the charter, because there are not many ways—

The CHAIRMAN: Senator, the proposed new subsection (1) of section 61 in the bill before us says:

> —if such purchase or redemption is made in accordance with the provisions of the letters patent or supplementary letters patent.

If I understand you, you are saying that subsection (1) of section 61 as proposed in the bill would be acceptable if subsection (2) appeared in the form which you read a few minutes ago?

Mr. KEEPING: That is correct, sir.

The CHAIRMAN: I think we understand that. Is there anything more you want to say?

Mr. KEEPING: I would like to go on a bit about the objects of the present section 61 because it raises trouble when elections are made under the Income Tax Act to, in effect, pay out accumulated earnings to shareholders at the lower rate of tax that is permitted under the Income Tax Act—a measure that was taken in 1948, I think, to assist in the mitigating of the income tax and estate tax burdens imposed upon proprietors of closely held corporations. It is quite possible, and it happens quite frequently that a company might elect to pay tax on the whole of its accumulated profits, in which case it capitalizes the total of those accumulated profits less the 15 per cent tax it has paid, and it is left with no accumulated profits. Under section 61 as it is now, when those preferred shares are redeemed the company is obliged to transfer an amount from accumulated earnings equivalent to the value of the shares redeemed, and there are no accumulated earnings to so transfer.

All that has happened is that the shareholder has really got out net profits to which he is entitled, but he has been obliged to convert them into capital and take them out by way of the capital route rather than by way of dividend. This is just one of the difficulties that is met with in connection with section 61.

We believe that preferred shares that are created out of accumulated earnings by way of declaration of a stock dividend in the form of preferred shares should certainly not be governed by any restriction at all. We can see absolutely no case for it. Should it be decided to leave in to some extent this principle of capitalizing a sum equal to the amount of the preferred shares redeemed we think it should certainly only apply to preferred shares that have been subscribed for in cash by the shareholders, or any property, but not any shares that have been created by a stock dividend out of earnings.

Senator THORVALDSON: Would you follow that up, Mr. Keeping, and say whether in your opinion there is any real purpose in that latter event?

Mr. KEEPING: We do not believe so. As I said, we believe there is no purpose served; that the public and the creditor is adequately covered if the company is insolvent and the preferred shares—if you apply a liquid assets test in section 61 and the proposed section 61 then I suggest, gentlemen, that liquid assets which consist, in my opinion, of cash on hand and readily marketable securities, which are available to pay your current debts. I suggest that it is quite possible for a company to have liquid assets and be insolvent. In other words, it may well have cash and readily marketable securities and yet be unable to pay its current debts and, therefore, be insolvent. I therefore suggest that the insolvency test is in some respects a better one than the liquid assets test.

Senator HUGESSEN: These provisions were inserted in the amending act of 1934—that is 30 years ago. What was the primary reason for these provisions? What were they designed to cover?

Mr. KEEPING: I think the idea behind it was to protect a creditor. The capital of the company should be preserved intact, and if some of the shares were redeemed, then it should be replaced by an amount transferred, an equivalent amount, from accumulated earnings, and frozen in in the same way as capital stock is frozen in, and can only be taken out in taking measures under the provisions for the reduction of capital which entails application for new supplementary letters patent, and notification in most instances to creditors. My point is that with redeemable preferred shares, they are issued as redeemable and shown in the financial statement as redeemable, and so any creditor should be on his guard that these shares can be redeemed and in assessing the risk should take that into account.

Senator LEONARD: What happens if the company was not insolvent and the creditor was nevertheless at the loss of his money?

Mr. KEEPING: The creditor would have an action against the directors.

Senator HUGESSEN: The provision of the Ontario act which you quoted goes against a company redeeming shares?

Mr. KEEPING: Definitely.

Senator LEONARD: Apart from the statute, how would you deal with the surplus resulting from a redemption of shares?

Mr. KEEPING: We say no surplus results from the redemption of preferred shares. They may be less than par value.

Senator LEONARD: If you redeem shares at $98 and there is a liability of $100, what happens about the $2?

Mr. KEEPING: They would be brought in under what we call contributed surplus. It is a type of capital but not taking the form of capital stock.

Senator LEONARD: It does not have to be so designated under the normal practice?

The CHAIRMAN: It can be just designated as surplus under the Ontario law. It can be put in under that heading.

Mr. HUTCHISON: I think we have put it in under contributed surplus.

The CHAIRMAN: In order to satisfy the legal requirement of the law you would put it in under that heading in the balance sheet?

Senator LEONARD: It would be like capital brought in on the sale of an asset, but not of fixed assets.

Mr. KEEPING: We accountants look at it rather differently from a gain on the disposal of fixed assets. We would consider it more or less a form of income. Any surplus on redemption of shares would immediately be made known to shareholders.

The CHAIRMAN: I have the transcript of the submission by the Canadian Bar Association on this point, on page 34. There Mr. Dorfman says:

> ... Clause 25 provides a revised wording of section 61 of the act. The bill preserves the principle that purchases or redemptions by a company of its shares must not be effected from capital. It should be noted that in Ontario the purchase or redemption of shares is not so restricted and may be accomplished by a return of capital. Greater flexibility in corporate organization and practice has resulted without any apparent detriment to the public. The experience of Ontario has prompted the Province of Manitoba to adopt a new provision, now being debated in its legislature. While it still may be argued that the purchase or redemption should be accomplished only from net profits or the profits under fresh issue of shares, no explanation is given in the bill whether the net profits must be available as liquid assets. Presumably, liquid assets would be interpreted to be cash and marketable securities. Inventory would not be certified as liquid assets. A company is thus prevented from borrowing moneys to effect a purchase or redemption even though the capital of a company would not thereby be impaired.

Senator THORVALDSON: They made no recommendation in regard to the section, did they?

Senator HUGESSEN: Is there not an implied criticism in that?

The CHAIRMAN: He says that this section does not modernize the act,—it prefers the original principle and is intended to bring the act up-to-date; but perhaps you might seriously consider adopting the Ontario provision.

Senator McCUTCHEON: This is one of the reasons why people do not come in Ottawa to incorporate companies.

Mr. KEEPING: There is one point I would like to mention regarding the proposed section 61 in the bill. There there is a requirement that the auditor certify that the profits in the required amount are available as liquid assets. In our view this is a completely unworkable provision. First of all I don't think an auditor could certify that any profits are available as liquid assets. He could conceivably certify as to the quantum of liquid assets at some particular time. This inflicts a burden on this kind of company because in some cases there are companies who are purchasing for cancellation all through the year, and to say that at every date they purchase a share for cancellation the auditor should be required to make an examination and give a certificate as to the liquid assets—this would be quite intolerable.

Senator McCUTCHEON: You don't agree with the explanation in the bill that the section is to be more practical?

Mr. KEEPING: No. I do not want to criticize the bill as a whole, because there are many, many sections with which we are just delighted. I spoke to Mr. Lesage the other day, and I told him I wished to commend the Secretary of State Department or whoever was responsible for the draft. There is one other matter I should like to mention. In our memorandum we submitted to you we mentioned the French text of the bill and the fact that in our opinion it is not satisfactory. There are a number of terms there which are not the generally accepted words in French at all. For example there is *excédent* for the word "surplus" whereas in French they normally use the word *surplus*. We have a committee studying it further and we will have a report prepared and I would like to submit that in connection with changes in the French text.

The CHAIRMAN: You have enumerated in your brief, which appears as an appendix to today's proceedings, a number of terms which you say are not suitable.

Mr. KEEPING: This is not a full list, or an exhaustive list. We have a committee going through them to deal with them in detail.

The CHAIRMAN: But you don't think that committee will make any changes in the ten you have mentioned.

Mr. KEEPING: No, but they may well come up with others.

Senator KINLEY: The witness said that the company law was outmoded —the present company law, if I understood him correctly. He spoke of disclosure. I would take that to mean that there could be something going on that everybody who is interested does not know about. This could be dangerous. What worries me and what is worrying a lot of people, and also the press of Ottawa have brought this to our attention the last two months, is the situation with regard to subcontractors. The subcontractor is not adequately protected. His position is very hazardous and it is getting to the situation where he is in a position that he has no protection at all. What would you say about that?

Mr. KEEPING: I don't know that I feel qualified to answer that. The subcontractor you refer to is a subcontractor, say, for a construction project?

The CHAIRMAN: Are you asking the witness a legal question or an accounting question?

Senator KINLEY: An accounting question.

Mr. KEEPING: Well in that case I must say I did not understand the question. I do not understand exactly in what way accounting comes into this. Do you say that the accounting is deficient in that it is responsible for the fact that the subcontractor is not adequately protected?

Senator KINLEY: Not adequately protected under the corporation law with which you deal. The subcontractor should be warned of the approaching danger. That is one of the big problems, that he is not adequately protected under the law. There is a Canadian provision which has to do with the Province of Nova Scotia, and as a result many problems have grown up in the shipbuilding industry. Take for example one of the old wooden shipbuilders, in a small business, who suddenly finds himself in big business, and he needs capital. I am speaking of an actual case. This was a shipbuilding company that was building vessels and I am advised that they had signed their subsidy to the Loan Board of the Province of Nova Scotia. That means that the Loan Board advances the money to build a ship, and they take security by way of a builder's mortgage or something like that. Now I find one of these companies had $50,000 borrowed from the Industrial Bank of Canada. That is a first mortgage too. Then of course they go to the Bank and I don't know what they do with their contract, but I guess they deposit the contract. Under section 88 they took as security an inventory of the company. They had subcontractors. The company went bankrupt and there were numerous people who in good faith and without knowledge supplied goods to the company which they needed for the contract work on the ship. They have to go into liquidation, and where is their protection? There is nothing left, between the Industrial Bank and the commercial bank and the Loan Board and everything else.

The CHAIRMAN: Well, senator, from the legal point of view the subcontractor could avoid all his problems by operating on a C.O.D. basis.

Senator KINLEY: They cannot do that. You think you are dealing with competent people. Why some people should be protected and others should not is rather hard to understand.

The CHAIRMAN: That is not a matter of company law as much as a matter of lien law and bankruptcy law.

Senator KINLEY: I am not speaking of law, I am speaking of conditions. What we are objecting to is this, there is no publicity about this. You find Canadian companies coming down to Nova Scotia and forming a subsidiary company there. And then you are in trouble again because the assets of the main company in Ontario are not available for the debts of the company in Nova Scotia.

The CHAIRMAN: Any person dealing with subsidiary companies knows that when he starts dealing with them.

Senator KINLEY: If you have a Government contract the Government makes them present a receipt to show that they have paid the subcontractors before they give them any money. Then they may have to give a receipt before they get paid, or they may say they don't want to do that. Many people are made to do it and they are in an intolerable position.

It is not a fair position. I respect our banks, I have every confidence in them, but when a bank goes to work and lends a man a certain sum of money with an hypothecation and leaves him half way through, that is not very good. If I or other manufacturers have to go to the lawyers to find out whether a man is worth any money, or this or that, if you give a mortgage you have to put it on record. I do not think these people could put these things on record at all. I have suffered from this on two or three occasions in the last couple of years, and have suffered quite acutely, because we like to feel there is honesty and confidence in business which cannot be destroyed by people getting a privilege, and the big fellow is getting too much privilege in this theatre. I think the position of the subcontractor—and in this I am supported by good legal and business authority—is not properly protected under the Companies Act. Of course, we deal mostly with the provincial Companies Act. To a large extent,

one follows after the other. You said the act was outmoded and that makes me come forward with what I believe. You talked about disclosures, and I think this should not be done without disclosure.

The CHAIRMAN: There are some phases of this in your submission Mr. Hutchison you are going to deal with.

Mr. HUTCHISON: Mr. Chairman, honourable senators, I propose to deal with section 34 of the amending bill which has incorporated in it virtually all the recommendations that have been made by The Canadian Institute of Chartered Accountants over the last 12 years. These recommendations were very largely incorporated in the Ontario Corporations Act in 1954, and at the present time the only differences between the Ontario Corporations Act and Bill S-22 would be certain minor matters which have been referred to the Attorney General's committee on the Securities Act in Ontario, the Kimber Committee. The principal one would be the disclosure of sales which, in our opinion, is a most desirable feature for the Companies Act. We do not think it would place any hardship on any company to disclose sales, but if a hardship should be created then we do propose a reference to the Chief Justice of the province. However, from reading the proceedings which have gone on before you in the last few weeks we appreciate that maybe the Chief Justice of Ontario is too restrictive an individual to place this responsibility on, and I think the suggestion has been made it should be to a judge of the Superior Court, which would certainly meet with our approval.

Senator BURCHILL: Is that section 34 you are talking about?

Mr. HUTCHISON: Yes, section 34.

Senator BEAUBIEN (*Bedford*): Of Bill S-22?

Mr. HUTCHISON: Yes, section 34 of Bill S-22.

Mr. KEEPING: Page 21, Mr. Chairman.

The CHAIRMAN: Section 34 starts at the bottom of page 19.

Mr. HUTCHISON: I think the reference to sales is at the bottom of page 21, section 117(1)(a).

Senator BOUFFARD: Do you not think there is a feeling that divulging information might give an unfair advantage to competitiors? Do you not think the disclosure of sales, purchases and prices, and so forth, might be quite harmful to some companies if they were made to competitors in the same field?

Mr. HUTCHISON: We feel that very few companies would be hurt. It has become almost universal practice in the United States and now meets with no opposition there. However, we do recommend there should be permission not to disclose by reference to the Chief Justice, and I understand the suggestion has now been made before you that this should be a judge of the Supreme Court.

The CHAIRMAN: Mr. Dorfman, who was here making a presentation on behalf of the Canadian Bar Association, dealt with this matter, and said:

> while . . . it is desirable that a statement present fairly the results of a company's operations, in the case of a private company all these detailed requirements may be unduly burdensome, unnecessary and not desired by small private companies owned by one or a few shareholders. It is, therefore, submitted that the bill be amended by adding a provision similar to the following which has been included in the bill to amend the Manitoba Companies Act. These provisions were also made applicable to private companies, . . .

—and he goes on to give a reference to the Manitoba act.

. . . This subsection provides:

With the consent in writing of all shareholders,

—it must be unanimous—

—a private company may dispense with the requirements under... —these sections.

He said that in relation to small companies let the shareholders decide, why go to the expense of making a presentation and arguing the matter before a judge?

There was a suggestion made that in public companies a judge of the Superior Court, at the instance of shareholders representing at least 10 per cent of the outstanding shares of the company, should look into the matter. I think that is the basis of the statement that was made to us earlier.

Senator THORVALDSON: Might I ask whether the representative of the Canadian Bar Association made any representation in regard to the fact this must be presented to the Chief Justice or Acting Chief Justice rather than any judge of the court? It seems to me it is unduly restrictive, because there is no reason why a Chief Justice or an Acting Chief Justice, in my judgment, can look after a matter of this kind any better than judge of his court.

The CHAIRMAN: I think Mr. Hutchison's point is a good one.

Senator THORVALDSON: Yes, I think so too.

The CHAIRMAN: Why restrict yourself to the Chief Justice of the province? I think it should be at the instance of a reasonable percentage of the shareholders, because you are disclosing, maybe, very valuable information of the company to its competitors. Of course, if they all have to disclose, I suppose they are not at any individual disadvantage.

Senator BURCHILL: How does it work out down in the United States? Do they go ahead and disclose all their sales?

Mr. HUTCHISON: I would say all public companies are disclosing their sales now. Private companies are probably disclosing sales anyway because their statements are not publicly circulated.

Senator BOUFFARD: Who is going to benefit from that information?

Mr. HUTCHISON: The shareholders, probably. It is probably the most valuable and important piece of information on which to judge a company's progress.

Senator BOUFFARD: Why would it not be left to the shareholders to decide what kind of information the company gives, if it is for their own benefit?

The CHAIRMAN: Do you mean a majority vote?

Senator BOUFFARD: Yes. We might put in a certain percentage, and it might be even more than a mere majority. If the shareholders are going to benefit most because of the disclosure of this information, it seems to me we should leave the shareholders to decide, either a majority of two-thirds, or even more, if you wish to. But it seems to me it is the shareholders who should decide.

Senator LEONARD: It is the minority that is likely to need the information rather than the majority.

Mr. HUTCHISON: I think even a sizeable minority might have considerable difficulty in getting the information they want. If you set a figure of, say, 10 per cent being required I think it would be very difficult in many companies to round up 10 per cent of the shareholders to support the requirement for the disclosure of sales.

The CHAIRMAN: I suppose if I were in a competitor's company my sales would be disclosed too. I do not know that it should be a problem for the shareholders to decide, whatever might be an acceptable number of them.

Mr. HUTCHISON: I have a feeling that the Canadian Bar Association, when they were speaking to that 90 per cent requirement, were speaking to the private company disclosure, whereas the one I was speaking to at the moment

is the one with respect to sales. I do not think they had any special recommendations to make on sales.

The CHAIRMAN: They were addressing themselves in that to the question of full disclosure. However, later on, at page 36 in the committee report Mr. Dorfman said:

> May I just suggest the application must only be made according to the wording, to the Chief Justice or Acting Chief Justice, and no power of delegation by the Chief Justice is even present in this bill. It is submitted that if this subsection is to be retained it should be amended to provide that the application may be made to any judge of the Superior Court of that province.

Mr. HUTCHISON: We would fully support that. We put the words "Chief Justice" in the recommendations we made because we followed the wording in the old federal Companies Act with respect to the court order.

The CHAIRMAN: He said:

> It is further submitted that the requirement in the proposed new section 117(1)(a) that statements show the amount of sale or gross revenue derived from the operations may adversely or unfairly affect those companies which deal in one product only, since competitors selling diversified products would only be required to disclose the total sales of all their products and not of each product.

Mr. HUTCHISON: My own feeling would be that informed management really knows the sales of its competitors. There are so many ways to make a very informed guess as to what your competitors' sales are I doubt if this is revealing very much to the management of another company; but giving the figure of sales will give the ordinary shareholder of the company a very good indication of the progress of the business in which he is a shareholder.

Senator BOUFFARD: Don't you have the feeling in many cases some competitive company will buy shares to get that information?

Mr. HUTCHISON: If it is a public company the statements are probably published by the *Financial Post* anyway. If it is a private company I do not think that he could buy the shares without seeking out some individual shareholders.

Senator BOUFFARD: I mean in a public company, of course.

Mr. KEEPING: The financial statements are public. You do not have to obtain shares in a company to obtain that information. Any investment house will give you the financial statement of any public company.

Senator BOUFFARD: That would be so in the case where the shareholders would have that statement. A few shares would be purchased by a competitive company to get that information.

Senator LEONARD: What is the provision in the Ontario act dealing with the disclosure of sales?

Mr. HUTCHISON: There is no provision at the moment. The provincial secretary has referred the matter to the Kimber Committee on the Securities Act within the last six months on the grounds no changes in the financial requirements should be included in the Ontario Corporations Act until this committee has reported.

Senator MCCUTCHEON: How many companies are disclosing sales? It is increasing year after year.

Mr. HUTCHISON: It is increasing rapidly year by year. I would say the more progressive and more efficient and profitable companies are all disclosing sales.

It seems to us it is the companies who have something to hide who do not want to disclose sales.

Senator BOUFFARD: Do you not have the feeling that as long as there is not uniform company law for all Canada they might decide it is better to incorporate in the provincial field rather than the federal field?

Mr. HUTCHISON: I cannot say what Ontario will do with this proposed disclosure of sales, but it is certainly before the province of Ontario government authorities for consideration and they are giving it serious consideration. Manitoba has it under consideration. I think the bill has not been yet finally enacted in Manitoba.

Senator MCCUTCHEON: What is the position of the Toronto Stock Exchange on this?

Mr. HUTCHISON: They are doing everything possible to encourage companies to disclose sales, but I do not think they would delist a company for not doing so.

Senator MCCUTCHEON: But they are making an active attempt to urge companies to do that?

Mr. HUTCHISON: Yes, very active.

Senator MCCUTCHEON: And if you are subject to the provisions of the S.E.C., as some companies are, then you must disclose.

Mr. HUTCHISON: Yes, you must disclose.

Senator BURCHILL: Have there been any representations from the Canadian Chamber of Commerce or the Canadian Manufacturers' Association?

The CHAIRMAN: The Canadian Manufacturers' Association are here this morning.

Senator BURCHILL: I would like to hear from some of the companies as to how they feel about it.

Senator COOK: You had to go back to the court each year?

Mr. HUTCHISON: You had to go back to the court each year if you did not want to disclose your sales.

The CHAIRMAN: It strikes me that if you were going to incorporate that provision requiring the authority of some judge, surely you would not have to do it each year? If there is a direction that you do it, then the only right thereafter is that of an application to the court if you wanted to change.

Mr. HUTCHISON: I think our thought was that if you get permission from the court for a year then this might carry on indefinitely, and maybe you should be required to go back to the court to prove the case for not disclosing sales.

The CHAIRMAN: Is there any other submission?

Mr. HUTCHISON: Yes, I would like to speak to the provision with respect to company disclosure. We feel strongly that the private companies should disclose the same information as public companies. In many instances the minority shareholder in a private company is in a far more difficult position than the minority shareholder in a public company. At least, in a public company he has some opportunity to sell his shares. In a private company he frequently does not.

The CHAIRMAN: The opposite side of the coin is that you certainly must want to get into a private company very badly because getting into a private company is not a simply procedure. Is not that right?

Mr. HUTCHISON: Yes, that is right.

Senator MOLSON: You may find yourself a shareholder of a private company by reason of inheritance, or some other such circumstance.

Senator McCUTCHEON: Or, having got in the situation may change.

Mr. HUTCHISON: The private company is very often a borrower, and this kind of information is very often provided to banks and financial houses. We consider that the same kind of information that a public company puts into its statements should be contained in the statements of private companies.

The CHAIRMAN: If a bank was contemplating a loan to a private company and the balance sheet did not disclose all the information it wanted then it would ask for it, or it would not make the loan.

Mr. HUTCHISON: Sometimes I think they do not want to ask for it, Mr. Chairman.

The CHAIRMAN: Well, if their accountants cannot tell them then they should talk to their lawyer.

Mr. HUTCHISON: We have had this provision in the Ontario Corporations Act ever since 1954, and I do not think any public accountant or auditor has found it at all burdensome. We have not heard individual businesses complain it is a burdensome requirement.

Actually, in our institute we have published a number of policies on the subject of accounting disclosure, and one of them requires disclosure in financial statements on terms which are almost identical to the requirements in Bill S-22, and any good auditor should see that the disclosure in any set of statements meets the requirements of Bill S-22. What you are really doing is providing legal authority for the protection which we think a shareholder should have.

The CHAIRMAN: We have noted that. Are there some other submissions you would like to make, Mr. Hutchison?

Mr. HUTCHISON: We would like to suggest that section 119(1)(j) and (k) on page 24—in the third line it says: "the basis of valuation, whether cost or otherwise, if valued on the basis of an appraisal made since 1963 or since the date preceding by twenty years...", and we consider that that might go back three years. The present federal act goes back three years. If that is done you would then have a consistent flow following from the present act.

The CHAIRMAN: What do you suggest is involved in any change there?

Mr. HUTCHISON: Could you make it "made since 1960"?

The CHAIRMAN: Yes?

Mr. HUTCHISON: In section 124(6) on page 35—I think this is a mistake on our part in producing some wording. I am referring to the first line. We think that "not more than ten days" should be changed to "not less than seven days".

The CHAIRMAN: Where is that on page 35?

Mr. HUTCHISON: It is on page 35, in the first line of subsection (6). We think it should read:

> A company, upon receipt, not less than seven days before a meeting of shareholders—

What we are trying to do is to make sure that if the auditor is being changed he at least has an opportunity of telling the shareholders his reasons for feeling that he should not be changed.

The CHAIRMAN: Very well.

Mr. HUTCHISON: There is one remaining thing, and one upon which we feel strongly although I realize it is something upon which we cannot really make recommendations. I am referring to section 37 dealing with amalgamations. We gather from reading the proceedings—

Senator BOUFFARD: What is the page?

The CHAIRMAN: It is at the top of page 37. It is clause 37 and the new section 128A under the heading of "Amalgamation".

Mr. HUTCHISON: We think this may involve constitutional issues from having read over your prior proceedings, but it seems to me that it should be possible to make an amalgamation between a provincially incorporated company and a federally incorporated company. If this is not so then you put all the federally incorporated companies into a strait jacket.

Senator BOUFFARD: Do you think we can decide that ourselves? The provinces would have something to say with respect to that.

The CHAIRMAN: They may not have. I have been looking at the Ontario provisions, and it may be possible to provide the machinery.

Senator LEONARD: Undoubtedly it is possible because there have been cases. As long as the Ontario act provides power for an Ontario company to amalgamate then all we need to do is to give that same power to a dominion company.

The CHAIRMAN: Yes, to provide the other half of that combination.

Mr. HUTCHISON: The Ontario Corporations Act, I think, does so now provide, and I think the Manitoba Act will so provide.

Senator BOUFFARD: In Quebec we have to go before the two Parliaments, federal and provincial.

Senator THORVALDSON: I take it that this matter has not been dealt with at all in Bill S-22?

The CHAIRMAN: Yes. What I thought our procedure should be is that after we have heard all these witnesses we will go back to Mr. Lesage and say with respect to each section: "Here is what is proposed as against what is in the bill, and here is something that is proposed which is not in the bill. Could we have your comment on it?" We could ask him whether it is suitable and whether it would carry out the intentions so far as policy is concerned. I agree that amalgamation is something we should look at.

Senator THORVALDSON: I take it that that is your recommendation, that we look at this?

Mr. HUTCHISON: Yes, very strongly. It would be of genuine benefit to the economy that amalgamation between corporations that are under different jurisdictions be allowed.

Senator BURCHILL: That point is noted in your brief, is it not?

Mr. HUTCHISON: Yes, it is. I think all the other points are covered in our brief, Mr. Chairman.

The CHAIRMAN: That is your submission?

Mr. HUTCHISON: Yes, Mr. Chairman.

The CHAIRMAN: Thank you very much.

Senator KINLEY: May I make a remark, Mr. Chairman?

The CHAIRMAN: Yes, certainly.

Senator KINLEY: With respect to the matter of shipping C.O.D. I would point out that that is a last resort. You would never do much business if you had to go on that principle.

The CHAIRMAN: Of course, you would not lose any money on bad debts.

Senator KINLEY: I have asked for disclosure in the same way as the securities commission has asked for it. I have asked for disclosure from people who take mortgages and who place liens so that we have the information before we start. What manufacturer would fabricate goods under a plan or design which obliged him to ship C.O.D. You cannot do it. You would be left with the goods on your hands, and no money. That happens all the time. C.O.D. is no good for that. It is simply a case of where you do not want anything to

do with them, but if that is the only safeguard a subcontractor has then he is in a very poor position. I just want that on the record.

Senator LEONARD: Has Mr. Hutchison finished what he wanted to say with respect to the amalgamation section?

The CHAIRMAN: Yes, he has finished his presentation.

Senator LEONARD: He has no quarrel with the wording of the section?

Mr. HUTCHISON: No.

The CHAIRMAN: There is one question I would like to ask. I notice that this section devises the same procedure of sanctioning and for a review on the merits in the court after the amalgamation has been agreed upon and signed. It strikes me that the compromise section in the Companies Act where shareholders are asked to re-write the conditions governing their shares is a matter of such importance that it is quite proper that any shareholder who is not satisfied with that should be able to go to the court afterwards to raise a question on the merits. But, I do not see the same elements involved in an amalgamation, and yet you have exactly the same procedure. You have a review on the merits afterwards. I do not think it is necessary.

Mr. HUTCHISON: I do not think, Mr. Chairman, we gave great consideration to this point. We were merely thinking of the mechanics of putting the two companies together.

Senator LEONARD: So you still have an open mind?

The CHAIRMAN: Your mind is still open on that point?

Mr. HUTCHISON: I would say we never gave particular consideration to it.

Senator LEONARD: What about clause 36 which adds section 125A to the act? Have you no comment on that section?

The CHAIRMAN: They have some comment on it in their brief.

Mr. HUTCHISON: We have a comment on it in the brief. I did not particularly comment on it at this time because really we think it is a matter that concerns the legal profession more than it does the accounting profession.

Senator BOUFFARD: Is there anything in the act that obliges a company to divulge what it has paid its lawyers in the course of the year? Is there anything in the act that requires that?

Mr. HUTCHISON: There was a requirement in the old federal act for the disclosure of legal fees. That requirement is not in bill S-22. Of course, companies are paying other fees such as management consultant fees and auditors' fees.

Senator MCCUTCHEON: The next step would be to require disclosure of the auditor's fees.

Mr. HUTCHISON: Unfortunately, they have such a provision in the United Kingdom.

Senator THORVALDSON: May I ask one question with reference to section 125A? Is there any similar provision in the provincial companies acts?

The CHAIRMAN: No. At a previous meeting I indicated that this provision is taken from the Companies Information Act of Ontario. I must say frankly that I do not claim any virtue in my discovering it. I was shocked firstly at the provision and, secondly, at the fact that I had not noticed it there before.

Senator THORVALDSON: I was wondering what the reason for this was, and whether any representations with respect to it had been made.

The CHAIRMAN: We can get that from Mr. Lesage when we make a full review of the bill.

Shall we hear the next witness until the Minister can attend with respect to the bill amending the National Defence Act?

Hon. SENATORS: Agreed.

The CHAIRMAN: We have now before us representatives of the Canadian Manufacturers' Association. Mr. Bruce is the secretary of Canadian Westinghouse Company Limited of Hamilton, and he is chairman of the C.M.A. Legislation Committee. He will make the introductions and I think then that Mr. Hemens, who is the general counsel of Du Pont of Canada Limited and the chairman of the C.M.A. subcommittee on the Companies Act will carry the main burden of the presentation.

Mr. D. I. W. Bruce, Chairman, C.M.A. Legislation Committee: Mr. Chairman and honourable senators, we appreciate very much this opportunity of meeting with you. As indicated by the chairman I have with me Mr. H. J. Hemens who is the General Counsel of Du Pont of Canada Limited; Mr. W. H. Flynn who is the Ontario General Manager of Canadian Industries Limited; Mr. J. E. Hughes, the General Counsel of Shell Canada Limited. From the C. M. A. staff we have Mr. H. S. Shurtleff, who is the manager of the C.M.A. Legislation Department, and Mr. C. Willis George, our Ottawa representative.

Mr. Hemens headed the subcommittee which worked on this bill. Perhaps I should say that he spearheaded it. Therefore, with your permission, I would like to turn over the reading of our brief, which I understand has been given to you in advance, to him. If you have any questions I shall ask him to refer them to whoever he feels is the most appropriate person to answer them.

The CHAIRMAN: Before Mr. Hemens takes over I would point out that if this brief is read into the proceedings it will come in in the order of the presentation of the evidence. Does that meet with the committee's wishes, or shall we print it as an appendix to today's proceedings?

Senator KINLEY: Print it.

The CHAIRMAN: Shall it be printed as an appendix?

Hon. SENATORS: Agreed.

The CHAIRMAN: We have no objection to Mr. Hemens' reading the brief, but I wonder if he would prefer, because the brief is to be part of today's proceedings, to make comments on the various sections rather than reading the brief as a whole. Would you care to make comment on the various sections rather than just read the brief? Would you care to follow that procedure?

Mr. H. J. Hemens, Q.C., General Counsel, Du Pont of Canada Ltd., Montreal, and Chairman, C.M.A. Subcommittee on Companies Act: Mr. Chairman, honourable senators, I think I would like to start informally by expressing our commendation of the Senate for its initiative in attempting to modernize our Companies Act.

Dealing with the brief in particular we have referred first of all to section 52 of the bill, and our arguments and representations are substantially the same as those which have been made by the Canadian Bar Association. Essentially we believe that the proposed remedy is rather drastic in the circumstances, and would have a tendency to penalize the shareholders rather than to penalize those who are responsible for the failures described in subsections d, e and f on page 3.

With particular respect to subsection d, that is the failure for two or more consecutive years to hold a meeting of the shareholders, there is one adequate remedy available under the Companies Act for shareholders who feel that an annual meeting should be convened. Sections 100 and 101 of the Companies Act give that opportunity.

We suggest also in connection with subsection 5 of the same section which appears on page 3 of the bill, that there seems to be little justification for

enabling the court to impose the costs of winding up on the directors since normally these failures are in our experience not because of a failure by the directors, but probably on the part of the officers. As an officer I do not propose that the costs should be assessed on the officers either.

Senator THORVALDSON: What section is that?

Mr. HEMENS: Subsection 5.

The CHAIRMAN: Page 3, subsection 5 of the bill.

Mr. HEMENS: With respect to section 7 of the bill, we take the same position and it is identical with that of the Canadian Bar Association. With respect to section 8 of the bill which amends section 10 of the act we would suggest respectfully that wherever "letters patent" is mentioned that the words "or supplementary letters patent" might well be added. The purpose is the same.

The CHAIRMAN: Is there anything in the definition section which says anything about that?

Mr. HEMENS: No; furthermore in two sections of the existing act, sections 2 and 4, reference was made to the letters patent and to supplementary letters patent.

The CHAIRMAN: The ordinary way would be to say letters patent were to be included. But there are specific provisions elsewhere in the act dealing with supplementary letters and not with letters patent.

Mr. HEMENS: We are concerned with section 9 of the bill which seems to be very simple. With your permission I would like to read our particular representation on that:

> Section 5 of the Companies Act which is amended by section 5 (1) of the bill makes it clear that a company comes into existence solely as a result of the grant of a charter. The proposed new section 11 of the Act set out in section 9 of the bill establishes the date of incorporation. Since it is the actual grant of the charter which brings the company into existence, doubts have arisen as to whether or not acts done by a proposed Board of Directors after the date fixed by the Companies Branch as the date which the letters patent shall bear, but before the actual issue of such letters patent, are, notwithstanding the wording in section 11, valid. It is respectfully submitted that the proposed section 11 of the Act should be amended to provide such validity.

What concerns us there is that an application is made for letters patent, and the company's branch agrees that they will issue them, and in the meantime the proposed directors meet and take certain actions. However the charter has not yet been granted and there is some doubt as to the validity of those actions despite the wording of the proposed section 11 as it now stands.

The CHAIRMAN: Are you making the point that the charter is granted only when the piece of paper containing the letters patent is handed to you?

Mr. HEMENS: Substantially that, sir. Section 5 says that the Secretary of State may grant a charter. Therefore it is the grant of the charter which constitutes the company.

Senator BOUFFARD: In a recent case in the Supreme Court of Canada they have decided that the date of letters patent is supposed to be the date of incorporation, although the letters are issued many weeks after. They have declared that all acts of the company during that time shall be valid.

Mr. HEMENS: I accept your view on that, senator. I recall the case, but I don't recall the Supreme Court establishing the validity of the interim acts.

Senator BOUFFARD: That was done in a judgment about two months ago. There was an option that was declared valid although the man had no shares for which he could deal because letters patent had not been issued at the time.

The CHAIRMAN: There are occasions on which the particulars and all material have been provided and cleared. The Secretary of State has said that everything is in order and that letters patent will be issued as of a certain date and that the company can start doing business as of that particular date.

Senator BOUFFARD: It was quite a hardship on the man in the case I have mentioned at that time because he had an option which expired on the 1st of October, and he didn't have letters patent. That was the effect at that particular time.

Senator LEONARD: Is Mr. Hemens suggesting that this new section in the bill makes any change from the previous section it replaces? It seems to me they mean exactly the same thing. The wording endeavours to make the meaning clearer. My view is that the meaning is exactly the same.

The CHAIRMAN: When does a grant of letters patent take place? Does it take place when the Secretary of State says the material is in order?

Senator LEONARD: I think one should look at the date of the letters patent.

Senator BOUFFARD: But if it is, for example, dated on the 21st of October, it is antedated to the 21st of September, and all acts done in between are valid.

The CHAIRMAN: I am not too sure about the term "antedating". If on the 21st of September the Secretary of State says "I am granting you letters patent, but the piece of paper will not be issued for one month," do the letters patent not apply from the date on which he says this?

Senator BOUFFARD: But in the meantime you cannot receive the shares you are promised, and you cannot deal with them. The letters patent are not issued yet.

The CHAIRMAN: That raises another question.

Senator THORVALDSON: I wonder if the witness could quote any abuses that there have been in respect of this. I wonder if he could give any instances where the Secretary of State gave a date after which one could operate and start work on the company. Are there any abuses that the witness has in mind resulting from present practice? The chairman indicated that the actual getting out of the letters patent is a matter of routine administrative work. It is a matter of whether the Secretary of State is in Ottawa or is out of Ottawa for, say, a week. I have always thought that the practice in the past has been to give a date, and that it has been a useful one.

Mr. HEMENS: I don't know of any such. We have had the opportunity of discussing the precise meaning of this section with other legal counsel who have expressed doubts as to the validity of interim acts, notwithstanding the Supreme Court judgment. We thought of ways of wording this so that it would mean greater clarification.

Senator HUGESSEN: I very much doubt if we could devise a satisfactory wording to cover that. I think we should leave it as it is.

Mr. HEMENS: We did attempt to devise a wording but then considered that the Government drafting counsel could probably do it better than we could.

The CHAIRMAN: In accordance with the announcement I made at the beginning of our sitting this morning that we were going to break off at 11 or as close to 11 as possible, I now suggest that we do so. The Minister of National Defence is here now, as is Brigadier General Lawson, and I think we should break off and go ahead with the amendments to the National Defence Act. Having done that we can come back to the witness, Mr. Hemens, afterwards.

(Upon returning to consideration of Bill S-22, to amend the Companies Act.)

The CHAIRMAN: Senators, we will now resume with Mr. Hemens. We had got to section 10 of the bill. Is that right?

Mr. HEMENS: That is right, sir. I propose to pass over section 10 without saying more than what we have in the brief.

With respect to section 13—because I think we are the only ones who raise this point—I would like to draw attention to the fact that it can be clarified by simply adding the word "holding" before the word "company" in the fourth line.

The CHAIRMAN: This is on page 10?

Mr. HEMENS: Yes, page 10, subsection (2) in the fourth line. We think such an amendment would avoid any possible ambiguity.

The CHAIRMAN: So that the phrase is "shares of a holding company"?

Mr. HEMENS: Yes.

The CHAIRMAN: That is what is intended, is it not?

Mr. HEMENS: Yes, I believe that is what is intended.

Senator MCCUTCHEON: What is the suggestion, Mr. Chairman?

The CHAIRMAN: It is simply to put the word "holding" before the word "company" in the fourth line of subsection (2). It makes it clear.

Mr. HEMENS: With respect to section 17 of the bill which appears on page 13 we substantially support the position of the Canadian Bar Association. This is the proposal to allow a summary of the preferences, rights *et cetera* to be attached rather than having a complete reproduction of those preferences, rights, *et cetera* together with a statement that the full wording of the preferences, rights, *et cetera* is available on request.

Some of these preferences, rights, conditions, restrictions, *et cetera* are beginning to appear in rather voluminous form, and it may well be quite impracticable to follow the provisions of this new subsection.

The CHAIRMAN: The Canadian Bar Association's position is similar to yours. A reference will be found to this in what Mr. Dorfman said at page 33 of Volume No. 2 of our Proceedings.

Senator THORVALDSON: There is no reference to summarizing there.

The CHAIRMAN: The Canadian Bar Association's submission was:

> This clause is intended, presumably, to insure that a holder of a share receives full information as to the rights and conditions attached to such a share. It is recognized that it is often difficult to properly summarize lengthy and involved rights and conditions. Any prejudice caused by a material omission would give rise to a claim.
>
> Furthermore, the practice is now developing of printing certificates in both French and English. In every case the share certificate would have to be of an impractical size to set out in full all rights and conditions, and would make obsolete expensive machinery and equipment in which transfer companies have invested to issue and transfer share certificates. The authority to attach a writing permanently to the share certificate would, therefore, be helpful if practical.

That is the submission of the Canadian Bar Association.

I think it has been the experience of those members of the committee who are lawyers, and of those who invest in shares, that you tend to get such a lengthy list of preferences, rights, conditions, *et cetera* on the certificate that in the end you keep on reducing the printing by means of photography, and in the end you really have to supply a magnifying glass to the purchaser of the share in order that he can read it.

Senator THORVALDSON: Has no one recommended that a summary of the conditions be allowed, with a statement to the effect that if anybody wants the full wording of the conditions he can see the letters patent of the company? Would not that be a practical and sensible suggestion?

Mr. HEMENS: This is what we are recommending, sir.

The CHAIRMAN: Yes, ordinarily on the initial offering of shares you deliver to prospectus to the buyer, and if he reads that prospectus he will find all the conditions set out in full. For those who buy shares afterwards I presume that as long as there is a place of reference where he can feel the conditions that should be enough.

Senator HUGESSEN: I would go further than Senator Thorvaldson. I think there should be a summary with the statement that if the shareholder wishes to have the complete provisions the company will send him a copy of the by-law.

Senator THORVALDSON: Yes. I will agree to anything that eliminates the necessity of printing those voluminous conditions.

The CHAIRMAN: I think that if what you put on the certificate alerts the person who reads it that there are conditions that are not fully set out then that would cover it.

Senator MCCUTCHEON: It should mention the fact that there are not only conditions but there are preferences, rights, et cetera. If that was not mentioned then I think the summary could be attacked.

The CHAIRMAN: Yes, it could cause trouble.

Senator THORVALDSON: I did not hear what was said.

Senator MCCUTCHEON: A summary is very dangerous because people might come to reply on the summary and that might cause difficulty.

The CHAIRMAN: This presents all kinds of problems. I would think that if there were a notice on the back of the certificate that there are conditions attached to the share, and a copy of them is available on request from the company or the transfer agent, then that might be sufficient. The request could be addressed to the company or to the transfer agent. Would you approve of something of that character?

Mr. HEMENS: I think so. That is essentially our proposal.

The CHAIRMAN: We now go on to section 19 of the bill.

Mr. HEMENS: With respect to section 19 of the bill, which is found at page 14, we submit that the proposed subsection (5) of amended section 48 of the act has the effect of placing the power of veto in the hands of a single shareholder. In all circumstances it would appear that minority shareholders are adequately protected by the provisions of the proposed subsection (4).

We point out the possibility of ambiguity as between subsection (4) and subsection (5). Under subsection (4) you must have sanction by at least two-thirds of the votes cast at a special general meeting of the shareholders. Under subsection (5), where the holders of any class of shares would be affected by a by-law under subsection (2), you must, in effect, have unanimous approval. It is suggested that there is the possibility of ambiguity there.

The CHAIRMAN: As I understand the procedure, if you are going to change the rights attaching to any class of shares, or to any of the classes of shares, then under the law you have to have meetings of those classes of shareholders in order to have such a compromise, and a certain percentage of those present have to vote in favour of it. When that has been done why do you have to go back and obtain the unanimous approval of all holders of the classes affected?

Mr. HEMENS: We believe, sir, to give you an illustration, that where you have class A, class B and class C shares and you want, for example, to double the votes of the class A shares, you would fall under subsection (4). But, since

this would affect the class B and class C shareholders essentially by reducing their proportion of the vote, you would also have to go to subsection (5).

However, in the illustration I gave the class A shareholders would be affected by a by-law. Consequently, we feel that there is some possibility of ambiguity as between subsection (4) and subsection (5). In addition, of course, in most public companies the requirement of unanimous approval is quite impractical.

Senator HUGESSEN: Mr. Hemens, it rather strikes me the other way. Today, if you want to affect the rights of one or more classes of shares, you could not do it by by-law. You would have to proceed by way of compromise or arrangement.

Mr. HEMENS: That is right.

Senator HUGESSEN: Does not this provision widen that?

Mr. HEMENS: I agree with you, but in respect to making terms or arrangements you do not require unanimous approval.

Senator HUGESSEN: Exactly. That is the very point. If a shareholder objects then he has the right under the terms or arrangements provision to go to the court and state his objection.

The CHAIRMAN: Yes, the matter is reviewed on the merits when you go to the court.

Senator HUGESSEN: This provision makes it possible to avoid that situation if you can get the unanimous consent of all the shareholders of the class affected. I think it is a valuable thing.

Mr. HEMENS: On the other hand you do have the practical situation. I can recall one situation where the holder of a single preferred share died intestate. The ownership of that share was being contested by one state of the United States, and a province of Canada. How could we hope to get approval of that shareholder when we did not know who he was?

Senator HUGESSEN: The answer to that would be to go through the compromise and arrangement precedure.

Mr. HEMENS: I am afraid you are right, and I wonder if that is the intent of the legislation.

Senator HUGESSEN: You are affecting the rights of shareholders.

The CHAIRMAN: This it not new. The only purpose is to effect changes in section 48. The present section 48 is to provide for the alteration of share capital. It says in subsection 2:

> No such by-law shall take effect until it is sanctioned by at least two-thirds of the votes of the holders of each class of shares thereby dealt with, cast at a special general meeting of shareholders called for the purpose...

What is new in here would appear to be this requirement of unanimous approval of the shareholders when the procedures presently in the act have been followed. Then you must go and get unanimous approval.

Senator MCCUTCHEON: Why should you have to do that? Why could it not be two-thirds or three-quarters?

The CHAIRMAN: Because if you take the alternative route the statute permits the shareholder to have one further protection. He could go to the court and question the merits of the plan.

Senator MCCUTCHEON: It is just nullifying the section as I see it. Why have the section at all? Why not go by compromise and arrangement?

The CHAIRMAN: It seems to me, as you say, that you can avoid the section by going by compromise and arrangement and by obtaining the unanimous

approval of the shareholders. I am wondering why it requires meetings of all classes of shareholders, and two-thirds of the vote, and then requires something unanimous afterwards.

Senator COOK: In some cases you have to sell your shares on a 90 per cent vote. Why not have a 90 per cent vote to alter the rights instead of having it unanimous?

The CHAIRMAN: I think the amendments need some looking into. May be the section itself requires looking into. The section as it stands is really a two-thirds section. That is to say the by-law must be sanctioned by a two-thirds vote. Then you get the supplementary letters patent.

Senator MOLSON: Perhaps it is raised as a nuisance value.

The CHAIRMAN: It does increase the bargaining power of a shareholder. He can say that he will require these elaborate procedures to be invoked if he doesn't get a good deal.

Senator BOUFFARD: Do you think all shareholders must be present, or must it be a unanimous vote of those people who are in attendance?

Mr. HEMENS: I should point out we are not so concerned with dissident shareholders as we are with shareholders we cannot find.

Senator MOLSON: Isn't there an «or» between subparagraph (a) and subparagraph (b)? Should it not be read in there? You would not first get it in writing and then hold a meeting.

Senator HUGESSEN: The «or» is between (b) and (c).

Senator MOLSON: Isn't it implied there? Should it not be (a) or (b) or (c)?

The CHAIRMAN: The «or» comes between (b) and (c).

(a) it has been unanimously approved in writting by the holders of all classes of shares affected;

(b) it has been unanimously approved by all classes of shares affected, by vote cast at a special general meeting of the shareholders called for the purpose; or

(c) it has been approved in the manner, and by the shareholders, specifically set out in the terms of the conditions . . .

That would take some of the sting out of it. Where you have to produce a statement in writing signed by every shareholder or call a special general meeting of shareholders, and if you get the unanimous vote of those classes, it means the unanimous vote of those present. If you had an "or" after (a) that might do it.

Senator MCCUTCHEON: If that doesn't do it, you could fall back on (c).

The CHAIRMAN: We have seen the difficulty. Shall we move to the next point?

Mr. HEMENS: With respect to section 5 of the bill on page 3 we support Mr. Graydon.

The CHAIRMAN: Do you also support the chartered accountants?

Mr. HEMENS: Yes.

The CHAIRMAN: And the Canadian Bar Association?

Mr. HEMENS: Yes, to the extent that they propose the incorporation of the Ontario proposal.

The CHAIRMAN: Section 29 of the bill?

Mr. HEMENS: With respect to section 29 of the bill, on page 17, again we substantially support the proposal of the Canadian Bar Association.

The CHAIRMAN: There should be some way of getting the Ontario copy.

Mr. HEMENS: We say in connection with section 29—

The CHAIRMAN: Yes, I was looking at 76(a). The material you have to file if your shareholders have been qualified by SEC, that, or a certified copy of the prospectus. There would be difficulty in getting a certified copy within a reasonable time, and maybe a photostatic copy as well.

Mr. HEMENS: We suggest a sworn copy.

The CHAIRMAN: We have noted that. This is a question of how to prove the existence of certain things.

Mr. HEMENS: With respect to section 31 of the bill on page 18, again we support Mr. Graydon's submission and essentially object to having a flexible number of directors. I believe that this is the case at the moment in British Columbia as well as in England. With respect to section 32 of the bill on page 18—

The CHAIRMAN: You say "a flexible number of directors." When you incorporate a company you set out who the first directors are going to be, and there must be at least three in number. Are you suggesting that thereafter that number be flexible at the will of the company?

Mr. HEMENS: There must be at least three in number, and not exceeding ten or twelve with the right to alter by by-law within those figures.

Senator MCCUTCHEON: That is what the banks do.

Senator HUGESSEN: I think in England the by-laws provide for a board of not less than seven, and not more than some other number. It all depends on how many directors the shareholders elect at the annual meeting.

The CHAIRMAN: I am trying to remember what is done in the banks. Is there not a resolution under the by-law by which they can extend the board of directors?

Mr. HEMENS: That is essentially our proposal. With reference to section 32 of the bill on page 18 our real purpose here is to determine what is an officer of the company. So far as I know there is no definition of an officer of the company. It may well include assistant secretaries who are appointed purely for signing purposes, a controller, a public relations officer or any of these people. And since the requirement is that an officer of the company shall furnish to the secretary of the company a statement—unless we know what is an officer we are going to have a problem. In our brief we have proposed the amendment "shall require a director of the company or any officer or any shareholder controlling more than 10 per cent—"

The CHAIRMAN: The section in the act, section 98, deals in this connection with a director of a public company.

Senator LEONARD: Is not the word "director" modified by "controlling more than 10 per cent"?

Mr. HEMENS: I don't believe so, sir.

The CHAIRMAN: It is a little ambiguous.

Mr. HEMENS: Our real concern is with what is an officer.

The CHAIRMAN: What is the difference between an officer and an official. I would have thought an assistant secretary would be an official.

Senator KINLEY: Wouldn't an officer be elected by the directors, and an official appointed by the board?

Senator COOK: It really applies to anybody employed by the company. It would apply to a director or to anybody having knowledge of the company's affairs. It could be a director or an employee of the company.

Mr. HEMENS: Many companies do appoint a number of assistant secretaries who are essentially appointed as signing officers. They may know nothing in fact about the affairs of the company, that is to say the more important and secret affairs of the company, whereas an assistant to the treasurer, who would

not normally be an officer, would have a great deal more information and yet he is not required to make a disclosure. I understand we are concerned with disclosure in this paragraph.

Senator HUGESSEN: Wouldn't the person being an officer depend on the company's by-law? The by-law would prescribe such persons.

Mr. HEMENS: It is covered by the words "or such others as the directors may from time to time appoint."

Senator HUGESSEN: I think there are other provisions in the Companies Act dealing with officers.

Mr. HEMENS: Section 90 of the present act is the section dealing with that and it leaves it pretty wide open.

Senator KINLEY: What is the need for this section?

The CHAIRMAN: It has to do with the matter of disclosure. It may well be that directors of a company who are in a position to learn about the affairs of the company and may profit by that information either by selling against a contemplated market decline or by buying against a contemplated market increase by virtue of the position in which they are, and by virtue of the act, and the present section, directors are required to make disclosure once a year in relation to the previous 12 months. This requires a greater disclosure by a greater number of people every 30 days.

Senator KINLEY: With regard to the purchases of stock?

The CHAIRMAN: Purchase and sales, yes.

Senator KINLEY: I take it you would get people who had knowledge of the daily affairs of the company.

The CHAIRMAN: In this you would get a director, an officer or a person having more than 10 per cent of the shares.

Senator KINLEY: When you buy the shares the secretary posts it on the books.

The CHAIRMAN: Most of these companies have transfer agents and the secretary might not know.

Senator BURCHILL: This include shareholders too ?

The CHAIRMAN: Yes.

Senator BURCHILL: The Ontario act has that section in it?

The CHAIRMAN: I don't think so.

Senator BURCHILL: This is new.

The CHAIRMAN: Only to the extent that it adds to the burden already on a director. It adds the burden to an officer of the company and to any shareholder holding 10 per cent, and it makes it over 30 days in connection with purchases and sales instead of annually.

Senator BURCHILL: That is something new, is it not?

The CHAIRMAN: That is right. We have the point, unless there is some more comment any senator wants to make. The next item?

Mr. HEMENS: In the same section, Mr. Chairman, we have again some slight concern with the wording in connection with subsection 2. It says:

> The directors shall present to the shareholders of the company...

I am not quite sure I know what "present" means, whether it means "give" or "read" or "make available". In the previous subsection, subsection 1, the requirement is, "to make available". We wonder whether it would not be worth while to have subsection 2 read consistently with subsection 1 or, in the alternative, some word to replace "present" since "present" is a word of somewhat doubtful meaning.

The CHAIRMAN: If you had consistent language it would be that you "table" it at the end of the meeting of the shareholders and you say that it is on the table.

Senator HUGESSEN: Would "submit" help?

The CHAIRMAN: I would think that would involve more than simply filing it.

Senator HUGESSEN: The directors submit various financial statements. Could not they submit this statement in the same way?

The CHAIRMAN: It means they would have to read it to the meeting.

Senator MCCUTCHEON: Put it on the table.

The CHAIRMAN: Maybe we are quarrelling over words, but I am sure that "submit" has not a broader connotation than "make available".

Senator HUGESSEN: Why not use the wording of section 116 for the financial statement? Section 116 reads:

> The directors shall place before each annual meeting of shareholders, ...

The CHAIRMAN: That focuses the question. The question is: are you going to require them to make it available to the meeting, in which event you table it; or are you going to place it before them, which means you must actually read it to them?

Senator BOUFFARD: Is not a report going to be made at every annual meeting? As long as a statement is tabled or filed, that is all.

The CHAIRMAN: We have to decide which provision we want to incorporate. Do we want to say it is tabled and available to every shareholder to read, or that you must mouth-feed them by tablespoon the statement?

Senator MCCUTCHEON: If it is going to be of any value you have to do more than lay it on the table.

The CHAIRMAN: If it is going to be really valuable you have to do more than lay it on the table because just laying it on the table means that if you are curious you will have a look at it and if you are not you will not.

The next section?

Mr. HEMENS: With respect to section 34 of the bill, which starts on page 19, I referred briefly to a number of proposals. Since the words "and accounting records" have been added to the words "proper books of the account" we wonder whether we could not do without the words "books of account" and have simply "accounting records" which we understand to be what is happening more frequently today.

We have also suggested that the location of the accounting records of a company is essentially a matter of internal management, and on that basis we would submit that subsections 2 and 3 of the present act should be retained instead of enacting subsections 2, 3, 4 and 5 of the proposed new section 115.

The CHAIRMAN: The present...?

Mr. HEMENS: Subsections 2 and 3 of the present section 115. We also support the proposal of the Canadian Bar Association permitting a private company, with the consent in writing of all the shareholders, to dispense with the requirements of sections 116 to 120, except that the financial statement shall be drawn up so as to present fairly the results of the operation of the company for the period covered by the statement.

The CHAIRMAN: Which section are you referring to now?

Mr. HEMENS: We are proposing a new subsection such as appears in the proposed Manitoba Companies Act. That is essentially the proposal of the Canadian Bar Association.

Again, we support the proposal of the Canadian Bar Association and what I understand to be the proposal of The Institute of Chartered Accountants with respect to the proposed new section 117(1)(a) which appears on page 21. This requires an application to the Chief Justice or Acting Chief Justice, and we feel an application to the court would be adequate.

We suggest going one step further and deleting the limitation of the court that disclosure of this information "would be detrimental to the interests of the company". We suggest that if you apply to the court the court may make such decision on such facts as are before it without being limited to the "detrimental to the interests of the company" aspect.

The CHAIRMAN: If you said instead of "detrimental" "would adversely affect"—No, that is not good enough either. You could say, "is not in the interests of the company".

Senator McCUTCHEON: That would be much better.

Senator HAYDEN: You give the judge a broader scope.

Senator LEONARD: Put it positively: "that it is to the advantage of the company not to disclose".

Senator BOUFFARD: Why not let the judge decide as to whether there are some good reasons for not divulging?

Senator BURCHILL: In other words, you favour disclosure?

Mr. HEMENS: Yes, that is our submission.

Senator BOUFFARD: It seems to me the Chief Justice should decide on whatever reasons he sees proper.

Mr. HEMENS: We do not, I think, disagree with disclosure. We are concerned with the problem of the company involved in one product. This is where we think the problem really lies.

Senator BURCHILL: I can think of companies manufacturing one product that would like to have the information. It would help them with regard to their competitors.

The CHAIRMAN: It works both ways.

Senator BURCHILL: Sure.

The CHAIRMAN: I know some would like to get the information but be able to hold back their own.

Senator BURCHILL: Exactly, that is the point.

The CHAIRMAN: The next item?

Mr. HEMENS: With reference to the proposed new paragraph (j) of subsection (1) of section 177, we would suggest that no really useful purpose is served by a requirement to include contributions to pension funds in remuneration reported for directors and officers, particularly in view of the complicated pension fund arrangements frequently encountered.

Senator HUGESSEN: What section is that?

The CHAIRMAN: On page 22, senator, subsection (j), and the latter part of that, where it says:

> . . . including all salaries, bonuses, fees, contributions to pension funds and other emoluments;

Your emphasis is on the words "contributions to pension funds," is that it?

Mr. HEMENS: Yes, sir, that is it. The problem in some cases can be illustrated by the situation where the company's contribution to the pension fund is a percentage of the total wages or salaries based upon actuarial requirements. How do you then estimate what the contribution to the pension fund by the company is in respect of Director "A"?

Senator McCUTCHEON: Would not it be a function of the very functions you have mentioned, the proportion of Director "A"'s income which is attributable to that?

Senator LEONARD: The pension fund has earnings of its own, and in some cases the contribution from the employer company is the amount required to make the fund sufficient to carry out the actuarial requirements of the fund. This amount is not related to any particular matter of wages or earnings, or any proportion thereof.

The CHAIRMAN: There are three possible sources of income for a pension fund: contributions of employers; contributions of employees; and earnings of the increment in the fund. In a lot of these plans the employers' obligation is to make up the difference between what is required to carry the plan and the contributions of the employees. That varies with the increment.

Senator McCUTCHEON: The S.E.C. requirement might be more revealing. That is where you disclose the anticipated amount of the officer's pension at 65.

Senator COOK: This subsection only relates to directors?

Mr. HEMENS: Yes.

The CHAIRMAN: It says:

> ...as a director, officer or employee of the company...

Senator COOK: "by directors".

The CHAIRMAN: Yes, that is right, "by directors".

Senator COOK: In other words, are not officers to be included as well as directors?

The CHAIRMAN: No, but a director may also be an officer.

Senator COOK: But an officer is not necessarily a director.

The CHAIRMAN: That is right.

Senator COOK: Why limit it only to directors?

Mr. HEMENS: Might I suggest we have exactly the same problem. I do not know what an officer is and I do not know of anybody else who does.

The CHAIRMAN: You mean you cannot delimit it?

Mr. HEMENS: Yes.

Senator THORVALDSON: A great many companies have a string of people they call officers. Some are in charge of sales, some in charge of credits, and so on; but usually officers are referred to as president, vice-president, secretary and treasurer, and so on. Is that what you mean?

Mr. HEMENS: Yes, that is it. We have in my own company an employee designated as "first signing officer". Is he an officer? Not normally.

The CHAIRMAN: We have noted this problem for consideration.

Mr. HEMENS: On the same page, in subsection (g), on page 22, the provision is:

> the provision made for each of the following, namely, depreciation, obsolescence and depletion;

This would suggest you must set out separately a provision for depreciation and a provision for obsolescence. It is suggested this is something it is very difficult to segregate, and the words "each of" might be deleted.

Senator COOK: Is that subsection (g)?

Mr. HEMENS: Subsection (g) on page 22.

Senator HUGESSEN: You would lump them altogether, would you?

Mr. HEMENS: Yes, as is the case at the present time.

Senator McCUTCHEON: Depletion is an important factor for a company. I do not think you want that lumped in with depreciation.

Mr. HEMENS: I am informed that in practice depletion is shown separately. The problem really is between depreciation and obsolescence.

Senator McCUTCHEON: I do not think we should amend it in such a way that depletion will be lumped in with the other two.

The CHAIRMAN: I think that in the case of obsolescence and depreciation in a corporate statement, as against an income tax statement, it would be perfectly all right to lump them together, but depletion is certainly an important item of information.

Senator BURCHILL: For the pulp and paper company.

Senator McCUTCHEON: I am thinking of that.

The CHAIRMAN: The mining company.

Mr. HEMENS: Subparagraph (ii) of paragraph (j) of section 119, that is exactly the same wording.

Senator BEAUBIEN (*Bedford*): What page?

Mr. HEMENS: On page 24.

The CHAIRMAN: All right, we have made a note of that.

Mr. HEMENS: With respect to proposed section 124 of the act, which appears on page 34, it is suggested that this provision respecting the right of the auditor to attend meetings imposes an undue burden, particularly on private companies. We suggest that there be adopted a wording similar to that found in the proposed new Manitoba act, which reads as follows—

Senator HUGESSEN: Which subsection?

Mr. HEMENS: Section 124(5), which appears on page 35. The proposed wording of the proposed new Manitoba act says:

> With the consent in writing of all the shareholders, a company may dispense with notice to the auditor in respect of, and his attendance at, any particular meeting specified in the consent.

There is nothing in that subsection that says the auditor shall be paid for such attendance.

Mr. HEMENS: You don't know auditors!

The CHAIRMAN: This is statutory. It says he shall receive notice, and he shall be heard. I do not think it is putting it on the basis that the company has to pay him if it does not want to.

Senator MOLSON: I think he should. He signs this statement, and he should be able to attend the meeting.

The CHAIRMAN: Yes, but I am concerned about the burden of payment of his fees.

Senator MOLSON: It should be a matter of negotiation.

The CHAIRMAN: I agree.

Mr. HEMENS: I think through my own fault I am being misunderstood. We are concerned only with private companies. We are not concerned with the case of where in a private company you have the unanimous consent of all the shareholders. We are concerned with the burden of giving notice to the auditor in connection with this.

Senator McCUTCHEON: Just putting an extra envelope in the mail cannot be a great burden.

Mr. HEMENS: Let me give you an example, Senator. Where you have a wholly-owned subsidiary and where you may have five shareholders, for example, all of whom are directors, then at a directors' meeting you can deal

with the problem but you suddenly discover that in order to validate or ratify that you must have it ratified by the shareholders. You then immediately call a meeting of the shareholders, but you can no longer do that under these circumstances.

Senator MOLSON: I do not think their interests necessarily coincide. If you have a small private company with a minimum number of shareholders, they might be anxious to keep the auditor away.

Mr. HEMENS: Surely the auditor is entitled to be the defendant of the shareholders, and if the shareholders do not want the defendant there then surely that is their business, senator.

Senator MOLSON: I am not sure. It depends upon what they are taking up at the meeting. It might affect the auditor's status, and various other things.

The CHAIRMAN: Perhaps there is a happy hunting ground in between. The auditor is needed in connection with all meetings that relate to the financial aspects of the company. Suppose in a private company where the shares were very closely held you wanted to call a meeting of the shareholders to approve an increase in the number of directors, or a decrease; instead of putting it up to a meeting at which all the shareholders are present, you have to call a meeting for some time later and send notice to the auditor. Yet, all you want to do is increase the number of directors.

Senator COOK: That does not mean the meeting is invalidated.

The CHAIRMAN: If he is entitled to be present and he wanted to protest, it would.

Senator LEONARD: Perhaps the auditor could waive that notice. If that is all that is to be discussed then that notice could be waived so that the meeting could be held right away.

The CHAIRMAN: All we are giving him is a right, so I would think he could waive it if he wished.

Senator LEONARD: Yes. He is entitled to receive the notice that a shareholder receives.

The CHAIRMAN: I should point out to the committee that this same objection was taken by Mr. Merriam in the portion of the Canadian Bar Association's brief that he presented to us. It can be found at page 46 of Volume 3 of our proceedings.

Senator HUGESSEN: To put your point at its most extreme, Mr. Hemens, under this subsection if a meeting is held in the circumstances you describe then it is invalid because the auditor is not there.

Mr. HEMENS: Precisely, sir.

Senator HUGESSEN: That is, unless he subsequently waives his right to notice. If the business transacted is proper then no doubt he will waive that right.

Senator THORVALDSON: I would like to see a provision to the effect that the absence of the auditor does not invalidate any meeting. There might be litigation over the validity of a meeting.

The CHAIRMAN: If you could simply say that the auditor may waive this right under subsection (5)—

Senator BOUFFARD: Why not limit the presence of the auditor to the annual meeting?

The CHAIRMAN: There might be more important special general meetings.

Senator BOUFFARD: I do not think the proceedings that have been adopted at a meeting should be invalidated on account of the fact that the auditor is not present.

Senator HUGESSEN: The purpose of the subsection is to give the auditor the right to attend a meeting, and I think that is a valuable right in the interests of the shareholders. I would not like to vary it in any way because of any very technical sort of case. I would prefer to leave the subsection as it is.

The CHAIRMAN: Perhaps we should consider whether it should specifically say that the auditor has a right to waive.

Senator LANG: Is not that permissive?

Mr. HEMENS: I am not so sure. Suppose an auditor waives it, but a shareholder attacks the meeting on the ground that the auditor was entitled to notice and did not in fact get it, and waived that right after the date on which he should have received the notice. I have some worries about that.

Senator HUGESSEN: Lawyers have to live, Mr. Hemens.

The CHAIRMAN: Thank you very much, senator. What is the next item?

Mr. HEMENS: With respect to section 35 of the bill, subsection (2), which is found at page 35, we support the contention of Mr. Graydon that there should be no requirement for the auditor of the company to certify the information provided under subsection (1), since this is essentially a matter of law

The CHAIRMAN: Yes, what is the next item?

Mr. HEMENS: With respect to section 36 of the bill at page 37, dealing with section 125A, we support the views of Mr. Graydon and the Canadian Bar Association. The alternative proposal of Mr. Graydon we support rather less vigorously than we support the main proposal of Mr. Graydon, which is that section 125A should be deleted.

The CHAIRMAN: Is there anything else?

Mr. HEMENS: With respect to section 37 of the bill which starts at page 37, we believe that the requirement of a court order in addition of the approval of 75 per cent of the votes of the shareholders is an unnecessary and undesirable feature for the following reasons:

1. The affirmative vote of 75 per cent of the shareholders of both companies to the amalgamation is convincing evidence that the amalgamation is fair to the shareholders of both companies.

2. In the event the amalgamation is unfair to a minority as a result of fraudulent tactics on the part of the majority as opposed to commercial considerations, resort to the courts is open to a minority.

3. The requirement of a court order, which can be made subject to such terms and conditions as the court thinks fit, casts uncertainty on a commercial transaction.

4. Added to the uncertainty of court approval, the Minister retains the prerogative of issuing or not issuing the necessary letters patent to confirm the amalgamation agreement.

5. The necessity of obtaining a court order to effect an amalgamation in the interests of the shareholders as a whole of both companies can afford a small minority the opportunity of harassing the vast majority.

Senator BOUFFARD: What about the creditors? Where can they make their objections to an amalgamation?

The CHAIRMAN: In an amalgamation all that happens is that you push two companies together, but no rights are lost and no rights are gained in the process.

Senator BOUFFARD: But subsection (6) on page 38 reads:

> Notice of the time and place of application for the approving order shall be given to the creditors of each of the amalgamating companies in such manner as the court may direct.

That means that the creditors may have something to say about an amalgamation.

Mr. HEMENS: I think, Mr. Chairman, subsection (6) in particular seems to have no place because, as you have pointed out, no rights of creditors are affected.

Senator BOUFFARD: Why should we give notice to creditors then?

Mr. HEMENS: I agree with you.

The CHAIRMAN: I do not think we should.

Senator BOUFFARD: They cannot say anything and they have no rights, and yet you have to give them notice.

The CHAIRMAN: Why do you say they have a right to notice?

Senator BOUFFARD: In an amalgamation one of the companies might have more creditors than the other one. It might then be more difficult for the creditors to collect their amounts.

Mr. HEMENS: May I refer to page 39, where under subsection (11) you protect the rights of the creditors.

Senator MCCUTCHEON: Perhaps the rights are preserved in an amalgamation, but not the rights of a creditor of a strong company that goes into the amalgamation as compared with those of the creditor of a weak company. He benefits. In the case of a company on the verge of insolvency amalgamating with a company that is not insolvent the rights of creditors are surely affected. The rights of the creditors of the solvent company, or the strong company, are affected.

The CHAIRMAN: If there is any position of creditors to be protected then the creditors should have notice, but this is a notice of the approval by the court. I go further than anything that has been said here yet; I say that in an amalgamation you should not import the court sanction procedures that you have in a compromise because you are not affecting the rights of shareholders in the way those rights are affected in a compromise where the shareholders of both companies agree. Where there is an amalgamation agreement there should be no requirement that you go to the courts.

Senator BOUFFARD: Supposing a creditor has something to say about it?

Senator THORVALDSON: I think the principle should be this, that there should be a right to go to the court if there are dissident shareholders amounting to a certain percentage. As Senator McCutcheon has pointed out, there could be cases where creditors are affected, and perhaps creditors should be given the right to go to the court if they are prejudicially affected. However, to have every amalgamation where there is 100 per cent approval of the shareholders approved by the court—

The CHAIRMAN: If the rights of creditors are impaired by the amalgamation then surely they have a cause of action before the amalgamation gets going.

Mr. HEMENS: May I point out, Mr. Chairman, that section 76 of the Ontario Corporations Act does provide for the necessity of having court sanction.

Senator BOUFFARD: Do they have any provision in so far as creditors are concerned?

Mr. HEMENS: They do not appear to have, sir.

Senator COOK: Do the creditors have the right to dissent upon receiving notice?

The CHAIRMAN: No, there is no provision with respect to creditors in the Ontario act. The creditor has his cause of action. He is above the rights of shareholders.

Senator THORVALDSON: That is right. He has the right to sue the company.

The CHAIRMAN: Yes, if he thinks they are imperilling his security then he can sue. I think in any agreement procedure that I have had anything to do with it has been very important that the companies carry the goodwill of the creditors. Otherwise, they would want their money.

Senator LEONARD: It might involve the giving of notice to thousands.

The CHAIRMAN: That is right.

Senator THORVALDSON: That is the problem there.

The CHAIRMAN: I think we had better have a look at this. We know what Mr. Hemens' position is. Is there anything else?

Mr. HEMENS: With respect to section 38 on page 39, which proposes the enactment of section 139A, we support the position of Mr. Graydon who recommended the deletion of section 139A.

The CHAIRMAN: Is there anything else?

Mr. HEMENS: That is all I have, sir.

The CHAIRMAN: Senators, I want to tax your patience a little bit longer. We have present representatives of the Board of Trade of Metropolitan Toronto. They have a short brief. Perhaps we can deal with it now. Mr. Jupp is present, and he has Mr. Crysler with him. Is it the wish of the committee that the brief of the Board of Trade of Metropolitan Toronto be printed as an appendix to today's proceedings?

Hon. SENATORS: Agreed.

The CHAIRMAN: Are you going to carry the ball, Mr. Jupp?

Mr. D. H. Jupp, Honorary Treasurer, Board of Trade of Metropolitan Toronto: Yes, I would like to start it off.

The CHAIRMAN: As we have your brief I think we should consider the sections it deals with, and get your viewpoint upon them.

Mr. JUPP: Yes. In the preamble we have merely indicated our interest in the Companies Act, and we are very happy to say that in general we support Bill S-22. We find incorporated in it a substantial part of our recommendations. We have only a few points that we would like to discuss further.

The CHAIRMAN: Yes. Would you proceed?

Mr. JUPP: On page 3 we talk about uniformity, and we say:

> it has been gratifying to find incorporated in Bill S-22, in sections 115-125, in the place of the provisions now there, the provisions respecting financial statements and returns which appear in the Draft Uniform Companies Act with certain adjustments to bring these in line with the most recent developments in accounting principles and practice. In this regard the Board is also pleased to find in section 76 (a) the requirement respecting filing prospectuses limited to filing copies of such material with the Secretary of State.

The CHAIRMAN: Yes.

Mr. JUPP: Disclosure of purchase of securities. Here we say:

> The Board's policy is substantially in conformity with the provision to be enacted in section 98. Your attention, however, is directed to the requirement of disclosure within 30 days of purchase or sale by filing a statement with the secretary. In some cases this could result in multiplicity of filing statements. After going into the matter in some

> detail, the Board reached the conclusion that it would be sufficient to require the reporting of the transactions concerned to the secretary before the end of the month following the month during which the purchases or sales took place. This would put the reporting on a monthly basis and limit the maximum number of reports to twelve per year. In the opinion of the Board this is sufficient as it considers that the real sanction of the provision is the requirement to disclose rather than the precise frequency of disclosure.

We think that to disclose or to file within 30 days might mean several dozen reports rather than the 12 which would be provided by the amendment we propose.

The CHAIRMAN: In regard to other sections we have had the views of other witnesses. Would you care to indicate your views?

Mr. JUPP: Could I ask Mr. Crysler, our legal officer to deal with the appendix?

The CHAIRMAN: Certainly.

Mr. A. C. Crysler, Legal Secretary, Board of Trade of Metropolitan Toronto: Honourable senators, I appreciate the lateness of the hour, and also that most of these points have been discussed already. Our brief is filed and it will appear, I presume, in your proceedings. If it would be agreeable to you I shall not take up your time by commenting on the number of sections which are not substantial matters from the point of view of the business community although lawyers or accountants might be interested and also comments which we make and which are perfectly clear and which I do not think you will have any difficulty in understanding when you read them.

The first of I think not more than three or four sections on which I would like to comment is section 21 of the present act, subsection 1, in which we refer to the inclusion of the words "which head office shall be the domicile of the corporation". We rather feel that that confuses the question of jurisdiction over the corporation and the domicile of the corporation which is a factual matter. As a substantive question a corporation can get into quite a bit of difficulty if that danger of conflict is not removed, and we go on to say—

> It should be stated that the province or territory where the head office is situate shall be the domicile of the company. An explanation of the history and reasons for this appears in Dicey's Conflict of Laws, seventh edition, under Rule 76.

Then we come to section 21, subsection 3, which deals with the sanctioning of changes, of the existing act, and these are some matters that are not in the present bill, but which we would like to have you consider with a view to putting them in. Now the last three-and-a-portion lines in section 21, subsection 3, which refer to a copy of the by-law certified under the seal of the company being filed with the Secretary of State and published in the *Canada Gazette*, are mandatory, owing to the earlier portion of the subsection which states that no by-law is valid or shall be acted upon, and so forth. We believe that the subsection should be revised so that the latter portion of it, which deals with the filing and publishing of the by-law, is directory only. And for a suitable wording we refer you to section 87, subsection 3, of the existing act which deals with the increase in the number of directors by the formula in the third subsection:

> A copy of the by-law certified under the seal of the company shall be forthwith filed with the Secretary of State . . .

This leave a duty to file but it does not make the act invalid by reason of the fact that somebody omitted to file.

The CHAIRMAN: We have noted that.

Mr. CRYSLER: Comment has already been made concerning the particulars on the issue of certificates. This is section 33, subsection 4, of the present act. Our suggestion as to how you might deal with this would be that a section might be rephrased to provide that share certificates shall contain notice of any conditions or restrictions which are prescribed by letters patent or supplementary letters patent, but just by name, and then it should be left to the shareholder or prospective shareholder to get the full text if he wishes to do so.

The CHAIRMAN: That is in line with opinions expressed to us already.

Mr. CRYSLER: Section 49 has been discussed in full, and as we agree largely with what has been said I do not intend to discuss the merits, but I would like to discuss it in connection with changes which we envisage.

The CHAIRMAN: Is this section 49 of the act?

Mr. CRYSLER: Section 49 of the existing act. Our suggestion is that section 49 which deals with the by-law for the reduction of capital. Where a company has issued redeemable shares under the authority of letters patent or supplementary letters patent and redemption has been made in accordance with the terms thereof, it should not be necessary to take out supplementary letters patent to confirm the consequential reductions in capital. A subsection to this effect should be added to section 49. In this connection section 61 should be deleted and the act should contain provision to the effect set out in section 27, subsections 11 and 12, of the Draft Uniform Companies Act. That should be of the year 1958. Now subsection 11 is the one read this morning and is already in the Dominion act. The addition we would propose for subsection 12, redrafted would be as follows—

> Where preference shares are redeemed or purchased for cancellation by the company, they shall be thereby cancelled, and the authorized and the issued capital of the company shall be thereby decreased.

The CHAIRMAN: In the Ontario act at the present time under the circumstances you have detailed you do not need to get supplementary letters patent?

Mr. CRYSLER: That is right. The next is a small point regarding information with respect to mortgages and charges. Without explaining the reasons in full we suggest it might be sufficient or it would be sufficient to flle with the Secretary of State a concise statement of the provision of these documents showing pertinent items such as the amounts of money, dates and times, etc. Going on to consider some of the instances, one is in connection with the payment of dividends by companies whose assets are of a wasting character. Section 83, subsection 4, of the present act.

Going on to consideration for fully paid shares to be cash or fair equivalent of cash dealt with in section 99, subsection 4, of the present act, those two provisions relate to mining companies. We think that these are rather on all fours with gas and oil companies and consideration might be given to including gas and oil companies in this section. With reference to section 90 (b), we would like you to consider a revision of this section under which it would be made explicitly clear that while the president must be elected from among the directors the vice-presidents need not be. There is some little doubt about the present wording, as to whether you are entitled to elect vice-presidents from other than the directors.

The CHAIRMAN: Although it is being done?

Mr. CRYSLER: Yes, I agree, but there is doubt about it.

Senator THORVALDSON: There is no provision anywhere for authorizing that practice, and yet it is being done.

Mr. CRYSLER: Yes. The next one is a point the trust companies have raised in connection with section 103 of the present act. It is entitled, "Notice" and the notice has to do with—

The CHAIRMAN: Sending out the material to the Shareholders.

Mr. CRYSLER: Yes, for annual meetings. Where you have a group of transfer offices the trust companies are in a dilemma to have a firm rule as to the cut-off date in order to comply with that section. Frankly, we have not agreed on the appropriate cut-off date. The suggestions have varied from seven to 14 or 15 days, but we do think it would be well to add a provision to the effect that the by-laws of the company may provide that the directors may fix a certain number of days preceding the date of sending notices of meetings, as of which the shareholders entitled to such notice shall be determined. I think if you examine the act you will find the trust companies really sort of have to trust to Providence.

The CHAIRMAN: Except that section 103 of the present act starts off by saying:

> In the absence of other provisions in that behalf in the letters patent, supplementary letters patent or by-laws of the company.

—and you follow the procedure laid down in the statute.

Mr. CRYSLER: With respect, we read that as relating only to sending the notice and not extending to giving you a cut-off date.

The CHAIRMAN: It is notice of the time and place of the holding of a meeting to each shareholder entitled to vote at such meeting.

Mr. CRYSLER: How do you determine his entitlement, as of what date? The point is this, section 103 gives you all the direction one needs about the sending of notice, and says that may be provided for in the by-laws, but it does not say how and by what means you can establish the cut-off date for the list of shareholders entitled to notice. I am told this is of some importance in the case of transfer registers.

Senator MCCUTCHEON: It is of great importance in the case of a proxy fight.

The CHAIRMAN: We will have a good look at it.

Mr. CRYSLER: That is all we have asked, sir.

After we had filed the brief Mr. Jupp and I have been commenting on of June 1st, which was prepared rather hurriedly, we did distribute Senate Bill S-22 to a number of our members, corporation lawyers and executives. Certain points were raised. I do not consider any of these points of vital importance, and I would suggest that rather than taking up further time at this late moment this might be made part of your proceedings, and if anyone wants to address questions by letter or wants us to come back, we will be glad to comply; but I doubt if any questions will arise.

Hon. SENATORS: Agreed.

Senator BOUFFARD: Did you make these observations to the department before you came here, at the time they were studying the amendments?

Mr. CRYSLER: To the province of Ontario.

Senator BOUFFARD: But not here?

Mr. CRYSLER: No, except I should say that this brief is really the unimplemented remains of the brief we did submit here—that is, to the inter-provincial conference of secretaries in 1959 as to those steps we thought might usefully

be taken to revise the dominion act in light of developments since back in the thirties.

The CHAIRMAN: Thank you, Mr. Crysler and Mr. Jupp.

I think, in the ordinary way, this concludes the outside evidence. My suggestion is that at our next meeting we should hear Mr. Lesage and his officials and go over the suggestions which have been made which are at variance with what is contained in these amendments. We shall get his viewpoint, and then, to the extent there are suggestions dealing with other sections of the act, we might get his viewpoint on these. Then, when we have accumulated all that, we might come to the stage then where this small subcommittee could put the thing in shape, with suggestions as to what should be included and what should not. Then the committee can consider all that. Does that strike the members of the committee as being an orderly way of dealing with it?

Senator BOUFFARD: Should the committee deal only with the amendments that are proposed at the present time, or should it review the whole of the Companies Act?

The CHAIRMAN: That is a large order. We have had some sections discussed here that are not in the bill, and since they have been discussed I, for one, would like to have Mr. Lesage's viewpoint on them. He might be agreeable, or he might give reasons why we should not consider them at this time. I would like to get that information before we consider the bill itself.

Senator LEONARD: I see no reason why we should not amend the other sections of the Companies Act apart from those mentioned here.

Senator MCCUTCHEON: Is there any deadline for the completion of this? Has it to be completed before the recess?

The CHAIRMAN: There is no deadline in that respect, but depending upon how long we take with Mr. Lesage I would think the subsequent part of it would proceed very quickly. I am ready to piece a lot of these things together and submit them for the consideration of the committee.

I should tell you about the next meeting. I do not think there will be another meeting of the committee before next Wednesday. We committed ourselves some time ago to hearing Mr. Bennett and any other witneses with respect to the bill incorporating the Bank of British Columbia. I offered them the dates of July 8 and July 15. They accepted, and then changed their minds because either the sponsor or Mr. Bennett was not available. We have now finally fixed that meeting for July 22. The first order of business on July 22 will be the hearing of Mr. Bennett. If there are public bills that we have to deal with they will follow the hearing of Mr. Bennett.

We then still have on our order paper the bills to incorporate the Bank of Western Canada and the Laurentide Bank. The bill to incorporate the Bank of Western Canada stands at the stage where the sponsor can move it into action at any time by making a motion. With respect to the Laurentide Bank I think that at some stage, there being no more evidence, the committee has to sit down and consider the situation and how it wants to deal with that bill.

Is it agreed that we adjourn at this time?

Hon. SENATORS: Agreed.

The committee adjourned.

APPENDIX "A"

OSLER, HOSKIN & HARCOURT

Toronto 1

JULY 7, 1964.

The Hon. Salter A. Hayden, Q.C.,
The Senate of Canada,
Parliament Buildings,
Ottawa, Ontario.

Dear Senator Hayden,

Re: Bill S.22—An Act to amend the Companies Act.
Our File 18,674

In examining the above mentioned Bill there has come to my attention what appears to be an error in subsection (3) of Section 123 as it is to be enacted by clause 34 of the Bill. It appears on page 34 of the Bill.

Subsection (3) provides that a person appointed as auditor under subsection (2) shall indicate in his report to the shareholders that he is a director, officer or employee of the company or an affiliated company or a partner, employer or employee of the director, officer or employee. It seems to me that the underlined word "the" should read "a" and that the words "of the company" should be added at the end of the subsection.

The word "the" as used in the Bill grammatically indicates some particular individual director, officer or employee, while I submit that it is the intention of the subsection that the required disclosure should be made if the auditor is a partner, employer or employee of any director, officer or employee of the company in question.

I am drawing this matter to your attention in the hope that an appropriate correction may be made in the Bill at the Committee stage. I am sending a copy of this letter to Mr. Lesage.

Yours very truly,

H. C. F. MOCKRIDGE.

APPENDIX "B"

O'BRIEN, HOME, HALL, NOLAN & SAUNDERS

Montreal 1

JUNE 19th, 1964

The Honourable John J. Connolly, Q.C.,
56 Sparks Street,
Ottawa, Ontario

Dear John:

I have noted that Bill S-22 (An Act to Amend the Companies Act) provides for certain amendments to sub-sections (1) and (4) of Section 5, but does not cover any amendment to sub-section (3). Sub-section (3), as you know, reads as follows:

> "(3) Nothing in this Part shall be construed to authorize the company to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money or as the note of a bank, or to engage in the business of banking or insurance."

Sub-section (3) is not clear as to whether the words "any note payable to the bearer thereof" are qualified by the words "intended to be circulated as money" or whether the words "intended to be circulated as money" apply only to "any promissory note". At the present time many companies are issuing notes, secured and unsecured, which, from a practical view point, are indistinguishable from bonds or debentures, yet there seems to be no provision against a company issuing bearer bonds or debentures.

If it is not too late, might I make the suggestion that consideration be given to amending sub-section (3) by deleting the words "any note payable to the bearer thereof or". If this deletion could be made it should clarify matters and still prohibit the issuance of notes, whether bearer or otherwise, intended to be circulated as money. Obviously this clause was inserted in the Act to prohibit Letters Patent Companies from engaging in the business of banking. The amendment suggested above would in no way alter that prohibition. However, there would seem to be no good reason why a company should not be permitted to issue bearer notes so long as they do not circulate as money if it can issue bearer bonds or debentures.

I may say that as far as I am aware neither the Ontario Corporations Act nor the Quebec Companies Act prohibits a Company issuing bearer notes.

Your very truly,

GEORGE W. HALL.

APPENDIX "C"

Campney Owen & Murphy
Vancouver 5, B.C.

June 12, 1964

The Honourable John J. Connolly,
The Senate,
Ottawa, Canada.

Dear John:

Re: Canada Companies Act

I understand that Bill S-22, being an Act to amend the Companies Act, is before the Senate.

After consultation with some members of this firm as to the purport of the amendments proposed we feel that it would be advisable if these proposed amendments were postponed as to approval for a year, to enable careful consideration to be given to the provisions of the Act by the members of the Bar. I am writing to you in the hope that you might suggest to the Cabinet that this be done.

While many of the proposed amendments constitute undoubted improvements to the Companies Act, several of them appear quite radical and warrant further consideration. Some of our suggestions are enumerated below.

1. By section 8 of the Bill the Secretary of State has power to direct correction of Letters Patent if they depart *materially* from the orginal notice. The interpretation of "materially" should not be in the hands of a department official.

2. By Section 10 of the Bill the Act is amended to prevent one class of shares in a private company from having exclusive voting control. This has been a useful device in estate planning, where a father holds the only voting shares, and his children hold non-voting shares with the possibility of equity increase.

3. By Section 29 of the Bill, the prospectus requirements of the Canada Act do not apply if a prospectus is prepared under provincial law or the law of any foreign country.
   (a) certain provinces, including British Columbia give exemptions from prospectus requirements for banks, insurance companies, trust companies and others. No such exemption is provided by the proposed Canada Companies Act. It will, therefore, be necessary to file a prospectus with the Secretary of State even although no other jurisdiction requires one.
   (b) the copy of a prospectus issued in another jurisdiction must be certified by the public authority of that jurisdiction for filing with the Secretary of State. No doubt the provinces will give such certificates but there may be difficulties with, say, the Securities Exchange Commission of the United States.

4. Section 32 of the Bill amends the Act to require, inter alia, any shareholders with more than ten percent of the issued voting shares to report to the Secretary of the Company any dealing with the securities of the company. Whether or not this is a good provision, time to consider the effect might be valuable.

5. The sections of the Act dealing with financial statements and the powers and duties of auditors are extensively amended to conform with a brief submitted by the Canadian Institute of Chartered Accountants. While no doubt many of the changes proposed are improvements, the bar should be given a chance to study the proposals.

All of the above I submit for your consideration, and if you deem it desirable that the Cabinet should give further consideration to the proposal to postpone the finalizing of the Act for a year, as was done in the case of the Estate Tax Act, this would enable the members of the Bar to carefully consider the matter and make such recommendations as they think fit.

Yours sincerely,

R. O. Campney.

ROC:dh

APPENDIX "D"

CAMPBELL, GODFREY & LEWTAS

July 9, 1964.

The Honourable Salter Hayden,
Chairman,
Banking and Finance Committee of the Senate,
Parliament Buildings,
OTTAWA, Ontario.

Dear Senator Hayden:

Re: Section 11 of Bill S-22—An Act to amend the Companies Act.

I act for United Accumulative Fund Ltd., an open end mutual fund with assets now in excess of $80,000,000, which was incorporated in May 1957 under the Dominion Companies Act.

The letters patent contain the usual provisions respecting mutual funds in that they provide that a shareholder may "require the company to redeem his said shares for cancellation at the asset value of such shares".

The explanatory notes to the Bill state that:

> It is thought desirable to give such statutory recognition to mutual fund shares and thereby set at rest any doubts there may be in regard to the capital structure of these companies.

I agree that this is very desirable. However, in my opinion, Section 11 of Bill S-22 as presently drafted does not accomplish such purposes.

Firstly, the definition of mutual fund shares and the operative part of the section refers to the "surrender" to the company at the request of the holder thereof. No useful purpose appears to be served by using the word "surrender" instead of the words "redemption or purchase for cancellation" which now appear in Section 61 of the Companies Act, and also appear in the letters patent of the mutual funds already incorporated. Using the word "surrender" certainly does not set at rest any doubts there may be with respect to those companies already incorporated whose letters patent provide that their shareholders may require the company to "redeem" his shares, and in effect, by implication, creates considerable doubt as to the legal validity of such provisions. What the section is trying to accomplish is to make it perfectly clear that it is legal for mutual funds to redeem or purchase for cancellation their shares at the request of the holders thereof, and there is no necessity for introducing new terminology by the use of the word "surrender" in the Act in this connection.

Secondly, Sub-Section 4 provides that no mutual fund shares may be accepted for surrender when the company is insolvent or if such surrender would render the company insolvent. There is, of course, no objection to this, but then the sub-section goes on to borrow a concept from Section 83(2), which deals with the payment of dividends, to the effect that in determining the solvency of the company no account shall be taken of any increase in the surplus or reserves of the company resulting merely from the writing up of the value of the assets of the company, unless such writing up was made more than five years before the date of the surrender of the mutual fund shares.

This provision shows a complete misconception of how a mutual fund operates, because, in fact, their assets are valued for the purposes of redemption and sales at least once each business day, because for the purposes of redemption, and of course for the purposes of determining the solvency of the

company, it is the current market value of the securities held which are important, and not what the value might have been five years before.

The last part of Sub-Section 4 should, therefore, be deleted, because it just isn't applicable for the purposes of considering the solvency of a mutual fund whose sole assets consist of marketable securities whose value varies every day.

If your Committee is going to have any public hearings, at which it will be possible to make verbal representations, with regard to this matter, I would appreciate your advising me.

If you have any questions you would like to ask with respect to my above objections to the section as presently worded, please do not hesitate to let me know.

Yours truly,
John M. Godfrey

c.c. Mr. Louis Lesage,
Companies Division,
Department of the Secretary of State.

APPENDIX "E"

To: The Honourable Salter A. Hayden, Chairman, and to the Honourable Members of the Standing Committee of the Senate of Canada on Banking and Commerce

Re: Bill S-22

I respectfully make the following submissions on Bill S-22, being an Act to amend the Companies Act. These submissions are made on my own behalf as well as on behalf of the firm of Blake, Cassels & Graydon.

Allan Graydon, Q.C.

May 26, 1964.

1. Re: Section 5, Subsection (2)

It is proposed by subsection (2) of section 5 of the Bill to amend the present subsection (4) of section 5 of the Companies Act by adding as additional grounds upon which application may be made for the winding-up of a company the following:

"(*d*) fails for two or more consecutive years to hold an annual meeting of its shareholders,

(*e*) fails to comply with the requirements of section 121E or 121F, or

(*f*) defaults in complying for six months or more with any requirement of section 125,"

and by adding a new subsection (5) which would enable a court, upon making an order for winding-up, to impose the cost of the winding-up upon any or all of the directors of the company concerned.

Paragraph (*d*) quoted above requires no explanation. Section 121E referred to in paragraph (*e*) requires a public company to send to its shareholders at least ten days before the date of the annual meeting a copy of its financial statements and a copy of the auditors' report: and section 121F requires the filing with the Department of Secretary of State of a copy of such documents within seven days after the mailing thereof to shareholders. Section 125, referred to in paragraph (*f*), relates to the filing of the annual summary.

We submit that the proposed paragraph (*d*), (*e*) and (*f*) of subsection (4) and subsection (5) should be deleted and should not be enacted on the following grounds:

(*a*) the proposed paragraphs (*d*), (*e*) and (*f*) would have retroactive effect. Thus, if a company had failed in the past to hold annual meetings for two or more consecutive years, it could be subject to an application for winding-up although in subsequent years annual meetings had been regularly held. There would be no means by which the defaults could be made good. There are many companies which have been in receivership; which during the period of receivership were unable to hold annual meetings; which subsequently got out of receivership and have since held regular annual meetings; and which, nevertheless, would be subject to be wound up as a consequence of the proposed paragraph (*d*).

(*b*) there is no requirement of advance notice from the Secretary of State and even if there were provisions for advance notice and a company in the future did not hold annual meetings for two con-

secutive years, there would be no means by which the default could be cured;

(c) as regards failure to file the annual summary pursuant to section 125, it will be noticed that by section 35 of the Bill it is proposed to enact new subsections (10), (11) and (12) to section 125 which would give the Secretary of State, after notice, power to declare the company dissolved. This provides ample remedy;

(d) there are many reasons why a company may find it impracticable to hold annual meetings, and this is recognized in section 104 of the present Act;

(e) if by order of the court a receiver and manager has been appointed of the undertaking, property and assets of a company, he would have possession of all the books and records of the company in receivership and would have control of its operations, and in such circumstances it is not normally feasible for the directors to prepare the required financial statements and to convene annual meetings of the company in receivership nor, since the Receiver and Manager would control them, of any subsidiary. Since such a receiver and manager is a court officer and is subject to the authority of the court which appointed him, the shareholders, as well as the creditors, are protected;

(f) there are presently in the Act ample remedies available to shareholders who feel that an annual or other meeting of shareholders should be convened. Section 100 enables the court in the province in which the head office of the company is situate to order, on the application of any shareholder, the calling of an annual meeting. Section 101 enables shareholders to requisition meetings of shareholders; and section 104 has been referred to above;

(g) if a winding-up were ordered, there is no justification for the provision which would enable the court to impose the costs of winding-up on the directors or any of them.

Alternatively

We submit that the following amendments should be made.

(a) that paragraphs (d), (e) and (f) should be amended to read as follows:

"(d) fails, after due and reasonable notice from the Secretary of State, for two or more consecutive years after January 1, 1965* to hold an annual meeting of its shareholders;

(e) fails after due and reasonable notice from the Secretary of State to comply with the requirements of section 121E or 121F; or

(f) defaults, after due and reasonable notice from the Secretary of State, in complying for six months or more with any requirement of section 125."

(b) that the proposed subsection (5) be deleted and replaced by the following:

"(5) Paragraphs (d) and (e) of subsection (4) shall not apply to a company of whose undertaking, property and assets a receiver and manager has been appointed by the court or to any subsidiary thereof.";

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*This date is suggested on the assumption that Bill S-22 will be enacted and come into force prior to Dec. 31, 1964.

(c) that a new subsection (6) be added reading somewhat as follows:

"(*g*) If after notice from the Secretary of State a company holds an annual meeting of its shareholders and in connection with it complies with sections 121E and 121F and if after notice from the Secretary of State any default in complying with the requirements of section 125 is made good, all prior default shall be deemed to be cured."

2. Re: Section 10, Subsection (1)

We do not understand the intent or the effect of the proposed new section 12(1) which, after providing that the letters patent or supplementary letters patent may provide for shares of more than one class and for any preferred, deferred or other special rights etc., states that:

"no such rights, restrictions, conditions or limitations shall permit an alteration of the capital of the company in any manner other than by supplementary letters patent issued pursuant to sections 48 or 58 or section 126 as the circumstances of the case may require".

We submit

(*a*) that if preferred shares be issued convertible into common shares and if the right of conversion be exercised, the capital of the company would be altered by the consequent issue of common shares and the retirement of preferred shares; and

(*b*) likewise, that if preferred shares be issued subject to redemption and be redeemed, the capital would be altered notwithstanding that by section 61 of the Act a capital surplus resulted.

We suggest that the quoted phrase should be clarified.

3. Re: Section 25

It is proposed by section 25 to rewrite the present section 61 of the Act.

The effect of the proposed section 61, as we construe it, is to restrict the redemption or purchase for cancellation of preferred shares so that they may be redeemed or purchased only out of ascertained net profits of the company set aside by the directors and available for the purpose as liquid assets. It also provides that the surplus resulting from the redemption or purchase for cancellation shall be designated as capital surplus. The resulting capital surplus is not to be reduced or distributed except as a consequence of a reduction of capital under other provisions of the Act. The effect of the new section 61 is somewhat similar in substance to the old section.

Under The Corporations Act of Ontario there are no similar restrictions and no requirement for a capital surplus and where preference shares of an Ontario company are redeemed or purchased they are to be cancelled and the authorized and issued capital is thereby decreased—section 27(13) of The Corporations Act of Ontario.

We submit that the scheme of the Ontario act is preferable and more realistic than the provisions of the Companies Act, and particularly the proposed section 61. The limitation on the redemption or purchase for cancellation of preferred shares under the present section 61 of the Act or the proposed section 61 serves no useful purpose save the payment of a nominal fee to the Department of the Secretary of State for Canada for letters patent reducing the capital to the extent of the capital surplus.

We suggest that, since extensive amendments to the Companies Act are now being considered, advantage be taken of the opportunity to revise the scheme of the Companies Act as regards the redemption or purchase of

preferred shares and to adopt provisions corresponding to those in The Corporations Act of Ontario. We recognize, however, that this would require, not only the elimination of section 61, but certain other consequential amendments.

4. Re: Section 31

It is proposed by section 31 to rewrite section 84 which provides for the management of the affairs of a company by a board of directors. If the existing conception that the board must consist of a fixed number of directors is to prevail, then we consider that the proposed revision is beneficial.

We submit, however, that consideration should be given at this time to making provision for a board of a fluctuating number which is the practice commonly prevailing in England. The minimum number would have to be three; the maximum number could be established by the by-laws of the company; and provision could be made that the actual number would be established by the board of directors from time to time subject to such minimum and maximum.

5. Re: Section 33

It is proposed by section 33 to revise to some extent section 103 of the Act. We consider that the revision will be beneficial.

However, questions have arisen in the past as to whether in the giving of notices section 137 of the Act would override the provisions of letters patent, supplementary letters patent or by-laws as to when notices to shareholders are deemed to be given.

We submit that consideration should be given to amending section 137 of the Act by inserting at the commencement of it the words: "In the absence of any other provision in the letters patent, supplementary letters patent or by-laws".

6. Re: Section 35

It is proposed by subsection (1) of section 35 to repeal subsections (1) to (3) of the present section 125 of the Act and to substitute therefor new subsections (1) and (2). By the new subsection (2) it is proposed to provide that the annual summary to be filed on or before the 1st day of June in each year shall be "signed and certified by a director or an officer and by the auditor of the company". (The underlining is ours).

We submit that the requirement that the annual summary be certified by the auditor should be deleted on the following grounds:

(*a*) it removes from the corporate directors or officers the ability to comply with section 125; and

(*b*) it has the effect of requiring the auditor to certify to matters of law.

7. Re: Section 36

It is proposed by section 36 to enact a new section 125A which would provide that the Secretary of State may at any time by notice require any company to make a return upon any subject connected with its affairs within the time specified in the notice and that on default in making such return every director of the company is guilty of an offence.

We submit that the proposed section 125A should not be enacted on the grounds:

(*a*) it is unduly burdensome;

(*b*) the length of notice given might not be sufficient; and

(c) there is no requirement that the information be held confidential to the Secretary of State although the subjects to be dealt with might be such that they should not be made public or communicated to another department of the government. For example: the amount of sales or gross revenue might be required to be disclosed notwithstanding that, pursuant to the proposed new section 117 (1)(*a*), the Chief Justice or acting Chief Justice of the court of the appropriate province had authorized their omission from the financial statements of the company.

Alternatively:

We submit that the proposed section 125A should be amended to provide:

(*a*) for a minimum notice of three months; and

(*b*) that the information disclosed by the return be confidential to the Secretary of State.

8. Re: Section 37

It is proposed by section 37 to enact a new section 128A providing for the amalgamation of any two or more companies incorporated under the Act.

We consider such a provision for amalgamation beneficial.

Unlike the corresponding provision in The Corporations Act of Ontario, it is proposed to require that the amalgamation agreement be approved by order of the court—see subsections (5), (6) and (7) of the proposed section 128A. We do not disagree with this and our comments are related to the phraseology in subsection (7).

By subsection (7) it is proposed to provide that:

"(7) The court shall hear and determine the matter of amalgamation and may approve the amalgamation agreement as presented or may approve it subject to compliance with such terms and conditions as it thinks fit, having regard to the rights and interests of all parties including the creditors and dissentient shareholders."

(The underlining is ours).

We are uncertain as to the intent of and the meaning which will be given to the phrase "such terms and conditions". We think there is a serious risk that a court will interpret this phrase as authority to follow the procedure prevailing in certain states of the United States of America whereby an amalgamating company may be required to pay dissentient shareholders the value of their proportionate interest. Reference is made to section 262 of the Delaware Corporation Law. This would not be feasible under our laws since it would result in an unauthorized reduction of capital. It is also not clear that the amalgamating companies would be in a position to withdraw from the amalgamation if they considered the terms and conditions to be unduly onerous.

We submit that subsection (7) of the proposed section 128A should be rewritten to enable the court to approve the amalgamation agreements as presented or with such amendments as the court might think fit having regard to the rights and interests of all parties, including the creditors and dissentient shareholders, with liberty to the amalgamating companies to terminate the amalgamation agreement if any such amendments be not approved by or on their behalf.

The question also arises as to whether the order of the court will be or should be subject to an appeal which might delay an amalgamation indefinitely.

9. Re: Section 38

Section 38 proposes the enactment of a new section 139A which would enable a shareholder or a creditor of the company aggrieved by failure of the company or a director, officer or employee thereof to perform any duty imposed by the Act, to apply to the court for an order directing the company, director, officer or employee to perform the duty etc.

We submit that this section should not be enacted upon the following grounds:

(*a*) the word "duty" is so broad as to embrace almost anything since under the Act it is the duty of the board of directors to manage the affairs of a company and, thus, will bring into question every aspect of management;

(*b*) consequently, actions might be instituted for the purpose of acquiring confidential information of which neither the Act nor proper corporate practice requires disclosure;

(*c*) the section will invite litigation by individual shareholders who will not be suing on behalf of a class and, thus, a company of substantial size might be involved in the course of a year in numerous actions based upon alleged, if unsound grievances;

(*d*) the tendency of those attacking the management of a company would be to use "men of straw" for the purposes of such actions who could not respond to any court costs awarded against them.

APPENDIX "F"

(C O P Y)

THE BOARD OF TRADE OF METROPOLITAN TORONTO

JUNE 1, 1964.

Senator The Honourable Salter A. Hayden, Q.C., Chairman, and Members of The Senate Banking and Commerce Committee, Ottawa, Ontario.

Gentlemen:

BILL S.22—AN ACT TO AMEND THE COMPANIES ACT

The Board of Trade of Metropolitan Toronto has had a long standing interest in the Companies Act and amendments to it. This interest goes back to the last revision of the Act in 1934-1935.

In 1959 the Board carried out a study to ascertain what, if any, amendments are desirable in the light of developments since this legislation was revised in 1934-1935. Representations were made thereon under the date of March 30, 1959, to the Federal-Provincial Committee on the Uniformity of Company Law.

First, the Board wishes to inform you of the constituency for which it speaks and of the qualifications of those who prepare its representations. The membership of the Board is comprised of more than ten thousand and five hundred persons who represent all types and sizes of business enterprise, as well as the professions. While the Board's membership is concentrated mainly in the Metropolitan Toronto area, the business and professional interests of many members extend throughout Ontario and Canada and to other countries.

The Board's submissions on corporation law are prepared by corporation officials and members of the legal and accounting professions who have special knowledge of the problems of businesses incorporated by letters patent under companies or corporation legislation. In addition, they are conversant with the considerations which influence those who deal in the shares and other securities of businesses so incorporated. The views stated are founded on a broad experience and set out policies that have grown out of long-term intensive studies, including the proposals developed by the Federal-Provincial Committee on Uniformity of Company Law.

The Board has not been able as of this date to complete a detailed study of Bill S.22 and assist the Senate Banking and Commerce Committee with a further comprehensive study of the Bill. However, we are happy to avail ourselves of the opportunity to appear before you and say that the major features proposed by the Board in its brief of March 30, 1959, on Revision of the Companies Act have been provided for wholly or in substantial part in Bill S.22. Those portions of our proposals which are not included in Bill S.22 are set out in an appendix to these representations. We invite your further consideration of them. We would also be happy to discuss any sections of the Bill on which you wish to have our comments even though we cannot place before you a formal statement of organizational policy on them.

Revision of Dominion Companies Act

As a result of the revision of the Companies Act in 1934-1935, the Federal legislation was placed upon a satisfactory basis for the most part. Also, the

administration of the Companies Act has been of a high quality. The Board's first main policy has been that no more is required at the present time than a review of the Act to ascertain any features of it which are not properly adjusted to today's needs. Revision need not go farther than any adjustments which appear advisable in the light of changes in business practice and needs since the last revision of the Federal legislation. It is gratifying to find in Bill S.22 that the amendment of the Act is on this basis.

Uniformity

The Board's second main policy has been that there would be advantage in uniformity in provisions relating to financial statements, prospectuses and annual returns. Likewise, it has been gratifying to find incorporated in Bill S.22, in sections 115-125, in the place of the provisions now there, the provisions respecting Financial statements and returns which appear in the Draft Uniform Companies Act with certain adjustments to bring these in line with the most recent developments in accounting principles and practice. In this regard the Board is also pleased to find in Section 76A the requirement respecting filing prospectuses limited to filing copies of such material with the Secretary of State. This subject matter can otherwise well be left to be regulated under provincial legislation relating to securities and to information filed by companies.

Disclosure of Purchase of Securities

Recently, the Board has been concerned in another connection with the question of disclosure of the purchase of securities, dealt with in section 98, in such a way as to formulate a policy on this matter. The Board's policy is substantially in conformity with the provision to be enacted in section 98. Your attention, however, is directed to the requirement of disclosure within thirty days of purchase or sale by filing a statement with the secretary. In some cases this could result in multiplicity of filing statements. After going into the matter in some detail, the Board reached the conclusion that it would be sufficient to require the reporting of the transactions concerned to the secretary before the end of the month following the month during which the purchases or sales took place. This would put the reporting on a monthly basis and limit the maximum number of reports to twelve per year. In the opinion of the Board this is sufficient as it considers that the real sanction of the provision is the requirement to disclose rather than the precise frequency of disclosure.

Respectfully submitted,

A. C. CRYSLER,
Legal Secretary.

APPENDIX

PART I

COMPANIES WITH SHARE CAPITAL

Definitions—"Accounts receivable"—s. 3(a)

The need for the definition of "Accounts receivable" in s. 3(a) is not apparent.

Grounds for cancellation of letters patent—s. 5(4) (a)

Section 5(4) (a)—Grounds for cancellation of letters patent—should be revised to read as follows:—

> "4. Any company that
>
> (a) carries on any business not within the scope of its purposes or objects, as set out in its letters patent or supplementary letters patent, or conferred by this Act."

If this revision is made, sub-paragraph (*b*) is unnecessary and should be deleted. A further reason for deleting sub-paragraph (*b*) is that the inclusion of the word "reasonably" negates the provisions of s. 14. Also, it is departmental policy to not allow inclusion, as stated objects in letters patent, of the incidental and ancillary powers set out in s. 14.

Financial assistance to shareholders or directors—s. 15.

Section 15 makes provision for a company making loans for certain purposes. Provisions should also be made for the giving of financial assistance under similar circumstances in the form of a guarantee, the provision of security or otherwise inasmuch as in many circumstances this may be cheaper and more satisfactory than the making of loans, as in some cases the assistance could be given without the company making any financial advance.

Commission on subscriptions—s. 16.

No reason is seen why the Act should not authorize payment of commissions as authorized by a by-law confirmed by some specified proportion of the shareholders. As s. 16 is presently worded, authorization by letters patent or supplementary letters patent is required.

Head office—s. 21 (1).

The inclusion of the words "which head office shall be the domicile of the corporation" in s. 21(1) confuses the questions of jurisdiction over the corporation and the domicile of the corporation, which is a factual matter.

It should be stated that the province or territory where the head office is situate shall be the domicile of the company. An explanation of the history and reasons for this appears in Dicey's Conflict of Laws, 7th Edition, under Rule 76. The Domicile of a corporation is in the country under whose law it is incorporated.

Change to be sanctioned—s. 21(3).

The last three and a portion lines in s. 21(3), which refer to a copy of the by-law certified under the seal of the company being filed with the Secretary of State and published in the Canada Gazette, are mandatory owing to the earlier portion of the subsection which states that no by-law is valid or shall be acted upon, etc. The subsection should be revised so that the latter portion of it, which deals with the filing and publishing of the by-law, is directory only. S. 87(3) of the Act illustrates a form of wording which can be followed in recasting the portion of s. 21(3), which deals with filing and publishing the by-law, in a form which is directory only.

Neglect to keep painted or affixed name of company—s. 23.

Section 23, which deals with Neglect to keep painted or affixed the name of the company, is unnecessary and should be deleted. Sections 22 and 24, which deal with the legible use of a company name, coupled with the general penalty section (s. 140), are sufficient for the purpose.

Forfeiture of charter for non-user—s. 28.

It is not clear from the use of the word "or" in the second line of s. 28(1), Forfeiture of charter for non-user, whether this word is used in the conjunctive or disjunctive sense as to not going into bona fide operation within three years after incorporation or not using its corporate powers for three consecutive years. The meaning should be clarified.

Share certificates—s. 33.

The entitlement of a shareholder to a share certificate without payment, referred to in s. 33(1), should be limited clearly to the issue of the share certificate on allotment.

Particulars of issue on certificate—s. 33 (4).

Section 33(4) should be rephrased to provide that share certificates shall contain notice of any conditions or restrictions which are prescribed by the letters patent or supplementary letters patent. Owing to the length of these conditions or restrictions, it is frequently impossible to state them in full in legible characters on the share certificate. The Act might provide that they should be made available on demand of a shareholder.

By-law for reduction of capital—s. 49.

As to s. 49, where a company has issued redeemable shares under the authority of letters patent or supplementary letters patent and redemption has been made in accordance with the terms thereof, it should not be necessary to take out supplementary letters patent to confirm the consequential reductions in capital. A subsection to this effect should be added to s. 49. In this connection s. 61 should be deleted and the Act should contain provision to the effect set out in s. 27 (11) and (12) of the Draft Uniform Companies Act.

Rights of preferred shareholders—s. 59 (2).

The comments above respecting s. 33(4), which deals with Particulars of issue on certificates, are applicable in the case of s. 59(2), which deals with statement of the Rights of preferred shareholders on the certificates of such shares.

When redemption or purchase not a reduction of paid-up capital—s. 61.

Section 61—When redemption or purchase not a reduction of paid-up capital—should be deleted from the Act. See comments respecting s. 49 above.

Information As To Mortgages and Charges—ss. 66-72.

A mortgage or an instrument creating a mortgage is required to be registered under corporations securities legislation. It should be sufficient to file with the Secretary of State a concise statement of the provisions of these documents showing pertinent items such as the amounts of money, dates and times, etc.

The maximum fee of twenty-five cents for a copy of a trust deed, specified in s. 72(2), is unrealistic in view of the present cost of copies of such documents. The fee should be increased to a reasonable amount.

Definitions—"Mining company"—s. 83 (1)(b).

The definition of "Mining company" in s. 83(1)(*b*) should be broadened to include oil companies and gas companies.

No dividends when company is insolvent—s. 83(2).

S. 83(2), respecting No dividends when company insolvent should end with the word "company" in the fourth line. Insolvency is a factual matter and rests upon whether or not the company is able to meet its obligations. It should not depend upon bookkeeping, which is envisaged in the remaining portion of the subsection, as it stands at present.

Shares in lieu of dividends—s. 83(3).

The reference at the end of s. 83(3) to a by-law which shall not have force or effect for more than one year from the date of its sanction is unnecessary and should be deleted. Also, the necessity for the directors being authorized by a by-law, sanctioned by at least two-thirds of the vote cast at a special general meeting of the shareholders, is questioned.

Payment of dividends by company whose assets are of wasting character—s. 83(4).

Section 83(4) deals with payment of dividends by a company whose assets are of a wasting character. This subsection should include reference to gas and oil companies, as well as mining companies.

Qualification of directors—s. 86.

Section 86 of the Companies Act should allow a director thirty days, following his election or appointment, in which to become a shareholder of a company to establish his qualification as a director.

President and vice-president—s. 90(d).

Section 90(*d*) respecting the election of Presidents and vice-presidents should be recast in a positive form to require that the president of a company must be appointed from among the directors. A separate section should be worked out to provide for the election or appointment of vice-presidents, and it should make clear that there may be more than one vice-president.

Consideration for fully paid shares to be cash or fair equivalent of cash—Mining companies excepted—s. 99(4).

Section 99(4), which excepts mining companies from the requirement that consideration for fully paid shares be cash or fair equivalent of cash, should be broadened to refer also to oil and gas companies.

Notice—s. 103.

There is a problem under the present wording of s. 103 in getting transfers from all co-transfer points so that a consolidated list of shareholders can be completed by the time for mailing notice of meetings. This problem would be met if there were added to s. 103 a provision to the effect that the by-laws of

the company may provide that the directors may fix a day not more than 00 days preceding the date of sending notice of the meeting, as of which the shareholders entitled to notice shall be determined.

In view of the provision in s. 103(c) that all questions at any meeting of shareholders shall be determined by a majority of votes and that other sections in the Act require different proportions of votes for different purposes, such as two-thirds for instance, the opening words of s. 103 should refer to the Act as well as to letters patent, supplementary letters patent or by-laws.

Books—Names of shareholders—s. 107(1)(b).

The requirements respecting the register of shareholders should provide that the names be alphabetically arranged in appropriate categories. This is necessary, for example, with regard to non-resident shareholders.

Books to be open for inspection—s. 109.

The provisions respecting inspection of books in s. 109 should be qualified by a provision such as s. 318 of The Ontario Corporations Act, 1953. If this is done, the form of the affidavit included in s. 318(1) should be revised in paragraphs 3 and 4 to require the affidavit to set out which of the several purposes referred to in s. 318(3) for which the list of shareholders is required; otherwise such a provision would give little or no protection.

Service of notices on shareholders—s. 136.

and

Time from which service reckoned—s. 137.

Section 136, respecting Service of notices on shareholders, and s. 137 respecting Time from which service reckoned, should be combined in the form of adding the provisions of s. 137 at the end of the provisions in s. 136.

APPENDIX "G"

RECOMMENDATION ON BILL S-22

An Act to Amend the Companies Act

Submitted by

THE CANADIAN INSTITUTE OF CHARTERED ACCOUNTANTS
L'INSTITUT CANADIEN DES COMPTABLES AGRÉÉS

June 1964

THE CANADIAN INSTITUTE OF CHARTERED ACCOUNANTS
L'INSTITUT CANADIEN DES COMPTABLES AGRÉÉS

Chartered Accountants Building, 69 Bloor Street East, Toronto 5, Ontario

JUNE 23, 1964.

The Honourable Salter A. Hayden, Chairman
and to the Honourable Members of the Standing Committee
of the Senate of Canada on Banking and Commerce:

The Canadian Institute of Chartered Accountants wishes to express the gratification of its members on the proposal to amend the Companies Act to bring it into line with the changes in Canadian business which have taken place since the last major revision in 1934.

The Institute has submitted recommendations to the Department of the Secretary of State from time to time in recent years for the amendment of various parts of the Act, which recommendations have been based upon the experience and thinking of the members regarding the modern requirements of legislation affecting business. We are naturally most pleased to see that the amendments to sections 115 to 124 incorporate a large number of our suggestions.

FRENCH VERSION OF BILL S-22

The Institute wishes to draw attention to the fact that the French version of Bill S-22 contains certain expressions which do not reflect modern Canadian practice. A quick review of sections 115 to 124 brought out the following technical terms which do not seem to correspond to Canadian practice. (An alternative is suggested between parentheses)

Ecritures comptables (documents comptables)
Etat des finances (état financier)
Excédent (surplus)
Fidèlement (équitablement)
Prévisions (provisions)
Excédent provenant des versements de capital (surplus d'apport)
Capital d'émission (capital émis)
Procédés (pratiques)
Holding company (compagnie-mère)
Donne un aperçu exact (présente équitablement)

We are enclosing a lexicon published by The Canadian Institute of Chartered Accountants in 1963 "Termes-Comptables/Accounting Terms" along with a companion book "Terminology for Accountants". We will be pleased to make a detailed review of the French version of the Bill if requested.

Section 21

This section amends section 52 of the Act. We believe it in order that the Secretary of State ask for a statement by the auditor as to whether or not the debts or claims against the company have been discharged, determined or secured. We think, however, that if a certification is to be provided that the consent of each creditor has been obtained it would be more practical if this certification were made by the officers of the company rather than by the auditor. We were surprised to read the comment in the Bill that this was "the present practice". This is not the experience of the members of the Institute's Committee on the Companies Act. We recommend, therefore, that the lines 8 and 9 be amended by deleting the words "by the certificate of an auditor".

Section 25

This sections amends and is somewhat similar in terms to the previous section 61.

Section 61 of the Act can be interpreted as providing, in effect, that where redeemable preferred shares are redeemed other than from the proceeds of a new issue of shares, an amount equal to the par or stated value of the shares redeemed shall be transferred from earned surplus and designated as "capital surplus", which is a term that does not have any accepted connotation in current accounting usage. In recent years, due principally to tax legislation, section 61 has been called into play in situations for which it was not designed. The main object of the section as we understand it is to protect the creditors' security while at the same time making possible a reduction in the stated issued capital without a formal reduction which would involve the approval of the Secretary of State and the issue of supplementary letters patent. This protection has been achieved by requiring the retention as "capital" surplus of an amount equal to the reduction in issued capital. What the existing legislation and the proposed amendment fail to recognize is that preference shares may have been created out of accumulated earnings, that is they may have been issued as a stock dividend. This indeed has been a common practice over the last few years and it is evident that the redemption out of earnings of such shares in no way impairs the subscribed capital.

In our view there is no need for one set of rules for redeeming shares issued as a stock dividend and another set of rules for shares issued for capital subscriptions. We believe that the present legislation provides unnecessary and cumbersome restrictions which may be expensive to the shareholders without providing any additional safeguard for the creditors.

The main object of section 61 of the Act could still be achieved if section 61 were deleted and replaced by a general provision such as section 31(1) of the Draft Act, which permits the company to redeem preference shares by more convenient procedures. It has been suggested that to so amend the Act could seriously weaken the position of creditors and thus imperil the whole concept of limited liability upon which a very large part of our economy rests. We are of the opinion that the interests of creditors would be adequately safeguarded by provisions such as those contained in section 35(1) of the Draft Act. The experience of the last ten years under the Ontario Corporations Act appears to indicate that the simpler approach to this problem is workable and does not prejudice the interests of creditors.

We recommend that section 61 of the Act should be deleted and substituted by sections 31(1) and 35(1) of the Draft Act, which read as follows:

31(1) The charter may provide for the redemption by the company of any preference shares at the request of the holder thereof, or for the

redemption by the company of all preference shares of a class at the request of any number or proportion of the holders thereof.

35(1) A company shall not redeem shares or purchase shares for cancellation under sections 49 to 58*, if the company is insolvent or if the redemption or purchase would render the company insolvent.

Section 34

This section amends sections 115 to 124 of the Act.

We note with considerable satisfaction that the disclosure requirements are in accordance with our recommendations and that in the words of the comment in the draft they will enable corporate accounting to accord with generally accepted accounting principles. In particular, we are pleased to see that the proposed amendments in so far as they affect disclosure refer to all companies, that is both public and private companies. We understand that there has been some objection raised to the proposal that legal requirements governing disclosure in the financial statements of private companies should be identical with those of public companies. In our view, no possible argument can be advanced that the shareholder of a public company should be entitled to receive a fair presentation while the shareholder of a private company receives something rather less than a fair presentation. The minority shareholder of a private company is not infrequently more in need of protection than his counterpart in a public company. One of the reasons for this is that the shareholder of a public company usually can find a ready market through which to dispose of his holdings if he is dissatisfied, whereas the shareholder of a private company may well find himself unable to sell and thus be locked in. Furthermore, the financial statement of a private company is frequently made available to third parties for various purposes, such as for credit or possible sale. In these circumstances too, we believe it to be equally important that the third party be provided with a financial statement drawn up in accordance with such minimum standards.

Fears have been expressed that an undue burden would be placed on private companies if they were forced to comply with the recommended standards of disclosure. In our opinion these fears have no foundation. That this is so is clearly demonstrated by experience in Ontario where, under the Corporations Act, enacted in 1953, such standards of disclosure have applied to private companies for the past ten years, and by the measure of acceptance accorded by business to a statement issued some six years ago by the Committee on Accounting and Auditing Research of this Institute. In this statement the standards of disclosure that we advocate be incorporated in the law are set forth as the minimum standards necessary to conform with acceptable practice.

Section 124(6)

The time element specified by this subsection should read "not less than seven days" rather than "not more than ten days". We believe the intention is to require that a certain minimum period of notice be given to the company asking the auditor to attend the annual meeting rather than excluding such request because it is made more than ten days before the meeting.

Section 35

This section amends section 125, subsections (1) to (3). We believe that the summary referred to should be certified by the directors or officers of the company and that since this is a purely corporate affair the auditors should not be required to be a signatory to such a return. We recommend, therefore, that on line 39 the words "and by the auditor of the company" be deleted.

* Sections 31, 32 and 33 of the Draft Act, respecting the redemption or cancellation of shares.

Section 36

This new section gives the Secretary of State power to request almost any information that occurs to him regarding the affairs of the company. It would also require the company to disclose much detailed information that is not required by other sections of the Act to be disclosed either to the public or to the Secretary of State. We recommend that the section be amended to modify the type of information that can be required and to provide for some reasonable time limit in supplying such information so sought.

Section 37

This section provides for the amalgamation of companies. We recommend that consideration be given to extending the amalgamation provisions to provide for the malgamation of two or more companies incorporated under different jurisdictions. If the amalgamation provisions are to be of the widest general benefit companies incorporated in different jurisdictions should be able to amalgamate, one with the other. The possible approach to this problem has been set out in the Draft Act, the Ontario Corporations Act and the New Brunswick Act. In these cases the provision is made whereby a company incorporated under one jurisdiction may obtain letters patent to continue as if it had been incorporated under another jurisdiction. Having achieved status under another jurisdiction, a company is then in a position to amalgamate with another company subject to that jurisdiction. You will appreciate that we do not feel ourselves qualified to form an opinion as to whether or not this approach is constitutionally sound, but, in the event that it is, we would support incorporation in the Act of provisions along the lines of sections 112 and 113 of the Draft Act which read as follows:

112. (1) Any company incorporated otherwise than by letters patent and that at the time of its application is a subsisting company may apply for letters patent continuing it as if it had been incorporated under this Act, and the Secretary of State may issue such letters patent continuing it as if it had been incorporated under this Act.

(2) Where a company applies for the issue of letters patent under subsection (1), the Secretary of State may, by the letters patent, limit or extend the powers of the company, name its directors and change its corporate name, as the applicant desires.

(3) A company incorporated under the laws of any jurisdiction other than (insert name of jurisdiction) may, if it appears to the Secretary of State to be so authorized by the laws of the jurisdiction in which it was incorporated, apply to the Secretary of State for letters patent continuing it as if it had been incorporated under this Act, and the Secretary of State may issue such letters patent on application supported by such material as appears satisfactory, and the letters patent may be issued on such terms, and subject to such limitations and conditions, and contain such provisions, as appear to the Secretary of State to be proper.

(4) The Secretary of State shall cause notice of the issue of letters patent under subsection (3) to be given forthwith to the proper officer of the jurisdiction in which the company was incorporated.

113. A company incorporated under the laws of (insert name of jurisdiction) may, if authorized by a special resolution and by the laws of any other jurisdiction, apply to the proper officer of the other

jurisdiction for an instrument of continuation continuing the company as if it had been incorporated under the laws of the other jurisdiction, and on and after the date of the instrument of continuation the company becomes an extra-provincial corporation.

Section 41

This consequential amendment should perhaps include in section 147(1)(e) a reference to section 116. If this is done the directors of every Part II company will have been required to place the financial statements and the report of the auditor before the annual meeting of the company.

Since Part II companies are non-profit organizations it might be appropriate to give the companies somewhat more leeway in the appointment of auditors than provisions in this respect provide for Part I companies because these appointments are often of an honorary nature.

Section 123(1) provides that the auditor cannot be a director, officer, or employee of that company or an affiliated company or a partner, employer or employee of any such director, officer or employee.

Subsection (2) allows for the appointment as auditor of a private company someone who is otherwise restricted provided there is an unanimous vote of the shareholders.

Subsection (3) requires the auditor to indicate in his report to the shareholders if there is any affiliation of the nature referred to in subsection (1).

We suggest, therefore, that the reference to section 123 be deleted and that the provisions of Part II be adjusted to require "that the auditor shall indicate in his report to the shareholders on the annual financial statements of the company that he is a director, officer or employee of the company or an affiliated company or a partner, employer or employee of the director, officer or employee, if such is the case".

Respectfully submitted,

G. P. Keeping, FCA,
Chairman,
Companies Act Committee.

Committee Members

R. B. Dale-Harris, FCA, T. A. M. Hutchison, FCA,
C. L. King, FCA.

21041—5½

APPENDIX "H"

SUBMISSION

of

THE CANADIAN MANUFACTURERS' ASSOCIATION

to the

STANDING COMMITTEE ON BANKING AND COMMERCE

of the

SENATE OF CANADA

with respect to

BILL S-22, AN ACT TO AMEND THE COMPANIES ACT

July 1964.

THE CANADIAN MANUFACTURERS' ASSOCIATION
67 Yonge Street, Toronto 1, Ontario

July 16, 1964.

The Honourable Salter A. Hayden,
Chairman,
And Members,
The Standing Committee on Banking and Commerce,
The Senate of Canada,
Ottawa, Canada.

Honourable Senators:

The Canadian Manufacturers' Association appreciates and welcomes this opportunity of presenting its views on Bill S-22, An Act to amend the Companies Act.

The Canadian Manufacturers' Association is a non-profit, non-political organization of manufacturers, both large and small, in every line of manufacturing industry from Newfoundland to British Columbia who are joined together to consider and take action on their common problems. Founded 93 years ago, the Association has over 6,000 members representing about 75 percent of Canada's total manufacturing output and who are located in over 600 cities, towns and villages. Over three-quarters of the Association's member firms employ less than 100 persons.

The provisions of the Companies Act are of concern to the Association, since a large number of its members have been incorporated under it and are subject to its requirements. It is appropriate for manufacturers to incorporate under the Companies Act because in most instances they carry on business in more than one province.

The Association respectfully submits the following comments on those of the proposed amendments to the Companies Act contained in Bill S-22, which in its view should not be enacted in their present form:

1. Section 5(2) of Bill

This section provides for the replacement of section 5(4) of the Companies Act and in effect adds new paragraphs (*d*), (*e*) and (*f*). It is respectfully submitted that new paragraphs (*d*), (*e*) and (*f*) should be deleted from the proposed amendments for the following reasons:

(i) The proposed paragraphs (*d*), (*e*) and (*f*) could have retroactive effect and in the case of paragraph (*d*) the failure to hold annual meetings could not be remedied.

(ii) There is no provision for advance notice from the Secretary of State nor any period provided during which the default could be remedied.

(iii) Section 35(3) of the Bill provides for the enactment of new subsections (10), (11), and (12) of section 125 of the Companies Act and it is submitted that these proposed new subsections provide adequate remedy with respect to the situation dealt with in proposed paragraph (*f*) of section 5(4) of the Companies Act.

(iv) Adequate remedies are available under the Companies Act to shareholders who feel that an annual or other meeting of shareholders should be convened.

Alternatively, with respect to the proposed new paragraph (*d*), it is submitted that provision should be made whereby the Secretary of State or the Attorney General could order an annual meeting to be held within a specified period following which the proposed application to a court for a winding up order might be invoked.

It is further submitted that in any event if a winding up were ordered under the provisions of the proposed revised subsection there is no justification for the proposed new subsection (5) which would enable the court to impose the costs of winding up on the directors or any of them.

2. Section 7 of Bill

In subsection (3) of section 7, it is proposed to amend section 8 of the Companies Act by adding a new subsection (5). Having regard to the explanatory comments which indicate that this subsection is intended essentially as a convenience to applicants, it is suggested that the proposed subsection be amended by the insertion after the words "agent may" in the 3rd line, of the words "with the consent or approval of the applicants."

3. Section 8 of Bill

It is submitted that the words "or supplementary letters patent" should be inserted in the proposed new section 10 of the Act immediately after the words "letters patent" wherever they occur.

4. Section 9 of Bill

Section 5 of the Companies Act which is amended by section 5(1) of the Bill makes it clear that a company comes into existence solely as a result of the grant of a charter. The proposed new section 11 of the Act set out in section 9 of the Bill establishes the date of incorporation. Since it is the actual grant of the charter which brings the company into existence, doubts have arisen as to whether or not acts done by a proposed Board of Directors after the date

fixed by the Companies Branch as the date which the letters patent shall bear, but before the actual issue of such letters patent, are, notwithstanding the wording in section 11, valid. It is respectfully submitted that the proposed section 11 of the Act should be amended to provide such validity.

5. Section 10(1) of Bill

The Association supports the following submission made in respect of this section by Mr. Allan Graydon, Q.C., in his brief dated 26th May 1964:

> "We do not understand the intent or the effect of the proposed new section 12(1) which, after providing that the letters patent or supplementary letters patent may provide for shares of more than one class and for any preferred, deferred or other special rights etc., states that:
>
> "no such rights, restrictions, conditions or limitations shall permit an alteration of the capital of the company in any manner other than by supplementary letters patent issued pursuant to sections 48 to 58 or section 126 as the circumstances of the case may require".
>
> We submit
>
> (*a*) that if preferred shares be issued convertible into common shares and if the right or conversion be exercised, the capital of the company would be altered by the consequent issue of common shares and the retirement of preferred shares; and
>
> (*b*) likewise, that if preferred shares be issued subject to redemption and be redeemed, the capital would be altered notwithstanding that by section 61 of the Act a capital surplus resulted.
>
> We suggest that the quoted phrase should be carified".

6. Section 10(2) of Bill

Subsection (2) of this section is to replace section 12(7) of the Companies Act. It is assumed that the words "commencement of this subsection" which appear at the end of the proposed replacement subsection will before passage of the Bill be replaced by the appropriate date. Similar wording is noticed in section 13 of the Bill proposing a new section 16A (4) of the Companies Act and in section 30 of the Bill amending section 77(1) of the Act.

7. Section 13 of Bill

It is suggested with respect to subsection (2) of the proposed new section 16A of the Act that the replacement of the words "a company" in the fourth line of subsection (2) by the words "a holding company" would tend to avoid any possible ambiguity.

8. Section 17 of Bill

We are informed that section 508 of the Business Corporation Law of the State of New York and section 12 of the newly revised Quebec Companies Act now provide for the right to attach a summary of the various preferences, rights, conditions, etc., together with a statement that full particulars are available on request to the company, instead of requiring the reproduction in full of the various preferences, rights etc. It is submitted that in view of the complexity of such matters, similar provision might well be made in the proposed new subsection (4) of section 33 of the Act.

9. Section 19 of Bill

It is respectfully submitted that the proposed subsection (5) of amended section 48 of the Act has the effect of placing the power of veto in the hands of a single shareholder. In all circumstances it would appear that minority shareholders are adequately protected by the provisions of the proposed subsection (4). It is suggested that the unanimous approval proposed in the new subsection (5) should be replaced by the approval of 75 per cent of the votes cast at a special general meeting of the affected shareholders.

10. Section 25 of Bill

The Association supports the following submission made in respect of this section by Mr. Allan Graydon, Q.C., in his brief dated 26th May 1964:

> "It is proposed by section 25 to rewrite the present section 61 of the Act.
>
> The effect of the proposed section 61, as we construe it, is to restrict the redemption or purchase for cancellation of preferred shares so that they may be redeemed or purchased only out of ascertained net profits of the company set aside by the directors and available for the purpose as liquid assets. It also provides that the surplus resulting from the redemption or purchase for cancellation shall be designated as capital surplus. The resulting capital surplus is not to be reduced or distributed except as a consequence of a reduction of capital under other provisions of the Act. The effect of the new section 61 is somewhat similar in substance to the old section.
>
> Under The Corporations Act of Ontario there are no similar restrictions and no requirement for a capital surplus and where preference shares of an Ontario company are redeemed or purchased they are to be cancelled and the authorized and issued capital is thereby decreased—section 27 (13) of The Corporations Act of Ontario.
>
> We submit that the scheme of the Ontario Act is preferable and more realistic than the provisions of the Companies Act, and particularly the proposed section 61. The limitation on the redemption or purchase for cancellation of preferred shares under the present section 61 of the Act or the proposed section 61 serves no useful purpose save the payment of a nominal fee to the Department of the Secretary of State for Canada for letters patent reducing the capital to the extent of the capital surplus.
>
> We suggest that, since extensive amendments to the Companies Act are now being considered, advantage be taken of the opportunity to revise the scheme of the Companies Act as regards the redemption or purchase of preferred shares and to adopt provisions corresponding to those in The Corporations Act of Ontario. We recognize, however, that this would require, not only the elimination of section 61, but certain other consequential amendments."

11. Section 29 of Bill

The proposed new section 76A of the Act is a definite improvement over the present provisions. However, no provision is made for those cases where an offer is made to the public of a company's securities in any province or any foreign country where it is not required by law to file with a public authority therein a prospectus, or where the particular offer is exempt by the relevant law from such filing. Furthermore the period of ten days proposed in subsection (2) may in all the circumstances be too short. It is therefore suggested that

the company concerned be permitted to file a certified sworn copy of the document filed in the province or foreign country or in the alternative that the period of time be extended.

12. Section 31 of Bill

The Association supports the following submission made in respect of this section by Mr. Allan Graydon, Q.C., in his brief dated 26th May 1964:

> "It is proposed by section 31 to rewrite section 84 which provides for the management of the affairs of a company by a board of directors. If the existing conception that the board must consist of a fixed number of directors is to prevail, then we consider that the proposed revision is beneficial.
>
> We submit, however, that consideration should be given at this time to making provision for a board of a fluctuating number which is the practice commonly prevailing in England. The minimum number would have to be three; the maximum number could be established by the by-laws of the company; and provision could be made that the actual number would be established by the board of directors from time to time subject to such minimum and maximum."

13. Section 32 of Bill

In view of the comparative multiplicity and diversity of officers of companies today and of the difficulty of determining precisely who is an "officer", it is respectfully submitted that the first two lines of the proposed new section 98 (1) of the Act should be revised as follows:

> "where a director of a company or any officer or shareholder thereof controlling more than ten"

Subsection (1) of the proposed new section 98 provides in the last four lines thereof that a book "shall be available for inspection". Subsection (2) of the proposed new section 98 provides that the directors "shall present to the shareholders of the company at each annual meeting thereof a statement". It is suggested that ambiguity may be avoided by replacing the words "shall present" in proposed new section 98 (2) by the words "shall make available".

14. Section 34 of Bill

This section proposes the repeal and replacement of sections 115 to 124 of the Act. In the proposed new section 115 and elsewhere in these sections reference is made to "proper books of account and accounting records". In view of the progressive and continuing replacement of books of account by accounting records it is respectfully submitted that the words "books of account and accounting records" where they occur should be replaced by "accounting records".

It is respectfully submitted that subsections (2), (3), (4) and (5) of the proposed new section 115 of the Act should not be enacted but that subsections (2) and (3) of the present Act should be retained. The location of the accounting records of a company would seem to be a matter of internal management and not a matter for the operation of the discretion of the Secretary of State

The proposed sections 116 to 120 inclusive impose an onerous burden upon private companies. The proposed new Manitoba Companies Act provides in section 96(4) thereof as follows:

> "With the consent in writing of all shareholders, a private company may dispense with the requirements under sections 97 to 100 in respect of any particular financial statement specified in the consent, except that the financial statement shall be drawn up so as to present fairly

the results of the operation of the company for the period covered by the statement."

It is respectfully submitted that a similar provision should be included in the present bill possibly as a new subsection (4) of the proposed new section 116 of the Act.

With respect to the proposed new section 117(1)(*a*), it is suggested that the application to the chief justice or acting chief justice as well as the requirement that he be satisfied that disclosure of this information "would be detrimental to the interests of the company" are too limitative. It is respectfully submitted that the reference might with advantage be made to "the court in the province in which the head office of the company is situate" (Cf. section 128(1) of Act), rather than to the chief justice or acting chief justice, and furthermore that the authority of the court to authorize such omission should be unrestricted.

With reference to the proposed new paragraph (*j*) of subsection (1) of section 117 of the Act, while other benefits and emoluments might be considered for retention, in view of the complicated pension fund arrangements frequently encountered it is suggested that no really useful purpose is served by a requirement to include contributions to pension funds in remuneration reported for directors and officers. It is therefore urged that this requirement be deleted. The same submission is offered with respect to paragraph (*j*) of subsection (1) of section 120 of the Act.

With respect to the proposed new section 121F(1) of the Act it is respectfully submitted that the shortness of the period of time provided imposes an unnecessary burden on the companies. It is suggested that the present practice as set out in section 121(1)(*a*) of the present Act has operated satisfactorily and should be continued.

With respect to subsection (5) of the proposed new section 124 of the Act, it is suggested that this provision respecting the right of the auditor to attend meetings imposes an undue burden particularly on private companies. It is respectfully submitted that this subsection (5) should be replaced by subsection (2) of section 124 of the present Act or in the alternative that a subsection be added to the proposed new section 124 similar to subsection (6) of section 95 of the proposed new Manitoba Act which reads as follows:

"With the consent in writing of all the shareholders a company may dispense with notice to the auditor in respect of, and his attendance at, any particular meeting specified in the consent."

15. Section 35 of Bill

The Association supports the following submission made in respect of this section by Mr. Allan Graydon, Q.C., in his brief dated 26th May 1964:

"It is proposed by subsection (1) of section 35 to repeal subsections (1) to (3) of the present section 125 of the Act and to substitute therefor new subsections (1) and (2). By the new subsection (2) it is proposed to provide that the annual summary to be filed on or before the 1st day of June in each year shall be "signed and certified by a director or an officer and by the auditor of the company". (The underlining is ours).

We submit that the requirement that the annual summary be certified by the auditor should be deleted on the following grounds:

(*a*) it removes from the corporate directors or officers the ability to comply with section 125; and

(*b*) it has the effect of requiring the auditor to certify to matters of law."

16. Section 36 of Bill

The Association supports the following submission made in respect of this section by Mr. Allan Graydon, Q.C., in his brief dated 26th May, 1964:

"It is proposed by section 36 to enact a new section 125A which would provide that the Secretary of State may at any time by notice require any company to make a return upon any subject connected with its affairs within the time specified in the notice and that on default in making such return every director of the company is guilty of an offence.

We submit that the proposed section 125A should not be enacted on the grounds:

(*a*) it is unduly burdensome;

(*b*) the length of notice given might not be sufficient; and

(*c*) there is no requirement that the information be held confidential to the Secretary of State although the subjects to be dealt with might be such that they should not be made public or communicated to another department of the government. For example: the amount of sales or gross revenue might be required to be disclosed notwithstanding that, pursuant to the proposed new section 117(1)(*a*), the Chief Justice or acting Chief Justice of the court of the appropriate province had authorized their omission from the financial statements of the company.

Alternatively:

We submit that the proposed section 125A should be amended to provide:

(*a*) for a minimum notice of three months; and

(*b*) that the information disclosed by the return be confidential to the Secretary of State."

17. Section 37 of Bill

It is considered with respect to proposed section 128A that the requirement of a court order in addition to the approval of 75% of the votes of the shareholders is an unnecessary and undesirable feature for the following reasons:

(1) The affirmative vote of 75% of the shareholders of both companies to the amalgamation is convincing evidence that the amalgamation is fair to the shareholders of both companies.

(2) In the event the amalgamation is unfair to a minority as a result of fraudulent tactics on the part of the majority as opposed to commerial considerations, resort to the courts is open to a minority.

(3) The requirement of a court order, which can be made subject to such terms and conditions as the court thinks fit, casts uncertainty on a commercial transaction.

(4) Added to the uncertainty of court approval, the Minister retains the prerogative of issuing or not issuing the necessary letters patent to confirm the amalgamation agreement.

(5) The necessity of obtaining a court order to effect an amalgamation in the interests of the shareholders as a whole of both companies can afford a small minority the opportunity of harassing the vast majority.

18. Section 38 of Bill

The Association supports the following submission made in respect of this section by Mr. Allan Graydon, Q.C., in his brief dated 26th May, 1964:

> "Section 38 proposes the enactment of a new section 139A which would enable a shareholder or a creditor of the company aggrieved by failure of the company or a director, officer or employee thereof to perform any duty imposed by the Act, to apply to the court for an order directing the company, director, officer or employee to perform the duty etc.
>
> We submit that this section should not be enacted upon the following grounds:
>
> (*a*) the word "duty" is so broad as to embrace almost anything since under the Act it is the duty of the board of directors to manage the affairs of a company and, thus, will bring into question every aspect of management;
>
> (*b*) consequently, actions might be instituted for the purpose of acquiring confidential information of which neither the Act nor proper corporate practice requires disclosure;
>
> (*c*) the section will invite litigation by individual shareholders who will not be suing on behalf of a class and, thus, a company of substantial size might be involved in the course of a year in numerous actions based upon alleged, if unsound, grievances;
>
> (*d*) the tendency of those attacking the management of a company would be to use "men of straw" for the purposes of such actions who could not respond to any court costs awarded against them."

Respectfully submitted,

THE CANADIAN MANUFACTURERS' ASSOCIATION

J. C. Whitelaw,
Executive Vice-President and
General Manager.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-22, intituled: "An Act to amend the Companies Act".

The Honourable SALTER A. HAYDEN, Chairman

THURSDAY, JULY 23, 1964

No. 5

WITNESS:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21260—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 20, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Vien, P.C., seconded by the Honourable Senator Bradley, P.C., for second reading of the Bill S-22, intituled: "An Act to amend the Companies Act".

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

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, for the Honourable Senator Vien, P.C., seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

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

J. F. MACNEILL,
Clerk of the Senate.

21260—1½

MINUTES OF PROCEEDINGS

THURSDAY, July 23rd, 1964.

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

Present: Honourable Senators: Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Blois, Bouffard, Brooks, Burchill, Cook, Croll, Fergusson, Gershaw, Hugessen, Irvine, Isnor, Kinley, Lang, Leonard, McLean, Molson, Pearson, Pouliot, Reid, Smith (*Kamloops*), Thorvaldson, Vaillancourt and Willis—26.

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

Consideration of Bill S-22 "An Act to amend the Companies Act", was resumed.

The following witness was heard:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Committee postponed further consideration of the said Bill.

At 11.50 a.m. the Committee adjourned to the call of the Chairman.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, July 23, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, to amend the Companies Act, met this day at 9.30 a.m. to give further consideration to the bill.

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

The CHAIRMAN: Honourable senators, we have a quorum. Today we have before us Bill S-22, and we have reached the stage in consideration of this bill where we have heard what I could call the outside evidence. I would propose this morning that we hear Mr. Lesage and get his viewpoint on changes which were suggested or objections taken by some of the outside witnesses to the amendments in the form in which they were presented to us.

Mr. Lesage, how would you like to proceed?

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of Secretary of State: I have had a copy only this morning of the report of the last meeting on Bill S-22. I had prepared a few notes before that, and I wonder if you would agree that I take first from my notes the remarks I prepared for this bill. Thereafter I am afraid I shall have to go through last week's report and take a complete look at it.

The CHAIRMAN: We may not get too far. I am sure all those present will remember last week's report and will provide the spur.

I was wondering, senators, whether the best way to deal with this would not be to take the briefs presented and the various sections they dealt with, and let us take the changes or suggested changes or criticism of the various proposals and ask Mr. Lesage what he has to say about them. Let us start with the brief submitted by the Canadian Institute of Chartered Accountants. There I notice the first item referred to is section 21 of the bill, amending section 52 of the act. Here the chartered accountants have said:

> We believe it in order that the Secretary of State ask for a statement by the auditor as to whether or not the debts or claims against the company have been discharged, determined or secured. We think, however, that if a certification is to be provided that the consent of each creditor has been obtained it would be more practical if this certification were made by the officers of the company rather than by the auditor. We were surprised to read the comment in the bill that this was "the present practice". This is not the experience of the members of the Institute's Committee on the Companies Act. We recommend, therefore, that the lines 8 and 9 be amended by deleting the words "by the certificate of an auditor".

Now, what have you to say about that, Mr. Lesage?

Mr. LESAGE: I agree with them that it should be deleted.

The CHAIRMAN: Well, that did not take very long.

The next section dealt with in the brief of the Chartered Accountants is section 25. This is commented on in all the briefs that have been submitted.

This is section 25 of the bill, which repeals section 61 of the act and substitutes therefor a new section 61. Section 61, as I recall it, deals with the redemption of shares out of ascertained net profits specifically set aside. We have had a lot of discussion on this. Section 61 is a long section, but it really requires redemption of preferred shares out of ascertained net profits which are in liquid form and set aside for this purpose. Then the paid-in capital that you receive for the shares after they are redeemed becomes a capital surplus, and you cannot deal with it in any way until you get supplementary letters patent. The chartered accountants say:

> The main object of the section as we understand it is to protect the creditors' security while at the same time making possible a reduction in the stated issued capital without a formal reduction which would involve the approval of the Secretary of State and the issue of supplementary letters patent.

Then they go on to say:

> What the existing legislation and the proposed amendment fail to recognize is that preference shares may have been created out of accumulated earnings, that is they may have been issued as a stock dividend. This indeed has been a common practice over the last few years and it is evident that the redemption out of earnings of such shares in no way impairs the subscribed capital.
>
> In our view there is no need for one set of rules for redeeming shares issued as a stock dividend and another set of rules for shares issued for capital subscriptions. We believe that the present legislation provides unnecessary and cumbersome restrictions which may be expensive to the shareholders without providing any additional safeguard for the creditors.

What have you to say about that, Mr. Lesage? I might just point out to the committee that the recommendation of the chartered accountants is that section 61 be deleted and substituted for by sections 31(1) and 35(1) of the draft act. They are referring there to the Draft Uniform Companies Act. The wording of what they suggest in substitution is:

> The charter may provide for the redemption by the company of any preference shares at the request of the holder thereof, or for the redemption by the company of all preference shares of a class at the request of any number or proportion of the holders thereof.

And then again:

> A company shall not redeem shares or purchase shares for cancellation under sections 49 to 58—

Those are the capital redemption sections.

> —if the company is insolvent or if the redemption or purchase would render the company insolvent.

Can we have your comment on that, Mr. Lesage?

Mr. LESAGE: My first comment is that our Companies Act is derived from the English Companies Act, and also from the English common law on corporate matters. In England they have not as yet recognized the system which was adopted by Ontario, and which comes from American practices and American laws. The latest author I have read from England is "Gower on *Corporate Law*," who indicates very clearly that in England they still maintain that the capital stock of a company cannot be decreased without the authority of a court. This authority in Canada is vested in the Department of the Secretary of State. In England they have exactly the same exception as we have in our section 61. They have that in the English Act.

Senator REID: Is "England" a proper word to use instead of "Britain"?

Mr. LESAGE: Yes, Britain.

Senator REID: When you say "Britain" you include Scotland and Wales.

Mr. LESAGE: Well, that is the British Companies Act. The principle in section 61 is derived from England. To adopt the views of the chartered accountants, and even of the Canadian Bar and all those associations which were represented here, would be to make a strong departure from our corporate law system. However, we have to realize that we are part of North America, and that our capital is influenced to a large extent by American capital. The American people—and we can realize that in our daily administration of the act—hardly understand our restrictive law which we have maintained up to date, and which is still maintained in England.

On other hand, practising lawyers and chartered accountants and representatives of the Canadian Manufacturers' Association have evidently been influenced, and will be more and more influenced, by the American system by which capital can be decreased if it does not render the company insolvent, but what I am a little worried about is that they suggest no definition for "insolvency". Therefore, according to those views, I wonder how the line between solvency and insolvency can be determined.

A company can very well say: "I am solvent according to the Bankruptcy Act," or by taking other standards it can say it is solvent, and thus there is no way to draw the line. I am afraid that this might open the door to some decreases in capital which would really affect the rights of the creditors and shareholders.

Senator BOUFFARD: What about the consent of the creditors and shareholders? If you had the consent of the creditors and shareholders there would be no objection to it, would there?

Mr. LESAGE: I am not too much worried about the shareholders themselves because they know that when they are issuing preferred shares at the time they are promoting the company. I would say that since they permit the issue of preferred shares they readily admit that their investment is affected, or may be affected.

But, on the other hand, I think it is pretty hard to go completely across that almost general intention expressed by associations like the Canadian Bar Association, the Chartered Accountants' Institute, the C.M.A. and others. Therefore, I think if we could satisfy this need to keep abreast of the American system and at the same time preserve our British principle of law I would be a lot happier at adopting a simple measure such as the one indicated in the Draft Uniform Companies Act, or even the one which was adopted ten years ago by the Ontario Government.

For that reason I have prepared for submission a text of a new section which is mentioned here as section 49A, but which I think should rather be section 58A. That is only a matter of drafting. I must also admit that I have submitted my text to the Department of Justice, but in the absence of Mr. Ryan who worked with me on the preparation of the bill I prefer not to go too deeply into my comments. However, I have brought with me this morning my suggestion which is subject, of course, to review by Mr. Ryan, because I cannot take on all the responsibility of drafting the section.

The CHAIRMAN: Perhaps you could let us see it, and then we can find out what they think about it as well.

Mr. LESAGE: Yes. It reads as follows:

Redemption or purchase for cancellation of shares.

49A. (1) Subject to this section, a company may, if authorized by its letters patent or supplementary letters patent, redeem or purchase

for cancellation out of its capital any shares of the company, other than common or ordinary shares, by paying the holders thereof an amount therefor to be determined in the manner set out in its letters patent or supplementary letters patent.

Exception.

(2) No redemption or purchase for cancellation of shares may be made by a company if that redemption or purchase would impair the capital of the company so as to render it insolvent.

Shares redeemed or purchased for cancellation not to be reissued. Notice of redemption or purchase for cancellation.

(3) The shares redeemed or purchased for cancellation by a company shall be cancelled by the company and may in no case be reissued.

(4) Every company that redeems or purchases for cancellation any shares, other than common or ordinary shares, shall, before the end of the month immediately following the month in which that redemption or purchase for cancellation takes place, send by ordinary mail a notice described in subsection (5)

(a) if the company is a private company,

(i) to every shareholder in the company, regardless of the class of shares held by him, and

(ii) to the Secretary of State together with a statement as to the date on which the notice was mailed to the shareholders; and

(b) if the company is a public company, to the Secretary of State, who shall cause the notice to be published in the *Canada Gazette* at the expense of the company.

Contents of notice.

(5) The notice referred to in subsection (4) shall contain

(a) the date or dates of the redemption or purchase for cancellation of the shares:

(b) the number of shares involved;

(c) the price of the redemption or purchase for cancellation; and

(d) the names of the shareholders from whom the shares were redeemed or purchased for cancellation.

Copy to be sent.

(6) A copy of the notice described in subsection (5) shall be sent

(a) in the case of a private company, by the company to every shareholder or creditor thereof on application therefor or where the company fails to send a copy, by the Secretary of State on application by that shareholder or creditor and

(b) in the case of a public company, by the Secretary of State to every person who applies for a copy.

Supplementary letters patent to reflect change in capital of company.

(7) Where a company that has redeemed or purchased for cancellation any shares makes application for the issue of supplementary letters patent for any purpose whatsoever, the supplementary letters patent shall reflect the change in the capital of that company caused by the redemption or purchase for cancellation of the shares even though no request to this effect is made in the application or in any by-law or special resolution passed by the company.

The purpose of having those redemptions and purchases for cancellation publicized is to render public, in the case of public companies, and to render known to all interested persons, in the case of private companies, what transactions have taken place; so that at any time any interested person in any

company could know whether a company is decreasing its capital. Therefore, in the English system, which provides that no reduction in capital may be made otherwise than by supplementary letters patent in our case, such publication I say would in effect permit or achieve the same purpose as the supplementary letters patent had before, in notifying each and every person.

The CHAIRMAN: Mr. Lesage, what you have read seems to move along pretty logically and with emphasis on publicity, that is, that the Secretary of State and the public and the shareholders and creditors will be informed. I know that you do not want to say "This is what we recommend in substitution" until you have had a chance to talk to Mr. Ryan.

Mr. LESAGE: Of course.

The CHAIRMAN: We have it in the record now and we can identify it in connection with our consideration of section 61 when we come to consider what change if any we should make in this section of the bill. I want to call your attention to what the chartered accountants say. They say:

> It has been suggested that so to amend the act—

That is, in the manner we have been discussing, by reduction of capital—

> could seriously weaken the position of creditors and thus imperil the whole concept of limited liability upon which a very large part of our economy rests. We are of the opinion that the interests of creditors would be adequately safeguarded by provisions such as those contained in section 35(1) of the Draft Act.

You find that reflected in Mr. Lesage's draft, where they say you cannot redeem or purchase shares for cancellation when the company is insolvent or when their redemption or purchase for cancellation would produce or bring about insolvency. Then they go on to say:

> The experience of the last ten years under the Ontario Corporations Act appears to indicate that the simpler approach to this problem is workable and does not prejudice the interests of creditors.

Is there any comment on what Mr. Lesage has suggested?

Senator BOUFFARD: If we are to appoint a supplementary study committee for this—this is a very long bill—I think it should be studied by the subcommittee first and then we could consider the recommendations.

The CHAIRMAN: How does the committee feel? We have a suggested alternative which indicates Mr. Lesage is searching the same as we are to bring as much simplicity as possible into the procedure and at the same time adequately protect the rights of creditors and shareholders.

Senator LANG: My impression is that the draft suggested by Mr. Lesage is creating as much paper work as is necessary to apply for supplementary letters patent, so in the matter of simplicity I do not think it will accomplish very much. My feeling is very strong that the chartered accountants' position is the correct position, and that it is unnecessary to put in any restrictive provisos other than that respecting insolvency. I do not believe that in general commercial practice the creditors look to whether a company has preferred shares or deferred shares outstanding, nor is the creditor concerned with the redemption of preferred shares. Other factors govern the granting or withholding of credit to a limited company and I think these provisions are superfluous in present-day commercial practice.

Senator CROLL: I have not been able to grasp the difference between the Ontario act that is recommended by the chartered accountants, and what Mr. Lesage is suggesting. It has been going too quickly for me.

The CHAIRMAN: The big point of difference is the requirements of notice, which Mr. Lesage has incorporated in it as suggested.

Senator CROLL: And the Ontario act, notice is?

The CHAIRMAN: In the Ontario Act there is not the provision for notice. It proceeds on the prohibition in the particular section, section 27, that preference shares shall not be redeemed or purchased for cancellation by the company if the company is insolvent or if the redemption or purchase will render the company insolvent. That puts the burden on those who propose their redemption or purchase for cancellation, to satisfy themselves by all means possible that this will not produce insolvency or that the company at the time is not insolvent

Senator CROLL: And Mr. Lesage suggests?

The CHAIRMAN: Mr. Lesage suggests that provision, but as well that notice of the purchase or redemption shall be given (1) to the Secretary of State, who will publish at the expense of the company in the *Canada Gazette* and (2) that notice will be given to every shareholder of the company.

Senator BOUFFARD: And to all creditors?

The CHAIRMAN: Not of a public company; by a private company, as notice to the creditors as well. Notice to the Secretary of State is a matter of record and I do not see anything wrong with that. He has to have his records up to date in regard to the history of the company. I cannot see any objection to publication in the *Canada Gazette*. As to notices to all shareholders, I am wondering in the case of a public company what that does. First of all, certainly the shareholders involved know about the shares that have been purchased or redeemed. As to the other shares, if the shares are listed, anything you do that might materially affect the company, you must notify the exchange where they are listed. Frankly, at the moment, putting it on the scales, I cannot see the added value of requiring a notice to go to the shareholders that you have redeemed shares or purchased shares for cancellation. Of course, if the redemption is out of line with the priorities that are established among the different classes, then rights are being affected.

Senator THORVALDSON: Is there not also something provided that the names of the shareholders must be stated in the notice?

The CHAIRMAN: In the notice to the Secretary of State.

Senator THORVALDSON: Is there any purpose in giving the name, in view of the fact that there are thousands of shareholders?

The CHAIRMAN: I thought it was in the case of a private company that the name should be given.

Senator THORVALDSON: I did not understand that to be the case.

Mr. LESAGE: It is for the protection of other shareholders, so that in the case of those companies which appear to be not too solid, the directors can withdraw the amount of money for themselves only so that they will know that the directors of the company have paid up capital to themselves.

The CHAIRMAN: No, that was not the question. The question was, where you include the names of the shareholders whose names are given, who redeem shares or purchase sales for cancellation, in the draft, you have presented that as a requirement where you are dealing with a private company.

Mr. LESAGE: Yes. With a public company it would be impossible.

Senator ISNOR: Mr. Chairman, I should like to ask a question with regard to section 49A(5).

The CHAIRMAN: Which Mr. Lesage read?

Senator ISNOR: Yes, with reference to the name. I want to know the advantage of that.

Mr. LESAGE: I am afraid that from the drafting which was re-drafted, they have made it applicable to public companies. It reads as follows:

(*a*) the date or dates of the redemption or purchase for cancellation of the shares;
(*b*) the number of shares involved;
(*c*) the price of the redemption or purchase for cancellation; and
(*d*) the names of the shareholders from whom the shares were redeemed or purchased for cancellation.

I agree that it is almost an impossibility.

The CHAIRMAN: We have that comment, thank you, that if we were accepting this proposal we would give serious thought before we would require the names of shareholders of a public company whose shares are being redeemed or purchased for cancellation to be included, that it might be an almost impossible job to do it.

Senator LANG: Mr. Chairman, if I were a creditor of the company at the time of redemption and I subsequently received notice, what value would that be to me?

The CHAIRMAN: Well, the shareholders have a liability.

Senator LANG: *Ex post facto,* is it not? My rights have already been affected?

The CHAIRMAN: Yes, they have been affected but you still have rights against directors, for instance, who authorized the redemption or purchase for cancellation at a time when the company was insolvent.

Senator LANG: I would have that right in any event, under the Ontario section?

The CHAIRMAN: That is right.

Senator LANG: But this really adds nothing to my rights?

The CHAIRMAN: I don't know how you can add any more to your rights than that, in any event.

Senator LEONARD: Mr. Chairman, Mr. Lesage suggested that section 61, subsection (1) of the act, refers to a class of shares, which signifies to me the cancellation of redemption of all shares of a class. I do not know whether that has the same purport in Mr. Lesage's draft amendment; or does his amendment apply to cancellation of redemption or purchase of a portion of the shares?

The CHAIRMAN: The form in which it was worded would appear to suggest that you redeem all or none; and of course if we were going to take the section that is in the bill, there would have to be some change in that, because the very conditions attaching to preferred shares stipulate in connection with purchase for cancellation and redemption, that you may redeem a portion from time to time.

Senator LEONARD: I rather gathered, from listening to Mr. Lesage's amendment, that it was not confined to cases of redemption or cancellation of the whole class.

Mr. LESAGE: That has never been contemplated, and never was intended. The re-drafting of section 61 was not subsequently clear; but that has never been intended.

Senator LEONARD: Your draft definitely is intended to deal with a portion?

The CHAIRMAN: I think we have enough in our notes for consideration of this section, that is, when the subcommittee gets down to the business of studying it.

The next section which is discussed in the brief of the chartered accountants is section 34 of the bill, and section 34, on page 19 of the bill, amends sections 115 to 124. What have you to say with respect to the comment of the chartered

accountants? In the beginning of their comments they say they are very happy with the disclosure requirements, and then they have some comment.

Mr. LESAGE: I think that their comments concerning some particular items, as those which were pointed out at the first meeting of the committee on the study of this bill, and those matters which concern the details of those sections, must be taken one after the other; and it is almost impossible to offer comments at large on sections 115 to 124.

It appears that those sections have been generally accepted, with a few exceptions like the one about disclosure of sales, and so on. I think many of those recommendations are worthy of being studied, and I have not heard of one which should not be considered perhaps in the subcommittee. However, if you wish I could comment on them one by one.

The CHAIRMAN: No. If I may suggest, these sections deal with the amount of disclosure in quite some detail, and there were a few comments made. You will recall that the other day we had some discussion in committee on the question of disclosure of sales. I think we have enough information on the record to make a starting point for the subcommittee and its study, and most of the requirements of disclosure are beneficial. Supposing the subcommittee wrestles with this and sees if there are any more that should be added, or whether some are unnecessary, is that the pleasure of the meeting, or is there any particular comment you would like to make today?

Senator THORVALDSON: I think that is agreeable.

Mr. LESAGE: Mr. Chairman, before we go any further on that, with regard to sections 115 to 124 there was one point which I think was lacking in the drafting, requiring the consent of the Chief Justice or acting Chief Justice. I think the words "or any designated judge" has been forgotten in the drafting of those sections.

The CHAIRMAN: Yes.

Mr. LESAGE: Because, as a matter of fact the criticism which was brought in about the Chief Justice is pretty well taken. But the intention was, as we have now in the prospectuses sections, "or any designated judge".

Senator LEONARD: Why a "designated" judge, why not any judge?

Mr. LESAGE: This is rather a difficult matter to answer, or a delicate matter to answer, but, as you know, across the country some judges would be lenient, some judges would know little about corporate land, but the Chief Justice is certainly in a position to appoint a judge who has a knowledge of corporate law. You take, for instance, in my province, in the Province of Quebec, I would say that although our judges are very learned in the law, generally, many of them had very little opportunity to deal with corporate law. I am sure that in Quebec City and in Montreal there are some judges who are really capable of rendering a good judgment or a good decision, but if you leave that open to all the judges I think there is a slight danger, and that is the reason why we would like to keep the system we have in the prospectuses sections—to a designated judge.

Senator HUGESSEN: I agree with you there, Mr. Lesage. I think it should be either the Chief Justice or a judge designated by him. That is the practice in connection with compromises or arrangements where, certainly in the district of Montreal, all applications for compromises or arrangements go before one judge who has been designated by the Chief Justice, and he becomes expert in those matters. Here we are discussing an application to a judge for permission not to disclose sales. I think it would be very dangerous for that to be considered by any one of our 25 or 26 judges in the district of Montreal, some of whom may have had no experience whatever in that field. I think it is better to have it come before one judge.

The CHAIRMAN: I think it is a good point, senator. I know in Ontario in compromises and arrangements you go to the Chief Justice, or he designates a judge, and it is usually the same judge, and he acquires a facility and knowledge, and you get more certainty in what the practice is likely to be.

Senator THORVALDSON: That would involve a very simple amendment—"or a judge designated by him"; and that is all.

The CHAIRMAN: If you recall, when the C.M.A. were here last week, at the top of page 22, in dealing with what shall be included in the statement of profits and losses, we had under item (g), that you would be required to an act:

> the provision made for each of the following, namely, depreciation, obsolescence and depletion;

The suggestion of the Canadian Manufacturers' Association was that depreciation and obsolescence should be lumped together in one figure. I take it you have no objection to that?

Mr. LESAGE: No.

The CHAIRMAN: Paragraph (j), also on page 22, in dealing with what items shall be included in the statement, dealt with:

> total remuneration received as a director, officer or employee of the company by directors from the company and subsidiaries whose financial statements are consolidated with those of the company,

and went on to say:

> including all salaries, bonuses, fees

—and those are the words the C.M.A. suggested should be omitted—

> contributions to pension funds and other emoluments.

I think their objection is well taken, and it struck me at the time there was no purpose to be served in setting that out particularly.

Senator CROLL: Does Mr. Lesage have any observation to make on that?

Mr. LESAGE: I think if they can be included, the department could see no objection in those recommendations.

The CHAIRMAN: Then on page 24, in paragraph (*g*) there was the suggestion made to us that when you are meeting the requirements of section 119 as to what shall be in the balance sheet—which says:

> (*g*) shares, bonds, debentures and other like investments owned by the company, except those mentioned in paragraphs (*h*) and (*i*), stating their nature and the basis of valuation thereof...

—after the words "their nature" there should be added, "their nature, cost and the basis of valuation." The simple way of expressing it, of course, is "cost" and "market". Have you any comment to make on these suggestions?

Mr. LESAGE: Not on those ones. I have only one other general comment to make on those sections regarding the onus put on the private compagnies to prepare a financial statement according to those detailed requirements. We would like to see a provision like they have in some provinces which would permit a simplified form. I find that if it is a small company it simplifies by itself. If we draw the line between private and public companies we may be very misleading, because some private companies are very important companies, and this detailed information may be required. Any auditor can very well draft, I think, a balance sheet which would be very much simplified by not taking care of those subsections which are not applicable. If they are applicable, they apply, and so it is very easy. I think the financial statement is simplified by itself. I see a danger in permitting private companies to submit a simplified

statement without determining what is a simplified statement. I think it will simplify by itself because of the small or big operations of a company. Whether it is private or public, I think that those sections should apply, and I do not see it would be of any detriment to any company to have to comply with those requirements.

Senator THORVALDSON: Mr. Chairman, were you suggesting the word "cost" should be added to that paragraph (*g*)?

The CHAIRMAN: I was raising the point because it had been raised in the brief submitted to us that the word "cost" should be put in there. I am wondering, if you are going to put the word "cost" in there, whether there should not be some re-phrasing. The common terms used would be "cost" or "market".

Senator THORVALDSON: It seems to me you might have a situation where it is very difficult for a company to say at what cost certain securities were secured. It may go way back and it might have been by barter and in various complex transactions that certain securities were acquired by a company. Consequently, it would be nearly impossible for them to say definitely what the cost was.

The CHAIRMAN: You might be prepared to go along with the suggestion that the value you put in is the lower of cost or market.

Senator MOLSON: Is not the important part in that paragraph showing the basis of the valuation?

The CHAIRMAN: That is where there is no market. If there is market I think the words "basis of valuation" become meaningless, do they not?

Senator MOLSON: I would have thought the moment you put in these powers, in your balance sheet you show the basis of valuation. It might be cost; it might be market. It is the basis on which the figures shall appear on the balance sheet. If they are non-marketable the only figure you have is the book value, and you state that.

The CHAIRMAN: The statement here "basis of valuation" would be satisfied if you put them in at their cost, or if you put them in at their market value.

Senator LEONARD: I do not think the word "cost" needs to go in there at all.

The CHAIRMAN: I think you are right.

Senator MOLSON: May I draw your attention to (*j*)(ii), where you have to amend the "depreciation, obsolescence and depletion"?

The CHAIRMAN: I have a note of that, and I have a note that in relation to "1963" the suggestion was made that where it occurs in (*j*)(i), on page 24, that that should be "1960". I have a note here, while we are going through these items, on page 26 in section 120(1)(*a*) there was the suggestion made to us that the word "material" should be added—"particulars of any 'material' change in accounting principle or practice".

Then there was one we had some discussion on the other day, if you will recall it, on the top of page 35, about the right of the auditor to attend meetings. I think we finally resolved it by deciding that this gives the auditor the right to attend meetings, and he is entitled to receive notice of the meetings, but that we should draft something to provide that he could waive notice, and in the case of a private company, if there was a common consent of all shareholders attending, the suggestion was that they would not need to give notice to the auditor.

Senator CROLL: What harm is there in section 115? It seems to me that the auditor has a right. He may or may not.

The CHAIRMAN: Frankly I think if you give the auditor the right to waive notice, that would cover the whole situation. In the case of a small private

company where they are counting the nickels and dimes as well as the dollars I do not think you would find a disturbing auditor that would insist.

Senator BOUFFARD: I think it is possible that a private company may come to a certain decision at a board meeting which would make it obligatory to have a shareholders' meeting. All the shareholders are in attendance and they could hold a meeting right away, but if they have to notify the auditor it may have to be postponed.

Senator THORVALDSON: I have a question. Who is the auditor? In a big firm where there may be five or six or perhaps ten members all of whom are C.A.'s, who is the auditor? If they have 30 employees all of whom are C.A.'s, what is the situation then? Does this mean any one of the auditors or the employees of the firm would come within the definition of the word "auditor"?

The CHAIRMAN: Let us say that X and Y are appointed auditors to the company, then you give notice to the firm of X and Y.

Senator THORVALDSON: But normally a company of auditors is like Huston and Ross or Ross and Huston.

The CHAIRMAN: And you give notice to the company in that name.

Senator THORVALDSON: But who is entitled to come? Is a clerk entitled to come if he is not a C.A.?

Senator HUGESSEN: Whatever member the firm happens to designate.

Senator MOLSON: Normally it is the man who signs the statement who would attend, or else he would nominate somebody else.

The CHAIRMAN: You will notice in subparagraph 6 on page 35 it says, "A company, upon receipt, not more than ten days before a meeting of shareholders—". It has been suggested that we should change that to "upon receipt, not more than seven days—".

Senator LEONARD: Has Mr. Lesage any comment to make on what we have been discussing about auditors?

Mr. LESAGE: No. A little earlier you mentioned a recommendation made to add the word "material" before "change". I am afraid in the interpretation of the word "material" which is very broad, we might very well have an adverse effect by using the word "material". If the change is insignificant, there is no need to mention it. If we insert in the act "material", it could mean a revolution because they could say "It is not material". Where are we going to draw the line?

Senator BOUFFARD: Why don't you replace it with the word "important"?

Senator CROLL: But the term is in fact "a material change".

Mr. LESAGE: If the effect is a material change, nevertheless they can always come in and say it is not material, and it could be a revolution. If it is not a material change it is not worth mentioning.

The CHAIRMAN: I think perhaps the wording as it now stands may be all right because all that is required to be stated in the note to each financial statement is,—

> (*a*) particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice that was made during the period covered and that effects the comparison between the statement with that for the immediately preceding period;

This is section 120, halfway down page 26. That is tied into the kind of change you have to make a note of.

Senator LEONARD: It does not matter whether it is material or immaterial, as long as it affects the position.

The CHAIRMAN: Well, "material" is nevertheless a definable word. They have written in a dictionary for it.

Senator MOLSON: There is one weakness in this. They say here "particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice". That could make the production of annual statements a great deal more complicated. The auditor has to sign the statements—that is his responsibility. It seems to me that any practising firm of chartered accountants, if the word "material" were in there, would be reasonably well able to tell whether or not it was material. You get that word quite frankly in the phrase "any material change in the state of affairs of companies" elsewhere. I think here you are opening it up by not suggesting to change the form to "any account within the company".

The CHAIRMAN: If you remember what the wording said it was "any accounting principle or practice", or "any change in accounting principle or practice or in the method of applying any accounting principle or practice that was made during the period covered and that affects the comparison between the statement with that for the immediately preceding period".

Senator MOLSON: "any change" made.

The CHAIRMAN: In order to appreciate the comparison there should be a note.

Senator MOLSON: I would contend it should not be like that.

Senator LEONARD: You say the word "material" should go in.

Senator MOLSON: There is the word "material" in (*b*) and the word "material" should be in (*a*).

Senator HUGESSEN: Would you be satisfied by putting in the word "materially" at the end of the subparagraph in the words "and that materially affects the comparison between the statement with that for the immediately preceding period;"?

Senator LEONARD: The whole purpose of that subsection is to make a comparison.

The CHAIRMAN: We have made a note of that. Again if you will note on page 35, down at the bottom of the page, they deal with section 125 of the bill and in subparagraph 2 we decided to strike out the words "and by the auditor of the company" in signing these summaries required to go to the Secretary of State. We decided the officers of the company were in the best position to execute these documents.

Mr. LESAGE: May I say something on that? When I first presented the proposed amendments to the interdepartmental committee I suggested, and I still suggest, that all directors should sign the annual summary, either personally or by their agent, because in the department we had to write to a great number of defaulter companies and you would be surprised to know the number of letters we have received from persons who said "I have never been a director of that company," and they had evidence of that fact, and "I have ceased to be a director of that company" five or six or even ten years ago. And those statements were supposed to be sworn. And the most reputable firms of lawyers and accountants in Canada were presenting those. This made us feel that it was necessary to have an amendment so that each and every director would realize at least once a year that he is a director of such a company. If he has to sign either personally, or by agent if it is more convenient, the requirement of the department would be satisfied. But, some members of the interdepartmental committee objected that this would be too cumbersome, and they decided that auditors usually were the most serious persons dealing with a company's affairs, so it was suggested and then approved that the statement should be certified by the auditor. As stated by the chartered accountants that is not logical.

On the other hand, the Canadian Bar objected to the provision that the annual summary be signed by the auditor for another reason, and that was because it would remove from their offices the link they would have with those clients. This was the reason behind the objection of the Canadian Bar.

I have very great respect for my confreres, but with the very little co-operation we have in the filing of annual summaries I think the only possible way would be to require each and every director to sign personally, or by an agent. I do not think it is too much to require from a director once a year that he should realize he is a director of such company, so that we will have a little more accurate statement as to who is responsible, and the public will know who is responsible in the company. Then we will not be faced with the large number of letters we receive denying some supposed statements.

The CHAIRMAN: Then, you agree?

Mr. LESAGE: I agree on that, but something else should be done.

The CHAIRMAN: Section 36 at the top of page 37 is another section that was discussed. This proposes the creation of a new section of the act—section 125A. There have been all kinds of objections to this, which started really in the Senate, I suppose, when the bill was debated on second reading. I know Senator Walker had some things to say about this. He felt the section should be drastically amended, or struck out. The origin of the section, by some strange quirk, is the Companies Information Act of Ontario. Many people did not know it was there until they saw it in this bill, and they wanted to know where it would be possible to find such a section. Well, there it is in the Companies Information Act of Ontario. I must say that that is not any recommendation in my book for its inclusion in this amending bill.

The chartered accountants say:

> We recommend that the section be amended to modify the type of information that can be required and to provide for some reasonable time limit in supplying such information so sought.

That is not as rough a comment as I think some of the others made in relation to this section.

Senator BOUFFARD: There is another point with respect to that section. No director should be responsible for any fine.

Senator THORVALDSON: I wonder if we could get a statement from Mr. Lesage as to what the purpose of this section is. What is the situation that requires such a drastic thing as this?

The CHAIRMAN: When Mr. Lesage was before us on a previous occasion we talked considerably about this proposed section. If you will recall, the scheme of these amendments reduces the quantity of information that is being supplied in the annual summary, and the idea was to give the Secretary of State power so that if he wanted any additional information that was not provided to him in the usual way—or in what you might call the standard way —he would have authority to serve a demand on the company, and get it.

It goes further, of course, because if a company fails to file a summary pursuant to the standard information requirements then I would presume, if this section becomes law, the Secretary of State could make a demand on the directors for that information, including that kind of information, and then the directors under the proposed section would be personally liable, and would be guilty of an offence if the statement were not supplied. That is pretty drastic. Have you any comments on this, Mr. Lesage?

Mr. LESAGE: Yes, as I indicated at the first meeting, I never asked for that section to be introduced, even at the interdepartmental committee. It is there where it was suggested, and inserted in the bill.

Surprisingly, I spoke a few minutes ago about the lack of co-operation the department receives in the filing of returns, but when we need the information at the time of the issue of the supplementary letters patent, I would say, we have the warmest co-operation from the companies and firms when they are requesting the issue of supplementary letters patent. We do not need this section very badly because of the very good co-operation we receive at that time. But, I have prepared an amended section 125A—another draft—which is much shorter, and which does not render the directors responsible. It is more of a statement giving authority to the Secretary of State to require such information. I would suggest that it read as follows:

> The Secretary of State may at any time by notice require any private company to make a return upon any subject that a public company has to report to its shareholders pursuant to sections 115 to 122 of the act.

That is all we need. As I say, we have had it on a voluntary basis in all instances, but without any specific authority in the act. The information is already given to the Secretary of State by way of correspondence.

Senator BOUFFARD: That applies only to private companies?

Mr. LESAGE: Yes. In respect of public companies we already have the information and the statements.

Senator LEONARD: Are you going to draw the line at private companies when you refer to the information required by sections 115 to 122, or are you going to do it generally?

Mr. LESAGE: The information would be required from a public company according to sections 115 to 122. That is all we need.

Senator LEONARD: Then, why do you not make those sections applicable to private companies?

Mr. LESAGE: Because public companies have to file their financial statements with the Department of the Secretary of State, and we already have the information on file.

The CHAIRMAN: Senator Leonard is asking why you do not make sections 115 to 122 applicable to private companies with respect to the filing of information.

Mr. LESAGE: In the Department of the Secretary of State?

The CHAIRMAN: Yes.

Mr. LESAGE: It is not necessary to have all that information for all companies. It would merely fill our filling cabinets. We might need the information in only 50 instances, and yet we would require 13,000 companies to comply with something that perhaps would be required only 50 times a year.

Senator LEONARD: When you were giving evidence on May 27 I understood the line you were drawing was where the companies were in default. At page 12 I ask you:

> In your experience have you run into a need for such information?

And you answer:

> No, but there is going to be a need for it if we are going to run into instances of small private companies not filing financial statements . . .

Mr. LESAGE: When I said "not filing" I was not saying they were in default. They are not required to file. I do not think it would be necessary to require all the companies to file in the instances we have.

Senator LEONARD: Then, you could qualify that draft of yours to make it clear that you are not going to require this kind of information from the great mass of private companies.

Mr. LESAGE: Yes.

The CHAIRMAN: This will be just an authority in the Secretary of State in relation to a particular company. He can ask for information, and the scope of it is limited to the kind of information that is indicated in sections 115 to 122.

Senator LEONARD: Mr. Chairman, would that information then become public property and be available to any one?

The CHAIRMAN: I was going to call attention to the fact that Mr. Allan Graydon, in the brief he submitted and which is part of the record, and also the C.M.A., suggested that if we were going to have any requirement to give information then that information should be confidential to the Secretary of State.

Senator LEONARD: In order words, section 121F (2)—

The CHAIRMAN: Yes.

Senator LEONARD: They would have to supply that information too?

The CHAIRMAN: Yes.

Mr. LESAGE: I would even add a phrase to section 125A: "Such information should be kept confidential in the Department of the Secretary of State."

Senator LEONARD: In other words, that section 121F shall apply to information obtained under this section.

The CHAIRMAN: There was a suggestion in both these briefs—that from Graydon and from the C.M.A.—that the minimum notice should be three months, on the general ground that the length of time that is stipulated is not adequate.

Mr. LESAGE: If you would permit me, I wish to say the reason for the amendment coming in 125A, is that there is responsibility in the bill. The new 125A as suggested is already carrying that right and I do not know any need for any specific time limit.

The CHAIRMAN: That is right.

Senator HUGESSEN: I think that, knowing they are competent, if they have made a limitation on a private company in a case of this kind, if the company says it will be difficult to supply this information for another couple of months, the department would accept that.

Mr. LESAGE: It is for the benefit of the company, not for the benefit of the department.

The CHAIRMAN: In section 37 where we have had a submission which inserts the amalgamation provision, all the briefs start off by recommending the inclusion of amalgamation provisions in the federal Companies Act. Most of them are concerned about the requirement of application to the court for the sanction of the amalgamation. In other words, the procedure that you have for compromises and schemes of arrangement in relation to shareholders has been adopted and put into this draft. The second phase of it is discussed in some of the briefs, that is, that we should make an effort to provide some machinery under which any reciprocating provinces can operate. For instance in Ontario, where the statutory machinery is such that if you have a matching authority in another jurisdiction you can merge two companies that have their origin in different authorities of jurisdiction. They were suggesting that we could incorporate something of that kind in the federal act so that in Ontario or New Brunswick, or there may be one other province, it would be possible—at least the machinery would be there— to bring about an amalgamation as between say a provincial company and a federal company.

Senator LANG: Under what jurisdiction would you amalgamate the company thereafter operating?

The CHAIRMAN: The procedures are such that you have to make a declaration as to which you will have thereafter. That is what they call a re-

ceiving provision and an accepting provision. If you match them on both sides, obviously they cannot account to both jurisdictions afterwards.

Senator HUGESSEN: Dealing with the regulation that an amalgamation agreement shall be subject to the approval of the court, I disagree with the submissions made by some of the briefs. I think that it is very wise to have in this section the requirement that an amalgamation agreement shall be subject to the approval of the court exactly in the same way as a comprise or arrangement is. I will give reasons for that. If you look at section 128A, page 37, (*h*) at the bottom of the page, it says in regard to amalgamation agreement:

> such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company and the manner of converting the authorized and issued capital of each of the companies into that of the amalgamated company . . .

Now here is what the position would be. I am a shareholder holding common shares in company A. It is proposed to amalgamate that company with company B, into a new company called company C. The amalgamation agreement provides that I, holding one share of company A, am in the future to have, say, one preferred share of company C and one class B share of company C. In other words, my rights may be affected in that I am told I would get something quite different from what I have at the moment. I think that, for the protection of the shareholder, the companies proposing to amalgamate should be in a position to justify before a court of justice what they are proposing to do. Then the court would be in a position to say whether the amalgamation agreement is being fair to the shareholders of both constituent companies, exactly in the same way as in the case of a proposed compromise between a company and its shareholders, where the rights of the shareholders are affected.

There is one thing further I want to say. I think if you retain in this section the provision that you have got to apply to a court and satisfy the court that you are being fair to the shareholders of the two companies, it is going to have a very considerable effect in deterring any attempt at an unfair amalgamation; in other words, the directors of both companies will know that they have to justify before the court the way in which they are proposing to affect the rights of their shareholders.

Senator BOUFFARD: I think also we should be very careful to protect creditors against alterations. In some cases it may be that a creditor of one company which is quite solvent will amalgamate with a company which is on the borderline, and his position as a creditor of the new company would not be the same as it was a creditor of the old company. I think he should have a place where he can be heard.

Senator HUGESSEN: Before a court?

Senator BOUFFARD: Yes.

Senator HUGESSEN: Yes.

Senator LEONARD: I do not agree. I think the proper comparison is that if company A were selling to company B, ordinarily that kind of transaction does not go through the court, nor does it go to the creditors as it does in the case of a composition or an arrangement of affairs. It is up to the two companies, whether A is to sell to B or whether B is to buy company A. Very often, instead of a sale arrangement, an amalgamation arrangement is made.

Senator HUGESSEN: But in the case of a sale you are not changing the rights of the shareholders.

Senator LEONARD: Yes, you are.

Senator HUGESSEN: He remains a shareholder of company A and gets his consideration.

The CHAIRMAN: His consideration may be in shares of the other company.

Senator LEONARD: He may lose shares in A and receive some consideration, depending on the deal. It may be shares of the other company or it may be cash. The decision is made by the necessary majority of the shareholders and the amalgamation is, in effect, just another form of buying and selling. Very often it is done for a tax arrangement because it is a more convenient way of two companies making a deal.

Senator BURCHILL: Before amalgamation takes place would not the shareholders of every class of stock have to vote on it and accept the proposal?

The CHAIRMAN: The requirement is under this proposed section that you will have to have three-quarters of the votes of each class of shares cast at each meeting in favour of the amalgamation agreement.

Senator BURCHILL: Then you want the court approval on top of that?

Senator HUGESSEN: Yes.

Senator COOK: What is the big objection to asking for court approval?

Senator LEONARD: Amalgamation would have to take place.

Senator COOK: Court approval can be very effective in a case which is not quite right. If the case is right you get court approval.

The CHAIRMAN: To me there seems to be an essential difference, with all due respect, between compromise and schemes of arrangement. Here you are definitely altering the rights of one class or perhaps of different classes of shareholders, as represented by the different pieces of paper they have. Therefore you must have a meeting of that class. It is not a meeting of the company as such, it is a meeting of the classes of shareholders that are affected. In an amalgamation agreement you are not taking anything out. Whatever is in the pot in relation to company A and company B, when you amalgamate, the pot is bigger by all the assets being put into one pot.

Senator LEONARD: It depends on the provisions of the amalgamation.

The CHAIRMAN: It may be affected by the liabilities and the creditors have their rights.

Mr. LESAGE: In the department we have no facilities to hear evidence, and a person may write to the department and we have no answer to give him. They accept that as the law, and they will say that there is discrimination against them because they are minority shareholders.

It is not that we in the department would not like to accept responsibilities; but we think that it is easier for the judges to decide, or rather would be good for the shareholders, to say that, "This has been brought before the court, and you were not there." As it is, the department would have to take all the blame from the dissentient shareholders, and it would be said, "Once again, you are affecting our minority rights." Whether they are right or not, is not important, but we will have to take the blame, and we will be helpless in a case like that.

For that reason, I think it is good for all minority shareholders to have an opportunity to express their views before a court of justice. If there is one shareholder who has something to say then he will have an opportunity to say it. If you took from a person the right to be heard by anyone, I think it would be very bad publicity for Canadian shares, and it might have a very bad effect on people outside of Canada, because we would have to admit that there is nothing we can do, and that is the law, and the law does not offer them any satisfaction.

The CHAIRMAN: But Mr. Lesage, getting back to the basic concept of a scheme of arrangement by compromise, that is exactly what those words mean,

that a shareholder is compromising rights which he has. A true amalgamation agreement, in my opinion, does not involve a compromise of rights, it involves the putting together of two companies, and all the assets, liabilities and everything else go into that pot.

Senator HUGESSEN: It does involve him getting something quite different from what he has, Mr. Chairman, because he takes shares in a new company, an amalgamated company, in place of shares of a former company.

The CHAIRMAN: I did not say it did not involve getting something different, because obviously he gets a different piece of paper with a different name on it, etc.

Senator HUGESSEN: It involves a compromise between him and the shareholders of the other companies as to relative proportions of the new pot. That is my point.

The CHAIRMAN: But he is not giving up anything of the rights that are on that piece of paper that he presently holds.

Senator COOK: He may finally give up voting powers which he had before.

Senator LEONARD: There are nearly always dissentient shareholders in the case of purchase and sales agreements as between companies. Now, why do not the same reasons apply with respect to amalgamations, so that both kinds of agreements can go to the courts?

Senator HUGESSEN: I quite agree. Perhaps they should. But now we are faced with something different, because an appeal does not extend perhaps so far as it might is no reason why—

Senator LANG: Mr. Lesage mentioned there was nothing that the department could do. I think it is the responsibility of the department to exercise a discretion, that if they feel an injustice is being done to a dissentient shareholder or group, it should exercise a discretion in favour of that dissentient shareholder and refuse the supplementary letters patent of amalgamation.

Mr. LESAGE: It is impossible for an administrative department to hear the necessary evidence in the case of dissentient shareholders, who might have hearing for three or four days. I think it would be giving too much administrative authority. Since it is in the nature of a controversial matter, I think that a court of justice is in fact the right forum to hear such evidence, and not the department.

The CHAIRMAN: But what Senator Lang is drawing to your attention, Mr. Lesage, is that in this draft bill, even though you have provided to go to the court, you have left a discretion in the Secretary of State, and that when I bring in my supplementary letters, you admit the Secretary of State may issue letters patent.

Mr. LESAGE: Yes.

The CHAIRMAN: Why don't you say "shall"?

Mr. LESAGE: Because I remember only one case in which we have exercised that authority not to grant supplementary letters patent after a compromise was granted, because the judgment was obviously illegal, and we asked the parties to start all over again before the court, because the judgment was obviously illegal.

Senator HUGESSEN: Wasn't that the case where a judgment was for a no par value of shares?

Mr. LESAGE: It was a case where the judge had granted something which was not required or requested and said to the parties, "I don't like your agreement, and I change it;" and there is no authority for the judge to change it without going back to the shareholders.

Senator COOK: Did they go back to the shareholders?

Mr. LESAGE: Yes. We sent them back to the shareholders. We told the company we would not grant the supplementary letters patent and they would have to go back to the shareholders, and to go back to a court, after they would have accepted or rejected the proposals of the judge, because the judgment as it was could not be accepted. Even the company was not happy with the judgment; but the company was asking us to confirm only that part of the judgment which was acceptable to them.

The CHAIRMAN: It looks as though at this point we have differences in viewpoint.

Yes, Senator Molson?

Senator MOLSON: Mr. Chairman, I hesitate, not being a member of your august profession, to ask this question; but is there anything wrong with the thought that the dissentient shareholder could apply for a hearing before the court?

Senator LEONARD: That is a good legal argument.

The CHAIRMAN: When you say "anything wrong"—

Senator MOLSON: Is it obviously illegal?

The CHAIRMAN: I take it that you suggest that rather than making it a requirement that the companies must apply for sanction of the amalgamation, any shareholder who dissents from this viewpoint may apply to the court within a certain length of time?

Senator MOLSON: Right.

Mr. LESAGE: You would have to increase the delay, I am afraid, of giving notice, especially in the case of public companies, and it would be almost impossible, where you have shareholders scattered around the world.

The CHAIRMAN: The time, under your draft, is in the hands of the judge to whom you apply for sanction.

Mr. LESAGE: But the judge has the authority to hold the case.

The CHAIRMAN: If you said a dissentient shareholder shall apply within ten days, you would have all the machinery you need.

Senator HUGESSEN: I do not think, Mr. Chairman, that I would agree with Senator Molson's suggestion. After all, these minority shareholders are individuals holding 10, 25, 50 or 100 shares, and they read this document and say, "That is unfair to me, but what can I do about it?" Which of those shareholders is going to take the trouble and expense of applying on his own and at his own expense to the court to have permission to appear before it? In these corporate proceedings everything is weighted so much in favour of management and the directors. The minority shareholder may feel that he is not getting his fair share of the new "pot," as you might call it, but in the vast majority of cases he will feel it is not worth his while to fight the thing. I would much rather have the responsibility upon the company to apply to the court and be in a position to show the court what they were proposing was for the shareholders a fair thing.

The CHAIRMAN: I am not prepared to go along with that. I know you have had quite a lot of experience in these things, but the experience I have had in these company relationships and the position of shareholders is that very often the disturbing shareholder is not the little fellow that you and every person would be anxious to protect, but he is the person who sees in the particular thing that is proposed to be done an opportunity to make a special profit for himself.

I have run into that time after time, where such people who have large shareholding interests of, maybe, 10 or 15 per cent want a special deal and who instigate all kinds of proceedings, of every conceivable kind, until somebody may go around and call on him at a back door some place and he gets his special deal and everything goes fine.

When you put all these suggestions in you permit the sort of thing to develop where somebody says, "This is an opportunity for me to get a special slice of this." He wants somebody to take over his position and then the deal is all right for the person who takes over his position, but he wants special consideration for stepping out of the piece. I have seen that many times in transactions which were good transactions. So we cannot always worry about the poor little fellow with 25 shares. Chances are that he is the one that goes to the meeting or sends in his proxy and votes for it.

Senator HUGESSEN: You are still not protecting your small shareholder. I do not care about the occasional chap who wants to make trouble. If he wants to make trouble he can and will, but he will get his fair desserts before the court. It seems to me it is for the court to determine.

Mr. LESAGE: If the court does not have him who will have him?

Senator LANG: You, Mr. Lesage.

Mr. LESAGE: I might as well see him at the court.

The CHAIRMAN: What you are asking is to lighten what you think might be the burden of administration. The question is whether we should look at it that way. As far as I see it, an amalgamation is an entirely different kind of thing from a compromise or scheme of arrangement.

Mr. LESAGE: It is not what we do not like responsibilities, but generally there are so many criticisms by the public that civil servants are too powerful. I think this would be another opportunity for the public to criticize the Government, that too much authority is vested in the civil servants.

Senator COOK: If there are any criticisms of these manoeuvres at all I think we should enlarge the jurisdiction of the court rather than diminish it away.

The CHAIRMAN: That is a generalization I cannot comment on.

Senator LEONARD: I think we have discussed the whole area now.

The CHAIRMAN: Yes.

Couldn't we come to the second part for a moment, and may I recall to you by way of introduction, what the Institute of Chartered Accountants said?

They said:

> We recommend that consideration be given to extending the amalgamation provisions to provide for the amalgamation of two or more companies incorporated under different jurisdictions. If the amalgamation provisions are to be of the widest general benefit companies incorporated in different jurisdictions should be able to amalgamate, one with the other. The possible approach to this problem has been set out in the Draft Act,

—that is in the Uniform Companies Act.

> the Ontario Corporations Act and the New Brunswick Act. In these cases the provision is made whereby a company incorporated under one jurisdiction may obtain letters patent to continue as if it had been incorporated under another jurisdiction. Having achieved status under another jurisdiction, a company is then in a position to amalgamate with another company subject to that jurisdiction.

Then they say, "We are not lawyers".

I think it would be a worth-while effort by this committee if we had a good look at the Ontario provision. The New Brunswick provision, I understand, is broader and more flexible. I think it is being used in a variety of cases that I have heard about. The only point is I do not want to put them on the record. I mean, legitimate cases.

Mr. LESAGE: Might I say my main worry on that is that under section 92 of the B.N.A. Act a province has the authority to incorporate companies for provincial purposes. The authority of the federal Government is definite. While I agree it would be very possible for two provinces to have amalgamation provisions, I think that when we come to a federal company we have to look a little deeper into the constitution. But if we were to have in the Companies Act a procedure of reciprocal arrangement with the provinces this could apply for those companies which have objects which are as well provincial as federal. On the other hand, there is the other point that if a province feels that our provision is not constitutional it has only to mention in its own legislation that their reciprocal arrangement cannot apply with a federal company. So I wonder to what extent a province could really complain about reciprocal arrangement which could be introduced in our federal Companies Act.

The CHAIRMAN: Let us assume you had an Ontario company that was desirous of amalgamating with a federal company. The first step is to lift up the Ontario company to federal status, where it is on the same level as the federal company. If you have a procedure by which the Ontario law says that, "In a certain set of circumstances of this kind we release and forego any jurisdiction or authority in relation to that Ontario company", and the federal authority says, "When we are furnished with those materials we will accept and give a federal status to this company", then you have them on the same level and you can amalgamate under the provisions we are putting in here.

Senator LEONARD: Mr. Chairman, I think I mentioned the example when the Canada Permanent Trust Company, a federally incorporated company, amalgamated with the Toronto General Trusts, a provincially incorporated company, to become the Canada Permanent Toronto General Trust Company. That was done under reciprocal legislation. It required an act of the Ontario legislature to give the Toronto General Trusts Company the authority to amalgamate with the Canada Permanent Trust Company and become the Canada Permanent Toronto General Trust Company, a dominion corporation. Similarly, dominion legislation gave the power to the Canada Permanent Trust, a federally incorporated company, to amalgamate withthe Toronto General Trusts, a provincially incorporated company.

The CHAIRMAN: You achieved it by legislation in both jurisdictions, and it was particular legislation.

Senator LEONARD: There is no reason why if this applied to one it could not apply to all.

Senator HUGESSEN: Is there anything in the Ontario act which permits an Ontario company to divest itself of its provincial status for the purpose of amalgamating with a company in another jurisdiction?

The CHAIRMAN: Yes, where the company in the other jurisdiction has provision under which it will accept or receive.

Senator HUGESSEN: If you have a proposed amalgamation between an Ontario company and a dominion company, the Ontario company is governed by the existing Ontario legislation, so what we need to do is to put into our act corresponding federal legislation.

The CHAIRMAN: I think it is worth having a look at it.

Mr. LESAGE: Don't you think this is a case where the Secretary of State would have to use his discretionary power? If you are, for example, in the field of education, and it is not strictly within the field of the federal jurisdiction, I think the Secretary of State could say "This company cannot be accepted as a federal company because it does not fall within the ambit of legislative authority of the Parliament of Canada."

The CHAIRMAN: That refers to problems which may arise, but we are speaking of general legislation which would enable the federal authorities to receive and accept jurisdiction from an Ontario company. I am not suggesting we should enact something which says that if a provincial company divests itself and does everything necessary to get out of the scope of the Ontario legislation that the law should say to the federal authority "You shall receive it." I am saying it would not disturb the Secretary of State if we were to say whether he could do it or not.

Mr. LESAGE: But you have a different basis. If you wish I could on an unofficial basis ask for the opinion of Justice on that.

The CHAIRMAN: Perhaps we should draft something rather than leave it in the air. If we draft a parallel provision to that in the Ontario legislation, or even that in the New Brunswick legislation which is even broader, it might be better to do it that way. I would be inclined first to ask our own Law Clerk what he thinks about it. If he wanted to confer with Justice I think that might be the procedure, and it might also get you off the hook.

Senator BOUFFARD: You already have that situation in some of the Quebec acts. The federal Government in private acts gave authority for amalgamation with provincial companies.

The CHAIRMAN: There are a number of special act companies, and I can recall some of them. Some of the bills have been presented while I have been a member of the Senate where companies have amalgamated with others. A number of branch line railway companies have done so and the statutory authority was sought from the federal Parliament so that they could amalgamate with a provincial branch line company. Again that was particular legislation. It was done under special acts. I was proposing something that would be general law. I think there is enough merit in this that we should try to work it out. I don't think it will involve much work in the way of drafting.

We had such a long day yesterday I decided I was not going to make it a long day again today unless the committee forced me to do so. We have not exhausted all the provisions. We have just dealt with some of the main ones, and I think we will have to come back at Mr. Lesage again. Let us see what else is in the accountants' brief.

There is one other item we might discuss, and then I would suggest we adjourn. That is the section on page 39, section 38, about an aggrieved shareholder. Now in Mr. Graydon's brief which was before us he has suggested this. He says—

> —this section should not be enacted upon the following grounds:
>
> (*a*) the word "duty" is so broad as to embrace almost anything since under the Act it is the duty of the board of directors to manage the affairs of a company and, thus, will bring into question every aspect of management;
>
> (*b*) consequently, actions might be instituted for the purpose of acquiring confidential information of which neither the Act nor proper corporate practice requires disclosure;
>
> (*c*) the section will invite litigation by individual shareholders who will not be suing on behalf of a class and, thus, a company of substantial size might be involved in the course of a year in numerous actions based upon alleged, if unsound grievances;
>
> (*d*) the tendency of those attacking the management of a company would be to use "men of straw" for the purposes of such actions who could not respond to any court costs awarded against them.

That is what Mr. Graydon had to say.

The Canadian Manufacturers' Association adopted, I think, what Mr. Graydon had said and they have even quoted the language of his brief.

The Chartered Accountants have made no comment on this since this is a matter of law, and since chartered accountants will be just as zealous in their field as lawyers would be in their own field against practising accountancy, they have made no comment on that.

Senator HUGESSEN: Could we find out from Mr. Lesage what the purpose of the section is?

Mr. LESAGE: It was to protect the minority shareholders. This was brought in not by the department but by the interdepartmental committee, by some people who had worked on the Draft Uniform Companies Act, and they felt this provision which comes from the Draft Uniform Companies Act should also be inserted here as a measure of protection for minority shareholders. I do not see any good reason to bring it in, and so far as I am concerned I will be as happy if it is deleted. As Mr. Graydon says in his letter, it opens the door to unnecessary litigation.

Senator BURCHILL: Is it in any provincial act?

Mr. LESAGE: It may have been tried in Ontario, but I don't know. I think it comes from the Draft Uniform Companies Act, and it was suggested at the interdepartmental committee where we had three lawyers from the practice, three lawyers who were invited to sit with us. These were the people who asked for that because they were advocating that we should adopt as much as possible from the Draft Uniform Companies Act. I do not see any reason for it, and I would agree with Mr. Graydon's views that there is a danger there would be unnecessary litigation.

I do not see the need for it. If the committee decides to leave it there, it does not change anything in the administration of the act so far as the department is concerned, and therefore I have no firm views, but I would rather be inclined to have it deleted.

The CHAIRMAN: The proposed section is word for word with section 341 in the Ontario Corporations Act.

Senator HUGESSEN: Do you know of any actions taken under that section?

The CHAIRMAN: I don't know of any. I understand there were a few cases I could mention that I am satisfied were of the character I described to you. We might, however, discover that, like this section in the Companies Information Act, very few of those practising under the act were aware of its existence until it was called to their attention here. But it does seem to open a very broad field where an aggrieved shareholder can sue an employee of the company. I think the rights of aggrieved shareholders are amply provided for otherwise under the act, and in the general law. Mr. Lesage, of course, would be just as happy if we struck it out, so I think we will take due note of that.

Now, I am going to make one suggestion, if I may—and it might be thought that this is a hobbyhorse I am riding—with respect to special act companies. When you look at the special acts in some cases section 96 of the general act is specifically referred to as being applicable. Now, section 96 of the general act is the one that delimits the directors' liability. It is quite a lengthy section. It is concerned with a director who is interested in a contract with the company, and it goes on to indicate how he shall behave, and what procedures he shall follow. Some of the special act companies include this section specifically, but just as many of them do not include it.

Under the general provisions of the Federal Companies Act, in section 149, I think it is, certain sections of the Companies Act are made applicable to special act companies, but not section 96.

What I suggest is that if a company incorporated by special act forgets to put in section 96 then the directors are exposed to the common law liability which presents an almost impossible situation. I have a treatise here which shows the extent of the common law liability on directors.

I was going to suggest that at an appropriate time section 149(1) of the act, where it says:

> Sections 66 to 82, sections 112 to 125, and section 100 of Part I apply to companies to which this Part applies, except those loan companies and trust companies to which this Part continues to apply.

Be amended by adding section 96.

Mr. LESAGE: And why not section 97? I would rather see sections 96 and 97 inserted there—those two sections.

The CHAIRMAN: That is right.

Mr. LESAGE: You have in section 147 a reference to Part II, corporations without share capital. You could link sections 96 and 97 together. If it was considered good, then I would agree to insert sections 96 and 97.

The CHAIRMAN: There is one other thing I would like to mention. There is a brief that I referred to the other day which came from the late Senator Campbell's firm. It is incorporated in the addenda to the proceedings of the last meeting. It has to do with section 11 of the bill, and it arises in connection with these mutual funds. What Mr. Godfrey had to say about section 11 of the bill was this:

> The letters patent contain the usual provisions respecting mutual funds in that they provide that a shareholder may "require a company to redeem his said shares for cancellation at the asset value of such shares".

Now, if we look at the explanatory note we see that there is the suggestion that it is thought desirable to give such statutory recognition to mutual funds shares and thereby set at rest any doubts there may be in regard to the capital structure of these companies. But, the definition of "mutual fund shares" in the operative part of the section refers to "the surrender at the request of the holder thereof". What these people are concerned about is that they see no useful purpose to be served by using the word "surrender" instead of the words "purchase of redemption for cancellation", which are the words used in the Companies Act, and which have a well known meaning.

Mr. LESAGE: There is a reason why we use the word " surrender".

The CHAIRMAN: Their objection is that you are confusing the terminology by introducing the word "surrender" when the provisions of the incorporating letters patent contain the words "redemption or purchase for cancellation".

Mr. LESAGE: There, you see, the word "redemption" means that a company is redeeming at the price determined in the letters patent—that is to say, the par value plus a premium, which is determined in the letters patent—while the purchase for consideration is the price agreed upon between the company and the shareholder, or with the unanimous consent of the holders of the all the preferred shares at a price, but never exceeding the redemption price.

In the case of mutual share companies you usually have 10-cent par value shares which may be surrendered at $8, $9 or $10 on the market, so the words "purchased for cancellation" would be misleading because we have to take into account the fact that the concept of a mutual fund share does not fit into the British common law system, and it does not fit into the concept we have of a share in our Companies Act. A mutual fund share lies between the nature of a share and the nature of a trust ticket, I would say, and it has not been

a share within the meaning of a share that we usually have. I think it would be dangerous to use the same language for repaying to the shareholders.

The CHAIRMAN: There are two objections, Mr. Lesage. First of all, such companies are incorporated, and the language is used that a shareholder may require the company to redeem his said shares for cancellation at the asset value of such shares. Now, this is a piece of paper that is handed out, and it contains that language. But, when you are introducing this specific authority to deal with such mutual fund shares you say: "surrender at the request of the holder of such shares".

Mr. LESAGE: That is right.

The CHAIRMAN: What I am saying is: Why introduce the word "surrender" when the piece of paper I have contains the language "to redeem".

Mr. LESAGE: It will not.

The CHAIRMAN: You say it will not. What I am saying is that the share certificates that are presently outstanding in the letters patent of the companies that are incorporated as mutual fund companies do contain those provisions.

Mr. LESAGE: Yes, but they will not contain them for long. As soon as section 12A comes into force the language will be changed in the letters patent and the supplementary letters patent. That is what brought section 12A in, and that is what brought the policy of the department not to grant any further letters patent incorporating mutual funds almost two years ago.

The CHAIRMAN: Wait a minute. Do you mean that companies that presently have letters patent and have shares outstanding are going to have to come back to you and get supplementary letters patent changing the language and the terms and conditions?

Mr. LESAGE: They have to come for the authorization of more capital, I would say, at least once every two years, and it is going to be within a very short time that the language will be changed over.

The CHAIRMAN: The language will be changed over. Do you not need the authority of what is proposed in this bill to do that?

Mr. LESAGE: To change the language?

The CHAIRMAN: Yes.

Mr. LESAGE: The companies will request it because what they have at the moment will be illegal—the wording that is now used for the mutual funds is illegal because the so-called redemption and the so-called purchase for cancellation in the mutual fund companies is not, in fact, a redemption or a purchase for cancellation within the meaning of the act, or within the meaning of the common law.

The CHAIRMAN: We can have a good look at that, but the second point I want to raise has to do with subsection (4) which is found on page 9. There is provision that no surrender shall be made if the company is insolvent or if such surrender of shares would render the company insolvent. Then it goes on to spell out:

> —in determining the solvency of the company for the purposes of this subsection, no account shall be taken of any increase in the surplus or reserves of the company resulting merely from the writing up of the values of the assets of the company unless such writing up was made more than five years before the date of the surrender of the mutual fund shares.

Mr. LESAGE: That is from section 83 of the act.

The CHAIRMAN: You will notice the problem presented by that is that mutual fund companies, their assets are valued—

Senator BEAUBIEN (*Bedford*): Every day.

The CHAIRMAN: At least once each business day.

Mr. LESAGE: Yes.

The CHAIRMAN: And to say that the value and write-up which must persist is one that is valued five years before the date of surrender, gives complete unreality to the whole transaction.

Mr. LESAGE: When you try to find a definition of the word "insolvency" the only place in the act where insolvency is defined is in section 83, as you have read a few minutes ago. It is at the end of subsection (4), which is taken from section 83. To tell you that I am happy about it, I cannot. I see that it is section 83(2) word for word, I would rather take another test for insolvency than the one which is given in section 83. I would rather take another test for insolvency, at least for section 4 of the new section 12A. I would leave it for later to determine.

Senator COOK: Stop after the word "insolvency".

Mr. LESAGE: So far as the insolvency is concerned all those shares are listed on the market and I do not see any need for that definition of five years.

The CHAIRMAN: So you would stop the subsection after the word "insolvency".

Mr. LESAGE: Yes.

Senator BEAUBIEN (*Bedford*): How could an open investment trust company become insolvent? I do not see any point in it. They do not buy on the margin, they buy securities.

The CHAIRMAN: They can never be insolvent, can they?

Mr. LESAGE: The mutual fund cannot be insolvent. I do not see any reason for the insertion in subsection (4) of the definition. I do not see any reason for that.

The CHAIRMAN: We ave had some useful explanations from Mr. Lesage. Is there a motion to adjourn?

Senator HUGESSEN: May I make one suggestion of a minor change in wording of the act?

The CHAIRMAN: It will take another meeting to dispose of it.

Senator HUGESSEN: It is in section 16 of the bill, section 29 of the act, relating to the surrender of a charter. The wording in subsection 1(a) is:

> (1) The charter of a company may be surrendered if the company proves to the satisfaction of the Secretary of State
> (a) that the company has no assets and that any assets owned by it immediately prior to the application for leave to surrender its charter have been divided rateably among its shareholders...

That leaves the implication that the company must have had some assets remaining legally before the application. I have had a number of instances in my practice, and I am sure others have had also, where it is desired to surrender the charter. In the case of quite a number you find no assets in them at all. A company cleaning up corporate shares may have no assets in operation for many years. If you have to prove that the assets owned prior to surrender have been distributed, it is very difficult to do so because there are no assets to distribute. I thought it may be clearer if we change the wording to read:

> (*a*) that the company has no assets and that, if it had any assets immediately prior to the application for leave to surrender its charter, such assets have been divided...

Mr. Lesage might have some comment on it.

Mr. LESAGE: No. I think it is correct. I agree with your suggestion.

Senator HUGESSEN: I think that in the vast majority of cases where you surrender a charter, in the case of quite a number you find no assets in them at all.

The CHAIRMAN: You have never won a case, in all your life, as quickly as you have won this one.

Mr. LESAGE: Before we adjourn there is one thing I am afraid I may forget. It is a minor matter. It is in section 12(6) of the act and nothing has been put forward in the bill for that. It says:

> All or any part of the authorized capital of a company, except shares having priority as to capital or being subject to redemption...

You would need to have "or purchase for cancellation".

Senator BOUFFARD: Is it for the purpose of mutual funds?

Mr. LESAGE: No, that is not the purpose. It is to see that you would not have shares without par value permitting a decrease in the capital authorized by way of repayment to shareholders as in the case of shares with par value. It has been argued many times in our office that the word "redemption" was pretty correct, but they were purchasing for cancellation. It is a loophole in the act and nothing else, and we would like to have it covered. It means adding "or purchase for cancellation". It is only a loophole in the act, and through the years many lawyers have found it.

Whereupon the committee adjourned.

Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill S-22, intituled: "An Act to amend the Companies Act".

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, SEPTEMBER 16, 1964

No. 6

WITNESS:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

APPENDIX "A"

An article by J. M. Wainberg, Q.C., in the *Financial Post* of September 5th, 1964.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21296—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Provencher*)	Hayden	Pouliot
Beaubien (*Bedford*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 20, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Vien, P.C., seconded by the Honourable Senator Bradley, P.C., for second reading of the Bill S-22, intituled: "An Act to amend the Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, for the Honourable Senator Vien, P.C., seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

21296—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, September 16, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.35 a.m.

Present: The Honourable Senators: Hayden (*Chairman*), Baird, Cook, Connolly (*Ottawa West*), Gelinas, Gouin, Hugessen, Isnor, McCutcheon, McLean, Molson, Pouliot, Smith (*Kamloops*), Taylor (*Norfolk*), Walker, Willis and Woodrow. (17)

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

Bill S-22, An Act to amend the Companies Act was further considered.

On Motion duly put it was RESOLVED to print as an appendix to this days proceedings an article by J. M. Wainberg, Q.C., in the *Financial Post* of September 5, 1964.

The following witness was heard:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

After discussion it was agreed that a Sub-Committee, comprising the Honourable Senators: Hayden, (*Chairman*), Bouffard, Cook, McCutcheon and Walker consider the proposed amendments to the said Bill.

At 11.00 a.m. the Committee adjourned to the call of the Chairman.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, September 16, 1964.

The Standing Committee on Banking and Commerce to which was referred Bill S-22, to amend the Companies Act, met this day at 10 a.m. to give further consideration to the bill.

Senator SALTER A. HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: Honourable senators, we had pretty well concluded our evidence and a substantial part of the submissions which had been made by the witnesses, with respect to Bill S-22, to amend the Companies Act. We had dealt with those with Mr. Lesage at the last sitting we had; and I think we have almost arrived at the stage where a subcommittee might be very useful. However, before a subcommittee is set up, if that is the wish of the committee, I would like to direct the attention of the committee to an article which appeared in the *Financial Post* of September 5 last, written by a Mr. J. M. Wainberg, Q.C., of Toronto. It is a lengthy article, and it raises a number of very interesting questions, one of which has to do with the provisions in relation to conflict of interests—a director or a shareholder who has more than 10 per cent of the shares of the company, and the conflict of interest, particularly in the case of directors, where they may secure information as the result of their position and put it to their profit, and what the author calls conflict of interest with regard to secret profits.

The other point that seems to be of some public importance is the matter of take-over bids. These are two of the highlights in this article of his. I was wondering what approach the committee suggests should be made to this. At first I thought we should invite Mr. Wainberg to be a witness but then I doubt if he could add anything to this lengthy article. We have the text before us, which perhaps the subcommittee could study. It deals with conflict of interest and there is a proposed amendment among those which we have in this act dealing with this aspect. The subcommittee might think that amendment does not go far enough or that there should be other changes. What is the view of the committee? There are a number of other points raised which I do not put in the same category; for instance he raises the question of auditors and the way in which they are appointed and function in the relationship between auditors and majority shareholders of companies and the possibility of influence there. He has some suggestions as to how to create a more secure and more independent position for auditors. Those are things we can take in our stride because they are the subject matter of amendments proposed in this bill, and in the course of the report by the subcommittee and its consideration by our committee we can look into that. However, in my view the two important ones are the questions of take-over bids and of conflict of interest and secret profits. Is it the view of the committee that in the first instance when we appoint a subcommittee we might suggest to them to report on that and if they feel some changes are necessary to recommend them?

Senator MCCUTCHEON: I suggest that Mr. Wainberg's statements should be incorporated in the appendix to today's proceedings. If it is the view of the

other members of the committee I think this whole matter should be referred now to the subcommittee.

The CHAIRMAN: Is it the view of the committee that we should append this statement to today's proceedings?

Hon. SENATORS: Agreed.

(*See appendix "A"*).

The CHAIRMAN: On the question of the subcommittee it is of course realized that the members of the subcommittee will want Mr. Lesage and our Law Clerk to be available in connection with any changes we may propose to make. The record is pretty clear. I have read through it again and it certainly indicates the views of the committee on many of the proposed amendments.

Before we go ahead and appoint a subcommittee I would like to ask Mr. Lesage at this stage, and before we get down to the work of appointing a subcommittee, if there is anything else he would like to add at this time.

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of Secretary of State: I would like to ask if it is possible for the subcommittee to have a representative from the legislative section of Department of Justice, and may I also suggest that Mr. Ryan, who worked with us in the drafting of the bill, attend those meetings.

The CHAIRMAN: That is something the subcommittee can consider. We will have our own Law Clerk and we have found that he is a pretty good lawyer. The subcommittee itself will have to decide whether it needs Mr. Ryan from time to time. Anything else?

Mr. LESAGE: There is something which has not been discussed at very great length, and that is the importance of having more teeth in the Companies Act, as was suggested, for the collecting of returns on financial statements. I wonder if it would be advisable for me to give some figures to indicate the necessity for the strengthening of those sections?

The CHAIRMAN: Have you figures available?

Mr. LESAGE: Yes. Some 14,292 companies received the notice last spring that they had to file their annual summaries. The summaries are due on June 2 each year, and as of June 1 only 7,520 summaries were received, leaving over 6,000 companies in default at that time. In checking with the department early this morning, I find that we have received 13,265 to date with the result that there are still over 2,000 defaulting companies. We have almost no way to collect those annual summaries and we have three years after to consider them or "deem them" as the act says "as no longer being in existence." We had also suggested that each and every director should sign personally or through an attorney the annual summary so that every director could realize that he is a director of the company. If all the directors were really responsible, then we could have more compliance and this is the reason for the stricter legislation we are seeking.

In so far as financial statements are concerned, the situation is really worse. Out of 2,200 public companies which have to deposit their financial statements as of this morning, 1,150 were up to date, and 1,050 were in default. These figures speak for themselves and we really need in the department some power to force those companies to comply not just for the interest of the department officials but for the protection of the public.

The other point, and this is the last one on which I wish to make a comment at this stage, is the redemption of preferred shares. At the last meeting

I submitted a proposed amendment to section 49 which I felt could be a compromise. I would not like the committee to understand that it is my personal view we should adopt that. It is only a matter of compromise, and I still think that the system we have that preferred shares could not be redeemed except out of ascertained net profit should be maintained as it is maintained in England, in the Province of Quebec and a few other provinces. Since we have not in the federal government any authority of the nature of a securities commission to control our companies, I think we still have to rely on the common law, and the departure from the common law adopted by Ontario a few years ago and a few weeks ago by the Winnipeg Government should not be adopted by the federal Government at least for a few years to come. I think, Mr. Chairman, these are the main points I wanted to add to my previous statements.

Senator ISNOR: Am I correct in assuming that 50 per cent of the companies who are supposed to make returns have not done so and you have no means of ensuring that they do so?

Mr. LESAGE: Almost no means.

Senator ISNOR: What is the difference?

Mr. LESAGE: We could apply the sanctions provided in sections 121 and 125 of the Companies Act. However this would mean that in each and every instance the department wou'd have to require an investigation to be carried out by the R.C.M.P. at Government expense, and then we would have to submit the case to the Department of Justice who would have to appoint an agent to go to court to collect the $20 fine to force them to comply. So the compliance in those cases would cost the Government hundreds of dollars, and the Government could collect the court costs which might amount to $13 or $15, and the $20 fine.

So, the only possibility is the one we have suggested, that authority be granted for the dissolution of the company. Many of those who presented briefs indicated that we were too drastic. When I gave those figures a few minutes ago it was to indicate that if we have to be that drastic it is because of a real lack of co-operation on the part of the companies. Otherwise we would have to set up an investigation department with the help of the R.C.M.P., or even without their help, and have a number of prosecutions each and every year. This is for the protection of the public in all instances, and not for the good of the Government.

Even those summaries that are received are not so very well prepared. They do not always disclose the truth. If we have no teeh in he Companies Ac it would not be possible to have realistic figures.

The CHAIRMAN: It appears to me that two remedies might be available. One would be a penalty for late filing and, secondly, there could be the right to cancel or dissolve the company if the filing is not made within a certain period of time.

Senator BAIRD: What actually do you mean by filing a statement? Is that the same statement that is submitted to the shareholders, or to the Income Tax Department?

Mr. LESAGE: No.

Senator BAIRD: It would not be the same?

Mr. LESAGE: Not at all. They are two different cases. In the case of public companies they have to file an annual return, and deposit a copy of the financial statement which also has to be mailed to each and every shareholder.

Senator BAIRD: Do you not think that many companies are getting pretty fed up with your demands for statements, and so on?

Mr. LESAGE: I beg your pardon?

Senator BAIRD: Do you not think they are fed up with all the demands of your department?

Mr. LESAGE: I do not say they are fed up, but they know that nothing happens if they do not comply except when they have to apply for supplementary letters patent, in which case we can say: "You have to file that return or you do not get your supplementary letters patent." But, that is a kind of blackmail I do not like.

The CHAIRMAN: If the Crown grants a charter surely the Crown can say: "We want you to report annually".

Senator BAIRD: Yes, surely, and they agree to that.

The CHAIRMAN: The information that goes to the Income Tax Division may well be, and usually is, a different kind of information that is contained in a corporate statement that is sent to the shareholders.

Senator MCCUTCHEON: They have adopted the two-book system.

Senator GOUIN: Do you suggest, Mr. Lesage, that all directors be obliged to sign the return?

Mr. LESAGE: The signature on the annual summary is another point. Experience has proved that in a large number of instances the summary we have received is a mere copy of the summary for the preceding year. When we have sent letters to each and every director advising them that the company is in default they have answered that they have not been a director for six or seven years, or they have never been a director of that company. Mind you, this was sworn to by supposedly responsible people. What we have to say is that those statements are not true, and they are made without any care. This may lead to many hardships being imposed on directors, and so on.

The only solution that we could find was to provide that each and every director in each and every year—but only once a year—sign that annual summary personally, or through an agent authorized in writing. This means that each and every director recognize at least once a year that he is a director of that particular company. I do not think it is too much to ask of a director of a company to realize that fact once a year.

Some objections were put forward. When we were in the interdepartmental committee somebody suggested that the auditor of the company should certify the summary so that the directors would not be obligated to sign it, but the Institute of Chartered Accountants objected to that. Everyone objected to the auditor of the company certifying the summary, so we are back to the old system of having it signed by only two directors on behalf of the board. Our experience has been that those two signatures which appear to have been sworn are in too many instances untrue. So, if there is any other system whereby we can have an accurate record without having to have a police force going in and investigating, then I think it is in the idea of having each and every director sign either personally or through an authorized person so that the necessary protection is given to the public. The department is not interested whether the statement is true or not. This does not affect the administration in the department, but it does affect the public generally.

Senator GOUIN: I agree, but is the idea in having each director sign the statement that he be made aware that he is a director?

Mr. LESAGE: That is right. It amounts to the same thing.

The CHAIRMAN: There is a point I want to raise with the committee. It concerns the question of conflict of interest, or the trading by directors in the

shares of a company. Section 98 of the Companies Act as we now have it provides:

> Every director of a public company shall furnish annually to the secretary, for the information of the shareholders of the company at the annual general meeting thereof, a statement setting forth in detail all shares or other securities of the company bought or sold by him, for his personal account, directly or indirectly, during the twelve months immediately preceding such annual meeting.

And that statement is available to the shareholders at the annual meeting. The amending section, which is section 32 of the bill, enlarges that by putting the obligation not only on a director but also on an officer of a company or any shareholders controlling more than 10 per cent of the issued shares of the company. It also requires that he shall furnish a statement within 30 days of any such purchase or sale to the secretary of the company, and that that statement is available for examination by the shareholders.

Now, if you will recall, the chartered accountants said that that might well produce very substantial filings, and they suggested that possibly it should provide that any trading within a 30-day period should be reported within 30 days after the end of the month in which it took place. What this bill does is to eliminate subsection (2) of section 98, and I am wondering what the reason for that is. Subsection (2) reads:

> No director of a public company shall speculate, for his personal account, directly or indirectly, in the shares or other securities of the company of which he is a director.

Senator McCUTCHEON: It does not say he shall not invest.

The CHAIRMAN: No, it is "speculate." I am wondering if Mr. Lesage can tell us very briefly why that subsection is being removed.

Mr. LESAGE: I think it was omitted in the case of public companies because it would prevent a director of a very large company, such as the Bell Telephone Company, which perhaps held very few shares in the company, from having the opportunity of dealing in the shares of that company. The exception applies only to public companies.

The CHAIRMAN: I suppose the answer may be that if you eliminate that subsection then the general law applies. If some person has inside information and profits thereby, the circumstances may be such that there would be a right of action, or there may not, and it is thrown upon the general law. I agree with Senator McCutcheon that that prohibition in subsection (2) is vague and general. I do not know how far it goes.

Senator HUGESSEN: I do not know how practical it is, Mr. Chairman, but it sounds very well, speaking of a public company, when you prevent a director from speculating in the shares of that company. That subsection has been in the act for a long time, has it not?

The CHAIRMAN: That is right.

Senator HUGESSEN: Have there been any prosecutions under it?

Mr. LESAGE: Never.

Senator HUGESSEN: I think it is one of those things that may have been put in for window dressing. I do not think, in the case of a public company the shares of which are listed, you can say that a director is speculating when he buys shares in that company. I think it is useless.

Senator McCUTCHEON: This raises a much broader question, and that is as to whether any filing of any information, or any disclosure such as is anticipated in this bill, with the secretary of the company and which is thus available to the

shareholders, is useful at all. Surely, if the purpose is to enable shareholders to know what people with superior knowledge of the affairs of the company are doing on their own personal account with respect to that company, then that information should be public information. As it is, under the terms of the S.E.C., where we read, once a month or twice a month, depending upon which paper we take, remarks that so and so was a director of a company and that his holding of shares are, say, 2,351, that is the only information which is any good. I have never been at a shareholders' meeting when the shareholders have said they want to see a return of the director's holding.

The CHAIRMAN: Neither have I.

Senator MCCUTCHEON: I have made plenty of returns, but I have never been asked.

The CHAIRMAN: It is a question whether the return should be made public as it is under the securities exchange law in the United States, or whether we should continue this present method where you lodge it with the secretary, where it is available in case anyone would like to see it. If it has a value, it is in its being made public.

Senator MCCUTCHEON: The value is in the publicity.

Senator HUGESSEN: Under the S.E.C., when a public company sends out proxies for an annual meeting of shareholders, it has to disclose a statement of the shareholdings of the directors.

Senator MCCUTCHEON: That is right. I am not suggesting we should adopt the Securities Exchange Commission law, but what I am now suggesting is that it seems to me that what is proposed now would do what we wish to accomplish.

Senator HUGESSEN: I suggest that as an alternative, perhaps the shareholders are entitled to know, in the case of an annual general meeting, to what extent the shareholders or directors are interested in the shares of the company.

The CHAIRMAN: We have had the benefit now of the views of the committee.

Mr. LESAGE: Would you permit me to say something about take-over bids? I had the opportunity to read this morning an article in the *Financial Post* and it happened to cross my mind that, as a matter of protection, the subcommittee could consider the possibility of giving to the holders of 5 to 10 per cent of the shares, authority to take the problem to a court of justice, within a very limited delay, in a very summary form, to have this proposed transaction reviewed by the court; but this authority being given to the courts only at the request of five or ten per cent, something to be determined thereafter. I wonder if the subcommittee could consider that possibility for the protection of minority shareholders.

The CHAIRMAN: We can have a look at that. It would be adopting something like the procedure used when you are proposing a scheme of arrangement or plan of arrangement, in which case you have to come back to the court to have the plan, as approved by the shareholders, sanctioned. Inherent in the suggestion that Mr. Lesage has made, if there is a take-over bid and a nominee is used—for instance, a trust company making an offer for shares in a company to get a controlling interest—I think his suggestion is that a shareholder holding at least, say, 10 per cent of the shares, should be able to go to the court, summarily, for full disclosure as to who are behind the nominee or the trustee who is making the offer. It is something we can think about.

Senator HUGESSEN: Not as to whether the offer is a good one.

The CHAIRMAN: That is so. It is not on the merits of the offer. He has to make up his mind on that himself.

On the question of the subcommittee, I would suggest there be about five members. I think that would be large enough. Does the committee care to make any designation as to what the membership of the subcommittee should be?

Senator BOUFFARD: The Chairman of the committee should be the chairman of the special committee.

Senator ISNOR: Five, in addition to the chairman?

The CHAIRMAN: Or four, in addition to the chairman?

Senator MOLSON: Four.

The CHAIRMAN: I would like very much if Senator Hugessen could agree to become a member.

Senator HUGESSEN: I would be very happy to do so but I am afraid I will be away for most of October.

The CHAIRMAN: I know that Senator Bouffard would like to be on this subcommittee, if at all possible. What about you, Senator McCutcheon?

Senator MCCUTCHEON: I would like to be on it, Mr. Chairman, and I will do my best to attend.

The CHAIRMAN: If you are not present, we can always tell you what we are proposing. That would make the membership: Senator Bouffard, Senator McCutcheon. Now, Senator Walker, you took part in the debate.

Senator MCCUTCHEON: I think Senator Walker should be on the committee.

Senator WALKER: I would be happy to be on it.

The CHAIRMAN: What about you, Senator Cook?

Senator COOK: It is a committee of lawyers?

The CHAIRMAN: It is really a lawyers' bill, so far as the subcommittee is concerned. When it comes back to the main committee, we have to justify what we propose. That is why I think that, in the first instance, the lawyers would move faster. But anything we propose will have to be justified to the main committee.

This would make the subcommittee consist as follows: Senator McCutcheon, Senator Bouffard, Senator Cook, Senator Walker and a chairman. Is that agreeable?

Hon. SENATORS: Agreed.

The CHAIRMAN: We will carry on and in due course make a report to the main committee.

Whereupon the committee adjourned.

APPENDIX "A"

By J. M. Wainberg, QC

The 12 existing companies acts in Canada are giving horse and buggy treatment to today's jet age corporate traffic problems. They are hopelessly archaic, totally out-of-date.

Someone is bound to get hurt. And many people do.

Did you know that a two-thirds vote of the shares represented at a legally constituted meeting can dispose of the complete undertaking? Or that firms can water down your interest by simply creating more stock?

Accordingly, the silent holders not represented at, or attending, the meeting are almost helplessly bound by the votes of management and proxies for the more important acts a company may take. The silent group may represent more than 50% of the holdings yet, without their assent, the assets may be sold, a company's charter surrendered, or its capitalization increased.

For other actions requiring a simple majority, 50% of those present in person and by proxy can bind all the remaining shareholders. Corporate decisions are thus frequently made by as few as 15% or 20% of the shareholders.

The same kind of apathy or lack of interest in public affairs gives us governments which do not represent the majority but merely an active and interested minority. Maybe we deserve what we get.

These provisions were conceived years back. They are no longer adequate.

The following archaic provisions are in the Ontario Corporations Act (probably the most "advanced" companies act in Canada), presumably to protect the minority.

Ten per cent of the shareholders (Section 308) may requisition the directors to call a general meeting for specific purposes. That's good, but what about an annual meeting? Under the regulations of the stock exchanges, annual meetings are required under threat of delistment. But for an unlisted public company there are no such effective teeth in the Act. This statement may be provocative but the word "effective" is deliberately chosen.

Five per cent of the shareholders (Section 309) can require management to circulate to the shareholders a resolution they intend to move at the next meeting of shareholders, together with a statement of not more than 1,000 words, but they must first deposit with management a sum reasonably sufficient to meet the company's expenses in giving effect thereto. To combat the requisitioners, management can use company funds, an unrestricted number of words and as many send-outs as time will allow.

One per cent of the shareholders (Section 71) can require each director to make a return to the company to be presented at the next annual meeting stating the number and class of shares of the company acquired or disposed of by him, directly or indirectly, since the last annual meeting. The requisition to enforce this must be filed 30 days before the annual meeting.

But the outside shareholder is not always aware of the date of the next annual meeting. How easy it is for management to convene the annual meeting immediately on receipt of such a requisition, for a date within the 30-day period, if the information requested is embarrassing.

Furthermore, why only at an annual meeting? Special meetings being called for extraordinary business are the ones which arouse suspicions. The nature of the special business might be such as to indicate that inside information, which could be advantageous to the directors, was available to them long before the meeting was called.

Such outdated clauses in our corporation laws negate efforts to improve investor protection and encourage broader ownership of Canadian industry by Canadians.

What's to be done about an over-all improvement for the future?

A uniform corporations act for all the land?

Desirable, but not likely. A draft for such an act was prepared about 1937 and a succession of national conferences have since amended and re-amended the proposal to no avail. After 27 years, no jurisdiction has accepted it.

The only hope for haste lies in accepting the second-best approach: update independently the 12 sets of corporation laws; stay with the present framework; set up clarity and continuity; most important of all, put some teeth in the content.

Six areas need emphasis.

THE 'INSIDERS' VS. 'OUTSIDERS'

The terms "minority shareholder" and "majority shareholder" have little or no significance in corporation parlance today. Most often when the term "majority" is used, the reference is to the group in power. How many companies are managed by shareholders holding a majority of the issued common shares? Probably fewer than 25% of public companies are in such a position.

"Insiders" or "in-group" would be more appropriate terms. Conversely, the "outsiders" or "out-group" would apply to what is commonly called (in most cases incorrectly) the minority.

There are several public companies whose management holds fewer than 5% of the issued common shares.

Financial Statements

There should be greater disclosure of companies' affairs at annual meetings and during the fiscal year.

Disclosure of corporate data at the annual meeting, or in the financial statements mailed immediately prior to the meeting, approximately six months after the end of the fiscal period, can hardly be said to be prejudicial to the interests of the company as is claimed by some.

Shareholders are demanding more such information, less secrecy.

Under all the companies acts, auditors are appointed by and for the shareholders. Their responsibility is to the existing shareholders and to no-one else—not to the directors, not to future shareholders, not to the public. Unfortunately, the auditors must work in conjunction with management, which all too often exercises a degree of control over the method and system of keeping the books, and the preparation of financial statements.

In many cases, the auditors are also the accountants. If the duties of accountants and auditors were clearly separated in public companies, the shareholders (who are the real owners of the company) would be more likely to receive the information to which they are entitled, and not merely the information which the "in-group" (most often a minority) deigns to hand out.

The auditors would then truly be the watchdogs for the shareholders.

What happens if a truly independent auditor disagrees with a management's statements or a management's instructions on how far it should go in the realm of disclosure? What chance has he for reappointment as next year's auditor?

There is no machinery for resolving any difference of opinion between the management and the auditor for the shareholders. The auditor is entitled to notice of every meeting of shareholders and he is entitled to be heard. But how much is he permitted to say? He should be obliged to attend, and he should be

required to disclose what is requested. He should be permitted to send his personal report direct to his employers—the shareholders—if in his opinion this is necessary to satisfy his obligation of appointment.

If management solicits proxies from the shareholders, it should indicate whether they intend to use such proxies for the appointment of the present auditor or a new one. If there has been some disagreement between the management and the auditor, shareholders should be told.

The legislature, being the creator of companies, could well provide a minimum standard of disclosure to which all companies must adhere. Is already does this in a minor form with the annual returns. It could also make necessary disclosure of such specific information as "cash-flow" (net profit plus depreciation and depletion) and "source and application of funds" (inward and outward movement of cash) etc.

The Toronto Stock Exchange requires a statement of source and application of funds with each filing statement. The Canadian Institute of Chartered Accountants is said to be urging its inclusion in all financial statements, but not without *opposition from some sources.*

The recent bulletin of the institute contains some worthy suggestions (FP, Aug. 22). But they have no legislative force. The government should not and cannot delegate to the CICA, or to the TSE, or to the securities commissions, power which it alone enjoys. These organizations are merely nursemaids watching over the corporate progeny created by the government.

Inventory and inventory reserves are other matters requiring disclosure. The bland statement that inventory was taken at the "lesser of cost or market value" while intended to be informative can be very misleading. The auditors' certificate should be required to disclose how market value was ascertained and whether it conforms with the system used in similar industries.

A case at present in the courts involves a relatively small company in which the interpretation of the word "market" by two different groups shows a difference of over $500,000.

"Inventory reserves" (amounts set aside to take care of any decline in value or cost of stock-in-trade) should be disclosed, the reason therefor and method of calculation.

Disclosure of trading

A shareholder receives notice of an annual meeting of shareholders approximately seven to 15 days before the date of the meeting. It must be mailed not less than 10 days before the meeting. He reads the material. Assuming that this is adequate, he feels that he wants to know whether the officers of the company used inside information and bought or sold shares before the release of the information to the general body of shareholders. He finds that under the Ontario Corporations Act (Section 71) the holders of 1% of the issued capital can require each director to disclose at the next annual meeting his tradings in the shares of the company. But why only at an annual meeting?

The requisition for this purpose must be filed at least 30 days before the annual meeting. This is unchanged in the draft Uniform Act. While this section may look good on paper, it is almost completely ineffectual and rarely used.

Directors, officers and shareholders holding more than 10% of the voting stock should be required to report regularly any trading they have done in the company shares. One Ontario legislation has suggested that the act should be amended so as to compel every director and officer to report to the company's secretary all the trading he does in the company's stock, and that such information should be immediately available to every registered shareholder on request. He further suggests that failure to comply will permit the shareholder to recover in the courts the benefit of such secret trading. But this

solution is too simple for a problem so complex. It requires a great deal of study.

The Uniform Companies Act does not propose any amendment to this section, except changing a few words for clarification.

The present Section 98 of the federal Companies Act requires every director of a public company to furnish annually to the secretary of the company (for the information of the shareholders at the next annual meeting) a statement setting forth in detail his personal trading in the shares of the company during the 12 months preceding the annual meeting. Failing this he is liable to a fine not exceeding $1,000 or to imprisonment for six months or both. If he speculates for his personal account, directly or indirectly in the shares of the company, he is liable to the same penalties.

Under currently proposed changes (Bill S-22), Sec. 98 (1) will require every director and officer, and every shareholder holding over 10% of the voting stock, to notify the secretary of the company within 30 days of making any purchase or sale. This information is to be made available for inspection by any shareholder during normal business hours, and at the annual meeting. Secretaries are employees of the company. How many secretaries are there who will prejudice his or her employer by reporting on him or refusing to pre-date the notice of trading and put him in jeopardy of a fine not exceeding $1,000 or six months in jail or both?

Reports on trading should be filed by the secretary in a public office immediately upon receipt.

Dropped entirely is Section 98 (2), which states: "No director of a public company shall speculate, for his personal account directly or indirectly in the shares or other securities of the company of which he is a director."

The law states that directors are in a fiduciary relationship to the shareholders and that when they acquire information which affects the value of the shares they should disclose this information to the shareholders immediately. The courts will not allow a person holding a position of trust to make a profit out of his office.

In the U.S., the Securities & Exchange Commission compels the publication of information on trading by officers and directors. But there is no such law here except the section (see above) which permits a shareholder holding 1% of the issued shares to require this information providing the request is made 30 days prior to the annual meeting.

Secret profits

Insider profits are illegal in the U.S., but are not illegal here. Granted that in Canada a company can sue its own directors or officers to recover secret profits made with inside confidential information. But how often has this happened?

Directors are reluctant to sue their co-directors. Shareholders may institute a "class" action but at their own expense, providing knowledge of such secret profits comes to their attention. Suspicion alone is not enough. It is difficult, if not practically impossible, for an outside shareholder to ascertain whether insiders have been taking advantage of inside information.

The directors could benefit personally by prior knowledge of the purchase of a valuable asset (such as in the Timmins claim rush), or the failure of an enterprise operated by the company, long before these facts become known to the shareholder.

The poor shareholder is frustrated. He has no adequate means of getting inside information but his directors, whom he has placed in charge of his finances and his business, can make profits by reason of their inside knowledge.

If a director has something he wishes to sell to the company, he is permitted to make even an unconscionable profit providing he discloses his interest to the rest of the board and he refrains from voting. Such disclosure need be only general in nature.

Since the essence of democracy is participation, in order to participate shareholders (who are the real owners of the business but absent from its management) must have information. Without information, intelligent participation is impossible, new decisions and opinions worthless. Probably this explains why such a small percentage of shareholders send in proxy instruments, and why such a small number attend meetings in person.

These defects in the area of disclosure should be thoroughly investigated and remedied.

Takeovers

Every securities commission in varying degrees compels companies offering their securities for sale to reveal basic information about its officers, directors, assets, liabilities, intentions and plan of financing.

But no such requirement exists on takeover bids. A bidder should be compelled (through the provisions of the Companies Acts) to reveal his identity, his intentions and his ability to carry out his intentions. A takeover is analogous to a sale of assets or an amalgamation. In these cases existing provisions of, for example, the Ontario Corporations Act are applicable.

The approval of the holders of two-thirds of the shares present and voting at a shareholders' meeting called for that purpose is required.

In the calling of such a meeting the provisions of the Act regarding notice come into play. Full disclosure is required.

The act should be amended by adding takeover provisions:

Takeover bids must first be made to the company, giving the names of persons having more than a 5 per cent interest in the bidder, its intention and its ability to carry out its intention. This follows the requirements for a Toronto Stock Exchange filing statement.

The company must forthwith call a meeting of shareholders to consider the bid. If the company does not call such a meeting, any shareholder can call a meeting using the same provisions that make possible the calling of any meeting by requisition.

If consideration to be given is in securities of another company, all the information of such company should be given in form similar to that required by the Toronto Stock Exchange filing statement or a prospectus for filing with the Ontario Securities Commission, including the basis of the valuation of such securities.

Such a takeover code should be written into each company's act.

Nominee directors

Directors whose only interest in the company is as a representative of an undisclosed shareholder should disclose this situation.

A public company whose board of five comprises four employees of the major shareholder obviously does not have five independent votes. The decision of the employer controls (even if he is not on the board himself). His secretary, office manager or personal friend, with one or 10 shares, isn't likely to vote against the wishes or interests of the employer. Without considering whether this practice is right or wrong such a situation should be disclosed, not solely for the knowledge of the other shareholders but for the protection of the nominee director himself.

This is not an entirely new principle. Under Section 56 of the Ontario Act and Section 178 of the federal Act, executors, administrators, committees,

guardians or trustees, registered on the books as such, are not personally responsible in respect of the shares they represent. The estate or the person represented is liable, if such representation is recorded on the share register.

This should be extended to the case of nominee directors. Provision should be made for such nominee arrangements to be disclosed on the books of the company. If no disclosure is made, the nominee director should be only secondarily responsible. The principal himself should be primarily responsible, not only for the liabilities of the nominee director, but also for his acts as a director.

The Ontario Act (Section 73) extends this to directors with respect only to the liability for wages of employees. But there are many other liabilities imposed on the directors.

On the recent Timmins questionnaire of the Ontario Securities Commission, the nominee problem was touched. It will be interesting to see whether anything develops on this point from the inquiry.

Jurisdiction

Conflict such as, in Ontario, the overlapping of jurisdictions between the Provincial Secretary's Department, the Ontario Securities Commission and the Toronto Stock Exchange should be cleared up. There should be no doubt as to which has authority over any specific case.

As the law stands at present, one can hardly blame the heads of any of the three organizations or departments for not taking more direct action in the recent Timmins claims rush, or the Windfall Oils & Mines incident (FP, Aug. 29).

It is up to the legislature to clarify the respective authorities and give them the machinery with which to enforce their respective authority.

It appears that the Ontario Securities Commission assumes it has authority over the distribution of shares to the public under primary distribution. Yet the Toronto Stock Exchange assumes similar authority over shares listed with it even when the shares are under primary distribution.

Has the Ontario Securities Commission jurisdiction over misuse of company funds?

The Toronto Stock Exchange can delist for an infraction of its source and application of funds regulations but what then?

Does an outside shareholder have to institute an action in the courts for improper use of funds or mismanagement? If he does he has to advance the cost of the litigation himself. If he wins the proceeds go to the company. If he loses, he pays the shot himself—and he may lose not because he had no case, but because he did not have sufficient evidence.

A director of companies, directly responsible to the government, should be given supervisory responsibility as well as the authority to see that all companies, whether listed or not, whether public or private, are complying with a revised corporation law.

All Canadian companies are the creatures of government, provincial or federal. The real owners of those companies so created are the shareholders. That is why governments should take prompt action to make sure that company laws are in tune with modern practice and recognize the rights of the shareholders.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To which was referred the Bill S-22, intituled: "An Act to amend the Companies Act".

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, NOVEMBER 18, 1964

No. 7

WITNESS:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21298—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 20, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Vien, P.C., seconded by the Honourable Senator Bradley, P.C., for second reading of the Bill S-22, intituled: "An Act to amend the Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, for the Honourable Senator Vien, P.C., seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MACNEILL,
Clerk of the Senate.

21298—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 18th, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 4.45 p.m.

Present: The Honourable Senators: Hayden (*Chairman*), Aseltine, Baird, Blois, Choquette, Cook, Crerar, Croll, Davies, Dessureault, Fergusson, Gelinas, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, O'Leary (*Carleton*), Paterson, Pearson, Pouliot, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Willis and Woodrow.—(29)

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

Bill S-22, "An Act to amend the Companies Act", was further considered.

A report from the subcommittee, recommending certain amendments to the said Bill, was submitted and explained by the Chairman.

The following witness was heard:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

At 6.15 p.m. the Committee adjourned until 8.00 p.m. this day.

At 8.00 p.m. the Committee resumed.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Connolly (*Ottawa West*), Cook, Davies, Dessureault, Hugessen, Kinley, Lang, McCutcheon, Pearson, Pouliot, Smith (*Kamloops*), Taylor (*Norfolk*), Willis and Woodrow. (16)

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

Bill S-22 was further considered.

The following witness was heard:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Motion of the Honourable Senator Hugessen that section 128A in clause 37 of the Bill be retained, was RESOLVED in the negative on the following division:

YEAS—2 NAYS—9

On Motion of the Honourable Senator McCutcheon it was RESOLVED that the Bill as reported by the subcommittee and accepted by the Committee, be now reported with the following amendments:

1. *Page 1:* Clause 3 is amended by adding thereto after subclause (2) the following:

"(3) Section 3 of the said Act is further amended by inserting immediately after paragraph (*i*) thereof the following:

'(ia) "officer" means president, chairman of the board of directors, vice-president, secretary, assistant secretary, treasurer, assistant

treasurer, or any other person designated an officer by by-law or by a resolution of the directors.'

(4) Section 3 of the said Act is further amended by deleting from paragraph (*n*) thereof the following:

', a subscriber to the memorandum of agreement.' "

2. *Page 2:* Strike out subclause (2) of clause 5 and substitute therefor the following:

"(2) Subsection (3) of section 5 of the said Act is repealed and the following substituted therefor:

'(3) Nothing in this Part shall be construed to authorize the company to issue any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance.' "

"(3) Subsection (4) of section 5 of the said Act is repealed and the following substituted therefor:

'(4) Where a company

(*a*) carries on a business that is not within the scope of the objects set forth in its letters patent or supplementary letters patent,

(*b*) exercises or professes to exercise any powers that are not truly ancillary or reasonably incidental to the objects set forth in its letters patent or supplementary letters patent,

(*c*) exercises or professes to exercise any powers expressly excluded by its letters patent or supplementary letters patent,

the company is liable to be wound up and dissolved under the *Winding-up Act* upon the application of the Attorney General of Canada to a court of competent jurisdiction for an order that the company be wound up under that Act, which application may be made upon receipt by the Attorney General of Canada of a certificate of the Secretary of State setting forth his opinion that any of the circumstances described in paragraphs (*a*) to (*c*) apply to that company.

(5) In any application to the court under subsection (4) the court shall determine whether the costs of the winding up shall be borne by the company or personally by any or all of the directors of the company who knowingly and wilfully were responsible for the non-compliance with the requirements outlined in subsection (4) above.' "

3. *Page 6, line 6:* Immediately after "may" insert ", with the consent of such applicants or their authorized representative or agent,".

4. *Page 6, line 10:* Immediately after "patent" insert "or supplementary letters patent".

5. *Page 6, line 12:* Immediately after "patent" insert "or supplementary letters patent".

6. *Page 6, line 15:* Immediately after "patent" insert "or supplementary letters patent".

7. *Page 6, line 17:* Immediately after "patent" insert "or supplementary letters patent".

8. *Pages 6 to 8:* Strike out clause 10 and substitute therefor the following:

"10. (1) Subsection (1) of section 12 of the said Act is repealed and the following substituted therefor:

'12. (1) The letters patent or supplementary letters patent of a company may provide for shares of more than one class and for

any preferred, deferred or other special rights, restrictions, conditions or limitations attaching to any class of shares: Provided that such letters patent or supplementary letters patent shall not provide for shares subject to redemption or purchase for cancellation out of capital unless they are preferred shares having a par value and the price at which such redemption or purchase for cancellation may take place is not more than the par value of the shares plus a premium of not more than twenty per cent of such par value; and provided further that no such redemption or purchase for cancellation shall take place when the company is insolvent or when such redemption or purchase for cancellation would render it insolvent. If any class of shares has attached thereto preferred rights as to dividend, the letters patent or supplementary letters patent may authorize the issuance, from time to time, in one or more series, of the shares of any such class, and may authorize the directors to fix, from time to time before issuance, the designation, special rights, restrictions, conditions or limitations attaching to the shares of each series of such class.'

(2) Subsection (6) of section 12 of the said Act is repealed and the following substituted therefor:

'(6) All or any part of the authorized capital of a company, except shares having priority as to capital or being subject to redemption or purchase for cancellation, may consist of shares without nominal or par value.' "

9. *Page 8:* Strike out clause 11 and substitute therefor the following:

"11. The said Act is further amended by adding, immediately after section 12 thereof the following:

'12A. (1) In this Act "mutual fund share" means a participating interest in a fund administered by a company, with conditions attaching to the said interest which include a condition providing for the acceptance for surrender thereof by the company on the demand of the holder at a price determined and payable in accordance with such conditions; and, in relation to mutual fund shares, the words "redemption or purchase for cancellation" in any letters patent or supplementary letters patent shall be deemed to mean acceptance for surrender.

(2) If the only undertaking of the company consists in the administration of such a fund, the letters patent or supplementary letters patent may provide for the issuing of mutual fund shares, and for the conditions governing the acceptance for surrender by the company, on the demand of the holder thereof, of such mutual fund shares, or fractions or parts thereof, that are fully paid, at prices determined and payable in accordance with the conditions set out in such letters patent or supplementary letters patent.

(3) Any mutual fund shares, or fractions or parts thereof, surrendered to the company pursuant to the conditions attached thereto shall be deemed to be no longer outstanding and shall not be reissued by the company.' "

10. *Page 10, line 14:* Immediately after "section" insert "or on the date on which it became a subsidiary".

11. *Page 10, line 44:* Immediately before "capital" insert "authorized".

12. *Pages 11 to 14:* Renumber clauses 15 to 19 as clauses 16 to 20 and insert the following as clause 15:

"15. Subsection (3) of section 21 of the said Act is repealed and the following substituted therefor.

'(3) No by-law for the said purpose is valid or shall be acted upon until it is sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders duly called for considering the by-law.

(4) A copy of the by-law certified under the seal of the company shall be forthwith filed with the Secretary of State and published in the *Canada Gazette*.' "

13. *Page 12, line 11:* Immediately after "name" insert "or shall have two seals, each of equal authenticity, one showing the French and the other the English form of its name".

14. *Page 12:* Strike out lines 25 to 29, both inclusive, and substitute therefor the following:

"(*a*) that the company has no assets and that, if it had any assets immediately prior to the application for leave to surrender its charter, such assets have been divided rateably among its shareholders or members, and either,".

15. *Page 13:* Strike out lines 25 to 31, both inclusive, and substitute therefor the following:

"(4) Where a company has more than one class of shares, the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to any class of shares shall be stated or endorsed, in legible characters, on every share certificate representing that class of shares or by a writing permanently attached to the share certificate, or there shall be inscribed on each such share certificate, in legible characters, a statement that there are preferences, rights, conditions, restrictions, limitations or prohibitions attaching to such class of shares, the full text of which is obtainable on demand, and without fee, from the secretary of the company. Where such a statement is inscribed on the share certificate, the secretary of the company shall furnish, without fee, to the shareholder on demand the full text of any preferences, rights, conditions, restrictions, limitations or prohibitions attaching to such class of shares."

16. *Page 14, line 25:* Immediately after "affected;" add "or".

17. *Page 15, line 9:* Strike out "auditor" and substitute therefor "authorized officer of the company".

18. *Pages 14 to 18:* Renumber clauses 20 to 30 as clauses 22 to 32, and insert the following as clause 21:

"21. Section 49 of the said Act is amended by adding the following as subsection (3):

'(3) Nothwithstanding anything contained in this section, where pursuant to subsection (1) of section 12 preferred shares are issued providing for redemption or purchase for cancellation out of capital, and such shares are so redeemed or purchased for cancellation, then, upon the filing of notice thereof with the Secretary of State pursuant to section 62, they are thereupon cancelled, and the authorized and the issued capital of the company shall be thereby decreased.' "

19. *Page 16:* Strike out lines 15 to 19, both inclusive.

20. *Page 16, line 20:* Strike out "(4)" and substitute therefor "(3)".

21. *page 16, line 24:* Strike out "(5)" and substitute therefor "(4)".

22. *Page 16:* Strike out lines 30 to 39, both inclusive, and substitute therefor the following:

"28(1) Section 62 of the said Act is repealed and the following substituted therefor:

'62. When any class of shares is created or becomes subject to redemption or purchase for cancellation or conversion into any other class, and such redemption or purchase for cancellation or conversion is effected in any month, notice thereof, setting forth the number of shares of the class redeemed or purchased for cancellation or converted and the number of shares and the class into which conversion is made in that month, and also setting forth whether and the extent to which any such redemption or purchase for cancellation was made out of capital, shall be filed with the Secretary of State before the end of the following month.'

(2) The said Act is further amended by adding thereto, immediately after section 62 thereof, the following section:

"62A. When a company has issued any class of mutual fund shares the company shall each month file with the Department of the Secretary of State a statement giving the number of each class of such mutual fund shares which have been accepted for surrender during the preceding month."

23. *Page 17, line 14:* Immediately after "public," insert the following:

"or where such an offer may be made to the public in any such jurisdiction without the filing of a prospectus or similar document,".

24. *Page 17, line 26:* Immediately after "authority," insert the following:

"or by an officer of the company, together with a statement of the date and place of filing,".

25. *Page 18:* Renumber clause 31 as clause 34 and insert the following as clause 33:

"33. Subsection (3) of section 83 of the said Act is repealed and the following substituted therefor:

'(3) For the amount of any dividend that the directors may lawfully declare payable in money they may issue therefor shares of the company as fully paid up, or they may credit the amount of such dividend on the shares of the company already issued but not fully paid up, and the liability of the holders of such shares thereon shall be reduced by the amount of such dividend.' "

26. *Page 18:* Renumber clauses 32 to 37 as clauses 37 to 42 and insert the following as clauses 35 and 36:

"35. Section 86 of the said Act is amended by adding thereto the following as subsection (5):

'(5) Notwithstanding any provisions in subparagraphs (1) to (4) inclusive of this section, a person may become a director of a company if he becomes a shareholder within ten days after his election or appointment as a director, but, if he fails to become a shareholder within such ten days, he thereupon ceases to be a director and shall not be re-elected or re-appointed unless he is a shareholder of the company.'

36. Subsection (3) of section 87 of the said Act is repealed and the following substituted therefor:

'(3) A copy of the by-law certified under the seal of the company shall be forthwith filed with the Secretary of State, and such

copy shall be open for inspection, without fee, during normal office hours.' "

27. *Page 18, lines 31 and 32*: Strike out "within thirty days of any such purchase or sale" and substitute therefor "before the end of the month following that in which such purchase or sale took place".

28. *Page 18, line 39*: Immediately after "hours." add the following:

"The secretary of the company shall also, within thirty days of its receipt by him, furnish to the Secretary of State a copy of each such statement, and the Secretary of State shall make such statements available for inspection by any shareholder of the company at any time during usual office hours."

29. *Page 18, line 40:* Strike out "present" and substitute therefor "disclose".

30. *Page 19, line 6*: Strike out "make" and substitute therefor "furnish to the secretary of the company".

31. *Page 19*: Strike out line 35 and substitute therefor the following:

'by proxy whether or not such proxy is himself a shareholder'.

32. *Page 19*: Strike out lines 40 to 45, both inclusive, and substitute therefor:

"115. (1) Every company shall cause to be kept proper accounting records with respect to all financial and other transactions of the company, and, without limiting the generality of the foregoing, shall cause records to be kept of".

33. *Page 20*: Strike out lines 8 to 45, both inclusive, and substitute therefor:

"(2) The accounting records shall be kept at the head office of the company or at such other place in Canada as the directors think fit, and shall at all times be open to inspection by the directors.

(3) In case the operating accounts of the company are kept at some place outside Canada, there shall be kept at the head office of the company such comprehensive records as shall enable the directors to ascertain with reasonable accuracy the financial position of the company at the end of each three months' period."

34. *Page 21*: Immediately after line 27, add the following:

"(4) Each year, with the consent in writing of all shareholders, a private company which is not a subsidiary of a foreign or public company may dispense with the requirements under sections 117 to 121A, both inclusive, of this Act, in respect of any particular financial statement specified in the consent, except that the financial statement shal be drawn up so as to present fairly the results of the operation of the company for the period covered by the statement."

35. *Page 21, line 37:* Immediately after "situated," insert "or a judge of such court designated by either of them,".

36. *Page 22:* Strike out lines 13 to 15, both inclusive, and substitute therefor:

"(*g*) the provision made for depreciation and obsolescence, and separately for depletion;".

37. *Page 22, line 29:* Strike out ", contributions to pension funds".

38. *Page 24, line 15:* Immediately after "nature" insert "and cost".

39. *Page 24:* Strike out line 21 and substitute therefor:

"those of the company, stating the cost and basis of".

40. *Page 24, line 30:* Strike out "1963" and substitute "1960".

41. *Page 24:* Strike out lines 40 and 41 and substitute therefor:

"respect of depreciation and obsolescence, and separately in respect of depletion".

42. *Page 25, line 10:* Strike out "1963" and substitute "1960".

43. *Page 26, line 31:* Immediately before "affects" insert "materially".

44. *Page 32:* Strike out lines 16 to 18, both inclusive, and substitute therefor:

"subsection (1) that have most recently been made available to the shareholders prior to such demand."

45. *Page 32, line 33:* Strike out the period and add:

", or by a judge of the said court designated by either of them."

46. *Page 35, line 5:* Immediately after "receive" insert ", unless waived by such auditor,".

47. *Page 35:* Strike out lines 8 and 9 and substitute therefor:

"(6) A company, upon receipt, not less than seven days before a meeting of shareholders, of a written".

48. *Page 35, line 28:* Immediately after "which" insert "and the place where".

49. *Page 35, line 39:* Strike out "and by the auditor".

50. *Page 36, line 31:* Strike out "ordinary" and substitute "registered".

51. *Page 37:* Strike out lines 4 to 9, both inclusive, and substitute therefor:

"125A. (1) The Secretary of State may at any time by notice require any private company to make a return upon any subject that a public company has to report to its shareholders pursuant to section 115 to 122.

(2) Documents filed with the Secretary of State pursuant to this section shall not be open for public inspection except upon the written direction of the Secretary of State given upon the recommendation of the chief justice or acting chief justice of the court of the province in which the head office of the company concerned is situated, or by a judge of the said court designated by either of them."

5. *Page 37:* Strike out clause 37 (renumbered as clause 42) and substitute therefor the following:

"42. The said Act is further amended by adding thereto, immediately after section 128 thereof, the following heading and sections:

AMALGAMATION.

128A. (1) Any two or more companies incorporated under this Act, including holding and subsidiary companies, may amalgamate and continue as one company.

(2) Companies proposing to amalgamate may enter into an agreement for the amalgamation prescribing its terms and conditions and the mode of carrying the amalgamation into effect.

(3) The amalgamation agreement shall further set out

(*a*) the name of the amalgamated company;

(*b*) the objects of the amalgamated company;

(*c*) the amount of its authorized capital, the division thereof into shares and the rights, restrictions, conditions or limitations attaching to any class of shares;

(*d*) the place within Canada at which the head office of the amalgamated company is to be situated;
(*e*) the names, callings and postal addresses of the first directors thereof;
(*f*) when the subsequent directors are to be elected;
(*g*) whether or not the by-laws of the amalgamated company are to be those of one of the amalgamating companies and, if not, a copy of the proposed by-laws; and
(*h*) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company and the manner of converting the authorized and issue capital of each of the companies into that of the amalgamated company as determined pursuant to paragraph (c) above.

(4) The amalgamation agreement shall be submitted to the shareholders of each class of shares of each of the amalgamating companies at general meetings thereof called for the purpose of considering the agreement, and, if three-fourths of the votes of each class of shares cast at each meeting are in favour of the amalgamation agreement, the secretary of each of the amalgamating companies shall certify that fact upon the agreement under the corporate seal thereof; and thereafter the agreement shall be deemed to have been adopted by each of the amalgamating companies unless the amalgamation agreement is annulled in accordance with the procedure outlined in the following subsections.

(5) Within seven days of the final vote on the amalgamation agreement, any shareholder or shareholders holding at least ten per cent of the shares of any class of shares in any of the amalgamating companies may apply to the chief justice or acting chief justice of the court of the province in which the head office of the company is situated, or a judge of the said court designated by either of them, for an order annulling the amalgamation agreement: Provided that such application may be made only by a shareholder or shareholders whose dissent was recorded at a meeting of any class of shareholders called to consider the amalgamation agreement.

(6) The said judge shall fix a time and place for consideration of the application for the order annulling the amalgamation agreement, which time shall be within fifteen days of the making of such application, and notice thereof shall be given to each of the amalgamating companies, and to the Secretary of State, in such manner as the said judge may direct.

(7) The said judge shall hear and determine the matters raised in the application and shall issue an order annulling the amalgamation agreement, or dismissing the application, which order shall not be subject to appeal. Where an annulling order is issued the amalgamation agreement is annulled and has no force or effect whatsoever.

(8) Where a reduction of capital may result from an amalgamation agreement, the provisions of sections 51, 52, 53, 54, 55 and 57 of the Act shall apply, mutatis mutandis, as if the amalgamation agreement represented an application for supplementary letters patent confirming a by-law reducing the capital stock of the company.

(9) The amalgamating companies shall, within six months of the date of the final vote on the amalgamation agreement, jointly file with the Secretary of State the amalgamation agreement together with a certificate from the secretary of each of the amalgamating companies establishing the percentage of those who voted in favour of the agreement and the percentage of dissentient shareholders, in respect of each class of shares.

(10) (*a*) Not less than eight days following the final vote on the amalgamation agreement and upon receipt of evidence that no application was made to a judge for the annullment of the amalgamation agreement or that the application was dismissed, the Secretary of State may issue letters patent confirming the agreement: Provided that the requirement of eight days' delay may be dispensed with if the amalgamation agreement has received the approval of more than ninety percent of the votes of each class of shares cast at each meeting of the amalgamating companies.

(*b*) Notice of the granting of such letters patent shall be forthwith given by the Secretary of State in the *Canada Gazette*.

(11) Upon the issue of the said letters patent, the amalgamation agreement shall have full force and effect, and

(*a*) the amalgamating companies are amalgamated and are continued as one company (in this section called the "amalgamated company") under the name and having the authorized capital and objects specified in the amalgamation agreement; and

(*b*) the amalgamated company possesses all the property, assets, privileges and franchises, and is subject to all the contracts, liabilities, debts and obligations of each of the amalgamating companies.

(12) All rights of creditors against the property, rights, assets, privileges and franchises of a company amalgamated under this section and all liens upon its property, rights, assets, privileges and franchises are unimpaired by the amalgamation, and all debts, contracts, liabilities and duties of the company thenceforth attach to the amalgamated company and may be enforced against it.

128B. (1) A company incorporated under this Act, including a holding or subsidiary company, may amalgamate with any other company (in this section hereinafter referred to as "the provincial company") having the same or similar objects and incorporated under the provisions of any general Act (in this section hereinafter referred to as "the provincial Act") relating to corporations or companies, heretofore or hereafter enacted by the legislature of a province, under which provincial Act such an amalgamation may be authorized; and, if the conditions hereinafter set forth are complied with, such companies may thereafter continue as one company.

(2) The companies proposing to amalgamate may enter into an amalgamation agreement as hereinafter provided, and in so doing shall comply with the provisions of subsections (2) to (10), both inclusive, of section 128A. In addition, the amalgamation agreement shall stipulate whether the amalgamated company is to continue under this Act or under the provincial Act.

(3) The provincial company shall provide the Secretary of State with a certificate signed by the Lieutenant-Governor, Provincial Treasurer or such other body or person as may be authorized to confirm the amalgamation agreement under the provincial Act, to the effect that all of the requirements of the said Act have been satisfied, and that he is prepared to confirm the amalgamation agreement, by letters patent or otherwise, as provided for by the said Act.

(4) The Secretary of State may, if he is satisfied that the foregoing provisions have been complied with, issue letters patent confirming the amalgamation agreement.

(5) Upon the issue of the said letters patent by the Secretary of State and subsequent confirmation by the body or person authorized by the provincial Act to confirm the amalgamation agreement,

(*a*) the amalgamation agreement shall have full force and effect;
(*b*) the amalgamating companies are amalgamated and continued as one company (in this section called "the amalgamated company") under the name and having the authorized capital and objects specified in the amalgamation agreement;
(*c*) the amalgamated company shall possess all the property, assets, privileges and franchises, and be subject to all the contracts, liabilities, debts and obligations of each of the amalgamating companies; and
(*d*) the amalgamated company shall be deemed to be a company incorporated under this Act, and, subject to the amalgamation agreement, shall have all the powers, privileges and immunities conferred by and be subject to all the limitations, liabilities and provisions of this Act: Provided that, if the amalgamation agreement stipulates that the amalgamated company is to continue as a provincial company, it shall be deemed to be a company incorporated under the provincial Act, and, subject to the amalgamation agreement, shall have all the powers, privileges and immunities conferred by, and be subject to all the limitations, liabilities and provisions of the provincial Act.

(6) All rights of creditors against the property, rights, assets, privileges and franchises of a company amalgamated under this section and all liens upon its property, rights, assets, privileges and franchises are unimpaired by the amalgamation, and all debts, contracts, liabilities and duties of the company thenceforth attach to the amalgamated company and may be enforced against it.' "

53. *Page 39*: Strike out clause 38.

54. *Page 39:* Renumber clauses 39 to 42 as clauses 44 to 47, and insert the following as clause 43:

"43. The said Act is further amended by adding thereto, immediately after section 140, the following section:

'140A. (1) Notwithstanding any other provisions in this Act where a company
(*a*) fails for two or more consecutive years to hold an annual meeting of its shareholders,
(*b*) fails to comply with the requirements of section 121E or 121F, or
(*c*) defaults in complying for six months or more with any requirement of section 125,
the company is liable to be wound up and dissolved under the *Winding-Up Act* upon the application of the Attorney General of Canada to a court of competent jurisdiction for an order that the company be wound up under that Act, which application may be made upon receipt by the Attorney General of Canada of a certificate of the Secretary of State setting forth his opinion that any of the circumstances described in paragraph (*a*) to (*c*) apply to that company.

(2) In any application to the court under subsection (1) the court shall determine whether the costs of the winding up shall be borne by the company or personally by any or all of the directors of the company who knowingly and wilfully was or were responsible for the non-compliance with the requirement outlined in subsection (1) above.' "

55. *Page 40:* Strike out lines 32 and 33 and substitute therefor the following:

"(*e*) Sections 110, 111, and 113 to 115, sections 122 to 125A, and sections 129 to 142."

56. *Page 41:* Strike out ", and 125A" and substitute therefor ", 125A and 140A".

57. *Pages 41 and 42*: Renumber clauses 43 to 45 as clauses 50 to 52 and insert the following as clauses 48 and 49:

"48. Subsection (1) of section 149 of the said Act is repealed, and the following substituted therefor:

'(1) Sections 66 to 82, sections 96 and 97, sections 112 and 125, and section 100 of Part I apply to companies to which this Part applies, except those loan companies and trust companies to which this Part continues to apply.'

49. Section 153 of the said Act is repealed and the following substituted therefor:

'153. The affairs of the company shall be managed by a board of not less than three directors.' "

58. *Page 42*: Strike out lines 15 to 19, both inclusive, and substitute therefor the following:

"(5) The provisions set out in paragraph (*b*) of subsection (3) of section 22 apply in respect of any body corporate provided with a French or English form of its corporate name pursuant to this section.

(6) This section does not apply to a company incorporated under any of the Acts mentioned in paragraph (*b*), (*c*) or (*d*) of subsection (1) of section 5 or to a company carrying on a business described in paragraph (*a*) of subsection (1) of that section."

At 8.40 p.m. the Committee adjourned to the call of the Chairman.

Attest:

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 18th, 1964.

The Standing Committee on Banking and Commerce to which was referred the Bill S-22, intituled: "An Act to amend the Companies Act", has in obedience to the order of reference of May 20, 1964, examined the said Bill and now reports the same with the following amendments:

1. *Page 1:* Clause 3 is amended by adding thereto after subclause (2) the following:

"(3) Section 3 of the said Act is further amended by inserting immediately after paragraph (*i*) thereof the following:

'(ia) "officer" means president, chairman of the board of directors, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or any other person designated an officer by by-law or by a resolution of the directors.'

(4) Section 3 of the said Act is further amended by deleting from paragraph (*n*) thereof the following:

', a subscriber to the memorandum of agreement.' "

2. *Page 2:* Strike out subclause (2) of clause 5 and substitute therefor the following:

"(2) Subsection (3) of section 5 of the said Act is repealed and the following substituted therefor:

'(3) Nothing in this Part shall be construed to authorize the company to issue any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance.' "

"(3) Subsection (4) of section 5 of the said Act is repealed and the the following substituted therefor:

'(4) Where a company

(*a*) carries on a business that is not within the scope of the objects set forth in its letters patent or supplementary letters patent,

(*b*) exercises or professes to exercise any powers that are not truly ancillary or reasonably incidental to the objects set forth in its letters patent or supplementary letters patent,

(*c*) exercises or professes to exercise any powers expressly excluded by its letters patent or supplementary letters patent,

the company is liable to be wound up and dissolved under the *Winding-up Act* upon the application of the Attorney General of Canada to a court of competent jurisdiction for an order that the company be wound up under that Act, which application may be made upon receipt by the Attorney General of Canada of a certificate of the Secretary of State setting forth his opinion that any of the circumstances described in paragraphs (*a*) to (*c*) apply to that company.

(5) In any application to the court under subsection (4) the court shall determine whether the costs of the winding up shall be borne by the company or personally by any or all of the directors

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of the company who knowingly and wilfully were responsible for the non-compliance with the requirements outlined in subsection (4) above.' "

3. *Page 6, line 6*: Immediately after "may" insert ", with the consent of such applicants or their authorized representative or agent,".

4. *Page 6, line 10*: Immediately after "patent" insert "or supplementary letters patent".

5. *Page 6, line 12*: Immediately after "patent" insert "or supplementary letters patent".

6. *Page 6, line 15*: Immediately after "patent" insert "or supplementary letters patent".

7. *Page 6, line 17*: Immediately after "patent" insert "or supplementary letters patent".

8. *Pages 6 to 8*: Strike out clause 10 and substitute therefor the following:

"10. (1) Subsection (1) of section 12 of the said Act is repealed and the following substituted therefor:

'12. (1) The letters patent or supplementary letters patent of a company may provide for shares of more than one class and for any preferred, deferred or other special rights, restrictions, conditions or limitations attaching to any class of shares: Provided that such letters patent or supplementary letters patent shall not provide for shares subject to redemption or purchase for cancellation out of capital unless they are preferred shares having a par value and the price at which such redemption or purchase for cancellation may take place is not more than the par value of the shares plus a premium of not more than twenty per cent of such par value; and provided further that no such redemption or purchase for cancellation shall take place when the company is insolvent or when such redemption or purchase for cancellation would render it insolvent. If any class of shares has attached thereto preferred rights as to dividend, the letters patent or supplementary letters patent may authorize the issuance, from time to time, in one or more series, of the shares of any such class, and may authorize the directors to fix, from time to time before issuance, the designation, special rights, restrictions, conditions or limitations attaching to the shares of each series of such class.'

(2) Subsection (6) of section 12 of the said Act is repealed and the following substituted therefor:

'(6) All or any part of the authorized capital of a company, except shares having priority as to capital or being subject to redemption or purchase for cancellation, may consist of shares without nominal or par value.' "

9. *Page 8*: Strike out clause 11 and substitute therefor the following:

"11. The said Act is further amended by adding, immediately after section 12 thereof the following:

'12A. (1) In this Act "mutual fund share" means a participating interest in a fund administered by a company, with conditions attaching to the said interest which include a condition providing for the acceptance for surrender thereof by the company on the demand of the holder at a price determined and payable in accordance with such conditions; and, in relation to mutual fund shares, the words "redemption or purchase for cancellation" in any letters

patent or supplementary letters patent shall be deemed to mean acceptance for surrender.

(2) If the only undertaking of the company consists in the administration of such a fund, the letters patent or supplementary letters patent may provide for the issuing of mutual fund shares, and for the conditions governing the acceptance for surrender by the company, on the demand of the holder thereof, of such mutual fund shares, or fractions or parts thereof, that are fully paid, at prices determined and payable in accordance with the conditions set out in such letters patent or supplementary letters patent.

(3) Any mutual fund shares, or fractions or parts thereof, surrendered to the company pursuant to the conditions attached thereto shall be deemed to be no longer outstanding and shall not be reissued by the company.' "

10. *Page 10, line 14:* Immediately after "section" insert "or on the date on which it became a subsidiary".

11. *Page 10, line 44:* Immediately before "capital" insert "authorized".

12. *Pages 11 to 14:* Renumber clauses 15 to 19 as clauses 16 to 20 and insert the following as clause 15:

"15. Subsection (3) of section 21 of the said Act is repealed and the following substituted therefor:

'(3) No by-law for the said purpose is valid or shall be acted upon until it is sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders duly called for considering the by-law.

(4) A copy of the by-law certified under the seal of the company shall be forthwith filed with the Secretary of State and published in the *Canada Gazette.*' "

13. *Page 12, line 11:* Immediately after "name" insert "or shall have two seals, each of equal authenticity, one showing the French and the other the English form of its name".

14. *Page 12:* Strike out lines 25 to 29, both inclusive, and substitute therefor the following:

"(a) that the company has no assets and that, if it had any assets immediately prior to the application for leave to surrender its charter, such assets have been divided rateably among its shareholders or members, and either,".

15. *Page 13:* Strike out lines 25 to 31, both inclusive, and substitute therefor the following:

"(4) Where a company has more than one class of shares, the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to any class of shares shall be stated or endorsed in legible characters, on every share certificate representing that class of shares or by a writing permanently attached to the share certificate, or there shall be inscribed on each such share certificate, in legible characters, a statement that there are preferences, rights, conditions, restrictions, limitations or prohibitions attaching to such class of shares, the full text of which is obtainable on demand, and without fee, from the secretary of the company. Where such a statement is inscribed on the share certificate, the secretary of the company shall furnish, without fee, to the shareholder on demand the full text of any preferences, rights, conditions, restrictions, limitations or prohibitions attaching to such class of shares."

16. *Page 14, line 25:* Immediately after "affected;" add "or".

17. *Page 15, line 9:* Strike out "auditor" and substitute therefor "authorized officer of the company".

18. *Pages 14 to 18:* Renumber clauses 20 to 30 as clauses 22 to 32, and insert the following as clause 21:

"21. Section 49 of the said Act is amended by adding the following as subsection (3):

'(3) Notwithstanding anything contained in this section, where pursuant to subsection (1) of section 12 preferred shares are issued providing for redemption or purchase for cancellation out of capital, and such shares are so redeemed or purchased for cancellation, then, upon the filing of notice thereof with the Secretary of State pursuant to section 62, they are thereupon cancelled, and the authorized and the issued capital of the company shall be thereby decreased.' "

19. *Page 16*: Strike out lines 15 to 19, both inclusive.

20. *Page 16, line 20:* Strike out "(4)" and substitute therefor "(3)".

21. *Page 16, line 24*: Strike out "(5)" and substitute therefor "(4)".

22. *Page 16*: Strike out lines 30 to 39, both inclusive, and substitute therefor the following:

"28(1) Section 62 of the said Act is repealed and the following substituted therefor:

'62. When any class of shares is created or becomes subject to redemption or purchase for cancellation or conversion into any other class, and such redemption or purchase for cancellation or conversion is effected in any month, notice thereof, setting forth the number of shares of the class redeemed or purchased for cancellation or converted and the number of shares and the class into which conversion is made in that month, and also setting forth whether and the extent to which any such redemption or purchase for cancellation was made out of capital, shall be filed with the Secretary of State before the end of the following month.'

(2) The said Act is further amended by adding thereto, immediately after section 62 thereof, the following section:

"62A. When a company has issued any class of mutual fund shares the company shall each month file with the Department of the Secretary of State a statement giving the number of each class of such mutual fund shares which have been accepted for surrender during the preceding month."

23. *Page 17, line 14*: Immediately after "public," insert the following:

"or where such an offer may be made to the public in any such jurisdiction without the filing of a prospectus or similar document,".

24. *Page 17, line 26*: Immediately after "authority," insert the following:

"or by an officer of the company, together with a statement of the date and place of filing,".

25. *Page 18*: Renumber clause 31 as clause 34 and insert the following as clause 33:

"33. Subsection (3) of section 83 of the said Act is repealed and the following substituted therefor:

'(3) For the amount of any dividend that the directors may lawfully declare payable in money they may issue therefor shares

of the company as fully paid up, or they may credit the amount of such dividend on the shares of the company already issued but not fully paid up, and the liability of the holders of such shares thereon shall be reduced by the amount of such dividend.' "

26. *Page 18*: Renumber clauses 32 to 37 as clauses 37 to 42 and insert the following as clauses 35 and 36:

"35. Section 86 of the said Act is amended by adding thereto the following as subsection (5):

'(5) Notwithstanding any provisions in subparagraphs (1) to (4) inclusive of this section, a person may become a director of a company if he becomes a shareholder within ten days after his election or appointment as a director, but, if he fails to become a shareholder within such ten days, he thereupon ceases to be a director and shall not be re-elected or re-appointed unless he is a shareholder of the company.'

36. Subsection (3) of section 87 of the said Act is repealed and the following substituted therefor:

'(3) A copy of the by-law certified under the seal of the company shall be forthwith filed with the Secretary of State, and such copy shall be open for inspection, without fee, during normal office hours.' "

27. *Page 18, lines 31 and 32;* Strike out "within thirty days of any such purchase or sale" and substitute therefor "before the end of the month following that in which such purchase or sale took place".

28. *Page 18, line 39:* Immediately after "hours." add the following:

"The secretary of the company shall also, within thirty days of its receipt by him, furnish to the Secretary of State a copy of each such statement, and the Secretary of State shall make such statements available for inspection by any shareholder of the company at any time during usual office hours."

29. *Page 18, line 40:* Strike out "present" and substitute therefor "disclose".

30. *Page 19, line 6:* Strike out "make" and substitute therefor "furnish to the secretary of the company".

31. *Page 19:* Strike out line 35 and substitute therefor the following:

'by proxy whether or not such proxy is himself a shareholder'.

32. *Page 19:* Strike out lines 40 to 45, both inclusive, and substitute therefor:

"115. (1) Every company shall cause to be kept proper accounting records with respect to all financial and other transactions of the company, and, without limiting the generality of the foregoing, shall cause records to be kept of".

33. *Page 20:* Strike out lines 8 to 45, both inclusive, and substitute therefor:

"(2) The accounting records shall be kept at the head office of the company or at such other place in Canada as the directors think fit, and shall at all times be open to inspection by the directors.

(3) In case the operating accounts of the company are kept at some place outside Canada, there shall be kept at the head office of the company such comprehensive records as shall enable the directors to

ascertain with reasonable accuracy the financial position of the company at the end of each three months' period."

34. *Page 21:* Immediately after line 27, add the following:

"(4) Each year, with the consent in writing of all shareholders, a private company which is not a subsidiary of a foreign or public company may dispense with the requirements under sections 117 to 121A, both inclusive, of this Act, in respect of any particular financial statement specified in the consent, except that the financial statement shall be drawn up so as to present fairly the results of the operation of the company for the period covered by the statement."

35. *Page 21, line 37*: Immediately after "situated," insert "or a judge of such court designated by either of them,".

36. *Page 22*: Strike out lines 13 to 15, both inclusive, and substitute therefor:

"(*g*) the provision made for depreciation and obsolescence, and separately for depletion;".

37. *Page 22, line 29:* Strike out ", contributions to pension funds".

38. *Page 24, line 15*: Immediately after "nature" insert "and cost".

39. *Page 24*: Strike out line 21 and substitute therefor:

"those of the company, stating the cost and basis of".

40. *Page 24, line 30*: Strike out "1963" and substitute "1960".

41. *Page 24*: Strike out lines 40 and 41 and substitute therefor:

"respect of depreciation and obsolescence, and separately in respect of depletion".

42. *Page 25, line 10*: Strike out "1963" and substitute "1960".

43. *Page 26, line 31*: Immediately before "affects" insert "materially".

44. *Page 32*: Strike out lines 16 to 18, both inclusive, and substitute therefor:

"subsection (1) that have most recently been made available to the shareholders prior to such demand."

45. *Page 32, line 33*: Strike out the period and add:

", or by a judge of the said court designated by either of them."

46. *Page 35, line 5*: Immediately after "receive" insert ", unless waived by such auditor,".

47. *Page 35*: Strike out lines 8 and 9 and substitute therefor:

"(6) A company, upon receipt, not less than seven days before a meeting of shareholders, of a written".

48. *Page 35, line 28*: Immediately after "which" insert "and the place where".

49. *Page 35, line 39*: Strike out "and by the auditor".

50. *Page 36, line 31*: Strike out "ordinary" and substitute "registered".

51. *Page 37*: Strike out lines 4 to 9, both inclusive, and substitute therefor:

"125A. (1) The Secretary of State may at any time by notice require any private company to make a return upon any subject that a public company has to report to its shareholders pursuant to sections 115 to 122.

(2) Documents filed with the Secretary of State pursuant to this section shall not be open for public inspection except upon the written

direction of the Secretary of State given upon the recommendation of the chief justice or acting chief justice of the court of the province in which the head office of the company concerned is situated, or by a judge of the said court designated by either of them."

52. *Page 37*: Strike out clause 37 (renumbered as clause 42) and substitute therefor the following:

"42. The said Act is further amended by adding thereto, immediately after section 128 thereof, the following heading and sections:

AMALGAMATION

128A. (1) Any two or more companies incorporated under this Act, including holding and subsidiary companies, may amalgamate and continue as one company.

(2) Companies proposing to amalgamate may enter into an agreement for the amalgamation prescribing its terms and conditions and the mode of carrying the amalgamation into effect.

(4) The amalgamation agreement shall further set out

(*a*) the name of the amalgamated company;

(*b*) the objects of the amalgamated company;

(*c*) the amount of its authorized capital, the division thereof into shares and the rights, restrictions, conditions or limitations attaching to any class of shares;

(*d*) the place within Canada at which the head office of the amalgamated company is to be situated;

(*e*) the names, callings and postal addresses of the first directors thereof;

(*f*) when the subsequent directors are to be elected;

(*g*) whether or not the by-laws of the amalgamated company are to be those of one of the amalgamating companies and, if not, a copy of the proposed by-laws; and

(*h*) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company and the manner of converting the authorized and issued capital of each of the companies into that of the amalgamated company as determined pursuant to paragraph (c) above.

(4) The amalgamation agreement shall be submitted to the shareholders of each class of shares of each of the amalgamating companies at general meetings thereof called for the purpose of considering the agreement, and, if three-fourths of the votes of each class of shares cast at each meeting are in favour of the amalgamation agreement, the secretary of each of the amalgamating companies shall certify that fact upon the agreement under the corporate seal thereof; and thereafter the agreement shall be deemed to have been adopted by each of the amalgamating companies unless the amalgamation agreement is annulled in accordance with the procedure outlined in the following subsections.

(5) Within seven days of the final vote on the amalgamation agreement, any shareholder or shareholders holding at least ten per cent of the shares of any class of shares in any of the amalgamating companies may apply to the chief justice or acting chief justice of the court of the province in which the head office of the company is situated, or a judge of the said court designated by either of them, for an order annulling the amalgamation agreement: Provided that such application may be made

only by a shareholder or shareholders whose dissent was recorded at a meeting of any class of shareholders called to consider the amalgamation agreement.

(6) The said judge shall fix a time and place for consideration of the application for the order annulling the amalgamation agreement, which time shall be within fifteen days of the making of such application, and notice thereof shall be given to each of the amalgamating companies, and to the Secretary of State, in such manner as the said judge may direct.

(7) The said judge shall hear and determine the matters raised in the application and shall issue an order annulling the amalgamation agreement, or dismissing the application, which order shall not be subject to appeal. Where an annulling order is issued the amalgamation agreement is annulled and has no force or effect whatsover.

(8) Where a reduction of capital may result from an amalgamation agreement, the provisions of sections 51, 52, 53, 54, 55 and 57 of the Act shall apply, mutatis mutandis, as if the amalgamation agreement represented an application for supplementary letters patent confirming a by-law reducing the capital stock of the company.

(9) The amalgamating companies shall, within six months of the date of the final vote on the amalgamation agreement, jointly file with the Secretary of State the amalgamation agreement together with a certificate from the secretary of each of the amalgamating companies establishing the percentage of those who voted in favour of the agreement and the percentage of dissentient shareholders, in respect of each class of shares.

(10) (*a*) Not less than eight days following the final vote on the amalgamation agreement and upon receipt of evidence that no application was made to a judge for the annullment of the amalgamation agreement or that the application was dismissed, the Secretary of State may issue letters patent confirming the agreement: Provided that the requirement of eight days' delay may be dispensed with if the amalgamation agreement has received the approval of more than ninety percent of the votes of each class of shares cast at each meeting of the amalgamating companies.

(*b*) Notice of the granting of such letters patent shall be forthwith given by the Secretary of State in the *Canada Gazette*.

Upon the issue of the said letters patent, the amalgamation agreement shall have full force and effect, and

(*a*) the amalgamating companies are amalgamated and are continued as one company (in this section called the "amalgamated company") under the name and having the authorized capital and objects specified in the amalgamation agreement; and

(*b*) the amalgamated company possesses all the property, assets, privileges and franchises, and is subject to all the contracts, liabilities, debts and obligations of each of the amalgamating companies.

(12) All rights of creditors against the property, rights, assets, privileges and francises of a company amalgamated under this section and all liens upon its property, rights, assets, privileges and franchises are unimpaired by the amalgamation, and all debts, contracts, liabilities and duties of the company thenceforth attach to the amalgamated company and may be enforced against it.

128B. (1) A company incorporated under this Act, including a holding or subsidiary company, may amalgamate with any other company (in this section hereinafter referred to as "the provincial company") having the same or similar objects and incorporated under the provisions of any general Act (in this section hereinafter referred to as "the provincial Act") relating to corporations or companies, heretofore or hereafter enacted by the legislature of a province, under which provincial Act such an amalgamation may be authorized; and, if the conditions hereinafter set forth are complied with, such companies may thereafter continue as one company.

(2) The companies proposing to amalgamate may enter into an amalgamation agreement as hereinafter provided, and in so doing shall comply with the provisions of subsections (2) to (10), both inclusive, of section 128A. In addition, the amalgamation agreement shall stipulate whether the amalgamated company is to continue under this Act or under the provincial Act.

(3) The provincial company shall provide the Secretary of State with a certificate signed by the Lieutenant-Governor, Provincial Treasurer or such other body or person as may be authorized to confirm the amalgamation agreement under the provincial Act, to the effect that all of the requirements of the said Act have been satisfied, and that he is prepared to confirm the amalgamation agreement, by letters patent or otherwise, as provided for by the said Act.

(4) The Secretary of State may, if he is satisfied that the foregoing provisions have been complied with, issue letters patent confirming the amalagamation agreement.

(5) Upon the issue of the said letters patent by the Secretary of State and subsequent confirmation by the body or person authorized by the provincial Act to confirm the amalgamation agreement,

(*a*) the amalgamation agreement shall have full force and effect;

(*b*) the amalgamating companies are amalgamated and continued as one company (in this section called "the amalgamated company") under the name and having the authorized capital and objects specified in the amalgamation agreement;

(*c*) the amalgamated company shall possess all the property, assets, privileges and franchises, and be subject to all the contracts, liabilities, debts and obligations of each of the amalgamating companies; and

(*d*) the amalgamated company shall be deemed to be a company incorporated under this Act, and, subject to the amalgamation agreement, shall have all the powers, privileges and immunities conferred by and be subject to all the limitations, liabilities and provisions of this Act; Provided that, if the amalgamation agreement stipulates that the amalgamated company is to continue as a provincial company, it shall be deemed to be a company incorporated under the provincial Act, and, subject to the amalgamation agreement, shall have all the powers, privileges and immunities conferred by, and be subject to all the limitations, liabilities and provisions of the provincial Act.

(6) All rights of creditors against the property, rights, assets, privileges and franchises of a company amalgamated under this section and all liens upon its property, rights, assets, privileges and franchises are unimpaired by the amalgamation, and all debts, contracts, liabilities

and duties of the company thenceforth attach to the amalgamated company and may be enforced against it.' "

53. *Page 39:* Strike out clause 38.

54. *Page 39*: Renumber clauses 39 to 42 as clauses 44 to 47, and insert the following as clause 43:

"43. The said Act is further amended by adding thereto, immediately after section 140, the following section:

'140A. (1) Notwithstanding any other provisions in this Act where a company

(*a*) fails for two or more consecutive years to hold an annual meeting of its shareholders,

(*b*) fails to comply with the requirements of section 121E or 121F, or

(*c*) defaults in complying for six months or more with any requirement of section 125,

the company is liable to be wound up and dissolved under the *Winding-Up Act* upon the application of the Attorney General of Canada to a court of competent jurisdiction for an order that the company be wound up under that Act, which application may be made upon receipt by the Attorney General of Canada of a certificate of the Secretary of State setting forth his opinion that any of the circumstances described in paragraphs (*a*) to (*c*) apply to that company.

(2) In any application to the court under subsection (1) the court shall determine whether the costs of the winding up shall be borne by the company or personally by any or all of the directors of the company who knowingly and wilfully was or were responsible for the non-compliance with the requirement outlined in subsection (1) above.' "

55. *Page 40*: Strike out lines 32 and 33 and substitute therefor the following:

"(*e*) Sections 110, 111, and 113 to 115, sections 122 to 125A, and sections 129 to 142."

56. *Page 41*: Strike out ", and 125A" and substitute therefor ", 125A and 140A".

57. *Pages 41 and 42*: Renumber clauses 43 to 45 as clauses 50 to 52 and insert the following as clauses 48 and 49:

"48. Subsection (1) of section 149 of the said Act is repealed, and the following substituted therefor:

'(1) Sections 66 to 82, sections 96 and 97, sections 112 and 125, and section 100 of Part I apply to companies to which this Part applies, except those loan companies and trust companies to which this Part continues to apply.'

49. Section 153 of the said Act is repealed and the following substituted therefor:

'153. The affairs of the company shall be managed by a board of not less than three directors.' "

58. *Page 42*: Strike out lines 15 to 19, both inclusive, and substitute therefor the following:

"(5) The provisions set out in paragraph (*b*) of subsection (3) of section 22 apply in respect of any body corporate provided with a French or English form of its corporate name pursuant to this section.

(6) This section does not apply to a company incorporated under any of the Acts mentioned in paragraph (*b*), (*c*) or (*d*) of subsection (1) of section 5 or to a company carrying on a business described in paragraph (*a*) of subsection (1) of that section."

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 18, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, to amend the Companies Act, met this day at 4.45 p.m. to give further consideration to the bill.

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

The CHAIRMAN: I call the meeting to order.

The report of the subcommittee appointed some time ago to study the proposed amendments to Bill S-22 has been distributed and you now have copies of it before you.

There are several ways in which we can approach consideration of this matter. The first way is to go through the report before you as it deals with the various sections. Quite a number of these amendments are formal in their nature. In the alternative I could pick out first of all the items which the subcommittee regarded as being important and tell you what was done with those. I notice most of the members of our subcommittee are present: Senator Cook, Senator McCutcheon, Senator Leonard, Senator Choquette and myself. We have spent considerable time in studying these with the assistance of our Law Clerk and also Mr. Louis Lesage, Director of the Companies Branch. If you would prefer me to take the important headings first and then to deal with the remaining bits and pieces afterwards, I shall proceed in that way.

Hon. SENATORS: Agreed.

Senator CROLL: Mr. Chairman, before you proceed, I realize the work the subcommittee has done in connection with this bill and these recommendations. But I am now faced with 20 pages of foolscap sheets containing amendments, some of which are important and some of which are not so important. However I do not know what they entail, and I am asked to make a decision here and now with respect to matters which took a considerable length of time for study and decision by the subcommittee. I do not think that is fair to the committee. I feel I am usually able to catch on as quickly as most people, but I don't think it is fair to the committee to ask us to deal with these amendments at this time. I think this should be left with us for a period of time to study and then, at an appropriate time, we can be asked to deal with it. Until there is an opportunity to consider these vital matters thoroughly, I am objecting to these proceedings going on at the present time.

Senator MCCUTCHEON: Mr. Chairman, I do not think Senator Croll should denigrate himself in the way he is now doing. I am sure as we go through the amendments he will understand them more quickly than some members of the subcommittee understood them. If we don't deal with them now we run the risk of having them go over until some other time and this would mean a delay in getting the bill dealt with and over to the other place. We can if necessary sit until six o'clock, and then come back again at eight and work until 10.30 and get on with the business.

The CHAIRMAN: I should point out that this meeting has been convened here to receive the report from the subcommittee. After the report has been

heard the committee can take whatever action it thinks appropriate; it can consider the amendments and decide to report the bill as amended, or it can defer consideration. It is all in the wisdom of the committee. The situation at the moment is simply this; the subcommittee has discharged the work it was appointed to do and is now coming back with its report.

Senator CROLL: Mr. Chairman, I am not quarrelling at all with the work accomplished by the subcommittee. In fact I commend them for the work they have done. What I am saying is simply this, that I did not see these 20 pages of foolscap before coming into this room. I feel I am entitled to an opportunity to read and consider what is contained in this report. This is an important bill. I feel I am entitled to know more than that; I am entitled to discuss this with the people who know more about it than I do if it contains anything that particularly troubles me. There may be such matters or there may not be—I don't know. But we are now asked to proceed with consideration of these amendments without having had an opportunity to go through the bill and the amendments to consider them in their full context.

There is no difficulty, I suppose, in dealing with a section, but we have to consider what it means in its overall context. That is the important thing. We must also consider how it fits in with the provincial statutes. It is, as I said, a very important bill, and it does not matter how long we sit, if I can grasp the context of it—and I am not too sure that I can. I am making this protest on my own behalf but other people can speak for themselves.

The CHAIRMAN: The situation is very simple; the subcommittee is making its report to the main committee. When this has been done the main committee can indicate what it wants to do and can make whatever decision it considers it should make. At this stage the subcommittee has finished its work and is making its report.

Senator CROLL: I still think that the subcommittee, when it had finished its work, should have had this report in our hands for a day or two whereupon we could decide to deal with it within a reasonable time. But having seen the report for the first time five minutes ago and now being asked to proceed with it is, in my view, an unreasonable request.

The CHAIRMAN: Is it the wish of the committee that the subcommittee's report be made to the main committee at this time?

Hon. SENATORS: Agreed.

The CHAIRMAN: I had inended to pick out the more important items and deal with those and how they were dealt with in this report. Afterwards it is up to the main committee to decide whether they approve.

The first item I would like to mention deals with prospectuses. It is dealt with at section 29, page 17 of the bill.

We have in our Companies Act very elaborate provisions with respect to the filing of prospectuses by companies who are going to make an offering of shares to the public.

The purpose of the amendments provided in section 29 is to avoid duplication of work where there appeared to be no justification for continuing such procedures. For instance, in the various provinces of Canada you have security commissions, and in foreign jurisdictions, for instance in the United States, you have the Securities and Exchange Commission. Notwithstanding the fact that a federal company, in making an offer of shares to the public, would file all its materials with the Ontario Securities Commission if there was going to be an offering in Ontario, or file with the Securities and Exchange Commission in Washington if there was going to be an offering of any part of its securities in the United States, there was still the requirement under the Companies

Act, Canada, that the elaborate prospectus provisions of the Companies Act must also be complied with.

The amendments proposed in the bill are relieving, and section 29 provides for a new section 76A in the act. The effect of the amendment is to provide that where a prospectus or statement, an offering statement, is required to be filed with some public authority in a province, such as the Ontario Securities Commission in Ontario, in connection with the offering of shares of a federal company to the public, or where a public authority in a foreign jurisdiction has that requirement, then in those circumstances in the new section 76A it is provided that the requirement of filing a prospectus with the Secretary of State is waived.

We have added one further matter relating to the amendment, which you will find dealt with in item 24 on page 8. This further amendment relates to and provides for the waiver of the requirement to file a prospectus under the federal Companies Act where such filing is not required, or is exempt, by a provincial authority such as the Ontario Securities Commission, or by a public authority in the United States such as the Securities and Exchange Commission; thus if there is no requirement of filing a prospectus by either one of those types of public authority in certain circumstances then the filing of a prospectus in those circumstances under this federal Companies Act is also waived.

However, you will notice in the bill that there is a subsection that we have left in, and it provides to the effect that if the Secretary of State deems it to be in the public interest then, notwithstanding the waivers that are provided for, both in the bill as drafted and in the suggested amendment, the Secretary of State may nevertheless demand that a prospectus be filed. So, the Secretary of State can exercise his judgment and discretion.

Senator PEARSON: In all cases?

Senator LEONARD: No, it is at his option.

The CHAIRMAN: If the Secretary of State says: "The public interest requires that you file a prospectus", then notwithstanding the fact that you have filed elsewhere, you must file as well with the Secretary of State. What the bill requires is that you must furnish a copy of what you have filed with this public authority to the Secretary of State, and such copy is to be signed by an authorized officer of the company. We have enlarged on the manner of filing with the Secretary of State the prospectus that has been filed with, say the Ontario Securities Commission or the Securities and Exchange Commission of the United States, inasmuch as the bill itself provides that you must file with the Secretary of State a copy of the prospectus filed with such public authority certified by such authority. Very often there are real difficulties in the way of getting or getting quickly such certification.

What we have provided is that you must file either a certified copy of what you have filed with, say, the Ontario Securities Commission, or a copy of what you have filed, certified by an officer of the company together with the date of filing, with, say, the Ontario Securities Commission, because all that the provisions of the federal Companies Act require in the case of a prospectus is that you file. So they get the material that has been filed with the public authority —either the provincial authority or the foreign authority—in the form in which it was so filed. The Secretary of State still gets it, but it is in the form in which you have presented it to that jurisdiction. It is not in the detailed form required under our federal Companies Act.

That is the scope of section 29 of the bill, plus the amendments that we have added which appear in item 24 of this report to you.

Senator CRERAR: May I ask if there is any time limit within which the Secretary of State must act under the circumstances you have mentioned?

The CHAIRMAN: No, there is no time requirement. The Secretary of State, if he deems it in the public interest, will so notify the company, and he will demand that a prospectus be filed.

Senator CRERAR: What I had in mind was making certain that proceedings would not be held up by delaying the Secretary of State's request.

The CHAIRMAN: That could not be because when these sections become law you will have, if you are filing in Ontario, a statutory waiver of the requirements of filing under the federal act, and the requirement to file would only come if you receive a demand, so you are not being held up.

Senator CRERAR: I see.

The CHAIRMAN: Another of the important items that we have dealt with comes under the heading of "Disclosure". As you know, in the federal companies Act at the present time the disclosure of what I call trading is a requirement imposed on directors and officers. The requirement is that you file a record of your buys and sells with the secretary of the company before the annual meeting so that that information is available at the annual meeting.

The bill elaborated on that requirement. This is dealt with on page 8 of the report before you in items 26 and 27, and also in section 32 which is to be found on page 18 of the bill.

The bill itself expanded the list of persons who must file information of their trading. Section 32 of the bill requires a director or an officer of the company, or any shareholder controlling more than 10 per cent of the issued voting shares, to file with the secretary of the company within 30 days from the date of purchase or sale of shares a record of his purchase and/or sale. It also requires the secretary to enter information in a book which is to be kept for that purpose and which is to be available for inspection by the shareholders during normal business hours. The bill also required that a director—this was an obligation on directors—shall present to the shareholders at each annual meeting a statement containing the particulars of what is recorded in the book.

In our consideration we thought that this should go further. We still hold to the view that in the main a companies' act governs relations between the shareholders and the company, and there are other provisions that deal with the relationship of a company to the public—for instance, the prospectus sections.

We had evidence submitted to us, as members of the committee will remember, by the Canadian Institute of Chartered Accountants, the Canadian Bar Association and others on this point. They all thought that the requirements of filing particulars every time you had a trade was too heavy a responsibility, and that thereby you were going to pile up too much paper. The recommendation of the chartered accountants was that the requirements of filing this information as to trades by directors and officers, and shareholders having more than ten per cent of the voting shares, should be one that required them to file that information with the secretary of the company within 30 days from the end of the month in which their trades took place.

Subject to this change, we left the obligation as it is in the bill on the secretary of the company to enter this information in a special book of record which is to be available to the shareholders for inspection.

However, also provided that the directors—instead of "shall present to the shareholders" we chose a stronger term—"shall disclose to the shareholders" at the annual meeting that which is contained in this book. But then we added the further provision that you will find at the bottom of page 8 of our report, namely:

> The secretary of the company shall also, within thirty days of its receipt by him, furnish to the Secretary of State a copy of each such

statement, and the Secretary of State shall make such statements available for inspection by any shareholder of the company at any time during usual office hours.

That is the extent to which we felt that disclosure as between the various shareholders of a company and the company should be dealt with.

We were keeping in mind that this is essentially a companies act intended to govern the relationship of shareholders with the corporate entity known as the company. Our recommendation, as contained at the bottom of page 8 suggesting these several amendments particularizes the diclosure that we felt should be made.

Senator LEONARD: In effect, within not more than 60 days any shareholder can find out about any transaction that any director of a company has entered into with respect to the shares of the company, and the same applies to any shareholder who owns more than ten per cent of the shares.

The CHAIRMAN: Yes, and if any member of the public is curious to know what directors and officers or shareholders owning more than ten per cent of the voting shares are doing then he can go out and buy a share.

Dealing with the redemption of preferred shares—

Senator DAVIES: On what page is this?

The CHAIRMAN: This is at the bottom of page 3 of the report, and you will find it at page 6 of the bill. It is clause 10.

May I take just a moment to tell you that under the provisions of the federal Companies Act the method of redeeming or purchasing for cancellation preferred shares is a very elaborate provision. It is contained in section 61 of our act. Basically, it provides a procedure by which you redeem or purchase for cancellation preferred shares out of ascertained net profits or out of the proceeds of an issue of shares that you have made for the purpose of accomplishing that redemption or purchase for cancellation.

We had very strong representations from The Canadian Bar Association, from the Canadian Institute of Chartered Accountants, from the Board of Trade and from some individual law firms that in this day and age, and having regard to the provisions of provincial companies acts, one should be able to redeem and purchase for cancellation preferred shares out of capital.

The way in which we have resolved these submissions is this. We have retained the provisions of section 61, where you can have a redemption or purchase for cancellation of preferred shares out of ascertained net profits, following the procedures laid down. We have, however, tidied the language of Section 61, as you will see, on examining the new section of the bill. We also provided for the redemption or purchase for cancellation of preferred shares out of capital, accepting on this point the very forceful expressions of opinion that came to us from all of those different organizations. There is ample protection in our federal act so that redemption out of capital cannot be accomplished if the company is not solvent or if such redemption will lead to insolvency. This you will find at the bottom of page 6 in the bill, where clause 10 amends section 12 of the act, and then if you look at the bottom of page 3 of our report you will see that we have rewritten section 12, so as to provide for the redemption of preferred shares or their purchase for cancellation out of capital.

The next thing we dealt with was the matter of mutual shares and you recall the debate that took place in the house on the second reading in relation to mutual shares—The fact is that there are quite a number of companies in actual operation today who are offering mutual shares to the public. There seems to be some misconception about mutual shares, because calling them "shares" would suggest that they are shares in a company, like preferred

shares or common shares or various classes or series of shares. Actually, mutual shares are not shares in that sense at all: they represent a percentage participation in a fund administered by a company. Yet, over the years, because the machinery of the federal act had not been enlarged to accept these different concepts in financing, you have the language used in the conditions attaching to these shares about "redemption" and about "purchase for cancellation". Actually, a mutual shareholder has the right at any time to come in and say "Take this off my hands and you pay me so much." That is not the concept of redemption or purchase for cancellation of preferred shares, as we understand it. So, at the bottom of page 4 of the report—and it is on page 8 of the bill—we have defined "mutual shares". We say that:

> In this Act "mutual fund share" means a participating interest in a fund administered by a company, with conditions attaching to the said interest which include a condition providing for the acceptance for surrender thereof by the company on the demand of the holder at a price determined and payable in accordance with such conditions; and, in relation to mutual fund shares, the words "redemption or purchase for cancellation" in any letters patent or supplementary letters patent shall be deemed to mean acceptance for surrender.

We have received letters from legal firms across Canada who represent companies with mutual fund shares outstanding. When they saw the provisions in the bill they were concerned because in the mutual fund share conditions outstanding they talk about "redemption and purchase for cancellation," and in the bill we are talking about "surrender" and "acceptance for surrender." They were concerned as to whether this change would lead to a new jurisprudence and possibly in the process result in confusion. Therefore, in the last three or four lines I have read to you, we have provided what we call a bridge, that is we state that where in a mutual fund share the words "redemption or purchase for cancellation" occur in any letters patent or supplementary letters patent, they shall be deemed to mean "acceptance for surrender."

Senator DAVIES: Would you mind explaining once again what mutual shares are?

The CHAIRMAN: The definition is that they are a participating interest in a fund that is administered by a company. The company must apply to the Secretary of State for letters patent. They have a certain share capital and they also incorporate in their petition provisions authorizing them to create what are called mutual fund shares which represent participating interest in a fund. This is not the ordinary concept of a share. A share is a share in the capital stock of a company, but the act did not go far enough to carry all these distinctions, and the department went along as best it could with what the provisions of the Companies Act, as it stands now, permitted them to do.

In this tidying up we are really defining what a mutual fund share is, so that there can be no confusion. I suppose one way of describing it might be to ask: "When is a share not a share of capital stock?" and to answer: "It is not a share of capital stock when it is a mutual fund share; it is a participating interest in a fund."

Then we struck out part of the section 11 which was creating a new section 12A, because you cannot have insolvency in a mutual fund, because all the pieces of paper you have are participating interest in that fund and you participate to the extent that there is something in the fund to participate in. No matter what the amount in dollars of the fund may be, big or small, the fund never can be said to be insolvent. Therefore, we struck out the provisions in relation to insolvency.

That is seen on page 9 of the bill.

Honourable senators, you understand that there may have been a few consequential changes, but I am not taking time on those.

In dealing with the printing of conditions on the back of the certificates, one runs into so many series and classes of preferred and deferred shares that you have yards and yards of conditions and they become a real problem as to how to disclose such on the back of a certificate. Yet the statute requires that, and the amending section—which in our report is on page 6, and in the bill itself on page 13—was still requiring that conditions attaching to these various classes of shares appear on the back of the certificate. This seemed physically to become an insoluble problem, and we had representations from the chartered accountants, the Bar Association, the Board of Trade of Metropolitan Toronto and from some legal firms with respect to this. Therefore, we provide alternatively—and you will see it on page 6 of our report—that if you wish to print the conditions verbatim on the back of the certificate you may do so.

Any honourable senators who have looked at certificates recently, with their yards and yards of conditions, will note that they have been photographed down to such an extent that you would need a magnifying glass to read what is there. The requirement remains that you print these conditions on the back of the certificate, but alternatively you will satisfy the requirement if you inscribe on the back of the certificate in legible characters a statement that there are preferences, rights, conditions, restrictions, limitations or prohibitions attaching to such class of shares, and provided that the full text of this is available on demand and without fee from the secretary of the company. Therefore, you have full notice. It is an alternative procedure. We have not taken anything away but we are adding something which I think will prove to be a great convenience and be in the long run just as informative as having to go out and buy a magnifying glass to read what is on the back of the certificate.

Senator DAVIES: In other words, if you want it, ask for it.

The CHAIRMAN: Yes. Another amendment of substantial importance was amalgamation of companies. Under the existing federal Companies Act there is no provision for amalgamation of two or more federal companies. In the Ontario act there are amalgamation provisions, and in some of the statutes in other provinces are amalgamation provisions for two or more provincial companies. The Ontario act provides for two or more provincially incorporated companies with the same or similar objects.

The first thing proposed in the bill, at page 37, section 37, was a new section 128A, which provided the machinery for the amalgamation of two or more federal companies.

We have made some changes in these provisions of the bill you were obliged to have, as you will see on page 38 of the bill, first of all, an amalgamation agreement. Then that agreement had to be submitted to the shareholders of each company and to the various classes of shareholders of each company, and a three-quarters vote of the shareholders was required to approve the amalgamation agreement. We have not changed that. However, after that there was a provision that the company, even with that approval, then had to go to the court to get its approval on notice to each dissentient shareholder in such a manner as the court might indicate; also, the notice of that hearing had to be given to creditors of the company.

We thought in the circumstances that was piling up a lot of unnecessary procedures. As you will find in the amendments on page 12 of our report, we still have the requirement that each class of shareholders of each company

seeking amalgamation must by a three-quarters vote of each class approve in the agreement. From there on we provided that within seven days the dissenting shareholders, whose dissent is a matter of record at the meeting of shareholders, have the right to make an application to the court, if they held at least 10 per cent of the shares, to annul the amalgamation agreement. If they do not make that application, then the agreement becomes effective for all purposes.

So far as notice to creditors is concerned, we have provided that if there is any reduction of capital involved in the proposed amalgamation, the procedures are then subject to the provisions of the Companies Act which deal with the reduction of capital. That provides for a simple, well-regulated procedure for amalgamations, and one that is very well in line with provincial regulations.

We went one step further—and here I would say we are leading the way—by a section 128B, which is on page 15 of our report. Here we have ventured into the field of the possible amalgamation of a federal and a provincial company.

Senator HUGESSEN: Before dealing with that, Mr. Chairman, I hope you do not consider silence as being consent in this question of the approval by a court of an amalgamation of two companies. I have already expressed my view before the committee. I disagree with what the subcommittee has done. I reserve my right to do so, when we come to vote on it.

The CHAIRMAN: No one is taking that right of vote away, senator. I am simply explaining to the committee what we have done, and the report we are making.

The second phase of this section 128B, on page 15 and succeeding pages of our report, deals with this new type of thing, that is, the amalgamation of a federal and a provincial company. This is breaking new ground. We have provided for this amalgamation, where you have federal and provincial companies seeking to amalgamate who have the same and similar objects. We have taken that as the basis with regard to limitation.

In 128B there is the same procedure as to meetings of shareholders, the same requirements, the same rights in respect of dissentient shareholders, and how they may take proceedings to annul the amalgamation agreement. However, there is involved in this the principle that if the amalgamation agreement provides that the resulting amalgamated company is to be provincial in its operation and subject to provincial jurisdiction, then certain procedures will apply under which the Secretary of State will give, for want of a better word, an "exeat" to the federal company so that it can go to the province, and the provincial secretary in the province will agree to accept the company, and thereafter the amalgamated company becomes provincial.

In the reverse, we provide procedures under which the provincial secretary gives the exeat, and the federal authority must have an accepting authority whereby it can accept that company as a federal company, after which the company would be federal and subject and accountable to the Secretary of State.

Senator PEARSON: Would you not have to incorporate the new company as a federal company?

The CHAIRMAN: No. Letters patent based on the amalgamation agreement, that is the thing that is sanctioned by the provincial secretary and by the Secretary of State.

Mr. Louis Lesage: And by letters patent.

The CHAIRMAN: Yes, by letters patent. But it is not the usual form of incorporation. It is the amalgamation agreement that is sanctioned and approved by letters patent.

Senator LANG: It is a form of federalism, is it, Mr. Chairman?

The CHAIRMAN: I suppose we are not leading the way in that, except that it deals with corporate operations. Maybe there is an inspiration in that for some provincial jurisdictions.

These are what we would regard as the most important aspects of the bill. In some cases we have gone outside the bill and amended provisions in the present act where we thought it was in the interests of the public and the efficient operation of the statute to do so. Let me illustrate one instance. Under our federal act you cannot be elected a director of a federal company unless you are a shareholder. Under the Ontario act, and many of the other provincial statutes, you can be elected a director—and that is a good election as a director—if you qualify as a shareholder within ten days thereafter. We have incorporated that provision into the report which is before you, as an amendment to the act, appearing in the bill in final form. For instance, in another place in our federal statute, if a shareholder wants to appoint a proxy under the federal statute—the proxy himself must be a shareholder. Under the provincial statutes in the main, there is not the requirement that the proxy need be a shareholder. We have proposed an amendment to the effect that the proxy need not himself be a shareholder.

Senator ISNOR: Is ten days long enough, Mr. Chairman?

The CHAIRMAN: Oh, yes.

Senator ISNOR: Some company might come along and say that because you are a very good lawyer, they would like to have you as a director, that they have no shares at the present but will endeavour to secure shares for you. In the case of certain companies, I would say that ten days would be a very short time to procure those necessary shares.

The CHAIRMAN: We took ten days, first, because it seems to be the limit of the provincial statute. Secondly, where they really want you to be a director they will see that the shares are acquired before they propose you as a director, because they would not want to take any chance on losing you, and under the statute if you do not qualify within 10 days and they want to have you as a director later, then you have to be a shareholder before election or appointment as a director.

Also another provision we thought needed to be modernized was the one in our present act in relation to dividends, and the provision concerns where it is proposed to declare a stock dividend. I think everybody nowadays has a pretty good idea what a stock dividend is; it is where you declare a dividend that is payable in shares of the company. That practice has grown up considerably since the provisions of the Income Tax Act were amended where, on payment of a certain rate of tax, you could capitalize your earned surplus, create preferred shares, distribute them and subsequently redeem them. In the federal act there was the provision that in the case of a stock dividend you had to have a special by-law approved by the shareholders, and the by-law was only good for one year. That is quite outmoded and is inflexible. As a matter of fact, in many of these things we have changed from procedures requiring authorizing by-laws to something more flexible in the nature of resolutions by directors. Since directors have authority to declare dividends by resolution of the board, and a stock dividend is a form of dividend, therefore we saw no reason why you should require a by-law with a limited life if you are going to declare a stock dividend. Lastly, in removing that requirement

we were bringing the act into conformity with most of the provincial statutes. So we have eliminated that requirement.

I can also tell you that on Mr. Lesage's recommendation we are proposing striking out from the statute the schedule of forms. Maybe that is flying in the face of civil service practice.

Senator McCUTCHEON: Putting the lawyers on their own.

The CHAIRMAN: Yes, putting the lawyers on their own, where they earn their fees. With all the varieties of conditions, objects and whatnot you put in a petition for incorporation nowadays, you cannot utilize the force. You have to type the whole thing anyway. It seemed a useless addendum, so, on the recommendation of Mr. Lesage, out go the schedules—if the committee approves. I add those words so Senator Hugessen will not feel that he is committing himself.

Then in our Companies Act we have the strange provision, in section 153 of the act—I do not think you have the present act before you. These are special act companies.

Mr. LESAGE: Page 94 of the act.

The CHAIRMAN: Yes, page 94. These are special act companies. You are all familiar with the number of applications that come before us each year to incorporate what are called special act companies. We have ben trying to achieve a little flexibility in it. Here we have a requirement in our Companies Act that in the case of special act companies the affairs of the company shall be managed by a board of not more than nine and not less than three directors. We could see no reason for putting a ceiling on the number, requiring every time you wanted to change the number and did not have a specific provision in your special act you had to come to Parliament and get approval. So we are eliminating that ceiling.

We are also doing something more in connection with the flock of special act companies we have had who want to obtain a French name, for instance. They were coming to and engaging all the processes of Parliament to get a French name—equivalent or not—to the English name. There is a procedure in the bill under which instead of coming to Parliament in the case of these special act companies they can go to the Secretary of State and if they satisfy him there is no conflict with any other name he may grant their petition; and so we remove from the consideration of Parliament the many petitions for adding a French name in addition to the English name by special act companies.

Senator CROLL: Under what section?

Senator HAYDEN: Section 40 of the bill, I think it is.

Senator CROLL: What page?

Mr. LESAGE: Page 41.

The CHAIRMAN: Yes, page 41 of the bill. You see section 44. You do not have to come to Parliament for this.

Something else we have done is in connection with the seal of the company. The bill provided that where the company has a French name as well as an English name both the French and the English name might be put on the seal. That disturbed us a bit because we had visions, in some cases, of a very large seal being necessary in order to get the French and the English name on it. So what we have done by way of amendment is not to interfere with that provision so that you put both names on the seal if you so desire, but we have said that alternatively you can have a seal with the English name and another seal with the French name. You can take your choice. When we are at the business of simplification, these are things we should tidy up. Were there other things we dealt with?

Senator LEONARD: Do you want to speak about section 125A?

The CHAIRMAN: Yes, section 125A, which is at page—

Senator LEONARD: Page 37 of the bill.

The CHAIRMAN: Yes, page 37 of the bill. If you remember, I think Senator Walker, on second reading, spoke particularly and very strongly against this provision, and a lot of senators were wondering where such a provision could possibly come from and thought it smacked almost of a police state. It is that:

> The Secretary of State may at any time by notice require any company to make a return upon any subject connected with its affairs within the time specified in the notice, and on default in making such a return every director of the company is guilty of an offence.

Of course, under the general provisions of the statute, a substantial fine or alternatively a jail sentence, or maybe both, are provided for. We found in committee that this section 125A had been lifted out of the Ontario Companies Information Act, and how it ever got in there nobody seemed to know and nobody was able to find out. However, the subcommittee recommends that this subsection be struck out, but we are providing, at page 11 in our report, a new section 125A, limiting its application to private companies.

What we are saying is:

> The Secretary of State may at any time by notice require any private company to make a return upon any subject that a public company has to report to its shareholders pursuant to sections 115 to 122.

In other words, it is not a case of leaving it wide open so that the Secretary of State can ask for information on any subject that he feels is connected in any way. We are tying in his right to make a demand on a private company to such information as a public company might be required to furnish. We are then providing for the confidential nature of the information when it is furnished to the Secretary of State. You will see that at the bottom of page 11 and the top of page 12. The only way in which you can get any disclosure of that information that has been filed pursuant to that demand is upon the recommendation of the Chief Justice or Acting Chief Justice of the province or a judge designated by him, who recommends to the Secretary of State that it is a proper case.

There is one other amendment I think I should mention upon which there were different views expressed in committee by the witnesses. On page 21 of the bill there is a new section 117. This requires that:

> Every statement of profit and loss to be placed before an annual meeting of shareholders shall be drawn up to present fairly the results of the operations of the company for the period covered by the statement and shall show severally at least—"

And in

> (*a*) the amount of sales or gross revenue derived from the operations,"—

Then there is a provision that if the company does not wish to disclose its gross sales or revenue, an application may be made to the chief justice or the acting chief justice of the province where the head office of the company is situate or to a judge designated to hear the application, and if this judge is satisfied that the disclosure of the information would be detrimental to the interests of the company he may make an order and such disclosure need not be made.

The feeling of the committee as a whole, if I may call it that, was in favour of such disclosure, and the subcommittee was entirely in favour, and we have

approved of that section in our recommendation to this committee. However it may be a matter of importance to other people in circumstances which may be out of the ordinary, and that is why I thought I should draw your attention to this in particular.

There are a number of other amendments on these pages you have before you in the report, but I assure you they are all implementing recommendations by chartered accountants, the Canadian Bar Association, the Board of Trade of Metropolitan Toronto, and a number of legal firms across Canada on points of clarification. The essence of the law is not changed. Maybe I could give one illustration of what I mean by that.

Senator McCUTCHEON: What about where you substitute supplementary letters patent?

The CHAIRMAN: I did not have that one in mind. There are a number of cases where the bill referred to letters patent and we thought in these cases it should refer also to supplementary letters patent. Many of the additions are of that character. The one I particularly wished to draw to your attention as an illustration is found in section 5 of the statute. The wording of this section 5 subsection 3 has caused a lot of difficulty where companies are issuing short term notes. In the act itself at subsection 3 of section 5 it says:

> Nothing in this Part shall be construed to authorize the company to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance.

There was confusion as to what was meant by the expression "to issue any note payable to the bearer thereof," and what was intended by "to be circulated as money." What is the difference between a note and a promissory note? We could not see any difference. We had had representations for clarification from legal firms across Canada who act for financial companies issuing notes, so we recommended the striking out of "to issue any note payable to the bearer," so the section would then read "Nothing in this Part shall be construed to authorize the company to issue any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance." That is the sort of thing which we thought should be tidied up and to which our attention was called by legal firms experienced in these matters.

I can tell you as a matter of interest that there are sections on these pages which have now acquired names. For instance there is one section which we have not dealt with in our discussion which is called the "Hugessen amendment" because it was proposed in the main committee by Senator Hugessen. I am sure he has never won a case in such a short time. There are others called the "McCutcheon amendments" and even one or two called the "Hayden amendments".

I have tried to give the highlights of the report. I can assure you that anything I have not touched on deals mainly with clarification and tidying up and does not change the substance of the law.

The subcommittee has discharged its responsibility of examining the bill and drafting the changes which it thought were necessary and have now submitted this report to the main committee. The report is in the hands of the main committee and the bill is before the main committee, and it is now up to you to decide what is to be done. You have to decide whether to accept the report as a whole, or to accept it in part and if so to decide what parts you will accept.

Senator DAVIES: How does it affect companies under the control of the Corporations Act? Take the case where a company was formed and two men

were asked to sit on the directorate to give them qualifying shares. They had quite substantial interests in another company and this other company had taken away from them some of the provisions under the Companies Act.

The CHAIRMAN: That comes under the income tax law.

Senator ISNOR: Mr. Chairman, I would like to clear one point. I refer to page 4, the last paragraph where it says:

> '12A. (1) In this Act "mutual fund share" means a participating interest in a fund administered by a company, with conditions attaching to the said interest which include a condition providing for the acceptance for surrender thereof by the company on the demand of the holder at a price determined—"

What is the price determined?

The CHAIRMAN: When the letters patent are issued there is provision for certain types of mutual fund shares and for the conditions attaching to the shares. Amongst those conditions would be this particular one providing the basis on which the holder of that share may offer or make a demand to the company that it shall take the share off his hands and pay him so much money.

Senator ISNOR: But who would determine the price?

Senator MCCUTCHEON: It is a formula price and would depend upon the market, say, the day before and with a discount attached to it.

Senator WILLIS: I move that the committee accepts the report in toto.

The CHAIRMAN: Do you want to go through the bill section by section? Possibly Senator Hugessen has an objection. Do you wish to raise that now?

Senator HUGESSEN: Not until we are considering the bill section by section.

The CHAIRMAN: We can go through the bill and deal with it section by section and then we can come back and deal with the amendments to the act which are in the bill. That is why I was trying to short-cut it by saying if there were objections we could deal with them first.

Senator THORVALDSON: It seems to me that the subcommittee has spent a considerable amount of time on this bill. Its report has now been presented to this committee. For myself I can see no reason why we should go through all these matters section by section. Therefore I would suggest that if anybody wants to speak to a particular section—or if Senator Hugessen wishes to make a suggestion on an amendment to a certain section—it can be dealt with in that way. If that were done we could deal with all the sections in one part.

The CHAIRMAN: Senator Hugessen, you indicated in connection with the amalgamation provisions you did not support the viewpoint that was stated in committee, and which is now cropping up in the language of the recommendation of the subcommittee.

Senator HUGESSEN: I shall be very glad to explain my reasons. The objection I had to the report of the committee relates to a part of the amalgamation provisions which start on page 12. Perhaps I might commence by reminding the committee that there is now a section in the Companies Act dealing with arrangements and compromises between a company and its shareholders—where a company wishes to change the rights of its shareholders either by decreasing the number of their shares or giving them something different from what they have already. It is a provision that has been in the act for a long time, and it has very often been made use of.

I am referring to section 126 of the act which requires meetings of the different classes of shareholders to approve of the suggestions by a three-quarters vote of those present, and it goes on to provide that before the company can

apply for supplementary letters patent confirming the arrangement it has to apply to the court for approval. When it makes application to the court any shareholder who is dissatisfied or who does not feel he is being fairly treated has the right to go before the court and make his representations. Upon that hearing the court can either approve the proposed compromise without change, or require changes to meet what it considers to be the fair thing to do for the shareholders.

This bill provides for amalgamation on page 37. In their original form these provisions follow the procedure in the presently existing compromise provisions of the Companies Act. The bill provides that companies can agree to amalgamate; that the amalgamation agreement must be approved by votes of the shareholders of both companies, and then subsection (5) on page 38 reads:

> After the adoption of the amalgamation agreement by the amalgamating companies, the companies shall apply to the court for an order approving the amalgamation, and each amalgamating company shall notify each of its dissentient shareholders, in such manner as the court may direct, of the time and place when the application for the approving order will be made.

And that notice must be given to any shareholder who voted against the amalgamation at the meeting. A notice is to be given to the creditors of the time when the application for the order approving is to be made.

Now, that is fair. On the analogy of the provision that is already in the act dealing with compromises between a company and its shareholders, where a company wishes to give them something different from what they have already it has got to get the approval of the court. In the case of an amalgamation you have a somewhat similar situation. You have Companies A and B proposing to amalgamate into Company C, and you are going to give the shareholders of those two companies different kinds of shares in the new amalgamated company. The question that always comes up at that point is: "Are you treating the shareholders of each company fairly in relation to the others? Are you giving the shareholders of Company A a proper interest in the new Company C? Are you giving the shareholders of Company B a proper interest in the new Company C? In other words, are you dividing the pie fairly?"

It seemed to me that was another case of where we should follow the precedent that already exists in the Companies Act, that a court should be asked to approve of the provisions of the amalgamation and to satisfy itself that they are fair to all shareholders of both companies. It would give a chance to any dissentient shareholder to come before the court and put forward his recommendations. The court, after hearing these recommendations, could decide either to approve the proposed amalgamation or to insist upon changes which would make the amalgamation fairer to the shareholders.

That was what the bill originally provided, and that, I thought, was an extremely fair and proper thing. I must say that if I were a director of a company intending to amalgamate with another company I should feel very much happier if I had the court confirm what my board of directors had done so far to my shareholders.

The subcommittee's proposal is entirely different. They took out the requirement of approval by the court of an amalgamation, and the only way in which a dissentient shareholder can make his views known under these amendments, which are to be found at page 13 of the report, will be to have the shareholders holding at least 10 per cent of the shares get together and apply to the court for an order annulling the amalgamation agreement.

That seems to me to be grossly unfair to a small or minority shareholder. How can the man who owns 200, 300 or 500 shares of a company which has many hundreds of thousands of shares get together with other dissentient share-

holders to form 10 per cent altogether, and make an application to the court for the annulment of the agreement? And that, under subsection (5) on page 13, has to be made within 7 days of the vote on the amalgamation agreement.

Furthermore, I think from a practical point of view the subcommittee's recommendation is bad in this way; it says that if these 10 per cent or more do make an application, and the application is heard before the court then the judge can do certain things. Subsection (7) which is at the top of page 14 reads:

> The said judge shall hear and determine the matters raised in the application and shall issue an order annulling the amalgamation agreement, or dismissing the application...

He can do nothing else. He can either annul the amalgamation agreement, or dismiss the application.

The CHAIRMAN: Are you suggesting that in the case of a scheme of arrangement when you apply to the court the court can vary the scheme?

Senator HUGESSEN: Oh, yes.

The CHAIRMAN: Only with the consent of the parties. I can tell you that the practice in Ontario has been that if the judge does not think the scheme is meritorious he does not give any opportunity for variation.

Senator HUGESSEN: Well, I very much prefer that the provision in subsection (7) on page 38 of the bill remain as it is. It reads:

> The court shall heard and determine the matter of the amalgamation and may approve the amalgamation agreement as presented or may approve it subject to compliance with such terms and conditions as it thinks fit, having regard to the rights and interests of all parties including the creditors and dissentient shareholders.

That gives the court a great deal more scope than does the proposal of the subcommittee, and I very strongly urge upon honourable senators that this section of the bill as originally drafted should remain for the protection of minority shareholders. The court should be required in every case to give its sanction to a scheme of amalgamation where, as I said before, and which is the basis of the whole thing, what you are doing is trying to make a shareholder take something completely different from what he had before.

Senator LEONARD: I said before that when I find myself in disagreement with Senator Hugessen I am inclined to think I am wrong. Nevertheless, this time I am in disagreement with him. The analogy with respect to amalgamation, I think, is more with a case where a company sells to another company, in which case normally the votes of the shareholders determine the sale and you do not go to a court to approve of the sale, rather than a case of an arrangement inside a company as between classes of shareholders.

This section dealing with arrangements internally goes back, as you will see, to 1934 which was the time of the depression. Up to that time, in my recollection, there was no provision whereby a company could rearrange its respective rights between its shareholders. There were a good many cases of difficulties, where a company might have to go through either a receivership or a bankruptcy in order ultimately to come out with some new type of arrangement. For example, the Abitibi Company was one presented with a difficulty over the lack of legislation providing for a reorganization which the shareholders of all classes wanted to bring about.

This section dealing with internal company arrangements was brought into effect in order to enable those transactions to be accomplished. Automatically they did affect the respective rights of shareholders, because the shareholders had their rights to start with and if you were to rearrange them you were bound to give someone an advantage or possible advantage over

someone else. Therefore, in addition to the requirement of having a majority of the shareholders of the various classes agree, it was desirable that somebody impartial should look at the transaction and in judgment decide that this is fair to respective shareholders.

Now, when you come down to an amalgamation, you have quite a different thing, as you have in the case of the sale of a company. What you really are doing is selling out one company to a new entity, and you are selling out the other company to the same new entity; and in the normal course the majority of shareholders should make that determination. If it should happen that some small group of a minority does feel they have been affected, they should have the right to object to it; but you have the same type of objection to the sale of a company, where some small majority might be selling out for a price that was too low. If this results, that deals rather with a case of amalgamation than with a case of sale or an internal arrangement which automatically does affect the rights, whereas a sale or amalgamation presumably is in the interests of the shareholders and it is only when that presumption is to be overcome that one should need to go to the court. You also have this in mind, that a normal transaction would be upset if in every case they had to go to a judge and if the judge could never modify the transaction it would simply block all amalgamations.

The CHAIRMAN: I should point out, one, that the provision as we recommend it is a form that is contained in the Ontario act. In the Ontario act there is no provision for getting court approval.

Senator MCCUTCHEON: Nor even for court approval under any circumstances; and furthermore only a two-thirds vote, whereas we put three-quarters vote here.

Senator CROLL: I never thought of the Ontario act as the perfect act, and it has its shortcomings, and perhaps there will be an opportunity later on to deal with some of the shortcomings of the Ontario act. But the point being made is that a shareholder who has some shares and has invested his money, has some rights under the act at the present time, as it appears. Now he has got within seven days to collect 10 per cent of the shares, any class of shares, in order to make his case. That puts an unusual burden upon him, that the ordinary shareholder could not possibly cope with. He just does not know how. He is a shareholder and probably does not know anyone else, yet he has a grievance. He was able to deal with it under the original provisions, but he is not now able to deal with it and there is nobody so lonesome as a shareholder.

The CHAIRMAN: You start off in the Bill by requiring a three-quarters vote of the shareholders of every class, of both companies.

Senator HUGESSEN: Three-quarters of those present at the meeting, not three-quarters of the shareholders.

The CHAIRMAN: Three-quarters of those present at the meeting, yes. Prior to that, those shareholders would have received full information as to the nature of the proposed transaction, including a copy of the amalgamation agreement, so they would have full opportunity to consider what their position was. Under the amalgamation you are taking all the assets. If there are two or three companies going in, whatever the number may be, nothing is shaved off in the process. All the assets which are in those companies are all going into the amalgamation company. There may be a rearrangement of the respective interests and what they get in shares out of the amalgamated company, but nothing is taken away. That is the essential difference between amalgamation and a scheme of arrangement. In a scheme of arrangement you are affecting the

rights of shareholders of different classes and you may whittle them down, rearrange the conditions. You are not doing those things here.

Senator HUGESSEN: Oh, yes, Mr. Chairman.

The CHAIRMAN: That is where we differ.

Senator HUGESSEN: In the case of internal reorganization of a company for the whole different classes of shares, you are changing the rights of those different classes of shares as between themselves. In the case of amalgamation, you are saying that the shareholders of company A shall have so many shares in company B and that the shareholders of company B shall have so many shares in company C. You are rearranging the shares of the companies as between themselves. That is the essential point where the question of fairness comes in.

Senator MCCUTCHEON: Senator Hugessen, could I put this to you? Under the act as it stands at present—not under the bill—company A can acquire the shares of company B by offering to the shareholders of company B its shares; and it can do that, I think, on a simple minority vote on a majority vote of the shareholders, and I do not think it has to go to the shareholders, providing it has enough unissued shares in its treasury to buy them out. Now, if 90 per cent of the shareholders accept that offer, you know what the inevitable result is. The 10 per cent can be forced in. I do not see that there is any essential difference between what I have described and amalgamation. If you should carry it right through, the two companies are not amalgamated but are in the same basket from there out, and the shareholders of company A are in a different position from that in which they were, and the shareholders of company B are in a different position from that in which they were.

The CHAIRMAN: That is right.

Senator MCCUTCHEON: Whether it is a fair position or not is something that the shareholders themselves would have to decide.

Senator HUGESSEN: Yes, you leave them free to accept or not to accept the offer.

Senator MCCUTCHEON: I can give you another example, a better one. Company A can agree with company B—and this has been done—to purchase all the assets of company B for shares of company A. Now, you say I leave them free to accept or not. The directors of company B enter into that agreement. As it is a sale of assets, it has to be approved by X per cent of the shareholders attending the meeting—and I do not think it is as high as 75 per cent—and once it is approved, that is it—unless there is fraud. That is the exact analogy of amalgamation.

The CHAIRMAN: I do not think we can finish this discussion now, so we shall adjourn until 8 p.m.

Whereupon the committee adjourned until 8 p.m.

Upon resuming at 8 p.m.

The CHAIRMAN: We were discussing the question that Senator Hugessen raised before the adjournment. May I restate it?

In dealing with amalgamation, the various classes of shareholders of each company seeking to amalgamate are required at their respective meetings to vote in favour of amalgamation by a vote of three-quarters of the shares represented at the meeting. The committee provided in its amended report that the dissensient shareholders who recorded their dissent at the meetings of shareholders, and who represent not less than 10 per cent of the issued voting shares of a class of shares, may apply to the court within seven days to annul the amalgamation agreement. If they do not apply within that time, then on the eighth day the agreement becomes effective for all purposes.

In dealing with the reduction of capital situation, we have simply said that if any reduction of capital is involved in the amalgamation, then the provision of the sections dealing with reduction in capital apply. The bill as it came to us had provided that the company, after the shareholders approved, must go to the court in effect, in the same way as in a scheme of arrangement, and the judge hearing the company's application may sanction or he may not, or if he sees fit, I think the draft said he may impose conditions.

Senator Hugessen favours the scheme of arrangement method. The subcommittee was unanimous in the decision it came to, feeling that there was a difference between an amalgamation as between two companies where there is no shrinkage of the property or assets—everything goes into the amalgamation, as against the scheme of arrangement or compromise, which is internal or domestic, as affecting the rights of the shareholders in relation to their company.

Is there anything further you want to add to that, Senator Hugessen?

Senator HUGESSEN: Mr. Chairman, there is nothing much more I want to add. I think I put my view as succinctly as I could this afternoon.

I should like perhaps to refer to one or two things Senator McCutcheon said. He said there are cases where one company is purchasing the shares of another, and the minority shareholder has no rights if the majority insist on it. That is perfectly true. However, when we are introducing new legislation of this kind, I wonder whether we shall not perpetuate that, or, on the other hand, provide some protection to the minority shareholder in the case of an amalgamation, as is already provided in the present act, in the case where a company wishes to reorganize its capital structure.

Senator DAVIES: Am I correct in assuming that you want the judge to make the final decision in some of these matters?

Senator HUGESSEN: As exactly in a compromise case of a company of shareholders. When the shareholders have approved, then the company has to go to the court, and after the court has approved—

Senator DAVIES: Has the amendment wiped out any reference to the court?

Senator HUGESSEN: It only allows reference to the court when at least 10 per cent are affected.

Senator DAVIES: Ten per cent of the amount of the shares?

Senator HUGESSEN: No, of the number of shares.

The CHAIRMAN: Yes, not in dollars, in numbers; not 10 per cent of all the shares, but of any class.

Senator PEARSON: Of course, the shareholders will already have received a notice long before, giving them 10 days' notice or even a month's notice.

The CHAIRMAN: They have had the amalgamation agreement.

Senator PEARSON: They will have had two weeks in which to collect the 10 per cent.

Senator KINLEY: Does the original act say 10 per cent?

The CHAIRMAN: No.

Senator KINLEY: Any shareholder can go to the court.

The CHAIRMAN: In the bill as it came to us, yes. Under the bill as it came to us, the judge could say yes or no, or impose conditions.

Senator KINLEY: But now he cannot impose conditions?

The CHAIRMAN: No; it is either yes or no. After all, if you have an amalgamation agreement—

Senator COOK: If the judge imposes conditions, and the majority are not willing to accept the conditions, they do not have to accept them, do they?

The CHAIRMAN: No.

Senator HUGESSEN: In a great number of these compromises I have had under the compromise section of the act, in the terms we have always provided that the judge could make even a minor change, subject to such changes as the court or the Secretary of State might approve or impose. On the other hand, one thing I did not like about the original draft, which the committee is now proposing to reject, was the power of the court to approve the amalgamation agreement as presented, as it sees fit, without having regard to the rights of parties. Now the company comes before the court and the parties are heard, and dissenting shareholders, and the judge says, "Well, I think the shareholders of the company should get a little more out of this than they are being offered in the amalgamation agreement." He could very well say to the company, "You go back and hold further meetings with your shareholders on the basis of "A" getting such and such, instead of so and so, and if you can agree with that, then come back before me and I will sanction the agreement." In the amendments provided by the subcommittee there is nothing of that sort; the judge has either to sanction or to reject.

Senator MCCUTCHEON: That is as it should be.

Senator HUGESSEN: It leaves no latitude for a compromise after the judge has heard.

Senator MCCUTCHEON: Surely a judge is not the person to make a commercial decision.

Senator HUGESSEN: He has made it for 30 years in the compromise arrangement.

The CHAIRMAN: That is an adjustment of rights. Here is a matter of agreement.

Senator MCCUTCHEON: That is right.

Senator HUGESSEN: This is an adjustment of rights, just the same.

Senator MCCUTCHEON: No.

The CHAIRMAN: As Senator Leonard put it earlier today, an amalgamation agreement is very akin to a selling out of the assets from one company to another.

Senator KINLEY: What right has the minority shareholder, the 25 per cent shareholder, got outside of this right to go to the court?

The CHAIRMAN: Well, if three-quarters of those present think the agreement is a good agreement, then the dissenting shareholder—

Senator KINLEY: I have gone through that before.

Senator COOK: At first I was of Senator Hugessen's opinion, but I have since become convinced it is a mere matter of a commercial bargain. I have come around to the opinion of the view of the subcommittee that it is purely a commercial agreement, in the absence of fraud.

Senator MCCUTCHEON: Only 51 per cent of the majority in the Parliament of Canada carries. We are putting it at 75 per cent here.

Mr. LESAGE: If there is evidence of fraud after the judgment is rendered, who would say what might happen?

The CHAIRMAN: As Mr. Lesage has pointed out, even at the stage when all these proceedings have exhausted themselves and you then go to the Secretary of State to get letters patent confirming the amalgamation agreement, the Secretary of State might then inquire, and if he is satisfied there is something peculiar about this or there is really a fraud being practised he will not issue the letters patent.

Senator HUGESSEN: Would not you people be happier, Mr. Lesage, if you had a judgment of the court?

Mr. LESAGE: We have done that before, turned down the judgment of a court. This was in the case of a compromise, where the judge decided otherwise than requested by the parties, and the judgment in so far as we were concerned we considered as being null and void, and we refused to issue the supplementary letters patent. The company agreed and started all over again. But if we get representation from one single shareholder there is fraud, then we will ask for a full investigation before issuing the letters patent, in the case of an amalgamation, or supplementary letters patent, and the department is there to protect the public and shareholders at the same time. Of course, we look like rubber stamps in those cases, but in fact we are not.

Senator MCCUTCHEON: Senator Croll indicated he did not believe the Ontario laws were very good. The Ontario law about amalgamation has been working a number of years, and there has never been any federal right for amalgamation. The safeguards that have been built into this section are much greater than the safeguards that are built into the Ontario section. I have practised law and done busines in Ontario for a good many years, and I have heard no complaint in practice. I could almost join you in theory, Senator Hugessen, but not in practice, and we are talking practice tonight.

Senator HUGESSEN: In practice I think your safeguards are absolutely nugatory and useless. Supposing a few shareholders holding a few shares did apply, how could they get protection within seven days?

Senator MCCUTCHEON: In Ontario, if you can prove fraud you can sue. I come back to my A.B.C. companies. Company "A" makes a deal with company "B" to buy all the assets of company "B"—and I have done this—for shares of company "A"; and that is a transaction that under any companies act that I know of can be done by a 66⅔ per cent vote of the shareholders.

The CHAIRMAN: Or a majority vote in some cases.

Senator MCCUTCHEON: Yes, or even a majority vote under some acts. It has the same effect as an amalgamation, and no shareholder can go into court under any circumstances unless he can prove fraud.

The CHAIRMAN: Or non-disclosure.

Senator MCCUTCHEON: That is right. What we are trying to do, as I see it, in this section is to provide a simpler way for—and let me take an item out of my own experience—a simpler way for Dominion Tar and Building Products to get together than to go through the machinery we had to go through. There was no question nobody had any right to go to court. The shareholders' meetings were held. They were passed by the appropriate number of votes, and nobody could attack the thing except on the ground of fraud. To put a judge in the position of trying to say, "Well, I don't know. I think you fellows should have had one-tenth of a share more than you are getting"—to put a judge in the position of dealing with economics on that basis, I think, is wrong; and with all due respect to Senator Hugessen, for whom I have the greatest respect, as he knows, I do not believe his analogy between the compromise provisions and these provisions is a good one.

The CHAIRMAN: Now we have passed this one back and forth, do we take a vote on this?

Senator CONNOLLY (*Ottawa West*): Before you do—and this is not on the point you have been discussing, but just as a matter of interest to myself—the application to court that would be made by the 10 per cent of these shareholders affected, I suppose, in the common law courts is done by way of notice of motion. That is the normal procedure.

The CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): What about the situation in Quebec, because you are legislating here for all the provinces?

Mr. LESAGE: There would be a motion before a judge in chambers. It is exactly the same.

Senator CONNOLLY (*Ottawa West*): It is the practice?

Mr. LESAGE: Yes, it is the practice, exactly the same.

Senator KINLEY: Who drafted the bill before us? Is it a Government bill?

The CHAIRMAN: Yes, only it is introduced in the Senate before the House of Commons. When we made these changes, as against the bill presented to us, we carried the judgment of Mr. Lesage.

Senator KINLEY: Talking about precedents, here is a precedent, the Justice Department brought you a bill which you are amending.

Senator MCCUTCHEON: In the Senate we are entitled to amend Government bills.

Senator KINLEY: But you were talking about precedents.

The CHAIRMAN: I understand that when this bill was introduced in the Senate, Senator Connolly (*Ottawa West*) said something about this bill being introduced in the Senate in the hope it would be very well and carefully considered, and where amendments were thought to be necessary that they would be made.

Senator KINLEY: Nobody is objecting to the right to, but whether we should do it or not by what is before us.

The CHAIRMAN: We can talk back and forth all night.

Senator HUGESSEN: To bring the thing to a head I will move that that part of the subcommittee's report numbered 52 on page 12, starting with the word "AMALGAMATION" on page 12, and continuing to subsection 12 on page 15 be rejected, and that the provisions of the original bill, section 128A be substituted therefor. That simply means that upon an amalgamation being proposed and being voted upon it has got to be submitted to the approval of a court, and at the hearing before the court any shareholder who feels himself aggrieved or not properly dealt with by the terms of the proposed amalgamation will be in a position to make his representations to the court, and a court can then deal with it as it sees fit—exactly in the same way as is done in compromises or arrangements within a company itself.

The CHAIRMAN: Does everybody understand the question?

Those supporting Senator Hugessen's motion reinstating the provision of the bill and striking out the provision in the report of the subcommittee, will you please raise your hands? Contrary? The motion is lost.

Are there any other points in the bill, read with the report of the subcommittee, that any person wishes to raise at this time? Or are there any points in our report on which you want further information?

Senator DAVIES: As I understand it, this bill will now go to the Senate with the amendments as made by our subcommittee and agreed to by this committee?

The CHAIRMAN: That is right.

Senator DAVIES: It will then go to the House of Commons—

The CHAIRMAN: If the Senate approves the report.

Senator DAVIES: —and the House of Commons can then change it if it wishes?

The CHAIRMAN: That is right.

Senator MCCUTCHEON: I move that the bill be reported to the Senate with the amendments reported by the subcommittee—

The CHAIRMAN: —to the main committee and accepted by the main committee.

Senator MCCUTCHEON: That is right.

The CHAIRMAN: All those in favour of the motion? Contrary?

Hon. SENATORS: Carried.

The committee adjourned.

Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE ON

BANKING AND COMMERCE

To which was referred back the Report on the Bill S-22, intituled: "An Act to amend the Companies Act".

The Honourable SALTER A. HAYDEN, *Chairman*

No. 8

TUESDAY, NOVEMBER 24, 1964.

WITNESSES:

Mr. J. W. Ryan, Legislation Section, Department of Justice; Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21300—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 20, 1964.

"Pursuant to the Order of the Day, the Senate resumed debate on the motion of the Honourable Senator Vien, P.C., seconded by the Honourable Senator Bradley, P.C., for second reading of the Bill S-22, intituled: "An Act to amend the Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, for the Honourable Senator Vien, P.C., seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 24, 1964.

"Pursuant to the Order of the Day, the Senate proceeded to the consideration of the report of the Standing Committee on Banking and Commerce with respect to the Bill S-22, intituled: "An Act to amend the Companies Act".

The Honourable Senator Hayden moved, seconded by the Honourable Senator Crerar, P.C. that the Report be not now adopted, but that it be referred back to the Standing Committee on Banking and Commerce for further consideration.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21300—1½

MINUTES OF PROCEEDINGS

TUESDAY, November 24, 1964

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Bouffard, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Davies, Fergusson, Flynn, Gelinas, Gershaw, Gouin, Hugessen, Kinley, Lang, Leonard, McCutcheon, McLean, Molson, Pearson, Pouliot, Power, Reid, Roebuck, Taylor (*Norfolk*), Thorvaldson, Vaillancourt and Willis. (32)

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

The Report of the Committee on Bill S-22, "An Act to amend the Companies Act", was further considered and subsequently amended.

The following witnesses were heard: Mr. J. W. Ryan, Legislation Section, Department of Justice; Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

It was agreed that at a future revision of the said Act, it would be advisable to attempt to incorporate therein a clause similar to clause 128B, which clause was deleted from the first Report on the said Bill.

On motion duly put it was RESOLVED to again report the said Bill as further amended; as follows:

1. *Page 1*: Clause 3 is amended by adding thereto after sub-clause (2) the following:

"(3) Section 3 of the said Act is further amended by inserting immediately after paragraph (*i*) thereof the following:

'(*ia*) "officer" means president, chairman of the board of directors, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or any other person designated an officer by by-law or by a resolution of the directors.'

(4) Paragraph (*n*) of section 3 of the said Act is repealed and the following substituted therefor:

"(*n*) "shareholder" means every subscriber for or holder of a share in the capital stock of the company and includes the personal representatives of a deceased shareholder and every person who agrees with the company to become a shareholder;"

2. *Page 2*: Strike out subclause (2) of clause 5 and substitute therefor the following:

"(2) Subsection (3) of section 5 of the said Act is repealed and the following substituted therefor:

'(3) Nothing in this Part shall be construed to authorize the company to issue any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance.' "

"(3) Subsection (4) of section 5 of the said Act is repealed and the following substituted therefor:

'(4) Where a company

(*a*) carries on a business that is not within the scope of the objects set forth in its letters patent or supplementary letters patent,

(*b*) exercises or professes to exercise any powers that are not truly ancillary or reasonably incidental to the objects set forth in its letters patent or supplementary letters patent,

(*c*) exercises or professes to exercise any powers expressly excluded by its letters patent or supplementary letters patent,

the company is liable to be wound up and dissolved under the *Winding-up Act* upon the application of the Attorney General of Canada to a court of competent jurisdiction for an order that the company be wound up under that Act, which application may be made upon receipt by the Attorney General of Canada of a certificate of the Secretary of State setting forth his opinion that any of the circumstances described in paragraphs (*a*) to (*c*) apply to that company.

(5) In any application to the court under subsection (4) the court shall determine whether the costs of the winding up shall be borne by the company or personally by any or all of the directors of the company who participated or acquiesced in the carrying on of any business or the exercise or the professing of the exercise of any powers as described in subsection (4).' "

3. *Page 6, line 6:* Immediately after "may" insert ", with the consent of such applicants or their authorized representative or agent,".

4. *Page 6:* Strike out cause 8 and substitute therefor the following:

"8. Sections 9 and 10 of the said Act are repealed and the following substituted therefor:

'9. Notice of the granting of letters patent or supplementary letters patent shall be forthwith given by the Secretary of State by one insertion in the *Canada Gazette*.

10. (1) When the letters patent or supplementary letters patent contain any misnomer, misdescription, clerical error or other defect, the Secretary of State may direct the letters patent or supplementary letters patent to be corrected.

(2) Notice of the correction of the letters patent or supplementary letters patent shall be forthwith given by the Secretary of State in the *Canada Gazette* if the correction made causes them to depart materially from the text of the original notice given pursuant to section 9;' "

5. *Page 6:* Strike out lines 30 to 36, both inclusive, and substitute therefor the following:

"limitation attaching to any class of shares.

(1A) The letters patent or supplementary letters patent may provide for the issuing of preferred shares with par value subject to redemption or purchase for cancellation out of capital if the price at which such redemption or purchase for cancellation takes place is not more than the par value of the shares plus a premium of not more than twenty per cent of such par value; but no such redemption or purchase for cancellation shall take place where the company is insolvent or when such redemption or purchase for cancellation would render the company insolvent.

(1b) If any class of shares has attached".

6. *Page 7:* Strike out lines 5 and 6 and substitute therefor the following:

"(2) Subsections (6) and (7) of section 12 of the said Act are repealed and the following substituted therefor:

'(6) All or any part of the authorized capital of a company, except shares having priority as to capital or being subject to redemption or purchase for cancellation, may consist of shares without nominal or par value.' "

7. *Page 8:* Strike out clause 11 and substitute therefor the following:

"11. The said Act is further amended by adding, immediately after section 12 thereof the following:

'12A. (1) In this section, "mutual fund share" means a participating interest in a fund administered by a company, with conditions attaching to the said interest which include a condition providing for the acceptance for surrender thereof by the company on the demand of the holder at a price determined and payable in accordance with such conditions: and, in relation to mutual fund shares, the words "redemption or purchase for cancellation" in any letters patent or supplementary letters patent shall be deemed to mean acceptance for surrender.

(2) If the only undertaking of the company consists in the administration of such a fund, the letters patent or supplementary letters patent may provide for the issuing of mutual fund shares, and for the conditions governing the acceptance for surrender by the company, on the demand of the holder thereof, of such mutual fund shares, or fractions or parts thereof, that are fully paid, at prices determined and payable in accordance with the conditions set out in such letters patent or supplementary letters patent.

(3) Any mutual fund shares, or fractions or parts thereof, surrendered to the company pursuant to the conditions attached thereto shall be deemed to be no longer outstanding and shall not be reissued by the company.' "

8. *Page 10, line 14:* Immediately after "section" insert "or on the date on which it became a subsidiary".

9. *Page 10, line 44*: Immediately before "capital" insert "authorized".

10. *Pages 11 to 14:* Renumber clauses 15 to 19 as clauses 16 to 20 and insert the following as clause 15:

"15. Subsection (3) of section 21 of the said Act is repealed and the following substituted therefor:

'(3) No by-law for the said purpose is valid or shall be acted upon until it is sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders duly called for considering the by-law.

(4) A copy of the by-law certified under the seal of the company shall be forthwith filed with the Secretary of State and published in the *Canada Gazette*.' "

11. *Page 12, line 11*: Immediately after "name" insert "or shall have two seals, each of which shall be equally valid, one showing the French and the other the English form of its name".

12. *Page 12*: Strike out lines 25 to 29, both inclusive, and substitute therefor the following:

"(*a*) that the company has no assets and that, if it had any assets immediately prior to the application for leave to surrender its charter, such assets have been divided rateably among its shareholders or members, and either,".

13. *Page 13*: Strike out lines 25 to 31, both inclusive, and substitute therefor the following:

"(4) Where a company has more than one class of shares

(*a*) the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to any class of shares shall be stated in legible characters

(i) on every share certificate representing that class of shares, or

(ii) by a writing permanently attached to the share certificate; or

(*b*) there shall be inscribed on each such share certificate, in legible characters, a statement that there are preferences, rights, conditions, restrictions, limitations or prohibitions attached to such class of shares, and that the full text thereof is obtainable on demand, and without fee, from the secretary of the company.

(5) Where a statement referred to in paragraph (*b*) of subsection (1) is inscribed on the share certificate, the secretary of the company shall furnish, without fee, to the shareholder on demand the full text of any preferences, rights, conditions, restrictions, limitations or prohibitions attached to such class of shares."

14. *Page 14, line 25:* Immediately after "affected:" add "or".

15. *Page 15, line 9*: Strike out "auditor" and substitute therefor "authorized officer of the company".

16. *Pages 14 to 18*: Renumber clauses 20 to 30 as clauses 22 to 32, and insert the following as clause 21:

"21. Section 49 of the said Act is amended by adding the following as subsection (3):

'(3) Notwithstanding anything contained in this section, where pursuant to subsection (1) of section 12 preferred shares are issued providing for redemption or purchase for cancellation out of capital, and such shares are so redeemed or purchased for cancellation, then, upon the filing of notice thereof with the Secretary of State pursuant to section 62, they are thereupon cancelled, and the authorized and the issued capital of the company shall be thereby decreased.' "

17. *Page 16*: Strike out lines 15 to 19, both inclusive.

18. *Page 16, line 20*: Strike out "(4)" and substitute therefor "(3)".

19. *Page 16, line 24*: Strike out "(5)" and substitute therefor "(4)".

20. *Page 16*: Strike out lines 30 to 39, both inclusive, and substitute therefor the following:

"28(1) Section 62 of the said Act is repealed and the following substituted therefor:

'62. When any class of shares is created or becomes subject to redemption or purchase for cancellation or conversion into any other class, and such redemption or purchase for cancellation or conversion is effected in any month, notice thereof, setting forth the

number of shares of the class redeemed or purchased for cancellation or converted and the number of shares and the class into which conversion is made in that month, and also setting forth whether and the extent to which any such redemption or purchase for cancellation was made out of capital, shall be filed with the Secretary of State before the end of the following month.'

(2) The said Act is further amended by adding thereto, immediately after section 62 thereof, the following section:

"62A. When a company has issued any class of mutual fund shares within the meaning of section 12A, the company shall each month file with the Department of the Secretary of State a statement giving the number of each class of such mutual fund shares which have been accepted for surrender during the preceding month."

21. *Page 17*: Strike out lines 9 to 17, both inclusive, and substitute therefor the following:

"76A. (1) Where a company makes an offer to the public of its securities in any province or any foreign country wherein it is a general requirement of law that a prospectus or a document of a similar nature be filed with a public authority thereof before an offer of securities may lawfully be made to the public, whether or not the particular offer to the public of the securities of the company in that province or country may by the laws thereof be made without the filing of a prospectus or document of a similar nature, the company need not comply with the provisions of sections 74, 75, 77 and sections 70 to 82 with respect to such offering and, subject to subsection (4), those sections do not apply thereto."

22. *Page 17, line 26*: Immediately after "authority," insert the following:

"or by an officer of the company, together with a statement of the date and place of filing,".

23. *Page 18*: Renumber clause 31 as clause 34 and insert the following as clause 33:

"22. Subsection (3) of section 83 of the said Act is repealed and the following substituted therefor:

'(3) For the amount of any dividend that the directors may lawfully declare payable in money they may issue therefor shares of the company as fully paid up, or they may credit the amount of such dividend on the shares of the company already issued but not fully paid up, and the liability of the holders of such shares thereon shall be reduced by the amount of such dividend.' "

24. *Page 18*: Renumber clauses 32 to 37 as clauses 37 to 42 and insert the following as clauses 35 and 36:

"35. Section 86 of the said Act is amended by adding thereto the following as subsection (5):

'(5) Notwithstanding subsection (1), a person may become a director of a company if he becomes a shareholder within ten days after his election or appointment as a director, but if he fails to become a shareholder within such ten days, he thereupon ceases to be a director and shall not be re-elected or re-appointed unless he is a shareholder of the company.'

36. Subsection (3) of section 87 of the said Act is repealed and the following substituted therefor:

"(3) A copy of the by-law certified under the seal of the company shall be forthwith filed with the Secretary of State, and such copy shall be open for inspection, without fee, during normal office hours."

25. *Page 18, lines 31 and 32*: Strike out "within thirty days of any such purchase or sale" and substitute therefor "before the end of the month following that in which such purchase or sale took place".

26. *Page 18, line 39:* Immediately after "hours". add the following:

"The secretary of the company shall also, within thirty days of its receipt by him, furnish to the Secretary of State a copy of each such statement, and the Secretary of State shall make such statements available for inspection by any shareholders of the company at any time during usual office hours."

27. *Page 18, line 40:* Strike out "present" and substitute therefor "disclose".

28. *Page 19, line 6:* Strike out "make" and substitute therefor "furnish to the secretary of the company".

29. *Page 19:* Strike out line 35 and substitute therefor the following:

'by proxy whether or not such proxy is himself a shareholder'.

30. *Page 19:* Strike out lines 40 to 45, both inclusive, and substitute therefor:

"115. (1) Every company shall cause to be kept proper accounting records with respect to all financial and other transactions of the company, and, without limiting the generality of the foregoing, shall cause records to be kept of".

31. *Page 20:* Strike out lines 8 to 45, both inclusive, and substitute therefor:

"(2) The accounting records shall be kept at the head office of the company or at such other place in Canada as the directors think fit, and shall at all times be open to inspection by the directors.

(3) In case the operating accounts of the company are kept at some place outside Canada, there shall be kept at the head office of the company such comprehensive records as shall enable the directors to ascertain with reasonable accuracy the financial position of the company at the end of each three months' period."

32. *Page 21:* Immediately after line 27, add the following:

"(4) Each year, with the consent in writing of all shareholders, a private company that is not a subsidiary of a public company or a company incorporated otherwise than by or under an Act of the Parliament of Canada may dispense with the requirements of sections 117 to 121A, in respect of any particular financial statement specified in the consent, but the financial statement shall be drawn up so as to present fairly the results of the operation of the company for the period covered by the statement."

33. *Page 21, line 37:* Immediately after "situated," insert "or a judge of such court designated by either of them,".

34. *Page 22:* Strike out lines 13 to 15, both inclusive, and substitute therefor:

"(*g*) the provision made for depreciation and obsolescence, and separately for depletion:"

35. *Page 22, line 29:* Strike out ", contributions to pension funds".

36. *Page 24, line 15:* Immediately after "nature" insert "and cost".

37. *Page 24*: Strike out line 21 and substitute therefor:

"those of the company, stating the cost and basis of".

38. *Page 24, line 30*: Strike out "1963" and substitute "1960".

39. *Page 24*: Strike out lines 40 and 41 and substitute therefor:

"respect of depreciation and obsolescence, and separately in respect of depletion".

40. *Page 25, line 10*: Strike out "1963" and substitute "1960".

41. *Page 26, line 31*: Immediately before "affects" insert "materially".

42. *Page 32*: Strike out lines 16 to 18, both inclusive, and substitute therefor:

"subsection (1) that have most recently been made available to the shareholders prior to such demand."

43. *Page 32, line 33*: Strike out the period and add:

", or by a judge of the said court designated by either of them."

44. *Page 35, line 5*: Immediately after "receive" insert ", unless waived by such auditor,".

45. *Page 35*: Strike out lines 8 and 9 and substitute therefor:

"(6) A company, upon receipt, not less than seven days before a meeting of shareholders, of a written".

46. *Page 35, line 28*: Immediately after "which" insert "and the place where".

47. *Page 35, line 39*: Strike out "and by the auditor".

48. *Page 36, line 31*: Strike out "ordinary" and substitute "registered".

49. *Page 37*: Strike out lines 4 to 9, both inclusive, and substitute therefor:

"125A. (1) The Secretary of State may at any time by notice require any private company to make a return upon any subject that a public company has to report to its shareholders pursuant to section 115 to 122.

(2) Documents filed with the Secretary of State pursuant to this section shall not be open for public inspection except upon the written direction of the Secretary of State given upon the recommendation of the chief justice or acting chief justice of the court of the province in which the head office of the company concerned is situated, or by a judge of the said court designated by either of them."

50. *Page 37*: Strike out clause 37 (renumbered as clause 42) and substitute therefor the following:

"42. The said Act is further amended by adding thereto, immediately after section 128 thereof, the following heading and sections:

AMALGAMATION

128A. (1) Any two or more companies incorporated under this Act, including holding and subsidiary companies, may amalgamate and continue as one company.

(2) Companies proposing to amalgamate may enter into an agreement for the amalgamation prescribing its terms and conditions and the mode of carrying the amalgamation into effect.

(3) The amalgamation agreement shall further set out

(*a*) the name of the amalgamated company;

(*b*) the objects of the amalgamated company;

(*c*) the amount of its authorized capital, the division thereof into shares and the rights, restrictions, conditions or limitations attaching to any class of shares;

(*d*) the place within Canada at which the head office of the amalgamated company is to be situated;

(*e*) the names, callings and postal addresses of the first directors thereof;

(*f*) when the subsequent directors are to be elected;

(*g*) whether or not the by-laws of the amalgamated company are to be those of one of the amalgamating companies and, if not, a copy of the proposed by-laws; and

(*h*) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company and the manner of converting the authorized and issued capital of each of the companies into that of the amalgamated company as determined pursuant to paragraph (*c*) above.

(4) The amalgamation agreement shall be submitted to the shareholders of each class of shares of each of the amalgamating companies at general meetings thereof called for the purpose of considering the agreement, and, if three-fourths of the votes of each class of shares cast at each meeting are in favour of the amalgamation agreement, the secretary of each of the amalgamating companies shall certify that fact upon the agreement under the corporate seal thereof; and thereafter the agreement shall be deemed to have been adopted by each of the amalgamating companies unless the amalgamation agreement is annulled in accordance with the procedure prescribed in this section.

(5) Any shareholders holding at least ten per cent of the shares of any class of shares in an amalgamating company and whose dissent was recorded at a meeting of any class of shareholders called to consider the amalgamation agreement may, within seven days of the final vote on the amalgamation agreement, apply to the chief justice or acting chief justice of the court of the province in which the head office of the company is situated, or to a judge of the court designated by either of them, for an order annulling the amalgamation agreement.

(6) The judge to whom an application under subsection (5) is made shall fix a time and place for consideration of the application, which time shall be within fifteen days of the making of such application; and notice thereof shall be given to each of the amalgamating companies, and to the Secretary of State, in such manner as the judge may direct.

(7) The judge considering the application shall hear and determine the matter raised in the application and shall make an order annulling the amalgamation agreement or dismissing the application, and the order of the judge is final and not subject to appeal.

(8) Where an order is made under subsection (7) annulling an amalgamation agreement, the amalgamation agreement is thereby annulled.

(9) Where a reduction of capital may result from an amalgamation agreement, sections 51 to 56 and section 57 apply, mutatis mutandis, as if the amalgamation agreement represented an application for

supplementary letters patent confirming a by-law reducing the capital stock of the company.

(10) The amalgamating companies shall, within six months of the date of the final vote on the amalgamation agreement, jointly file with the Secretary of State the amalgamation agreement together with a certificate from the secretary of each of the amalgamating companies establishing the percentage of those who voted in favour of the agreement and the percentage of dissentient shareholders, in respect of each class of shares.

(11) Not less than eight days following the final vote on the amalgamation agreements and upon receipt of evidence that no application was made under this section for the annulment of the amalgamation agreement or that, if such an application was made, it was dismissed, the Secretary of State may issue letters patent confirming the agreement; but the requirement of eight days' delay may be dispensed with, if the amalgamation agreement has received the approval of more than ninety per cent of the votes of each class of shares cast at each meeting of the amalgamating companies.

(12) Notice of the granting of letters patent pursuant to subsection (11) shall forthwith be given by the Secretary of State in the *Canada Gazette*.

(13) Upon the issue of letters patent pursuant to subsection (11), the amalgamation agreement has full force and effect and"

(*a*) the amalgamating companies are amalgamated and are continued as one company (in this section called the "amalgamated company") under the name and having the authorized capital and objects specified in the amalgamation agreement; and

(*b*) the amalgamated company possesses all the property, assets, privileges and franchises, and is subject to all the contracts, liabilities, debts and obligations of each of the amalgamating companies.

(14) All rights of creditors against the property, rights, assets, privileges and franchises of a company amalgamated under this section and all liens upon its property, rights, assets, privileges and franchises are unimpaired by the amalgamation, and all debts, contracts, liabilities and duties of the company thenceforth attach to the amalgamated company and may be enforced against it."

51. *Page 39*: Strike out clause 38.

52. *Page 39*: Renumber clauses 39 to 42 as clauses 44 to 47, and insert the following as clause 43:

"43. The said Act is further amended by adding thereto, immediately after section 140, the following section:

'140A. (1) Notwithstanding any other provisions in this Act where a company

(*a*) fails for two or more consecutive years to hold an annual meeting of its shareholders,

(*b*) fails to comply with the requirements of sections 121E or 121F, or

(*c*) defaults in complying for six months or more with any requirement of section 125.

the company is liable to be wound up and dissolved under the *Winding-up Act* upon the application of the Attorney General of Canada to a court of competent jurisdiction for an order that the company be wound up under that Act, which application may be made upon receipt by the Attorney General of Canada of a certificate of the Secretary of State

setting forth his opinion that any of the circumstances described in paragraphs (*a*) to (*c*) apply to that company.

(2) In any application to the court under subsection (1) the court shall determine whether the costs of the winding up shall be borne by the company or personally by any or all of the directors of the company who were knowingly responsible for the company's failure or default as described in subsection (1).' "

53. *Page 40:* Strike out lines 32 and 33 and substitute therefor the following:

"(*e*) Sections 110, 111, and 113 to 115, sections 122 to 125A, and sections 129 to 142."

54. *Pages 41:* Strike out ", and 125A" and substitute therefor ", 125A and 140A".

55. *Pages 41 and 42:* Renumber clauses 43 to 45 as clauses 50 to 52 and insert the following as clauses 48 and 49:

"48. Subsection (1) of section 149 of the said Act is repealed, and the following substituted therefor:

'(1) Sections 66 to 82, sections 96 and 97, section 100 and sections 112 to 125, of Part I apply to companies to which this Part applies, except those loan companies and trust companies to which this Part continues to apply'.

49. Section 153 of the said Act is repealed and the following substituted therefor:

'153. The affairs of the company shall be managed by a board of not less than three directors.' "

56. *Page 42:* Strike out lines 15 to 19, both inclusive, and substitute therefor the following:

"(5) The provisions set out in paragraph (*b*) of subsection (3) of section 22 apply in respect of any body corporate provided with a French or English form of its corporate name pursuant to this section.

(6) This section does not apply to a company incorporated under any of the Acts mentioned in paragraphs (*b*), (*c*) or (*d*) of subsection (1) of section 5 or to a company carrying on a business described in paragraph (*a*) of subsection (1) of that section."

At 9.50 p.m. the Committee adjourned until Wednesday next, November 25th at 9.30 a.m.

Attest:

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, November 24, 1964

The Standing Committee on Banking and Commerce to which was referred back the Report on the Bill S-22, intituled: "An Act to amend the Companies Act", has in obedience to the order of reference of November 24, 1964, further examined the said Bill and now reports the same with the following amendments:

1. *Page 1:* Clause 3 is amended by adding thereto after sub-clause (2) the following:

"(3) Section 3 of the said Act is further amended by inserting immediately after paragraph (*i*) thereof the following:

'(*ia*) "officer" means president, chairman of the board of directors, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or any other person designated an officer by by-law or by a resolution of the directors.'

(4) Paragraph (*n*) of section 3 of the said Act is repealed and the following substituted therefor:

"(*n*) "shareholder" means every subscriber for or holder of a share in the capital stock of the company and includes the personal representatives of a deceased shareholder and every person who agrees with the company to become a shareholder;"

2. *Page 2:* Strike out subclause (2) of clause 5 and substitute therefor the following:

"(2) Subsection (3) of section 5 of the said Act is repealed and the following substituted therefor:

'(3) Nothing in this Part shall be construed to authorize the company to issue any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance.' "

"(3) Subsection (4) of section 5 of the said Act is repealed and the following substituted therefor:

'(4) Where a company

(*a*) carries on a business that is not within the scope of the objects set forth in its letters patent or supplementary letters patent,

(*b*) exercises or professes to exercise any powers that are not truly ancillary or reasonably incidental to the objects set forth in its letters patent or supplementary letters patent,

(*c*) exercises or professes to exercise any powers expressly excluded by its letters patent or supplementary letters patent,

the company is liable to be wound up and dissolved under the *Winding-up Act* upon the application of the Attorney General of Canada to a court of competent jurisdiction for an order that the company be wound up under that Act, which application may be made upon receipt by the Attorney General of Canada of a certificate of the Secretary of State setting forth his opinion that any of the circumstances described in paragraphs (*a*) to (*c*) apply to that company.

(5) In any application to the court under subsection (4) the court shall determine whether the costs of the winding up shall be borne by the company or personally by any or all of the directors of the company who participated or acquiesced in the carrying on of any business or the exercise or the professing of the exercise of any powers as described in subsection (4).' "

3. *Page 6, line 6:* Immediately after "may" insert ", with the consent of such applicants or their authorized representative or agent,".

4. *Page 6:* Strike out clause 8 and substitute therefor the following:

"8. Sections 9 and 10 of the said Act are repealed and the following substituted therefor:

'9. Notice of the granting of letters patent or supplementary letters patent shall be forthwith given by the Secretary of State by one insertion in the *Canada Gazette*.

10. (1) When the letters patent or supplementary letters patent contain any misnomer, misdescription, clerical error or other defect, the Secretary of State may direct the letters patent or supplementary letters patent to be corrected.

(2) Notice of the correction of the letters patent or supplementary letters patent shall be forthwith given by the Secretary of State in the *Canada Gazette* if the correction made causes them to depart materially from the text of the original notice given pursuant to section 9;' "

5. *Page 6:* Strike out lines 30 to 36, both inclusive, and substitute therefor the following:

"limitation attaching to any class of shares.

(1A) The letters patent or supplementary letters patent may provide for the issuing of preferred shares with par value subject to redemption or purchase for cancellation out of capital if the price at which such redemption or purchase for cancellation takes place is not more than the par value of the shares plus a premium or not more than twenty per cent of such par value; but no such redemption or purchase for cancellation shall take place where the company is insolvent or when such redemption or purchase for cancellation would render the company insolvent.

(1b) If any class of shares has attached".

6. *Page 7:* Strike out lines 5 and 6 and substitute therefor the following:

"(2) Subsections (6) and (7) of section 12 of the said Act are repealed and the following substituted therefor:

'(6) All or any part of the authorized capital of a company, except shares having priority as to capital or being subject to redemption or purchase for cancellation, may consist of shares without nominal or par value.' "

7. *Page 8:* Strike out clause 11 and substitute therefor the following:

"11. The said Act is further amended by adding, immediately after section 12 thereof the following:

'12A. (1) In this section, "mutual fund share" means a participating interest in a fund administered by a company, with conditions attaching to the said interest which include a condition providing for the acceptance for surrender thereof by the company on

the demand of the holder at a price determined and payable in accordance with such conditions: and, in relation to mutual fund shares, the words "redemption or purchase for cancellation" in any letters patent or supplementary letters patent shall be deemed to mean acceptance for surrender.

(2) If the only undertaking of the company consists in the administration of such a fund, the letters patent or supplementary letters patent may provide for the issuing of mutual fund shares, and for the conditions governing the acceptance for surrender by the company, on the demand of the holder thereof, of such mutual fund shares, or fractions or parts thereof, that are fully paid, at prices determined and payable in accordance with the conditions set out in such letters patent or supplementary letters patent.

(3) Any mutual fund shares, or fractions or parts thereof, surrendered to the company pursuant to the conditions attached thereto shall be deemed to be no longer outstanding and shall not be reissued by the company.' "

8. *Page 10, line 14:* Immediately after "section" insert "or on the date on which it became a subsidiary".

9. *Page 10, line 44*: Immediately before "capital" insert "authorized".

10. *Pages 11 to 14*: Renumber clauses 15 to 19 as clauses 16 to 20 and insert the following as clause 15:

"15. Subsection (3) of section 21 of the said Act is repealed and the folowing substituted therefor:

'(3) No by-law for the said purpose is valid or shall be acted upon until it is sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders duly called for considering the by-law.

(4) A copy of the by-law certified under the seal of the company shall be forthwith filed with the Secretary of State and published in the *Canada Gazette*.' "

11. *Page 12, line 11:* Immediately after "name" insert "or shall have two seals, each of which shall be equally valid, one showing the French and the other the English form of its name".

12. *Page 12*: Strike out lines 25 to 29, both inclusive, and substitute therefor the following:

"(*a*) that the company has no assets and that, if it had any assets immediately prior to the application for leave to surrender its charter, such assets have been divided rateably among its shareholders or members, and either,".

13. *Page 13*: Strike out lines 25 to 31, both inclusive, and substitute therefor the following:

"(4) Where a company has more than one class of shares

(*a*) the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to any class of shares shall be stated in legible characters

(i) on every share certificate representing that class of shares, or

(ii) by a writing permanently attached to the share certificate; or

(b) there shall be inscribed on each such share certificate, in legible characters, a statement that there are preferences, rights, conditions, restrictions, limitations or prohibitions attached to such class of shares, and that the full text thereof is obtainable on demand, and without fee, from the secretary of the company.

(5) Where a statement referred to in paragraph (b) of subsection (1) is inscribed on the share certificate, the secretary of the company shall furnish, without fee, to the shareholder on demand the full text of any preferences, rights, conditions, restrictions, limitations or prohibitions attached to such class of shares."

14. *Page 14, line 25*: Immediately after "affected:" add "or".

15. *Page 15, line 9*: Strike out "auditor" and substitute therefor "authorized officer of the company".

16. *Pages 14 to 18*: Renumber clauses 20 to 30 as clauses 22 to 32, and insert the following as clause 21:

"21. Section 49 of the said Act is amended by adding the following as subsection (3):

'(3) Notwithstanding anything contained in this section, where pursuant to subsection (1) of section 12 preferred shares are issued providing for redemption or purchase for cancellation out of capital, and such shares are so redeemed or purchased for cancellation, then, upon the filing of notice thereof with the Secretary of State pursuant to section 62, they are thereupon cancelled, and the authorized and the issued capital of the company shall be thereby decreased.' "

17. *Page 16*: Strike out lines 15 to 19, both inclusive.

18. *Page 16, line 20*: Strike out "(4)" and substitute therefor "(3)".

19. *Page 16, line 24*: Strike out "(5)" and substitute therefor "(4)".

20. *Page 16*: Strike out lines 30 to 39, both inclusive, and substitute therefor the following:

"28(1) Section 62 of the said Act is repealed and the following substituted therefor:

'62. When any class of shares is created or becomes subject to redemption or purchase for cancellation or conversion into any other class, and such redemption or purchase for cancellation or conversion is effected in any month, notice thereof, setting forth the number of shares of the class redeemed or purchase for cancellation or converted and the number of shares and the class into which conversion is made in that month, and also setting forth whether and the extent to which any such redemption or purchase for cancellation was made out of capital, shall be filed with the Secretary of State before the end of the following month.'

(2) The said Act is further amended by adding thereto, immediately after section 62 thereof, the following section:

"62A. When a company has issued any class of mutual fund shares within the meaning of section 12A, the company shall each month file with the Department of the Secretary of State a statement giving the number of each class of such mutual fund shares which have been accepted for surrender during the preceding month."

21. *Page 71:* Strike out lines 9 to 17, both inclusive, and substitute therefor the following:

"76A. (1) Where a company makes an offer to the public of its securities in any province or any foreign country wherein it is a general requirement of law that a prospectus or a document of a similar nature be filed with a public authority thereof before an offer of securities may lawfully be made to the public, whether or not the particular offer to the public of the securities of the company in that province or country may by the laws thereof be made without the filing of a prospectus or document of a similar nature, the company need not comply with the provisions of sections 74, 75, 77 and sections 70 to 82 with respect to such offering and, subject to subsection (4), those sections do not apply thereto."

22. *Page 17 line 26:* Immediately after "authority", insert the following: "or by an officer of the company, together with a statement of the date and place of filing,".

23. *Page 18:* Renumber clause 31 as clause 34 and insert the following as clause 33:

"22. Subsection (3) of section 83 of the said Act is repealed and the following substituted therefor:

'(3) For the amount of any dividend that the directors may lawfully declare payable in money they may issue therefor shares of the company as fully paid up, or they may credit the amount of such dividend on the shares of the company already issued but not fully paid up, and the liability of the holders of such shares thereon shall be reduced by the amount of such dividend.' "

24. *Page 18:* Renumber clauses 32 to 37 as clauses 37 to 42 and insert the following as clauses 35 and 36:

"35. Section 86 of the said Act is amended by adding thereto the following as subsection (5):

'(5) Notwithstanding subsection (1), a person may become a director of a company if he becomes a shareholder within ten days after his election or appointment as a director, but if he fails to become a shareholder within such ten days, he thereupon ceases to be a director and shall not be re-elected or re-appointed unless he is a shareholder of the company.'

36. Subsection (3) of section 87 of the said Act is repealed and the following substituted therefor:

"(3) A copy of the by-law certified under the seal of the company shall be forthwith filed with the Secretary of State, and such copy shall be open for inspection, without fee, during normal office hours."

25. *Page 18, lines 31 and 32:* Strike out "within thirty days of any such purchase or sale" and substitute therefor "before the end of the month following that in which such purchase or sale took place".

26. *Page 18, line 39:* Immediately after "hours." add the following:

"The secretary of the company shall also, within thirty days of its receipt by him, furnish to the Secretary of State a copy of each such statement, and the Secretary of State shall make such statements available for inspection by any shareholder of the company at any time during usual office hours."

27. *Page 18, line 40:* Strike out "present" and substitute therefor "disclose".

28. *Page 19, line 6:* Strike out "make" and substitute therefor "furnish to the secretary of the company".

29. *Page 19:* Strike out line 35 and substitute therefor the following:
'by proxy whether or not such proxy is himself a shareholder'.

30. *Page 19:* Strike out lines 40 to 45, both inclusive, and substitute therefor:

"115. (1) Every company shall cause to be kept proper accounting records with respect to all financial and other transactions of the company, and, without limiting the generality of the foregoing, shall cause records to be kept of".

31. *Page 20:* Strike out lines 8 to 45, both inclusive, and substitute therefor:

"(2) The accounting records shall be kept at the head office of the company or at such other place in Canada as the directors think fit, and shall at all times be open to inspection by the directors.

(3) In case the operating accounts of the company are kept at some place outside Canada, there shall be kept at the head office of the company such comprehensive records as shall enable the directors to ascertain with reasonable accuracy the financial position of the company at the end of each three months' period."

32. *Page 21:* Immediately after line 27, add the following:

"(4) Each year, with the consent in writing of all shareholders, a private company that is not a subsidiary of a public company or a company incorporated otherwise than by or under an Act of the Parliament of Canada may dispense with the requirements of sections 117 to 121A, in respect of any particular financial statement specified in the consent, but the financial statement shall be drawn up so as to present fairly the results of the operation of the company for the period covered by the statement."

33. *Page 21, line 37:* Immediately after "situated," insert "or a judge of such court designated by either of them,".

34. *Page 22:* Strike out lines 13 to 15, both inclusive, and substitute therefor:

"(*g*) the provision made for depreciation and obsolescence, and separately for depletion:".

35. *Page 22, line 29:* Strike out ", contributions to pension funds".

36. *Page 24, line 15:* Immediately after "nature" insert "and cost".

37. *Page 24:* Strike out line 21 and substitute therefor:

"those of the company, stating the cost and basis of".

38. *Page 24, line 30:* Strike out "1963" and substitute "1960".

39. *Page 24:* Strike out lines 40 and 41 and substitute therefor:

"respect of depreciation and obsolescence, and separately in respect of depletion".

40. *Page 25, line 10:* Strike out "1963" and substitute "1960".

41. *Page 26, line 31:* Immediately before "affects" insert "materially".

42. *Page 32:* Strike out lines 16 to 18, both inclusive, and substitute therefor:

"subsection (1) that have most recently been made available to the shareholders prior to such demand."

43. *Page 32, line 33:* Strike out the period and add:

", or by a judge of the said court designated by either of them."

44. *Page 35, line 5:* Immediately after "receive" insert ", unless waived by such auditor,".

45. *Page 35:* Strike out lines 8 and 9 and substitute therefor:

"(6) A company, upon receipt, not less than seven days before a meeting of shareholders, of a written".

46. *Page 35, line 28:* Immediately after "which" insert "and the place where".

47. *Page 35, line 39:* Strike out "and by the auditor".

48. *Page 36, line 31:* Strike out "ordinary" and substitute "registered".

49. *Page 37:* Strike out lines 4 to 9, both inclusive, and substitute therefor:

"125A. (1) The Secretary of State may at any time by notice require any private company to make a return upon any subject that a public company has to report to its shareholders pursuant to sections 115 to 122.

(2) Documents filed with the Secretary of State pursuant to this section shall not be open for public inspection except upon the written direction of the Secretary of State given upon the recommendation of the chief justice or acting chief justice of the court of the province in which the head office of the company concerned is situated, or by a judge of the said court designated by either of them."

50. *Page 37:* Strike out clause 37 (renumbered as clause 42) and substitute therefor the following:

"42. The said Act is further amended by adding thereto, immediately after section 128 thereof, the following heading and sections:

AMALGAMATION

128A. (1) Any two or more companies incorporated under this Act, including holding and subsidiary companies, may amalgamate and continue as one company.

(2) Companies proposing to amalgamate may enter into an agreement for the amalgamation prescribing its terms and conditions and the mode of carrying the amalgamation into effect.

(3) The amalgamation agreement shall further set out

(*a*) the name of the amalgamated company;

(*b*) the objects of the amalgamated company;

(c) the amount of its authorized capital, the division thereof into shares and the rights, restrictions, conditions or limitations attaching to any class of shares;

(*d*) the place within Canada at which the head office of the amalgamated company is to be situated;

(*e*) the names, callings and postal addresses of the first directors thereof;

(*f*) when the subsequent directors are to be elected;

(*g*) whether or not the by-laws of the amalgamated company are to be those of one of the amalgamating companies and, if not, a copy of the proposed by-laws; and

(*h*) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company and the manner of converting the authorized and issued capital of each of the companies into that of the amalgamated company as determined pursuant to paragraph (c) above.

(4) The amalgamation agreement shall be submitted to the shareholders of each class of shares of each of the amalgamating companies at general meetings thereof called for the purpose of considering the agreement, and, if three-fourths of the votes of each class of shares cast at each meeting are in favour of the amalgamation agreement, the secretary of each of the amalgamating companies shall certify that fact upon the agreement under the corporate seal thereof; and thereafter the agreement shall be deemed to have been adopted by each of the amalgamating companies unless the amalgamation agreement is annulled in accordance with the procedure prescribed in this section.

(5) Any shareholders holding at least ten per cent of the shares of any class of shares in an amalgamating company and whose dissent was recorded at a meeting of any class of shareholders called to consider the amalgamation agreement may, within seven days of the final vote on the amalgamation agreement, apply to the chief justice or acting chief justice of the court of the province in which the head office of the company is situated, or to a judge of the court designated by either of them, for an order annulling the amalgamation agreement.

(6) The judge to whom an application under subsection (5) is made shall fix a time and place for consideration of the application, which time shall be within fifteen days of the making of such application; and notice thereof shall be given to each of the amalgamating companies, and to the Secretary of State, in such manner as the judge may direct.

(7) The judge considering the application shall hear and determine the matter raised in the application and shall make an order annulling the amalgamation agreement or dismissing the application, and the order of the judge is final and not subject to appeal.

(8) Where an order is made under subsection (7) annulling an amalgamation agreement, the amalgamation agreement is thereby annulled.

(9) Where a reduction of capital may result from an amalgamation agreement, sections 51 to 56 and section 57 apply, mutatis mutandis, as if the amalagamation agreement represented an application for supplementary letters patent confirming a by-law reducing the capital stock of the company.

(10) The amalgamating companies shall, within six months of the date of the final vote on the amalgamation agreement, jointly file with the Secretary of State the amalgamation agreement together with a certificate from the secretary of each of the amalgamating companies establishing the percentage of those who voted in favour of the agreement and the percentage of dissentient shareholders, in respect of each class of shares.

(11) Not less than eight days following the final vote on the amalgamation agreements and upon receipt of evidence that no application was made under this section for the annulment of the amalgamation agreement or that, if such an application was made, it was dismissed, the

Secretary of State may issue letters patent confirming the agreement; but the requirement of eight days' delay may be dispensed with, if the amalgamation agreement has received the approval of more than ninety per cent of the votes of each class of shares cast at each meeting of the amalgamating companies.

(12) Notice of the granting of letters patent pursuant to subsection (11) shall forthwith be given the Secretary of State in the *Canada Gazette*.

(13) Upon the issue of letters patent pursuant to subsection (11), the amalgamation agreement has full force and effect and"

(*a*) the amalgamating companies are amalgamated and are continued as one company (in this section called the "amalgamated company") under the name and having the authorized capital and objects specified in the amalgamation agreement; and

(*b*) the amalgamated company possesses all the property, assets, privileges and franchises, and is subject to all the contracts, liabilities, debts and obligations of each of the amalgamating companies.

(14) All rights of creditors against the property, rights, assets, privileges and franchises of a company amalgamated under this section and all liens upon its property, rights, assets, privileges and franchises are unimpaired by the amalgamation, and all debts, contracts, liabilities and duties of the company thenceforth attach to the amalgamated company and may be enforced against it."

51. *Page 39:* Strike out clause 38.

52. *Page 39:* Renumber clauses 39 to 42 as clauses 44 to 47, and insert the following as clause 43:

"43. The said Act is further amended by adding thereto, immediately after section 140, the following section:

'140A. (1) Notwithstanding any other provisions in this Act where a company

(*a*) fails for two or more consecutive years to hold an annual meeting of its shareholders,

(*b*) fails to comply with the requirements of section 121E or 121F, or

(*c*) defaults in complying for six months or more with any requirement of section 125,

the company is liable to be wound up and dissolved under the *Winding-up Act* upon the application of the Attorney General of Canada to a court of competent jurisdiction for an order that the company be wound up under that Act, which application may be made upon receipt by the Attorney General of Canada of a certificate of the Secretary of State setting forth his opinion that any of the circumstances described in paragraphs (*a*) to (*c*) apply to that company.

(2) In any application to the court under subsection (1) the court shall determine whether the costs of the winding up shall be borne by the company or personally by any or all of the directors of the company who were knowingly responsible for the company's failure or default as described in subsection (1)'."

53. *Page 40*: Strike out lines 32 and 33 and substitute therefor the following:

"(*e*) Sections 110, 111, and 113 to 115, sections 122 to 125A, and sections 129 to 142."

54. *Page 41:* Strike out ", and 125A" and substitute therefor ", 125A and 140A".

55. *Pages 41 and 42*: Renumber clauses 43 to 45 as clauses 50 to 52 and insert the following as clauses 48 and 49:

"48. Subsection (1) of section 149 of the said Act is repealed, and the following substituted therefor:

'(1) Sections 66 to 82, sections 96 and 97, section 100 and sections 112 to 125, of Part I apply to companies to which this Part applies, except those loan companies and trust companies to which this Part continues to apply'.

49. Section 153 of the said Act is repealed and the following substituted therefor:

'153. The affairs of the company shall be managed by a board of not less than three directors.' "

56. *Page 42*: Strike out lines 15 to 19, both inclusive, and substitute therefor the following:

"(5) The provisions set out in paragraph (*b*) of subsection (3) of section 22 apply in respect of any body corporate provided with a French or English form of its corporate name pursuant to this section.

(6) This section does not apply to a company incorporated under any of the Acts mentioned in paragraph (*b*), (*c*) or (*d*) of subsection (1) of section 5 or to a company carrying on a business described in paragraph (*a*) of subsection (1) of that section."

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, November 24, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, to amend the Companies Act, met this day to give further consideration to the bill.

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

The CHAIRMAN: Honourable senators, I call the meeting to order. Our primary purpose here tonight is to have another look at section 128B, which we included in the amendments that we considered to this bill.

The bill itself provided for amalgamation procedures in relation to two or more federal companies, in view of representations made when we heard witnesses, and also in view of what occurred in general discussion in committee.

I should say that subsequently when the subcommittee was sitting, in its view it thought this was a time when perhaps we could give a little leadership in trying to promote some formula for amalgamation between one or more federal companies and one or more provincial companies. We did evolve a procedure. Frankly, I cannot say at this stage that I am satisfied that there is not a grey area there. We have given leadership now, because this has become a public matter, and even our report is a public document. Even this recommendation was discussed by the Canadian Tax Foundation as late as yesterday as a means to find a way out of this situation.

I do not profess to be a constitutional lawyer, and with Senator Roebuck present I am more hesitant than ever.

Senator ROEBUCK: Thank you for the compliment.

The CHAIRMAN: For provincial companies you have the authority, in relation to companies, under an enumerated head in section 92, whereas for the federal authority it is under the general peace and order provisions. The correlation between the responsibilities and rights we gave to the federal authority in this amendment, and to the provincial authority, may have the effect of creating an area where there is doubt.

What concerned me sufficiently to bring this back to committee is that I feel that this bill, with its updating of the provisions of the Companies Act, which came in in 1934, is too good a bill to become lost in an area of rather extensive constitutional discussion. Perhaps some of the constitutional discussion, if you are going to be very particular, would not be entitled to the description "constitutional," yet the real purpose in the point of this bill, when it gets over to the Commons, might get lost in this question, and it might be said that we are attempting to legislate on rights which the provinces enjoy.

Our thought in mind, in working this out, was that we might be able to evolve a formula where you have a provincial and a federal company, and on each side the federal authority has the right to grant what I call an "exeat,"—that is, you may go out from my jurisdiction—or a right to receive.

Then the province, in the same theory, would have the right to grant an exeat and say, "You may go, and be gone for ever," or "We will receive anything sent to us."

We thought that was the basic principle, and the drafting was prepared on that basis. However, there is an area that may provoke some discussion. Somebody had to give leadership, and I think we have done so; but I do not feel so strongly about it, having given that leadership, that I would now say, "Well, as far as I am concerned, the bill must go forward with that provision in it." I think we have sounded the alarm and provoked the interest of enough people that somehow, somewhere, this will be resolved. However, I do not regard it as being our major duty, since it was not in the bill when it came to us, that we should impose that at this time. That is my personal feeling, and I want to consult the committee on that.

Secondly, having got you all assembled to go over the report, while the drafting in some of the sections—and I conferred with others, for example, with Mr. Ryan of the Department of Justice—is without change in substance, some of the drafting in a few of the sections could be improved. I felt that it would be better to make the improvements while you are here, rather than to have them discoverable later, and ultimately to have the bill sent back to us. I think it would be as well to do that before presenting the bill.

The meeting is now open to deal with section 128B.

Senator BOUFFARD: May we have a reading of the new section?

The CHAIRMAN: Yes. It is very long, but I do not mind reading it.

> 128B. (1) A company incorporated under this Act, including a holding or subsidiary company, may amalgamate with any other company (in this section hereinafter referred to as "the provincial company") having the same or similar objects and incorporated under the provisions of any general Act (in this section hereinafter referred to as "the provincial Act") relating to corporations or companies, heretofore or hereafter enacted by the legislature of a province, under which provincial Act such an amalgamation may be authorized; and, if the conditions hereinafter set forth are complied with, such companies may thereafter continue as one company.
>
> (2) The Companies proposing to amalgamate may enter into an amalgamation agreement as hereinafter provided, and in so doing shall comply with the provisions of subsections (2) to (10), both inclusive, of section 128A.

Those are the provisions as to what shall be in the amalgamation agreement, as to objects, directors, and so forth.

> In addition, the amalgamation agreement shall stipulate whether the amalgamated company is to continue under this Act or under the provincial Act.
>
> (3) The provincial company shall provide the Secretary of State with a certificate signed by the Lieutenant-Governor, Provincial Treasurer or such other body or person as may be authorized to confirm the amalgamation agreement under the provincial Act, to the effect that all of the requirements of the said Act have been satisfied, and that he is prepared to confirm the amalgamation agreement, by letters patent or otherwise, as provided for by the said Act.
>
> (4) The Secretary of State may, if he is satisfied that the foregoing provisions have been complied with, issue letters patent confirming the amalgamation agreement.

(5) Upon the issue of the said letters patent by the Secretary of State and subsequent confirmation by the body or person authorized by the provincial Act to confirm the amalgamation agreement

(*a*) the amalgamation agreement shall have full force and effect;

(*b*) the amalgamating companies are amalgamated and continued as one company (in this section called "the amalgamated company") under the name and having the authorized capital and objects specified in the amalgamation agreement;

(*c*) the amalgamated company shall possess all the property, assets, privileges and franchises, and be subject to all the contracts, liabilities, debts and obligations of each of the amalgamating companies; and

(*d*) the amalgamated company shall be deemed to be a company incorporated under this Act, and, subject to the amalgamation agreement, shall have all the powers, privileges and immunities conferred by and be subject to all the limitations, liabilities and provisions of this Act:

Provided that, if the amalgamation agreement stipulates that the amalgamated company is to continue as a provincial company, it shall be deemed to be a company incorporated under the provincial Act, and, subject to the amalgamation agreement, shall have all the powers, privileges and immunities conferred by, and be subject to all the limitations, liabilities and provisions of the provincial Act.

(6) All rights of creditors against the property, rights, assets, privileges and franchises of a company amalgamated under this section and all liens upon its property, rights, assets, privileges and franchises are unimpaired by the amalgamation, and all debts, contracts, liabilities and duties of the company thenceforth attach to the amalgamated company and may be enforced against it.

Those are the provisions. You can see that it is getting away out in front of things, because there is no matching or reciprocal provincial legislation at this time.

Senator THORVALDSON: I should like one point to be clarified, Mr. Chairman. I take it that none of these provisions were in the original bill, but were added by the subcommittee or developed by it?

The CHAIRMAN: It is true that section 128B incorporates some of the provisions in the bill, relating only to the amalgamation of two or more federal companies; but these other provisions are the result of drafting that was done in the subcommittee, and we had the benefit of our Law Clerk and Mr. Lesage. But now the problem arises as to whether we should—

Senator BOUFFARD: What if two companies are authorized by the different authorities; the federal company by the federal Government and the provincial company by the provincial Government?

The CHAIRMAN: Outside this provision I would think the federal and provincial companies could enter into an amalgamation if they had certain agreements. If they wished to continue as a federal company, the amalgamation agreement would provide for the incorporation of a federal company and for the winding up and the handing in of the charter of the provincial company. We were trying to find a shortcut to cover the situation of a true amalgamation rather than a merger. We realize there are some constitutional aspects.

Senator LANG: What are the constitutional aspects? How does this section impinge upon the powers under section 191?

The CHAIRMAN: I will ask Mr. Ryan to answer that question. He is from the Department of Justice and we have been consulting with him.

Mr. J. W. Ryan, Legislation Section, Department of Justice: The first difficulty with section 128B is that it deals directly with provincial companies. It mentions them specifically and purports to effect certain provisions when an agreement has been entered into.

As you know, under section 92 of the B.N.A. Act the incorporation of companies with provincial objects is exclusively under the authority of a provincial legislature. The federal authority for incorporating companies is not generally mentioned. There is mention of the incorporation of banks, but the authority of Parliament falls back on the peace, order and good government clauses and the implied exception that must be made to section 92 when the objects of the company are other than provincial objects. The difficulty here is that section 128B can be said to relate to a provincial company, that is a company that looks entirely to a province for its entity. It will then authorize certain alterations in the structure. It presupposes—and this may be merely a drafting matter—that a provincial and federal company may have the same objects. Now, under the strict wording of the B.N.A. Act they cannot have the same objects. If they have provincial objects they will come under provincial jurisdiction, and if they have other objects presumably they are subject to federal jurisdiction.

The CHAIRMAN: The language is "the same or similar."

Mr. RYAN: That may be, but I do think that it means of necessity the "same objects" here.

Senator MCCUTCHEON: Anybody who has read letters patent will realize it is a matter more honoured in the breach than in the observance.

Mr. RYAN: There is no jurisprudence to assist directly on the point. There is argument on both sides. I am just putting up the one side now for your consideration.

There is also the matter of the provincial corporation that this must affect, because an amalgamation agreement is no good unless there are two or more, and one of these is so totally the creature of a provincial jurisdiction that it cannot be like a natural person which goes from one place to the other. The provincial company goes everywhere with the capacity and entity it starts out with, and the federal authority has little or no jurisdiction over companies with provincial objects unless it is legislating in relation to a matter by which it can directly affect such companies.

Senator POULIOT: Mr. Ryan, don't you think it would be a good thing to refer the matter to the Supreme Court for an opinion? I know it takes a long time. I have seen cases like this before, but it seems to me that it would be a very easy way of clearing the matter.

The CHAIRMAN: Senator Pouliot, as you know some references take a long time to get under way.

Senator ROEBUCK: If it were a mere matter of drafting we would not, of course, refer it to the Supreme Court. It is something we must do ourselves. I have not studied this very thoroughly, and my familiarity with it comes from listening to its being read here. Normally this is something to which I would like to give a little longer study. However there are two or three points which came to my mind as you read.

The first one was that under certain circumstances the new or amalgamated company shall continue under the provincial act. That is legislating in the provincial field directly and expressly. I don't think we have any power to say anything of that kind.

The next point is that the debts of each—that is the provincial debts of the provincial company—shall be a liability to the Dominion or the amalgamated company and vice versa. It seems to me that once again we are legislating under civil rights in making that a liability of a provincial company, under one meaning of the alternative.

The CHAIRMAN: With regard to the aspect of debts, drafting could take care of that. The agreement itself, without giving legislative sanction to that, could provide for the assumption of the debts by the amalgamated company.

Senator ROEBUCK: Yes, but we are giving sanction to legislation involving civil rights. Not only the debts but also the assets are transferred to the provincial company, and this to me looks very much like dabbling in civil rights.

Now, those are just two points that came to my mind as you read, and I think there are probably some others that I would note if I had an opportunity for a more careful study.

The CHAIRMAN: With an amalgamation agreement the concept is something entirely different from a merger. In an amalgamation agreement you take two companies or more and set them down one under the other and press down and out of that you produce an amalgamation which has all the characteristics of everything that went into it. In the strict sense you don't have a transfer.

Senator ROEBUCK: Why don't we confine ourselves to that rather than to what we are doing?

The CHAIRMAN: Having taken one step in regard to amalgamation—and everybody is talking about this question of amalgamation—it may be that once we have started and put something on paper, we may be able in a federal statute dealing with the provincial field to be very specific and very clear and take it out of any grey or doubtful area and make it clear and good law. I realize that may take a little time.

Senator MCCUTCHEON: Mr. Chairman, Mr. Ryan said there are arguments on both sides to be considered with regard to section 128B, and that it could possibly be considered *ultra vires*. I am going on the assumption that the mere fact that it may finally be determined to be *ultra vires* will not affect the other provisions of the bill, or of the act when enacted. If one section is found to be *ultra vires,* that fact does not destroy the validity of the balance of the statute.

The CHAIRMAN: That was not my point. I was afraid that the other sections might get lost in the furore of debate.

Senator MCCUTCHEON: That is the point I want to make. I want to say that from the little discussion we have heard tonight I would like to see this bill passed, and I think the business and financial community would like to see it passed. In order to avoid the kind of debate that has been started tonight, and which will go on for much longer than I want to stay here, I would like to see section 128B struck out.

The CHAIRMAN: Do you so move?

Senator MCCUTCHEON: Yes, I so move.

Senator FLYNN: What about the section this amends?

The CHAIRMAN: This is a new section.

Senator FLYNN: It did not exist before?

The CHAIRMAN: No, not even in any provincial legislation.

Senator BOUFFARD: It did exist with respect to one provincial company. I am referring to the amalgamation of the Quebec Railway, Light and Power Company with the Quebec Autobus Company.

The CHAIRMAN: Yes, but that amalgamation was provided for by statute.

Senator BOUFFARD: Yes, there was a federal statute and a provincial statute.

Senator MCCUTCHEON: I suggest that we deal with this new section next session, and have the remainder of the bill passed this session.

Senator BOUFFARD: Yes, I agree.

The CHAIRMAN: Are you in agreement that section 128B be stricken out?

Senator ROEBUCK: I would hate to see it go that easily because I have not yet had a chance of considering it. If it is understood that we are only postponing it until the next revision then perhaps that would be the better part of wisdom.

The CHAIRMAN: Maybe we can incorporate something in our report to that effect.

Senator ROEBUCK: Very well. I feel the purpose in mind can be carried out, but I caught two points in it that I think are deadly. I have mentioned both of them. I think they completely vitiate that clause as it stands, but I would like to see the object continued and pursued, and the section drafted to a point where I feel we are safe on it.

The CHAIRMAN: Is it the wish of the committee that we strike out section 128B?

Hon. SENATORS: Agreed.

The CHAIRMAN: Now, there is a number of tidying-up amendments to consider. I have been through them. They do not affect the substance of the legislation at all, but they do clarify it in some aspects, and one or two are consequential amendments. Where we have made certain changes it appears that there are consequential amendments to be made elsewhere in the act. I think there are seven or eight of them altogether, and I shall ask Mr. Ryan to point them out.

Mr. RYAN: I am concerned with subsection 4 which starts at page 686 of the *Minutes of the Proceedings* of the Senate. This removes the words:

> a subscriber to the memorandum of agreement.

There is another word, following the deleted words, that relates back to "subscribers," which should come out also.

The CHAIRMAN: Yes. If you look in the act you will see that we are striking out those words in the definition of a shareholder. That definition reads:

> "Shareholder" means every subscriber for or holder of a share in the capital stock of the company, and includes the personal representatives of a deceased shareholder—

Then we are striking out the next words, which are

> —a subscriber to the memorandum of agreement—

and then it goes on:

> —and every other person who agrees with the company to become a shareholder.

"Other" in that context is unnecessary, so we have striken it out. That is the first item, and I take it that that is carried.

Hon. SENATORS: Agreed.

Mr. RYAN: The second item is on the same page at the bottom in subsection (5). This refers to a director who knowingly and willfully is responsible for

non-compliance with the requirements outlined in subsection (4) above. There are no requirements outlined in that subsection. What has happened is that there has been a failure to comply, and there is a description of the failure. The language should be altered to make an exact reference to that position.

The CHAIRMAN: The proposed language is what?

Mr. RYAN:

> —any or all of the directors of the company who participated or acquiesced in the carrying on of any business or the exercise or the professing of this exercise of any powers as described in subsection (4).

Hon. SENATORS: Agreed.

The CHAIRMAN: What is the next one?

Mr. RYAN: The next one concerns Items 4, 5, 6 and 7. These are all tied together. The amendments insert the words "or supplementary letters patent" in section 10, but section 10 has a reference back to section 9.

The CHAIRMAN: It simply means that there is one more "or supplementary letters patent" which should be put in. Is that agreed?

Hon. SENATORS: Agreed.

Mr. RYAN: Item 8 at the top of page 688 goes too far because I do not think it was the intention to remove all of clause 10, but only subsection (1).

The CHAIRMAN: That is right.

Mr. RYAN: There is also here a matter of two provisos. Experience has indicated that if you use provisos you get into all sorts of difficulties with respect to meaning. It is suggested that the proviso matter be put into the form of subsections.

The CHAIRMAN: Subsections (a) and (b). You are not changing the substance, but just making it more orderly. Is that agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: The next one is with respect to section 12A, which is Item No. 9 on page 688 of the *Minutes of the Proceedings* of the Senate.

Mr. RYAN: Yes. There is only a very slight amendment here for the purpose of a cross reference in section 62A. It is a little clearer if you take out "this Act" and insert "this section", and the new section 62A refer back to section 12A.

The CHAIRMAN: Is that agreed?

Hon. SENATORS: Agreed.

Mr. RYAN: The next item is Item 13 on page 689. The term "each of equal authenticity" is a description, and it is not clear from the words whether you intend them to have equal authenticity or are describing a situation that exists. I think perhaps it would be clearer if the words were "which shall be equally authentic."

The CHAIRMAN: This is a case of where the bill provided for the seal of the company to bear the name in English or French. It was our thought that with respect to some company names you would have a seal of tremendous size. Therefore, we did not disturb that, but we went on to say that as an alternative you could have two seals, one in English, and one in French, both of equal validity. This phrase is legislative, so the suggestion is that we have two seals each of equal authenticity, and now we say:

> —shall have two seals which shall be equally authentic.

Senator THORVALDSON: Is it "each of which shall be equally authentic"?

The CHAIRMAN: Yes, so that that becomes legislative instead of descriptive.

Hon. SENATORS: Carried.

Mr. RYAN: The next one is Item 15 where there are again two legislative sentences. It would be better if they were divided into subsections, and perhaps a little tabulation would be better.

The CHAIRMAN: That is not changing the substance. I think the division of it into two subsections is a better way of doing it.

Senator THORVALDSON: In the fourth from last line you will notice it begins a new section.

The CHAIRMAN: Yes, that will be a new subsection (4) (b).

Mr. RYAN: Then, section 62A, as I mentioned, should make a cross reference back to section 12A.

The CHAIRMAN: Yes. Is that carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Then, Item 26.

Mr. RYAN: No, Item 23. This is a case of where one may read the words that have been added in two ways and thus extend the application of the section. This arises with—

The CHAIRMAN: Just a minute. This is a section dealing with prospectuses. The Companies Act, as I pointed out the other day, provides that where there is an offering of shares to the public, prospectuses shall be filed. We have now the development of provincial security commissions, and we have foreign countries with their security commissions, and it did seem loading it on pretty thick to require the filing of prospectuses with those commissions and then the filing of prospectuses in compliance with the federal act. When the bill came to us it provided that where the law of a province or of a foreign country provided that a prospectus must be filed before shares can lawfully be offered for sale, then the requirement for the filing of prospectuses under the federal act was waived. We thought it should go further, and that it should also provide that where there are transactions exempt from filing under the provincial securities law, or under a foreign securities law, that that exemption should also be recognized. In putting it into operation we used language which might be broader than what was intended, and Mr. Ryan has a suggestion to make that will take care of that.

Mr. RYAN: The suggestion is to re-cast the case to which the section applies by the words:

> Where the company makes an offer to the public of its securities in any province or any foreign country wherein it is a general requirement of law that a prospectus or a document of a similar nature be filed with a public authority thereof before an offer of securities may lawfully be made to the public, whether or not the particular offer to the public of the securities of the company in that jurisdiction may by the laws thereof be made without the filing of a prospectus or document of a similar nature, the company need not comply . . .

and continuing the words of section 76A (1).

Senator MCCUTCHEON: You are dealing with a case where you are offering shares in a jurisdiction where there are no security requirements?

The CHAIRMAN: No prospectus requirements. Is that carried?

Hon. SENATORS: Agreed.

The CHAIRMAN: Item 26.

Mr. RYAN: Subsection 5 makes reference to subparagraphs 1 to 4 of section 86. Subsections 2 to 4 have no connection with the proposed amendment and the reference therefore is too broad and causes some confusion.

The CHAIRMAN: Therefore, we are just striking out the reference.

Senator McCUTCHEON: How will that read then?

The CHAIRMAN: It simply reads:

> Notwithstanding any provision in subsection 1, a person may become a director . . .

Hon. SENATORS: Agreed.

The CHAIRMAN: Item 34.

Mr. RYAN: The meaning of "foreign company" in the second line of the proposed subsection 4 is somewhat doubtful. I presume that it is intended to refer to a company other than one incorporated by the Parliament of Canada.

The CHAIRMAN: The proposal is to substitute for the words "foreign company" the words "any company incorporated otherwise than by or under an act of the Parliament of Canada".

Hon. SENATORS: Agreed.

The CHAIRMAN: The next item is on page 693 of our *Minutes and Proceedings,* subparagraph (5) of section 128A—the amalgamation of two or more federal companies. Again, this does not affect the substance but in the drafting it will clarify it. Will you proceed with that, Mr. Ryan?

Mr. RYAN: It is again a matter of removing the proviso and redrafting the section so that the contents of the proviso are related back to the matter that they qualify. I can re-read it for you. It will read:

> Any shareholders holding at least 10 per cent of the shares of any class of shares in an amalgamating company and whose dissent was recorded at a meeting of any class of shareholders called to consider the amalgamation agreement may, within seven days of the final vote on the amalgamation agreement, apply to the chief justice or acting chief justice of the court of the province in which the head office of the company is situated, or to a judge of the court designated by either of them, for an order annulling the amalgamation agreement.

The CHAIRMAN: This is a rearrangement and I agree it is better.

Hon. SENATORS: Agreed.

The CHAIRMAN: Then, on the top of the next page, page 694, subsection (7), I may say we must be more courteous when we use the word "judge" and follow the form which should be recognized. Would you develop that, Mr. Ryan?

Mr. RYAN: There were two things about subsection (7). There is another sentence there which should come into a separate subsection.

Then, instead of using the words "the said judge", we propose to insert "the judge to whom application is made" or "the judge considering the application".

The CHAIRMAN: We must be polite.

Mr. RYAN: That involves renumbering: (8) becomes (9), (9) becomes (10), (10) becomes (11) and (11) becomes (12), because we are taking the last sentence of (7) and making it a separate paragraph, as this is a separate subject matter.

Hon. SENATORS: Agreed.

Senator KINLEY: On page 19 of the bill, dealing with the votes of shareholders, the proposed new section 103(2) says:

> In the absence of other provisions in that behalf in the letters patent or supplementary letters patent, at all meetings of shareholders every shareholder is entitled to give one vote for each share then held by him and such vote may be given in person or by proxy, if such proxy is himself a shareholder...

The CHAIRMAN: Senator, would you stop right there, please. In our amendments, we have taken out the requirements.

Senator KINLEY: That is what I am asking about. In the amendment, you let strangers come into the meeting and vote.

The CHAIRMAN: If the shareholder appoints a proxy who is not a shareholder.

Senator KINLEY: "If such proxy is himself a shareholder"—you have taken that out.

The CHAIRMAN: Yes.

Senator KINLEY: Then you do not have to be a shareholder to become a proxy. That is the change.

The CHAIRMAN: The shareholder himself either votes on his shares or gives a proxy to some person who is his agent, to vote them for him. Under the federal act the requirement has been that the person who gets the proxy from this other shareholder, must himself be a shareholder.

Senator KINLEY: Yes.

The CHAIRMAN: That is not so in most provincial statutes. We felt that a shareholder should be free to appoint any person in whom he has confidence as his proxy to attend the meeting and vote on his behalf. So we took out the qualification.

Senator KINLEY: That is what I wanted to ask you. You took out the qualification of a proxy shareholder, that is, you can give a proxy to anybody.

The CHAIRMAN: That is right.

Senator KINLEY: That is something new, is it not?

The CHAIRMAN: It is new in the federal act, but it is not new in provincial statutes.

Senator KINLEY: I did not say that. All I want to say is that the committee took it out of this act and it was in the bill. Is not that true?

The CHAIRMAN: That is right.

Senator KINLEY: There were only 11 members here when Senator Hugessen made an amendment to section 128A, and I think I was the only one who voted with him here on our objection to section 128A.

The CHAIRMAN: Senator, may I suggest that, since the committee voted on it and it is incorporated in our report, possibly the time and place to discuss that would be when the report is being considered in the Senate.

Senator KINLEY: I agree with that. I spoke with Senator Hugessen when he was here earlier and he said he was not going to bring this up now but that be would bring it up when the report is discussed in the house. I agreed with him, and I just want to say that I am not agreeing now to section 128A being approved here.

The CHAIRMAN: We approved of some changes, not of substance.

Senator KINLEY: It was not very consequential.

The CHAIRMAN: Thank you, senator.

Item 54:

Mr. RYAN: This is on page 696.

The CHAIRMAN: That corresponds to the difficulty which arose on the other item. The next one is page 696, item 54. We put the same thing in there as we did earlier, taking out these words "knowingly and willfully", as the basis on which you would charge a director the cost of these proceedings forcing a compulsory winding up and we are substituting these words:

> In any application to the court under subsection (1) the court shall determine whether the costs of the winding up shall be borne by the

company or personally by any or all of the directors who were knowingly responsible for the company's failure or default.

This is where they fail to make returns and do such things. We felt that the directors who were not a party to that should not be subject to the penalties; but where any directors knew that the company was in default and took no steps, causing the Secretary of State to take these proceedings of applying to the court for winding up of the company as a basis for forcing them to do something, those directors who made that situation possible should, if the judge thought right, be assessed the cost.

Senator MOLSON: Are you leaving in "knowingly" or taking it out?

The CHAIRMAN: We are leaving in "knowingly"—"who were knowingly responsible for the company's failure or default".

Hon. Senators: Agreed.

The CHAIRMAN: Item 57. I know you will say yes to this right away. When we were enumerating certain sections in the Companies Act which would apply to Part II companies, special act companies, we got the enumeration a little out of order. We put section 112 and section 125 and then we came to section 100. So we will move it back.

Hon. SENATORS: Agreed.

Senator ROEBUCK: Mr. Chairman, I am not too well satisfied with this matter of the seal. What was the word you took out, putting "authentic" in its place?

The CHAIRMAN: We did not do that.

Senator ROEBUCK: You struck out some word and substituted "authentic."

The CHAIRMAN: No. The wording as proposed by us was in connection with these two seals—that as an alternative the company shall have two seals, each of equal authenticity, one showing the French form of its name, and the other the English form. We thought the words "each of equal authenticity," might be said to be descriptive, but we changed the language to say "each of which shall be equally authentic," so as to use legislative instead of descriptive language.

Senator ROEBUCK: I am still not very well satisfied with "authentic." Authentic means what it purports to be; but what you are really attempting to say is that the one shall be equally valid with the other—that they are of equal validity.

The CHAIRMAN: I thought that is what we said.

Senator ROEBUCK: No, you said "equally authentic."

The CHAIRMAN: Isn't that what authentic means?

Senator ROEBUCK: No. It means that it is not bogus or sham, but what it purports to be.

The CHAIRMAN: It purports to be a seal of the company.

Senator ROEBUCK: But that is not exactly what you mean. You mean that it has equal validity. Without a more careful study of the language, I think that is what you are drafting there.

The CHAIRMAN: I would like to think about it. If I still come around to the conclusion that I think this language is all right, and you do not, then let us—

Senator ROEBUCK: No—I think "validity" is what you mean, that it is equally valid for the purpose for which it is intended.

The CHAIRMAN: We still have a quorum. Is there any choice between "valid" and "authentic?"

Mr. RYAN: My first choice was "valid," but I used the terms of the amendment as much as I could.

The CHAIRMAN: What is the view of the committee?

Senator FLYNN: "Valid".

Hon. SENATORS: Agreed.

The CHAIRMAN: Is it the wish of the committee that when I report tomorrow, the amendments we have made tonight shall be incorporated in the report?

Hon. SENATORS: Agreed.

The committee adjourned.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-28, intituled:
"An Act respecting The Quebec Board of Trade".

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, JUNE 10, 1964

WITNESSES:

Mr. Renault St. Laurent, Counsel, Quebec Board of Trade. Mr. Roger Vezina, General Manager, Quebec Board of Trade. Mr. Raynald Belanger, Board of Trade of St. Romuald d'Etchemin

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REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21047—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*
The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (Ottawa West).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 28, 1964:

"Pursuant to the Order of the Day, the Honourable Senator Bouffard moved, seconded by the Honourable Senator Crerar, P.C., that the Bill S-28, intituled: "An Act respecting The Quebec Board of Trade", be read the second time.

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

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21047—1½

REPORT OF THE COMMITTEE

WEDNESDAY, June 10, 1964.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-28, intituled: "An Act respecting The Quebec Board of Trade," have in obedience to the order of reference of May 28, 1964, examined the said Bill and now report the same with the following amendments:

1. *Page 16:* Delete clause 15.

2. *Page 6, line 16*: Strike out "16" and substitute "15".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 10, 1964.

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

Present: The Honourable Senators: Hayden (*Chairman*), Beaubien (*Bedford*), Blois, Bouffard, Bourget (*Speaker*), Burchill, Crerar, Dessureault, Fergusson, Flynn, Gershaw, Hugessen, Irvine, Isnor, Lang, Leonard, McCutcheon, McLean, Paterson, Pouliot, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt, Walker, White and Willis. (27)

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

On motion of the Honourable Senator Blois it was RESOLVED to report recommending thta authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-28.

The following witnesses were heard: Mr. Renault St. Laurent, Counsel, Quebec Board of Trade. Mr. Roger Vezina, General Manager, Quebec Board of Trade. Mr. Raynald Belanger, Board of Trade of St. Romuald d'Etchemin.

On motion of the Honourable Senator Thorvaldson it was RESOLVED to delete Clause 15 from the Bill and re-number clause 16 as clause 15.

On motion of the Honourable Senator McCutcheon it was RESOLVED to report the Bill with the following amendments:

1. Delete clause 15.
2. Re-number clause 16 to read 15.

At 10.50 a.m. the Committee concluded its consideration of Bill S-28, proceeding to the next order of business.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, May 10, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-28, respecting The Quebec Board of Trade, met this day at 9.30 a.m.

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

The CHAIRMAN: I call the meeting to order. We have several bills this morning. The first one is Bill S-28, an act respecting The Quebec Board of Trade.

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

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

Representing the Board of Trade we have Mr. Renault St. Laurent, and Mr. Roger Vezina, who is the secretary of the Quebec Board of Trade; Mr. Belanger, the Chamber of Commerce at St. Romuald d'Etchemin, Mr. Gaston, who is counsel for ten of the Boards of Trade of Metropolitan Quebec; and Mr. Bezin who is president of the Chamber of Commerce of Levis. These are the appearances, not necessarily appearing for or against the bill at the moment—That will clarify itself.

Mr. St. Laurent, have you organized who is going to make the presentation in support of the bill?

Mr. ST. LAURENT: Yes.

The CHAIRMAN: Are you going to do it?

Mr. ST. LAURENT: Yes sir.

The CHAIRMAN: Very well. Will you proceed, please?

Mr. Renault St. Laurent: As stated in the explanatory notes, Mr. Chairman the purposes of the bill are to modernize and consolidate the corporate structure of the corporation, to change its name from The Quebec Board of Trade to Board of Trade of Metropolitan Quebec—and in French, Chambre de Commerce de Québec Métropolitain. This bill, as stated in the explanatory notes, amounts to a restatement of the corporation's organization, functions, duties and powers.

The corporation started its corporate existence in 1842. It was organized under the name of Quebec Committee of Trade in 1909, and the association was for the purpose of the promotion and economic defence of Quebec; and it was, as stated by the historian who wrote the history of the Quebec Board of Trade, the product of the solidarity of the Quebec merchants who had to face the American competition in the West Indies and that of northern Europe on the English market.

The reasons for requesting that the name "Metroplitan" be added is to better situate in the mind of the public, and especially in the minds of these

5,000 correspondents who are annually in touch with the Quebec Board of Trade, the territories which, for many years, and particularly in recent years, have been the object of the Board of Trade's major endeavours in the promotion of the development of any lawful trade or industry, as stated in section 3 of the bill, and the fostering of the economic and social welfare of the City of Quebec and the metropolitan area of Quebec. Because of the fact that actually in years past it has promoted the development of Quebec and metropolitan Quebec, it is felt by the members and the board of this corporation that it would simply confirm by its title what it has been doing for many, many years with the addition of this word "metropolitan" to its name.

Some of the major endeavours that the board has undertaken in the interests of the metropolitan area—there are many of them, but I have a few here which if I may be permitted I should like to mention. They have worked on the preparing of a submission on the sharing of sales tax for the whole region of Quebec. They have promoted and organized the first winter carnival of the Quebec region, and they have participated in the subsequent carnivals in the past 10 years. They have prepared a report on the cement industry in the area, and this report, I understand, is responsible for the establishment of a large modern cement plant in a town which is a suburban municipality of Quebec, and not located within limits of the city. They have made several studies of reports on the port of Quebec. They have a jurisdiction over the office of the port warden which they have exercised practically since the port warden was appointed by Ottawa, and they are responsible for recommending the person who is to be appointed Port Warden and any assistants. They exercise control over the examination which the candidates have to take before they can be appointed to this office, and returns have to be filed with them, and they have jurisdiction for the removal of a port warden or any depupty for misconduct or neglect of duty and so forth.

This port warden has jurisdiction over the port of Quebec which extends away beyond the limits of the city of Quebec. It goes from the Quebec Bridge to Ste. Petrofille. It embraces the two shores, Quebec and the south shore including Lévis, Lauzon and so forth. The Quebec Board of Trade has worked for many years on the improvement of air services. They were mainly responsible for the establishment of the new airport in Quebec. That of course was not established within the city limits—that would not have been possible—but they succeeded in having it established outside.

They have recommended the establishment of a postal terminus, and domicile delivery for the whole region, and have contributed a substantial amount of money in 1954 and 1955 for the upkeep of Boulevard Talbot from Quebec to Chicoutimi. This was advantageous not only to Quebec City. They have prepared briefs in favour of a television station in Quebec, and later a C.B.C. station in Quebec. The television station was established in 1954 and the C.B.C. is preparing to establish a station in our city at the present time.

The private station is in Ste. Foy but the Quebec Board of Trade considers it is one of their responsibilities for the development of the general area. It has prepared and submitted a brief to the Fowler Commission on Radio and Television, and prepared and submitted a brief on the economic prospects of Quebec metropolitan area. This was submitted to the commission on economic prospects in Canada. It has submitted a brief on the coastal trade, and it has taken part in arbitration of business hours in the entire Quebec region, and tried to find a solution to the problem which is of interest to the whole area. It has published the only regional tourist map which on one side shows old Quebec and on the other the whole area, and this has been published and 35,000 copies distributed to tourists. It has made studies of the metropolitan highway problems and submitted a brief to the Quebec Minister of Roads,

and it has also prepared a study and supported the construction of the Champlain ship terminal which is located on the Quebec side and which I submit is beneficial to the whole area, but it also has made studies of the improvement of rail communications between Quebec and the City of Montreal.

All these I mention to indicate the work done by the Board of Trade of Quebec and to show that it has been beyond the limits of the city, and it has been in the interests of the whole area.

Its objects are stated in section 3 of the bill, and I submit that in section 15 where it is stated that:

> The territorial jurisdiction of the Corporation shall include the city of Quebec and other municipalities or territories included in the Quebec metropolitan area,—

does not actually give any power to the Quebec Board of Trade over these areas but simply enables the Quebec Board of Trade to do the things in other areas within greater Quebec that it has been doing in years past. We seek this in order to protect ourselves. It does not imply any danger to any other interests because as is stated in the remainder of the section:

> . . . However, this jurisdiction shall not affect any authority allocated to the local boards of trade already constituted and which operate lawfully in the municipalities or territories, other than the city of Quebec, included in the above-mentioned area.

Some question has arisen as to the possibility of conflict of names because of the word "Metropolitain" or "Metropolitan". It is conceded that there is one corporation known as le Bureau de l'Industrie et du Commerce de Quebec Metropolitain Inc., which is translated in English as The Industrial and Trade Bureau of Greater Quebec Inc. I submit, Mr. Chairman, that this is a provincial corporation. It was founded for certain purposes. The initiation of its foundation was taken by the Board of Trade of Quebec.

At one time, and for a certain number of years, there was an industrial commissioner who was employed by the City of Quebec, and when he no longer existed as such it was felt that in order to get the support of the suburban municipalities it would be in order and quite proper to invite other suburban municipalities, their local boards of trade or chambers of commerce, to support this project, and the only way it could be done was by creating a separate corporation.

That was not done by the Board of Trade of Quebec, but for this organization which replaced the Board of Trade of Quebec. Anything that could contribute to the improvement of the economic situation in that area The Quebec Board of Trade has in the past promoted and assisted and encouraged, and the Board of Trade is a member of this Industrial and Trade Bureau of Greater Quebec Inc.

I submit that the fact that this organization or corporation has a name containing the words "Québec Metropolitain" which is translated as "Greater Quebec" will not in any way create any conflict.

I think I should add here, Mr. Chairman, that the Board of Trade of Quebec has a permanent seat on the National Chamber of Commerce, and I think as a local board it is the only one in the Quebec area. It is also a member of the Canadian section of the International Chamber of Commerce, and it has quite a lot of influence in that chamber.

It is felt, because of the things it has done in the past and the things it plans to do for the Quebec area in the future, that the addition of the word "Metropolitain" to its name would add to its prestige. The Quebec area is becoming more and more important. "Metropolitan" is easily recognized as

something that can be added to names of cities like Toronto and Montreal. We have Metropolitan Toronto, Metropolitan Montreal, Metropolitan Vancouver, and I submit that we should now be saying "Metropolitan Quebec".

I would hope that those with whom the Board of Trade has worked in the past will realize that we are not trying to take anything away from anyone. We are simply trying to create a situation where, through our charter, we will have local recognition of what we have actually been doing, especially during the last 75 years.

The CHAIRMAN: Are there any questions?

Senator BOURGET: Mr. Chairman, I would like to ask Mr. St. Laurent a question. You have just mentioned some projects on which the chamber is working on the Quebec side. Could you tell us how many contracts have been realized by the Chamber of Commerce on the south shore?

Mr. ST. LAURENT: I think I would be more at ease if the managing director of the Board of Trade of Quebec were allowed to answer that question.

Mr. Roger Vezina, Secretary, Quebec Board of Trade: In many circumstances we have made recommendations for Quebec at large. Just as an example, a few months ago we studied the network of roads in the Quebec area, and certainly the most important of our recommendations was that the old number 2 highway between the Quebec bridge and the Rond Pont de Lévis be enlarged. This is just an example of what we have in mind in the Quebec Board of Trade. The chamber at Lévis is recommending the enlarging of the Boulevard Charest, which does not go to Quebec City but which goes out of Quebec City up to Ste. Foy. That is an example of the preoccupation of the Quebec Board of Trade, and it is in the original spirit because we think we are all interdependent.

Senator BOURGET: I quite agree with that, Mr. Vezina, but the study that was made regarding roads in the Quebec area, including Lévis, and a tunnel, was prepared by le Bureau de l'Industrie et du Commerce de Quebec Metropolitain, was it not? It made all the surveys. I have a report in my office of the study that was made, and it was not made by your chamber but by le Bureau de l'Industrie et du Commerce de Quebec Metropolitain.

Mr. VEZINA: We have requested—it is beyond our financial means, you know, to make a very serious study. This involves a matter of expertise which costs about $300,000 or $400,000, so we requested the department to have a survey made on that. This is just another example of what we have in mind. I think at the time the industrial bureau took care of that problem, but it was not its main objective which is the obtaining of new industry.

Senator BOURGET: Would you not agree with me that all the work—the surveys, the studies, the reports and the maps—was all done by le Bureau de l'Industrie et du Commerce de Quebec Metropolitain? Is not that a fact?

Mr. VEZINA: I admit they have made a study of that, but I can mention that the Quebec Board of Trade has made more important studies. We published a brief on the economic prospects of the metropolitan area.

Senator THORVALDSON: Mr. Chairman, while we are waiting for a French reporter may I ask Mr. St. Laurent a question? I notice that the date of incorporation of the control Board of Trade of Quebec is 1841. As a matter of personal interest can you tell me if that was the first Board of Trade incorporated in Canada?

Mr. ST. LAURENT: No, it was the second. The first board was in Halifax which was established in 1798, I understand. I am sorry, much before that is Halifax 1775.

Mr. VEZINA: 1798; and Quebec Board of Trade, 1809, and incorporated in 1842.

Senator THORVALDSON: It is very interesting that this board of trade was incorporated under the old union of the provinces in 1841. I was wondering if the Toronto Board of Trade was that old. I guess it is not.

Senator WILLIS: I acted for them last year in their application.

Senator THORVALDSON: Would you refer to the last Section 16, the repeal clause. There was a section relating to the Quebec Board of Trade passed as Chapter 99 of the Statutes of 1899. I assume that was an incorporation under the Boards of Trades Act of the Dominion, which I think had been enacted at that time.

Mr. St. LAURENT: There were very minor modifications made to the charter of the board of trade, the purpose being to replace the words "being inhabitants and using trade and commerce within the said City of Quebec" by the words "identified with trade, commerce or manufactures, to enable the board of trade to recruit people and accept in its corporation citizens who did not reside in the City of Quebec.

As a matter of fact, there are 500 members from outside Quebec City and perhaps half of these are corporations which are not located within the Quebec area but who find it most beneficial to belong to this Quebec Board of Trade.

Senator THORVALDSON: Thank you.

Senator VAILLANCOURT: You mentioned Montreal Chambre de Commerce. The name is Chambre de Commerce du District de Montreal.

Mr. ST. LAURENT: That would cover a much greater area than the Island of Montreal.

Senator VAILLANCOURT: It is not much larger than the Island of Montreal. For us this new name "Metropolitan" gives a distinction between the Bureau of Commerce and the Chambre de Commerce Metropolitan. We are mixed up all the time by these. We are afraid you take all of the south shore with the Quebec Metropolitan. We are afraid you ignore the Lévis, St. Romuald, Lauzon areas and that all Quebec will be cut down to Quebec city, against our travellers and the local travellers will disappear.

Mr. ST. LAURENT: I submit that this is not our intention and in the past we are not seeking anything more than we have had in the past. If these sections are read carefully, you will see that we have no legal jurisdiction over these people. They are free, as we are very honoured to have one of Senator Vaillancourt's industries in our Quebec Board of Trade and I know that several others on the south shore, such as Davy Shipbuilding, Geo. T. Davy & Sons Ltd. and Baribeau Industries.

Senator VAILLANCOURT: Only three, that is all.

Mr. VEZINA: It is impossible to mistake the Metropolitan Board of Trade in regard to outside people. We are registered as Quebec Board of Trade and are in the international directories of boards of trades and chambers of commerce all over the world. We receive thousands of letters from outside, coming from every area in the world and from time to time we receive letters from people who are making industrial surveys with the intention of establishing new industries. At that time we send a letter giving the information. So there is no possibility of confusion with any regional point of view or with any outside point of view anywhere in Canada.

Senator VAILLANCOURT: Is it necessary to have the word "Metropolitan" if you receive thousands of letters addressed to Quebec Chamber of Commerce from all parts of the world?

Mr. VEZINA: But we have to answer our letters and this is a matter of prestige for our region. We co-operate. There is a social reason. It is to let the people living outside have in mind that our objectives are all for the region of Quebec. So it is in the public interest.

The CHAIRMAN: This is an interesting debate that is going on between Senator Vaillancourt and Mr. Vezina.

Mr. VEZINA: But you know, senator, he is one of our members. The senator is a member of Quebec Board of Trade.

The CHAIRMAN: The purpose here is to develop the evidence in support of or against this bill and these witnesses are exposed for questioning. If we are going to argue the point we will argue it afterwards, but we are not going to argue with the witnesses.

Senator VAILLANCOURT: We are only on one word "Metropolitan". We are not against the bill. That is Quebec Metropolitan.

Senator BOURGET: I think the purpose in the question was to show to the members of the committee that the interests of the Chamber of Commerce of Quebec is limited in fact and in practice to the Quebec area, to the City of Quebec, not at all to the south shore, not to Lévis, Lauzon, St. Romuald d'Etchemin. This is the purpose of our question. That is the reason why I asked Mr. St. Laurent and Mr. Vezina if the Chamber of Commerce of Quebec has got anything for the development or to promote the interests of the south shore. So far we did not have any answer to that.

The CHAIRMAN: Mr. St. Laurent, have you an answer?

Mr. ST. LAURENT: I want to mention one item which was mentioned recently. There was a serious collision in the river some time ago and great efforts were made by the Quebec Board of Trade to have this ship repair directed to Lauzon and it was actually done there. They are under the impression that it was their intervention which was responsible for this. It was a $750,000 job. That is one instance.

Senator BOURGET: To that effect, I think the Member of Parliament for Lévis, and two senators, took a great interest in the work the shipyards can get in Lauzon. Of course yon can ask the Quebecers. They are in Quebec.

The CHAIRMAN: Are there any other questions you want to ask Mr. St. Laurent or Mr. Vezina?

Senator BOURGET: There is just one point. Mr. St. Laurent stated that the word "Metropolitan" would add prestige. Mr. Vezina said he is receiving piles of letters. Therefore, without adding the word "Metropolitan" to the Quebec Chamber of Commerce, it still has prestige, because it is receiving hundreds and hundreds of letters.

Mr. ST. LAURENT: Probably we would get twice as much.

The CHAIRMAN: Are there any representations to be made against the bill or against the name?

Mr. R. Belanger, Chamber of Commerce, St. Romuald d'Etchemin: Honourable senators, I am respresenting the Chambers of Commerce of Lévis, Lauzon, St. Romuald, Charlesbourg and Beauport. I also understand there are objections from the Chamber of Commerce of Loretteville and others. I have not got a mandate from them.

There is no question for us to make a quarrel with our good neighbours of Quebec City but we just want to point out the effect of the bill. Its avowed purpose will be to create a new chamber that will speak in the name of all the municipalities that are in the Metropolitan area of Quebec and that will have the prestige of the Metropolitan Chamber, although it will be a local chamber of commerce, that is the Chamber of Commerce of Quebec City.

There are many reasons why the local chambers object to the bill. It is because in many fields the interests of Quebec City are different from those of the surrounding municipalities.

For instance, the federal Government a few years ago built a wharf in Lévis that cost over $1 million. A private company wanted to lease that wharf, to build there. During a whole year the Quebec Chamber of Commerce opposed that project and when they gave their consent it was too late and the project was abandoned.

With regard to the question of the roads and traffic between the two cities at the two shores of the river, a committee is studying the question of traffic facilities between the two shores of the St. Lawrence River between Lévis and Quebec. Recently a member of that committee, from the Chamber of Commerce of Quebec, said he would withdraw from that committee. It was for the French reason. Anyway, they have different opinions and ideas about those questions, and there are many other questions, as for instance the one Mr. Vezina mentioned, the question of the sales tax.

There has been a difference of opinion between the City of Quebec and other cities about provincial sales tax, and I do not see how the City of Quebec could have the same interests as other municipalities on that subject.

Another question is that of tourism. I do not see how the Chamber of Commerce of Quebec could direct tourists from the municipalities from the south shore, because they would of course be interested in directing tourists to Quebec City.

Another point I want to mention is that the Chamber of Commerce of Quebec, before presenting that bill, did not ask the request or consent of any other chambers of commerce in the area, and did not ask the consent or approval of any municipal council in the area. We do not know who is going to benefit from the bill. Of course, we have no objection to the articles in the bill that provide for more power for the chamber, but we are opposed to the fact that it will create a situation whereby the chamber will have the prestige of a metropolitan chamber of commerce, whereas it should be a local chamber of commerce.

I want to point out also that we have a bureau which acts for the benefit of all the regions, and which with regard to this bill sent a telegram to the Secretary of State, who transferred the telegram, I understand to the Clerk of the Senate, opposing the name of the chamber of commerce, and what the bill is asking, because there will be confusion.

There is also that fact that we have two original chambers of commerce, one on the north shore of the river and another on the south shore for the purpose of working for the best interests of the whole region.

For all those reasons, Mr. Chairman, I do not see why in this bill the chamber of commerce is asking to change its name. We object to the new name, and also to the jurisdiction that is asked for in the bill.

Mr. St. Laurent said that this bill will not interfere with the other chambers of commerce. I do not think that is true, because if this chamber of commerce is over all the other ones, the local chambers of commerce will disappear. Up to this date there has always been good co-operation between the Chamber of Commerce of Quebec and the others in the area, and I do not see why this co-operation should not continue. I do not see how the Chamber of Commerce of Quebec could speak in the name of the other municipalities when there is a conflict, or there are different interests.

For all those reasons, Mr. Chairman, I would ask that there be three amendments to Bill S-28, as follows:

1. That the name of the corporation, in English, be changed to "Board of Trade of Quebec City" and in French to "Chambre de Commerce de Quebec."

2. That section 3 of the bill be modified by deleting in the third and fourth lines, the words "and metropolitan area of Quebec in particular," and by deleting in the sixteenth line, the words "metropolitan area."

3. That section 15 be substituted by the following:

The territorial jurisdiction of the Corporation shall include the City of Quebec.

Thank you, Mr. Chairman and honourable senators.

Senator ISNOR: Mr. Belanger, how many boards of trade are there outside the City of Quebec?

Mr. BELANGER: About 10 or 12. I have the names here.

The CHAIRMAN: Any other representations to be made?

Senator BURCHILL: How many chambers of commerce are there?

The CHAIRMAN: Mr. Belanger said about 10 or 12.

Senator BURCHILL: I take it, of course, that a board of trade is the same as a chamber of commerce.

The CHAIRMAN: Have you anything to add, Mr. St. Laurent?

Mr. St. LAURENT: First, I should like to point out, Mr. Chairman, that this is not a new name. We are asking to add to "Board of Trade," the word "metropolitan". We are asking for something to qualify and to conform with what we have been doing for all these six years. If the amendments suggested by my learned friend were accepted by this committee it would mean that some of the powers that we have enjoyed since 1842 would be reduced, if these powers extend as far as he claims, and I submit that they do not.

I submit that we have tried in section 3 to summarize what we have been authorized to do ever since we existed. The Board of Trade of the City of Lévis has the power to do something for the welfare of Canada, and particularly for the City of Lévis. So we are not quite as anxious—at least, we don't embrace so large a field—and we have limited ourselves to the Province of Quebec. However, if you consult their charter, you will find that they asked the power for the whole of Canada, and particularly for Lévis. It is not my fault if the cities of Quebec and Lévis have populations of unequal size. I am not saying that the initiatives, and so on, of the City of Lévis have not been as great, for instance, as those of the Board of Trade of Quebec; but I would like to repeat that Quebec City is the capital of the province. Quebec is the metropolitan area of that part of the province, just as Montreal is the metropolitan area of greater Montreal; and the same applies to Toronto.

For that reason, Mr. Chairman, I submit our request that the word "metropolitan" be approved as being added to the name of our corporation.

Senator ISNOR: What have you to say in reply to the statement that was made that you did not consult any of the other boards?

Mr. St. LAURENT: The manager of the Board of Trade of Quebec has queried as to the need of consultation and, if you like, the Montreal Board of Trade of the Province of Quebec, to consult or to request any approval from corporations which were formed in subsequent years, without ever asking to have the approval of the Board of Trade of Quebec. I do not think that anyone here, from the information I received from Mr. Vezina, can state that any of these local boards of trade had requested the approval of the Quebec Board of Trade before they applied for incorporation.

For the same reason, I think, the Board of Trade of Quebec has representatives from all the surrounding municipalities, and these representatives are aware of what is being done, because this is being submitted to a meeting of the members of the board of trade; and I think the committee, or the board of directors of the corporation, did not deem it necessary to seek the approval of the junior chambers of commerce or boards of trade of that area.

Senator BOURGET: Mr. Chairman, may I ask Mr. St. Laurent a question about what Senator Isnor asked a moment ago? When you want to extend your territorial jurisdiction outside of the City of Quebec, would it not be only fair that its chamber of commerce would ask those municipalities if they approve or disapprove?

Mr. ST. LAURENT: May I reply to that by saying that we do need in our charter the right to promote and foster the economic development of the whole province, and particularly of Quebec, and therefore that was much broader than is referred to in the bill. If we have that broad power before we are asked to be limited to our bill or to our charter, I submit there is no need to get the authorization of any of the local chambers. If we had that broad power before, we are asking for an amendment to our charter, and I submit that perhaps there was no need to get the authorization of any of the local chambers.

Senator BOURGET: But do you not agree with me you have the power of trying to promote the interests of all Quebec, but as a matter of fact you never have exercised your power outside of Quebec City? In practice it is never done.

Mr. ST. LAURENT: I am sorry to disagree. Here a very patent example of that is the St. Lawrence Cement which is located at Villeneuve, and that is a $20 million proposition.

Senator BOURGET: But you have not done a thing for the south shore, and you have not proved here that you have.

The CHAIRMAN: I understand from what has been said by both sides that if the word "Metropolitan" did not appear in this bill you would be raising no objections?

Senator BOURGET: Not at all.

The CHAIRMAN: Is it necessary for us to get into the situation as to who was responsible for a cement plant in some place and who was responsible for something else in some other place?

Is not the question really this: in the circumstances, should this Board of Trade—well known and well respected, having all the goodwill in the world—be permitted to use the word "Metropolitan"? Is that not it? And if the committee decides they should not be permitted so to do, then we are going to have to adjourn consideration of this bill because there are some amendments which are required in order to take care of what will follow as a result of striking out that word. I understand that even in section 3, to which Mr. Belanger referred, it contains the objects of the Board of Trade, but I do not read anywhere there where those objects are so exclusive that no person else should not do the same thing.

Senator BOUFFARD: As the promoter of the bill, Mr. Chairman, I must admit I am extremely surprised at the objections raised before this committee. Here are about ten Boards of Trade that have in the last 25 or 50 years helped the development of Quebec and the surrounding area. At the time I was a student Quebec carried only about 100,000 population; there was no industry and nothing else. Lèvis was a small city of 10,000 and St. Romauld, 2,000 or 3,000. Today Quebec has a population of 350,000, with lots of industries. This has occurred because of the co-operation among everybody in Quebec and the surrounding area who have tried to promote trade and industry in Quebec.

The only thing that the corporation is asking for is to have the prestige it thinks it rightly deserves, because it is at the present time a member of the Canadian Board of Trade and the Canadian Chamber of Commerce, on which it has two board members. It is also a member of a section of the International Board of Trade. It is not asking for anything which was not asked for by Montreal, Toronto, Vancouver, Winnipeg; and they were all in the same position, if I am not mistaken. As I say, the only thing the chamber wants is the prestige

necessary in its contacts with other Boards of Trade, with the industrial and commercial people who come, and it wants to be able to represent this section of Quebec, whether it is Lévis, or St. Laurent or Villeneuve. They want to have the prestige necessary to be able to discuss the development of Quebec and the surrounding area. It has no actual power at all; the only thing it can do is to help. It has no jurisdiction to impose anything; it has no jurisdiction to carry on any project in one or the other city. It can only help, and I am sorry to think a militant point of view thinks Quebec should not carry a name which is going to give it prestige, which it is necessary for the Board of Trade to have if it is going to deal with other bodies that can do something.

It has been said they have not done anything for Lévis. Well, they have been the promoters of the School of Commerce, which is part of the university. Is not that a promotion with regard to Lévis just as well as Quebec and the surroundings, where they have a little over 5,000 people taking courses in commerce and industry?

I know Senator Bourget, our Speaker, and Senator Vaillancourt have made many representations and have won the establishment of what they call the shipbuilding industry, to carry on work. It is all in Quebec, and I am sure the Board of Trade in Quebec and the Chamber of Commerce in Quebec have helped and made representations so Lévis can have as much work in construction as possible.

It does not give the Quebec Board of Trade any jurisdiction at all. They do not want to interfere with any local of the chamber of commerce. The only thing we want is prestige and more members.

Why more members? Because it is not going to be St. Emile that is going to have the Metropolitan Board of Trade. Quebec City is the biggest city and the capital of Quebec, and it is natural that it should carry the name "Metropolitan".

Why does it need more members and money? To do the work that has to be done before all kinds of commissions that come to Quebec, before whom it has to make representations. It is the Metropolitan Board of Trade that has to do that work, and to do the work we need more money and more members. As a matter of fact, there are many members from Lévis at the present time. I do not see why there is any objection before this committee when the only thing the corporation seeks is to help the development of greater Quebec. We have obtained an airfield; we have established the St. Lawrence Cement, which is a big industry in Villeneuve. If Lévis wants to have any help at any time the Board of Trade of Quebec will do all it can, but to do that in the best way it has to have the prestige.

Senator POULIOT: Mr. Chairman, I agree with Senator Bouffard that this institution should have prestige and keep the prestige it already has, but the prestige is owed to its good name, the good name of the Board of Trade, and if you translate it by "Bureau de Commerce" nobody will know what it is. In Quebec there are two similar institutions. There is one French which is the Chambre de Commerce, which has done as much as the Board of Trade for the progress of the City of Quebec, notwithstanding what has been said; and there is the Board of Trade, which is the English replica of the Chambre de Commerce.

Why is it called the Board of Trade? It is an English institution, and you know very well that in London the equivalent of the Canadian Minister of Trade and Commerce in the British government is called the President of the Board of Trade. It is well known, and some zealous translator has called the Board of Trade the Bureau de Commerce. Nobody will understand it.

Is the Board of Trade and La Chambre de Commerce the same thing?

The CHAIRMAN: Yes, it is the same thing.

Senator BOUFFARD: The name will read Chambre de Commerce de Quebec Metropolitain.

Senator POULIOT: Well, that is all right, and I am very happy.

The second thing with regard to the metropolitan area is, what is the use of it? The name is good, and if the adjacent municipalities, those that are near the City of Quebec but do not form part of the City of Quebec, have interests to promote, I wonder what will be the action of the Board of Trade or Chambre de Commerce in such cases?

I am for decentralization, and I do not see why the Board of Trade should be called the "Metropolitan" in an act of Parliament when the City of Quebec is far from being a metropolitan city. There are a lot of municipalities around the city of Quebec, and they are against annexation; and before the annexation is completed I do not see why the Board of Trade should be called "Metropolitan" in any act of Parliament.

Senator VAILLANCOURT: The word "Metropolitan" does not add any prestige to Quebec. What difference will it make to people dealing with the Board of Trade if you have "Metropolitan"? Quebec has its prestige. Nineteen years ago you permitted Lévis to organize its own chamber of commerce, and now you want to change that. That is my picture. Then we have our colleague Senator Bouffard who speaks on the commercial school of Laval University. You cannot build a school in any other place than near a university, and you cannot have an airport in Quebec—it must be outside. The Board of Trade is not responsible for that. We wish to co-operate.

Senator FLYNN: Mr. Chairman, I want to say I was impressed at the beginning by the arguments brought by those opposing the name of Quebec Metropolitan, but I think there is some confusion. The meaning of the word "metropolitan" does not imply any extra territorial jurisdiction in itself. I am not now discussing section 15 of the bill, but merely the word "metropolitan". There is no doubt the metropolis is Quebec City, and if there is any metropolitan board of trade in that area it is the Chamber of Commerce of Quebec. If it adds prestige to the chamber of commerce outside this area on the national basis, I think the argument is a valid one in favour of giving it the name. In itself the name does not take anything away from the other chambers of commerce, and there is no doubt that this one has been the one to take the initiative because of its relative importance with regard to others. I don't think anybody here can contest that it is a chamber of commerce, and for these reasons I think the word "metropolitan" should be granted. I think we might discuss the implications in section 15, but not the word "metropolitan".

Senator THORVALDSON: I have had a very long association with the chamber of commerce in Winnipeg. For that reason I want to add a word to what has been said. I made a couple of notes during the discussion, and one of those notes was the word "interfere," and the other was the word "jurisdiction". Senator Bouffard referred to both of those expressions. I want to say this; I do think that the objection to this bill completely misconceives and misconstrues the basic objectives of the chamber of commerce or board of trade movement in Canada. After all there is no such thing as a jurisdiction of a board of trade, or a chamber of commerce, whether you call it the Board of Trade of Winnipeg, greater Winnipeg or metropolitan Winnipeg. I might discuss the aspect of Winnipeg because the situation is identical to that of Quebec. We have the Winnipeg Chamber of Commerce. It used to be the board of trade. The names are identical. The only reason for these to be called chambers of commerce was because the changes were made after the Canadian Chamber of Commerce was named such, and consequently many cities and communities have changed their name from what used to be board of trade to chamber of commerce. So far as Winnipeg

is concerned some day someone may come here and ask for the word "metropolitan" to be added. Nevertheless the fact is that the chamber of commerce is a chamber or board of trade which covers the whole metropolitan area of Winnipeg which has now nearly one-half million people whereas the city itself has only two hundred or two hundred and fifty thousand.

Senator HUGESSEN: Are there other boards of trade?

Senator THORVALDSON: Yes.

Senator MCCUTCHEON: Does it go across the river?

Senator THORVALDSON: Yes, it goes across to St. Boniface. I don't think there is an industry in St. Boniface with membership in the Winnipeg Board of Trade. The same applies to St. James, Fort Garry, West Kildonan and East Kildonan. Nevertheless all these places, or most of them—I know St. Boniface and St. James have their local boards of trade, and specifically for the purpose of helping that particular area, but the Winnipeg Chamber of Commerce is devoted to helping the whole area. I cannot see the Winnipeg Chamber of Commerce coming here and asking for the word "metropolitan" to be added and any exception being taken by any municipality to that.

The point is that these are voluntary organizations. The whole chamber of commerce movement is a voluntary organization dedicated to helping commerce, business and industry in the area it serves. Unquestionably the Quebec Board of Trade must serve the whole area for the good of the area. It is all one economic unit, and for that reason its functions, purposes and usefulness would be very much diluted if it confined itself merely to the geographical limits of the City of Quebec itself. I say that because the same reasoning applies to it as applies to the City of Winnipeg which I know so well. I want to say thaat the objection to the change of name misconstrues and misconceives the purpose of the whole chamber of commerce movement.

The CHAIRMAN: Senator Dessureault.

Senator DESSUREAULT: I wasn't here when the objections were mentioned. But I am surprised that there is opposition to this bill. I did not hear what Senator Bouffard said, but I think by adding the word "metropolitan" to the name it will give a little more prestige, and the idea is to help the surrounding municipalities. I don't think the idea is to do any harm.

The CHAIRMAN: There is only one issue here, whether it is to be or not to be metropolitan.

Senator BOUFFARD: I move the adoption of the bill as is.

Senator ISNOR: May I say that is a matter for the committee as usual. We generally, after hearing the witnesses, consider the bill, and make our decision as a committee. I think two or three of the speeches made here have been more or less a play to the gallery, with all respect to the speakers.

The CHAIRMAN: Are you ready to consider the bill section by section?

Senator BOURGET: Before we consider it section by section, can you tell us if letters have been received from other chambers of commerce in the area of Quebec opposing the bill or supporting the bill?

The CHAIRMAN: The Committee Clerk informs me that there have been inquiries from various organizations in the area for copies of the bill, and there was an objection from Mr. Robert Blackburn, president of the chamber of commerce in Giffard.

Mr. ST. LAURENT: May I say that this was withdrawn. I have a letter here saying they were supporting the bill.

The CHAIRMAN: There was another objection from Mr. Lachance, who is vice-president of the Bureau of Industry and Commerce of Metropolitan Quebec Inc. There is a letter from Jacques Lavoie, vice-president of the

Chamber of Commerce of Duberger; from Antoine Parent, President of the Chamber of Commerce of Loretteville; from Fernand Boillard, President of the Chamber of Commerce of Beauport; from Adrien Begin, Secretaire, C.P. 40, Levis, Quebec; and from Firmin Bernatchez, Counsel, Chamber of Commerce of Saint Romuald d'Etchemin.

Senator BOURGET: Are they all opposing the bill?

The CHAIRMAN: No, these are the ones we have heard from. Three of them indicated opposition to the bill.

Senator BOURGET: What about the others?

The CHAIRMAN: I understand they just asked for copies of the bill. Shall we consider the bill section by section?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 3, the objects clause, carry?

Senator BOURGET: Mr. Chairman, you are going a little too fast for me.

Senator BEAUBIEN (*Bedford*): We have been on this an hour and a half now. Is that fast?

The CHAIRMAN: Shall section 3 carry?

Senator BURCHILL: Is not this just a question of the name?

The CHAIRMAN: Yes, but the committee has agreed to consider the bill section by section.

Senator BURCHILL: I was just going to suggest that these people get together and fix up the name between themselves.

The CHAIRMAN: They can do that afterwards. Shall section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 6 carry?

Senator MCCUTCHEON: Mr. Chairman, I want to raise one question here, and it may be unnecessary. It is usual, I think, in sections such as this to insert words which take out the basket clause provisions of the act. They can invest in securities that are permitted insurance companies under the Canadian and British Insurance Companies Act, without regard to what the basket clause provision is. Otherwise, it leaves it wide open.

The CHAIRMAN: Have you any comment on that, Senator Bouffard?

Senator BOUFFARD: No, but I think Mr. St. Laurent should comment on it.

Mr. ST. LAURENT: Mr. Chairman, I must apologize. I was being asked for information by the reporter to help him complete the stenographic record.

The CHAIRMAN: Senator McCutcheon's question was addressed to section 6 which has reference to the Canadian and British Insurance Companies Act. He asks whether there should be a limitation inserted.

Senator MCCUTCHEON: A limitation to the effect that they can invest in the same securities as insurance companies without having regard to the basket clause, the number of which I do not know.

Mr. ST. LAURENT: I understand this is taken from the act incorporating the Board of Trade of Metropolitan Toronto.

Senator MCCUTCHEON: Then my objection stands.

The CHAIRMAN: You have heard the objection. Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 9 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 10, on page 5, carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 11 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 13 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 14 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 15 carry?

Senator BOURGET: No, no. I have not had an opportunity to go through the amendment, but I move, seconded by Senator Vaillancourt that section 15 read:

> La compétence territoriale de la Corporation s'étend à la Cité de Québec:

My motion is that section 15 be amended so that the territorial jurisdiction of the corporation shall be limited to the City of Quebec. My motion is that section 15 be deleted, and be replaced by those words.

Senator WALKER: May I ask a question? Does the Dominion Bureau of Statistics include Lévis in the metropolitan area of Quebec?

Mr. ST. LAURENT: Yes.

Senator MCCUTCHEON: Suppose section 15 was stricken out entirely. Would it make any difference?

Senator BOUFFARD: I think Senator Leonard has a remark to make which will please everybody.

Senator LEONARD: Perhaps this covers the situation. Suppose section 15 is amended at line 11 by inserting the words "be exclusive and," so that it reads:

> However, this jurisdiction shall not be exclusive and affect any authority allocated to the local boards of trade...

That will indicate it is a jurisdiction shared with the other boards of trade in the area.

Mr. ST. LAURENT: That would be entirely satisfactory so far as we are concerned, Mr. Chairman.

Senator BOURGET: I am not a lawyer, as you know, but...

Mr. BELANGER: As one honourable senator said a few minutes ago, the chamber of commerce already has that jurisdiction. If they have it, then

I propose it be left as it is. They can work towards the improvement of trade relations in the whole of Canada, if they like, but their main purpose is to work for the City of Quebec.

Senator BOUFFARD: You have a definite jurisdiction.

Mr. BELANGER: You could have the same words as in the old act.

The CHAIRMAN: We have to keep this in order. We are considering section 15. Senator Bourget has proposed an amendment, and Senator Leonard has suggested a wording which makes very clear the intention of the section, namely, that it confers no exclusive jurisdiction on anybody. Senator Leonard has suggested inserting some words which have the effect of saying that this jurisdiction is not exclusive. Mr. St. Laurent says that that is satisfactory to him. All I am saying to Senator Bourget is: "Is that satisfactory to you? Do you withdraw your amendment, or do we vote on it?"

Senator BOURGET: It means exactly the same thing because the chamber of commerce of Quebec will still have jurisdiction in the City of Lévis and on the south shore. Am I not right in that?

Mr. HOPKINS: But not exclusive.

Senator BOUFFARD: That is right.

Senator BOURGET: It means that the chamber of commerce will have jurisdiction over the south shore.

The CHAIRMAN: Senator, all this bill indicates is the area within which this corporation will function. It does not say it will function there to the exclusion of all others.

Senator MCCUTCHEON: Mr. Chairman, we have passed section 3, and section 3 says that the objects of the corporation are to promote the development of any lawful trade or industry, and to foster the economic and social welfare, of the city and metropolitan area of Quebec in particular, and of the province of Quebec and Canada in general. All I say to Mr. St. Laurent is that I do not see that it makes any difference if clause 15 is stricken from the bill. I do not like clause 15 anyway.

The CHAIRMAN: Section 15 is intended only to protect the rights of—

Senator MCCUTCHEON: What authority does this bill confer on anyone? If you strike out that section you still have all your other powers.

Senator THORVALDSON: I might just add to that—

The CHAIRMAN: Wait just a second, senator, while we see what Mr. St. Laurent has to say, if there is a motion to delete the section—

Senator THORVALDSON: I so move.

Senator WILLIS: I second.

Senator THORVALDSON: When I spoke a while ago I suggested there was no such thing as jurisdiction in this matter. Personally, I see no purpose in regard to the first sentence referring to territorial jurisdiction.

The CHAIRMAN: With the consent of the promoters of the bill there is now a motion to delete section 15. Are you in favour?

Senator THORVALDSON: If it should be any satisfaction to other municipalities, this section 15 might be redrafted—

Senator MCCUTCHEON: We will be here for a week.

Senator THORVALDSON: —to indicate that nothing here should interfere with any other board of trade.

The CHAIRMAN: There is a motion before us. Those in favour of the motion to delete section 15, please signify. Those to the contrary? The motion is carried. Section 16 becomes section 15. Shall section 16 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall I report the bill as amended?

Hon. SENATORS: Agreed.

Senator VAILLANCOURT: On division.

Senator BOURGET: Honourable senators, I should like to say a word. Our amendments which were to be presented were not presented because we did not have any time. We would like to wish all success to the Chamber of Commerce of Quebec. The City of Lévis has worked for many years in close co-operation and I hope that the closest co-operation will exist in the future.

The CHAIRMAN: Honourable senators, this concludes our consideration of the bill.

Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-32, intituled: "An Act to incorporate World Mortgage Corporation".

The Honourable PAUL H. BOUFFARD, *Acting Chairman*

WEDNESDAY, JUNE 10th, 1964

WITNESSES:

Mr. J. J. Robinette, Q.C., Counsel.
Mr. K. R. MacGregor, Superintendent of Insurance.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21049—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate June 4th, 1964.

"Pursuant to the Order of the Day, the Honourable Senator Leonard moved, seconded by the Honourable Senator Paterson, that the Bill S-32, intituled: "An Act to incorporate World Mortgage Corporation", be read the second time.

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

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

21049—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, June 10th, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.50 a.m.

Present: The Honourable Senators: Hayden (*Chairman*), Beaubien (*Bedford*), Blois, Bouffard, Bourget (Speaker), Burchill, Crerar, Dessureault, Fergusson, Flynn, Gershaw, Hugessen, Irvine, Isnor, Lang, Leonard, McCutcheon, McLean, Paterson, Pouliot, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt, Walker, White, Willis.—(27)

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

On Motion of the Chairman the Honourable Senator Bouffard was elected Acting Chairman.

On Motion of the Honourable Senator McCutcheon it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-32.

Bill S-32, intituled: "An Act to incorporate World Mortgage Corporation", was read and considered.

The following witnesses were heard: Mr. J. J. Robinette, Q.C., Counsel. Mr. K. R. MacGregor, Superintendent of Insurance.

On Motion of the Honourable Senator Leonard it was RESOLVED to report the Bill with the following amendments:

1. *Page 2, line 16:* Strike out "80" and substitute therefor "81".

2. *Page 2, line 17:* after "invested" add the following: "Provided that nothing in this Act shall be deemed to permit the exchange of unissued shares of the Company for any unissued shares of Eastern & Chartered Trust Company or of any company formed by the amalgamation of Eastern & Chartered Trust Company with one or more other trust companies."

3. *Page 2, line 18:* Strike out "other than" and substitute therefor "including".

At 12.20 p.m. the Committee adjourned to the next order of business.

Attest.

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, June 10th, 1964.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-32, intituled: "An Act to incorporate World Mortgage Corporation", have in obedience to the order of reference of June 4, 1964, examined the said Bill and now report the same with the following amendments:

1. *Page 2, line 16:* Strike out "80" and substitute therefor "81".

2. *Page 2, line 17:* after "invested" add the following:

":Provided that nothing in this Act shall be deemed to permit the exchange of unissued shares of the Company for any unissued shares of Eastern & Chartered Trust Company or of any company formed by the amalgamation of Eastern & Chartered Trust Company with one or more other trust companies."

3. *Page 2, line 18:* Strike out "other than" and substitute therefor "including".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 10, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-32, to incorporate World Mortgage Corporation, met this day at 10.50 a.m.

Senator SALTER A. HAYDEN (*Chairman*) in the Chair.

Senator CRERAR: Before we commence consideration of this bill, I wish to say to the committee that I am a director of Eastern & Chartered Trust Company and in those circumstances I do not think I can sit in consideration of this bill. With the permission of the committee, I shall retire and wish you godspeed.

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

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

The CHAIRMAN: Honourable senators, I wish to tell the members of the committee that since my office has been identified with the drafting of this bill, I do not propose to sit as chairman and I have asked Senator Bouffard to take the chair.

The ACTING CHAIRMAN (*Senator Bouffard*): We are ready now.

Senator ISNOR: In view of the remarks of Senator Crerar, that he is a director of the Eastern & Chartered Trust Company, I wish to say that I am in the same position, except that instead of leaving the committee I am going to remain.

The ACTING CHAIRMAN: I certainly have no objection to that at all. On this bill, Mr. Robinette represents the promoters of the bill. I think it would be in order that he would make the first statement, so that the committee would know exactly what it means.

Mr. J. J. Robinette, Q.C.: Mr. Chairman and honourable senators, the committee may like to meet some of the petitioners who are in the room. We have Mr. Thomas Albert Boyles, one of the petitioners, who is General Manager of the Bank of Nova Scotia. On my far right is Mr. Charles William Jameson, Executive Assistant to the President of the Bank of Nova Scotia. Then we have Mr. Edgar Stuart Miles of Messrs. Burns Brothers and Denton; and then Mr. John William Blain of McCarthy and McCarthy.

There are also present, although they are not petitioners, they are interested in certain aspects of the financing: Mr. Wilder of Wood Gundy and Company; Mr. Harris of Harris and Partners; and Mr. McKinnon.

Senator BLOIS: Are they all supporting it?

Mr. ROBINETTE: They are all supporting it. The bill to incorporate this mortgage company follows the model bill in the Loan Companies Act, except

for Sections 7 and 8—and I will come to the explanation of those in a moment, of the need for those two sections.

A little background might be helpful to the committee. In the fall of 1963 the Eastern Trust Company and the Chartered Trust Company were amalgamated and that created a very well balanced, well managed trust company with offices all across Canada.

It was contemplated at that time and has been contemplated since that it is desirable to incorporate a mortgage loan company and to offer the shareholders of the amalgamated Eastern & Chartered Trust Company the opportunity of exchanging their shares for shares of the proposed loan company. The idea is that the loan company and the trust company will be operated in close liaison one with the other and together they will offer to the Canadian public a wide range of services.

On the basis of the proposed capitalization we are confident that the loan company will be able to raise from the Canadian public up to $350 million and we hope and anticipate that that sum of $350 million will be channeled into the mortgage financing requirements for housing and commercial purposes. That is a large sum but we are confident that that can be done and that it will create in the Canadian mortgage market a soundly based new competitor which will be beneficial with respect to interest rates and service to the Canadian public.

I wish to deal very briefly with what we see as certain advantages of the proposed new company. It will be Canadian owned and operated, despite its name The World Mortgage Corporation. I will come to that name possibly later. It is a Canadian company, the purpose is to raise money in Canada and to lend money in Canada, and all the people here who are interested in it are Canadians.

We submit it create a large additional source of mortgage money. The present sources of mortgage money for construction of new homes and purchase of old ones is quite limited. We think that the new company will be soundly based with experienced personnel and stable and reliable interest will be behind it.

An important consideration is that the loan company will be able to raise money from the public by the issue of debentures. Under the Trust Company Act, Section 70 a trust company is not permitted to raise money by way of bonds or debentures. Our financial advisors told us, and it makes sense to me, that a company which can issue debentures, that debentures are a more flexible form of raising money than the methods open to a trust company.

We submit that the company will bring into the mortgage area additional helpful competition.

As you know—I am speaking of Ontario particularly—recently problems of high interest rates and other abuses in connection with mortgage financing have been apparent. It is hopeful that a large corporation like this, introducing a large amount of mortgage money into the markets will tend at all events to stabilize the situation and cure that point.

We hope also that we will be able to give better facilities to the public when the mortgage company will be operated in close liaison with the Eastern and Chartered Trust Company.

As I say, the chartered company now has offices all across Canada. If we operate the loan company in those offices, we have a built in available personnel for the administration of the loan company. Running the two companies together, I suggest it would also mean economies in operations for both. It will give to the public in one office not only the trust company services but the services of a loan company.

The intention is to give to the present shareholders of the Eastern & Chartered Trust Company an opportunity to participate in this. It is contemplated that the mortgage company will use the services of the trust company,

and there will be service charges, and that will create an additional piece of income for the trust company. Those, as we see it, are the advantages of this corporation.

I want to explain, just for a moment, the proposed capitalization of the new mortgage company. It is proposed that 10,000 shares will be subscribed and paid for in cash at $275 per share, which will raise in cash $2,750,000. Of that sum it is proposed that 10 per cent will be subscribed by the Bank of Nova Scotia. The remaining 90 per cent will be subscribed for by the following investment houses—but no one of the following four will have a controlling interest: Wood Gundy and Company; Burns Brothers and Denton; Harris and Partners Limited; Greenshields Incorporated. Then we propose—

Senator McCUTCHEON: May I interrupt for a moment, Mr. Chairman, to ask if the amount which will be subscribed for by these four investment companies will be for investment purposes or distribution?

Mr. ROBINETTE: Some will be for investment purposes, and some for distribution. I cannot say what one particular house may or may not do. They will be free to distribute them and put them in investment accounts, but they will also be free to distribute them if they wish.

Senator ISNOR: In other words, 10 per cent will be subscribed by the Bank of Nova Scotia, and 90 per cent by the four companies?

Mr. ROBINETTE: The Bank of Nova Scotia limit is 10 per cent; the remaining 90 per cent will be apportioned among the four companies, senator. Then the loan company, the new mortgage company, will offer one share of its stock to the shareholders of the Eastern & Chartered for one share of their stock—one for one exchange.

Senator HAYDEN: After a subdivision?

Mr. ROBINETTE: Yes, after a subdivision of the shares; but basically at one for one.

Senator McCUTCHEON: How many shares will that represent?

Mr. ROBINETTE: I am just coming to that. Let me tell you, first of all, that we intend to take the shares into the loan company at $55 per share, which has been about the prevailing market price for the shares of the Eastern & Chartered Trust Company. A couple of months ago they stood at $55, around that. I noticed this morning they are at $52. We think $55 is the proper value.

These are issued shares of the trust company as follows. I was going to give approximate figures, but since I notice that notes are being made, I will give the precise figures. Issued shares of the trust company, 534,481; but there are subject to stock representations in favour of senior personnel, a small block of 3,635. So all those subscribed for the outstanding stock would be about 538,000 shares.

Senator ISNOR: That is issued stock?

Mr. ROBINETTE: Yes, sir.

Senator ISNOR: Then there is a considerable quantity of unissued?

Mr. ROBINETTE: Yes. All we propose to do is to pick up the issued shares.

Senator THORVALDSON: Those are fully-paid shares?

Mr. ROBINETTE: Those are fully-paid shares. As you can see, at $55 per share—and I am speaking in very round figures—that would come to approximately $30 million. That would represent an investment by the mortgage company of an asset of $30 million. In other words, the mortgage company on acquisition of those shares at $55 a share would have an asset of about $30 million.

One must assume, however, that probably we won't get 100 per cent, but we are quite confident that we would get at least 90 per cent of the outstanding

shares of the Eastern & Chartered Trust Company. So that if you took the figure of $27 million you would have on the assets side an asset worth $27 million. You would also have cash subscribed of $2,750,000 which in round figures brings you to a capitalization of about $30 million.

Senator McCUTCHEON: Someone said something about a subdivision of shares.

Mr. ROBINETTE: Well, I said that we were going to sell shares to the public, to the brokers, at $275. Now, they will be subdivided to make it jibe with the $55 a share.

Senator THORVALDSON: Is that subdivision required to be stated under this act?

Mr. ROBINETTE: No, it does not require to be done under the act.

Now the reason for the inclusion in the present bill of section 7. I am looking at section 7, which provides:

> Notwithstanding anything contained in the *Loan Companies Act*, the Company may, subject to section 8 hereof, purchase or otherwise acquire, and may exchange shares of the Company for, all or any portion of the outstanding shares of Eastern & Chartered Trust Company, a company resulting from an amalgamation of The Eastern Trust Company and the Chartered Trust Company, approved by Order in Council P.C. 1963-1729, 26th November, 1963, and may purchase or otherwise acquire, and may exchange shares of the Company for, all or any additional shares of Eastern & Chartered Trust Company which may from time to time be issued, or all or any of the shares of a company formed by the amalgamation of Eastern & Chartered Trust Company with one or more other trust companies and the reserve of the Company as that term is used in section 80 of the *Loan Companies Act* may be so invested.

We required that section because the Loan Companies Act in section 60 says that a loan company cannot acquire more than 30 per cent of the shares of a company, such as the Chartered Trust Company, and not more than 20 per cent of the whole of the security shares or bonds of that company.

So our scheme necessarily involves the acquisition of a higher percentage of shares in the amalgamated company than is permitted by the terms of section 60 of the Loan Companies Act. But section 61 does create an exception to that, of the Loan Companies Act, because it provides:

> Notwithstanding anything contained in section 60, a loan company that prior to the 28th day of June, 1922, held shares of a trust company to the extent of at least fifty per cent of the total number of shares of such trust company outstanding at the said date, may continue to hold such shares and may purchase or otherwise acquire any additional shares of such trust company or any or all of the shares of a company formed by the amalgamation of such trust company with one or more other trust companies.

So that is open today to certain companies; and I understand and am advised that section 61, for example, applies to the Canada Permanent Mortgage Corporation in its relationship with the Canada Permanent Trust Company; and it also applies to the Huron and Erie Mortgage Corporation in its relation with the Canada Trust Company. Our position is that we are going to have to be competing with those companies. We think it was perfectly proper in the case of the Canada Permanent Mortgage Corporation, when the act was amended in 1961, that they were permitted to acquire more than the amount of percentage of shares; and the Huron and Erie is in the same

position. In other words, there are historical reasons for that, and all we are saying is that we think we are entitled in that competitive market to the same opportunity as those companies have.

Senator WALKER: So there are two precedents for what you are asking?

Mr. ROBINETTE: I have not gone through the history of the legislation, senator, but section 60 was amended and broadened in 1961 to take care of the Canadian Permanent Mortgage situation, and it was a sensible, business-like and proper amendment. We say that with the backing this company is obviously going to have it is in the public interest.

Senator ISNOR: And there was a bill to that effect in the last two years, the amalgamation?

Mr. ROBINETTE: Yes, there was a bill, there was a statute amalgamating the Toronto General Trust and the Canadian Permanent Trust Company.

During the discussion of this bill with Mr. MacGregor, as I understand it, he raised some questions. He said, "If you leave section 7 as it is you could go out and borrow money and acquire the shares." We never had any intention of borrowing money to acquire the shares. So to cover that we inserted section 8 which is a limitation on the operation of section 7. It provides that:

> No investment, other than an investment made by way of exchange of shares of the Company, shall be made by the Company under the authority of section 7 hereof if, after the making of such investment, the aggregate cost to the Company of investments so made and then held by the Company would exceed the aggregate of the Company's then unimpaired paid-up capital and reserve, as that term is used in section 81 of the Loan Companies Act.

The purpose of that is to prevent us going out and borrowing money to acquire the shares. That was never our intention. Our intention is to acquire the shares of the Eastern & Chartered Trust Company by an offer of exchange. That is the purpose of the company, and we think it is going to be to the advantage of Canada. We think there is a precedent for departing in the case of a soundly based institution from section 60.

I mentioned the name earlier, and I saw some smiles and nods of interest regarding the name World Mortgage Corporation. I assure you, as I assured you before, we are only going to deal in Canada, but it is exceedingly difficult to get a good name because all the good names for mortgage companies have been taken up. Frankly, we suggest it be left at World Mortgage Corporation for the moment. We could have gone a little further and made it "Outer Space Mortgage Company."

Senator WALKER: Or "Heaven."

Mr. ROBINETTE: Yes, or "Heaven." But our real purpose is to carry on this mortgage corporation in close co-operation with the trust company. It may be we will change the name to a name that accurately reflects the association with the Eastern & Chartered Trust Company.

Senator MCLEAN: How about "Free World"?

Mr. ROBINETTE: That would be a good name.

Senator LEONARD: Mr. Robinette, in connection with the new shares that are to be offered at $55 per share, I take it these are to be shares of a $10 par value of which $10 will go into the capital side of the liability account and $45 into reserve?

Mr. ROBINETTE: Twenty dollars.

Senator LEONARD: Twenty dollars into the capital side and $35 into the reserve?

Mr. ROBINETTE: Yes.

Senator THORVALDSON: With regard to the name, I heard it suggested, I think in the Senate the other day, there was a mortgage corporation in the United States by the name of World Mortgage Corporation.

Mr. ROBINETTE: I have heard that suggestion. In fact, I asked the same question, but I could not find it.

Senator LEONARD: There was an article in the *Financial Post* of maybe two months ago referring to it.

Mr. ROBINETTE: A search was made in our own Secretary of State Department. We would prefer to have something like "Canadian Mortgage Corporation," but Senator Leonard might object to that.

Senator THORVALDSON: If you are too modest for this name, you might change it to, "World Mortgage Corporation of Canada."

Mr. ROBINETTE: Yes.

Senator MCLEAN: That is contradictory.

Mr. ROBINETTE: I rather think it would be advantageous to both the trust company and the mortgage company to try at least to select a name that will indicate the co-operation with the trust company.

Senator WALKER: Will you be dealing in conventional and N.H.A. mortgages?

Mr. ROBINETTE: Yes, and some of the financing will be primary, and it could well be there will be some secondary, in the sense that if there is a sale of good mortgages by anybody we will be in the market for them.

Senator WALKER: As a former minister responsible for national housing, we have been trying to get such organizations as yours formed without very much success.

Mr. ROBINETTE: I think that is the reason for the existence of this. If it can relieve the pressure on the Government of raising money, then it is in the public interest.

I am not saying about the Bank of Nova Scotia, but I think the fact banks got into the consumer credit field did tend to stabilize the situation there and remove some abuses. I think this type of company would tend to do the same thing in the mortgage field, and this is what our expectation would be.

Senator WALKER: I think the C.M.H.C. itself would be very happy to see this corporation functioning because it would relieve pressure on the Government to provide the money.

Senator BURCHILL: The Eastern & Chartered Trust Company have a very good reputation all over Canada. Is there any merit at all in tieing it in with these two old trust companies and calling it the Eastern & Chartered Loan Company?

Mr. ROBINETTE: A great deal of merit, but we cannot do that at the present time because we would have to get the consent of the Eastern & Chartered Trust Company, and the new company has not yet the shares of the Eastern & Chartered Trust, but I think your suggestion is a very sensible one and this is what I meant when I said we will consider getting a name that will tie them together.

The ACTING CHAIRMAN: You have to have a name, and that can be changed later on.

Mr. ROBINETTE: Yes, we have to have a name.

Senator MCCUTCHEON: I think it is a good one.

Senator ISNOR: Perhaps it is a little premature, but I remember the care taken by both The Eastern Trust Company and the Chartered Trust Company

at the time of the amalgamation in respect of the location of offices, and more particularly as to the staff. Do you propose to take over the staffs of these companies?

Mr. ROBINETTE: First of all, we do not propose to touch in the slightest the operations of the trust company, but the trust company will remain with its present offices. We hope the result of this will be a more vigorous and healthy trust company. I want to emphasize that there is no suggestion in any way of deprecating the trust company; the hope is it will build it up. Also you will have this advantage, that those existing offices and existing personnel will be available for the purposes of the loan company.

Senator ISNOR: Thank you. You mentioned the term, "one head office." That would be later on, I suppose, but the head office would be located in Toronto?

Mr. ROBINETTE: The head office of the trust company is located in Toronto, and I should expect that would be so, although, as you know, there is a regional office of the trust company in Halifax.

Senator ISNOR: That is a very good point.

Mr. ROBINETTE: And the trust company directors I know, meet in sections, eastern and western.

The ACTING CHAIRMAN: Any other questions?

Shall we hear Mr. MacGregor?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Mr. MacGregor, would you kindly come forward?

Senator MCCUTCHEON: Could we shorten the proceedings by asking Mr. MacGregor if he has any objection to any part of the bill.

The ACTING CHAIRMAN: I understand if he has he is going to state them right away.

Mr. K. R. MacGregor, Superintendent of Insurance: Mr. Chairman and honourable senators, Mr. Robinette has given a very complete description of the purpose of this bill so I shall not weary the committee with repetition.

I must say I have some concern about the bill and have had some concern about it ever since I heard of the possibility of this bill being brought forward over a year ago. One can have no objection whatever to the purposes of the company, and certainly as far as the department is concerned I have none. The first I heard of this proposed company was a little over a year ago when representatives of the Bank of Nova Scotia came to the department at a time when that bank held the controlling interest in the Chartered Trust Company, and indicated a desire to amalgamate it with the Eastern Trust Company, and secondly to superimpose upon the amalgamated company a new loan company which would be the parent of the proposed amalgamated trust company.

I could see no reason to object to the proposed amalgamation of the two trust companies. It was provided for under the Trust Companies Act, and action to that end was in fact later taken in the fall of 1963. The aspect of the proposal that worried me was the proposal to incorporate a loan company which would own this subsidiary trust company, notwithstanding the prohibition in the Loan Companies Act against any loan company owning more than 30 per cent of the shares of any other kind of company, whether it was a trust company or an industrial company. I felt that it is undesirable in a private bill to set aside a principle, especially a relatively long-established principle, in a general act. If the general act is not right it seems to me the proper course is to amend it. The origin of that 30 per cent prohibition goes back to the Royal Commission in 1906 on life insurance companies. At that time the Royal Commission in its report expressed the view that life insurance

companies ought not to own trust companies or street railway companies and so on, and recommended a limitation on the shares of another company that a life company might hold as an investment. That prohibition has been in the Insurance Acts for a long time having been put there in 1910 following the Royal Commission report in 1907.

The same prohibition was put in the Loan Companies Act and the Trust Companies Act in 1922. I think the main explanation for the delay is that the Department of Insurance had no responsibilities in relation to loan and trust companies until 1920. Prior to that, the Loan Companies Act was not administered by any particular department although loan companies operating under it were required to file statements with the Minister of Finance. So we have had for a great many years in the general acts administered by our department, namely the Insurance Act, the Loan Companies Act and the Trust Companies Act, really what amounts to a prohibition against subsidiaries. It is true, as Mr. Robinette explained, that there are now two exceptions in the loan company field to that prohibition. There are, however, some aspects of those exceptions that perhaps I might elaborate on more fully that did Mr. Robinette.

The Loan Companies Act and the Trust Companies Act were not enacted until 1914. May I say first of all the Huron and Erie Mortgage Corporation and the Canada Permanent Mortgage Corporation were incorporated years before that, before the turn of the century in fact. Those companies had desired to acquire trust powers. For that purpose they sought and obtained incorporation at different times of two Dominion trust companies; the Huron and Erie sought and obtained incorporation of the Canada Trust Company and the Canada Permanent Mortgage Corporation sought and obtained incorporation of the Canada Permanent Trust Company. The latter was in 1913, the year before the Loan Companies Act was passed.

Those two exceptions, referred to by Mr. Robinette, whereby two Dominion loan companies owned and controlled two subsidiary trust companies, arose before there was any prohibition against doing so. Consequently, as I view it, section 61 was enacted really to recognize an existing situation. It did not arise by way of making an exception to any prohibition in the act.

I had hoped that if the promoters of this proposed loan company wished to pursue their very laudable objectives, they would have sought the incorporation of a loan company without requesting anything in the nature of clause 7 running counter to this prohibition in the general Loan Companies Act against having a subsidiary company. I held that hope because if this exception is made setting aside the general prohibition in the Loan Companies Act, then it creates a precedent whereby any Dominion loan company can come to Parliament and seek in like manner to have the prohibition against a subsidiary company set aside, and any Dominion trust company can seek incorporation of a loan company to be superimposed on their own company as a parent.

That kind of situation was not envisaged when the Loan Companies Act was passed, and that is clear from the prohibition in that act. I think if that were to develop as a practice certain amendments would have to be made to the Loan Companies Act to recognize this situation. I say this because in the absence of any amendments some of the provisions in the Loan Companies Act might be rather ineffective, particularly in reference to the relationship of borrowed money, money obtained from the public, compared with capital and reserve.

My hope that the promoters of this bill would not seek any exception running against the general act was also furthered by the fact that we all knew the situation of the banks in particular, and, in fact, of practically all the major financial institutions in Canada was being considered by the Royal

Commission on Banking and Finance, and it seemed to me particularly inappropriate that at a time last year when the commission had not reported, and even now when it has reported, and at a time when no one knows what Parliament may do in respect of this question—

Senator WALKER: What recommendation did it make?

Mr. MACGREGOR: Broadly speaking it may be said that little or no encouragement was given in the report to subsidiary companies.

Senator WALKER: But did it mention them?

Mr. MACGREGOR: Yes, as regards banks and whether certain investments could be made; as regards investments, this is a brief summary:

1. Chartered banks be prohibited from owning shares in one another, directly or indirectly.

2. Savings banks and other banking institutions (other than chartered banks) be not permitted to invest directly or indirectly in stock of a licensed banking institution or chartered or savings bank except with Treasury Board approval.

3. Chartered banks be not permitted to invest in shares of savings banks or other licensed banking institutions, except with Treasury Board approval.

4. All banks—and I think they meant all banking institutions—be prohibited from acquiring more than ten per cent of the shares of any financial institution not subject to banking legislation except with Treasury Board approval.

There are ten of these altogether . . .

Senator WALKER: Give just the relevant ones.

Mr. MACGREGOR: 5. Banking institutions may incorporate or establish wholly-owned subsidiaries to carry on business within the institution's own powers.

Well, there is nothing new there. They have that now.

Senator WALKER: No.

Mr. MACGREGOR: 6. Banking institutions be free to own subsidiaries in foreign fields.

That is really to carry out their banking activities in accordance with the laws of the foreign country. I will skip the next three which I do not think are particularly pertinent.

10. Prohibit a banking institution from owning more than ten per cent of the stock of any non-financial institution.

As respects life insurance companies, the commission recommended that the present 30 per cent limitation be reduced to 10 per cent.

So, really what has worried me particularly . . .

Senator LEONARD: Mr. Chairman, with reference to the Porter Commission's report in respect of an institution owning up to 100 per cent of another institution having the same powers as a banking institution, I would point out that if the Porter Commission's report were implemented a chartered bank would have the powers of a mortgage corporation so far as lending of any kind of mortgage is concerned.

Mr. MACGREGOR: I would agree, Senator, with one exception. If that recommendation of the Porter Commission is implemented whereby the banks would be given mortgage lending powers, then it would seem reasonably consistent that it might, through a mortgage company, do the same thing, but there would still remain the question of the power to issue debentures which a bank can not do directly but which it could do through its mortgage company.

Senator LEONARD: Does the Porter Commission's report indicate that they might be able to issue debentures?

Mr. MACGREGOR: It does not mention it at all.

Senator HAYDEN: The recommendation of the commission, Mr. MacGregor, is ten per cent, and if you apply it to this case a bank holding more than ten per cent of the shares of a loan company would have to get treasury approval.

Mr. MACGREGOR: Yes, I believe so. So really, to make a long story short, I have been most reluctant to see another precedent, apart from the precedents of the Canada Permanent and the Huron and Erie, which arose in different circumstances, set at this particular time when the new rules are unknown.

In fairness to the promoters, there is one aspect of the situation that I should nevertheless mention. It has been contended on their behalf that the Canada Permanent Mortgage Corporation did get some additional new powers in 1961 at the time of the amalgamation of the Canada Permanent Trust Company and the Toronto General Trusts Corporation. A special act was necessary for the latter amalgamation in 1961 because at that time there was no provision in the general Trust Companies Act for amalgamating any two trust companies—not even two dominion trust companies.

In that particular case the proposed amalgamation was of a dominion company—the Canada Permanent Trust Company—and a provincial trust company—the Toronto General. At that time, of course, the Canada Permanent Mortgage Corporation held all of the shares of the Canada Permanent Trust Company. It had done so for years—from the beginning, in fact. The Toronto General Trusts Corporation was a larger company than the Canada Permanent Trust Company, so that upon the passing of that special act in 1961 permitting the amalgamation of those two trust companies a clause was put in at the end in reference to the Canada Permanent Mortgage Corporation, giving it the power not only to take in exchange shares of the amalgamated company corresponding to the shares it already held in its own subsidiary, the Canada Permanet Trust Company, but also giving it the power to invest in the shares of this amalgamated company that would in the amalgamation go to the shareholders of the Toronto General. In other words, it gave the Canada Permanent Mortgage Corporation the power not only to keep what it had in the amalgamation—the smaller of the two companies amalgamating—but get the rest...

The ACTING CHAIRMAN: To acquire a bigger one?

Senator HAYDEN: In fact, it was to enable the Canada Permanent Mortgage Corporation to retain control of the amalgamated company.

Mr. MACGREGOR: That is correct, Senator. I admit that some additional powers were then given to the Canada Permanent Mortgage Corporation. However, it was a practical situation that had to be dealt with. The alternative would have been to say, even though the Canada Permanent Mortgage Corporation had created this subsidiary trust company away back in 1913 when there was nothing against doing so, and had held all of the shares of it ever since, nevertheless, if that trust company should amalgamate, as proposed in 1961, with anoher trust company then the Canada Permanent Mortgage Corporation would simply have to divest itself of control of the amalgamated company and let it go. On the whole, that seemed unreasonable, and the Canada Permanent Mortgage Corporation was given the additional power to retain control of the amalgamated trust company.

That is the first point that I must admit worries me—the setting of another precedent now that creates a situation where any loan or trust company may come to Parliament and seek to have that general prohibition in the Loan Companies Act set aside.

The second...

Senator WALKER: Before you go on to your second point, Mr. MacGregor, having regard to the rapid economic growth of Canada, and the change in corporate structures and practice, could it be that the Loan Companies Act of 1914 is a bit out of date? I appreciate that this would be making an exception to the sections of the act, but, after all, might not it be for the benefit of the country that we should break new ground here? Supposing it were done, what objection is there to it?

Mr. MACGREGOR: My answer to that, Senator, would be that there is nothing to prevent the promoters accomplishing their object, by seeking incorporation of this loan company, but capitalizing it otherwise than in the parent-subsidiary way. They could have the two companies but independently owned, and not one owning the other.

Secondly, I think it creates a rather difficult situation at this particular juncture. It may be that these rules respecting subsidiaries are out of date, and I believe they will be considered, and probably are being considered, by the Government now in reference to banks, life insurance companies, loan companies and trust companies. But, my hope was that rather than anticipate the action of the Government as respects these rules the promoters might go ahead and incorporate a new loan company without special powers and wait until the new rules are clear.

Senator WALKER: You know how hard it is to wait for the Government. It might take another decade.

Mr. MACGREGOR: The Bank Act is coming up for revision this fall, and I would imagine the rules with respect to banks would be enacted at that time. The minister announced in his budget speech that the Canadian and British Insurance Companies Act would be amended at this session, so I expect that the hand of the Government would be indicated in that connection too. But, as respects the loan companies and trust companies acts, I do not know what amendments may be in view. Naturally, the amendment of one act almost always gives rise to amendment of others, but it depends on the nature of the amendment and how urgent it might be for the Government to amend the loan companies and trust companies acts.

The ACTING CHAIRMAN: Would it be an inducement for the Government to amend the Loan Companies Act—if there are so many exceptions . . .

Mr. MACGREGOR: I know of no other exception. This is the first, to my knowledge.

Senator LEONARD: May I ask a question? The two exceptions you mentioned, the Canada Permanent and the Huron and Erie, are the two largest companies under dominion jurisdiction. There have not been very many loan companies incorporated since 1922 under dominion jurisdiction.

Mr. MACGREGOR: Except in recent years.

Senator LEONARD: In recent years there have been a few, but they are comparatively small.

Mr. MACGREGOR: Kinross is not small, Senator.

Senator LEONARD: No. The history has been that there is a considerable identity of interest between loan companies and trust companies, and virtually the two types of company work together. For the past 40 years the tendency has been for loan companies to change into trust companies, acquiring trust companies' powers. This has not been possible under dominion jurisdiction; is not that right?

Mr. MACGREGOR: I would have to admit, Senator Leonard, that I think the case for a parent-subsidiary relationship, looking at banks, life insurance

companies, loan and trust companies, and so on, is better in the case of a loan company and a trust company than in the case of any other combination I can think of.

Senator LEONARD: It is much better than 1922, where there were virtually only the two large companies, both of whom had subsidiary companies at that time. Perhaps then the time has arrived for further exception to be made, having in mind that it is a strong hint towards a change in the general law. You may not subscribe to that.

Mr. MACGREGOR: I cannot, as to the words "strong hint". It is a complicated situation, in my view.

Senator LEONARD: That section again relating to the 30 per cent is a general investment section relating to all classes and types of investment by a loan company, investment in industrial concerns. It is designed to prevent a concentration of investment in some particular class of security and that reasoning or argument does not apply in the relationship between loan company and trust company.

Mr. MACGREGOR: Not to the same extent, I agree. The case for this parent-subsidiary relationship is stronger between a loan company and a trust company than between life insurance companies, banks and so on.

The ACTING CHAIRMAN: Is there an amendment to be proposed in that respect?

Mr. MACGREGOR: We have found in this kind of case that unless one keeps order in these things we are led into a maze. Precedents are most difficult to deal with. I am simply hoping that no further precedents will be set until the new rules are known.

Senator MCCUTCHEON: That is fine.

Mr. MACGREGOR: The next aspect which gives me some concern is the form of clause 7. Assuming that this company is incorporated and that an exception is to be made, setting aside the prohibition just referred to, which is the effect of clause 7, I think it again goes further than the powers specifically conferred upon any other existing Dominion loan companies, including the two in an exceptional position, that is, the Canada Permanent Mortgage Corporation and the Huron and Erie Mortgage Corporation.

I say that more particularly in reference to the words running all through clause 7, concerning the exchange of shares, that is, of the proposed loan company, for the shares of the Eastern and Chartered Trust Company.

Senator HAYDEN: That does not apply to the first four or five lines of section 7 because it speaks of outstanding shares.

Mr. MACGREGOR: No, it is the second and third parts that worry me at the moment, the first being the power to exchange shares already outstanding.

The second relates to new issues of shares by the trust company; and the third to any shares that may be issued by some possible amalgamated company that may rise in the future.

Senator HAYDEN: If it was not the intention of the promoters to create a position where you might have an exchange of unissued shares of the loan company for unissued shares of the trust company, then I am sure it would be very simple to add something to section 7 to say that.

Mr. MACGREGOR: I would hope that that at least might be done. I had hoped that the promoters of this bill might have thought it fit to delete any reference to the exchange of shares.

Mr. BLAIN: I am inclined to agree with that last point.

Mr. MACGREGOR: Whatever justification there may be for having a parent subsidiary relationship, whatever the case for it, and I do not dispute the case

intensely, I think a good deal can be said for not having a crisscross arrangement, whereby the parent buy the shares of the subsidiary and the subsidiary buys the share of the parent. If that occurs, the question then arises as to who owns whom, and who runs the show. It seems to me that the wording in clause 7 as it stands would permit just that, more particularly under the second and third kinds of situation referred to by Senator Hayden.

The ACTING CHAIRMAN: The exchange of unissued shares and other unissued shares of the amalgamated company.

Mr. MACGREGOR: Looking at the clause, Clause 7 gives the proposed loan company the power, in line 9, to purchase or otherwise acquire, and then there follow those words: "and may exchange shares of the company for"—that is, shares of the loan company—"all or any additional shares of the Eastern Chartered Trust Company" which may thereafter be issued. As I read that, if the Eastern & Chartered needs more capital and issues more shares, the loan company can take them up and give the trust company its own shares in exchange. There will be no new money injected into either company and in the end result the trust company owns the shares of the loan company and the loan company owns the shares of the trust company.

Senator HAYDEN: I think an amendment is being proposed to that section.

Mr. MACGREGOR: I think there is that possibility in both the second and third cases, because the same situation could arise in the case of any amalgamated company in the future.

May I say one word in addition, about these words "may exchange shares". I realize that this is a different kind of situation from that obtaining in the case of the other two exceptions, the Canada Permanent Mortgage Corporation and the Huron and Erie Mortgage Corporation. In the latter two cases the parents was on the scene for years. It created a new small subsidiary. That is the opposite to the present case where what will be the subsidiary has been on the scene now for many years, the Eastern & Chartered Company. The parent is being superimposed on it as the owner, as the parent. Naturally, the situation being inherently different in that way, one can readily see different problems arising.

One of the problems is that in this case it is proposed, right at the outset, for the new loan company to issue shares to the existing shareholders of Eastern & Chartered by way of exchange. Neither in section 61 of the Loan Companies Act now, nor in the special section at the end of the Private Act in 1961, was the Canada Permanent Mortgage Corporation given any specific powers in those words to exchange shares. The words used in section 61 and in section 7; being the final section of that 1961 private act, are "to purchase or otherwise acquire" or "to invest in."

I should imagine that the words "or otherwise acquire" would probably permit an exchange of shares without any additional words.

What worries me now is that, if those new words in reference to exchanges are added to the more limited expressions that we already have in the general act, namely, "purchase or otherwise acquire," one can only justify the additional words on one of two grounds. Either they give in this case something new that no other company has now, or—and I think this is the more likely intention—they are there for clarification or intended clarification, that they really do not add anything. But they may raise a question in all other cases under the general act, where they have similar powers, because the wording is just "purchase or otherwise acquire".

It is just that kind of thing which gives rise to questions later. Was a difference in powers intended, since the words are broader in one case than the other?

The ACTING CHAIRMAN: The word "exchange" is in the last paragraph of the Canada Permanent Trust.

Senator LEONARD: I have an amendment to suggest to meet Mr. MacGregor's point in regard to unissued shares and his rather narrower point, otherwise clear, in the case of the Canada Permanent. It would add to Section 7, which is the section which Mr. MacGregor is drawing attention to. I will read it and in due course it can be moved. It will show what is in our mind. It says:

> Provided that nothing in this act shall be deemed to permit the exchange of unissued shares of the company for any unissued shares of the Eastern & Chartered Trust Company or of any company formed by the amalgamation of Eastern & Chartered Trust Company with one or more trust companies.

That confines the power of exchange to the presently issued shares, which is necessary of course in order to complete this transaction.

Mr. MACGREGOR: I would think that answers about 90 per cent of any criticism or comment that I might have expressed or implied.

The only remaining part which it does not answer is the existence of these words in reference to exchanges, which do not appear in the general act or the private act of 1961 in the same context.

Again, to be fair, I must say that when one looks at section 7 of the private act in 1961, the word "exchange" does appear there, but it appears not in reference to exchanging shares of the parent mortgage company for shares of the amalgamated company. The wording there is that the Canada Permanent Mortgage Corporation may exchange shares of the "company" for shares of the amalgamated company; but "company" there, by definition in the preamble, means the subsidiary trust company. All that that clause did was to say that the Canada Permanent Mortgage Corporation as parent, which then held all the shares of the Canada Permanent Trust Company, might exchange such shares for shares of the amalgamated company. Personally, I do not see that that power was necessary. What else could it do?

Senator LEONARD: If it will be appropriate, I shall be glad to move the amendment to section 7 of the bill, which I have just read.

Senator THORVALDSON: Before that, since Mr. Robinette spoke about that, he may wish to have something to say.

Mr. ROBINETTE: I quite agree. That was the intention, and that improves the draftmanship. Mr. MacGregor's point is well taken.

Senator HAYDEN: I think it should be pointed out that in section 7 of the bill, the words "section 80" should be "section 81".

Mr. ROBINETTE: Yes, that should be section 81. It is a typographical error in the bill.

Senator HAYDEN: There should be a motion to that effect.

Senator LEONARD: I will move, then, that where the words "section 80" appear on line 16 of section 7 of the bill, the words "section 81" be substituted therefor.

I further move that the following addition be made to section 7:

> provided that nothing in this act shall be deemed to permit the exchange of unissued shares of the company for any unissued shares of the Eastern & Chartered Trust Company or of any company formed by the amalgamation of Eastern & Chartered Trust Company with one or more other trust companies.

The ACTING CHAIRMAN: Does the amendment meet with the concurrence of the promoters of the company? Is there a seconder to the motion?

Senator WILLIS: I second the motion.

Amendment carried.

The ACTING CHAIRMAN: I believe Mr. MacGregor has something to say on section 8.

Mr. MACGREGOR: Clause 8, in lines 18 and 19, on page 2 of the bill, also has a reference to exchange of shares of the company. I must say again that it was my hope that all these references would have been deleted; but it does seem to be necessary to give some further thought to clause 8, if the clause is to carry out its apparent intention. I may be off base on this one, for I must admit I have not had time to spend on this bill, and it was only last night that I gave any thought to it. Consequently, I can only trust to what thought I have been able to give to it.

The origin of clause 8, I think it is fair to say, and Senator Hayden will correct me if I am wrong, arose out of one of several comments that I made or discussions that we had about this whole proposal. I had been particularly fearful that the new loan company if put in the position to own the Eastern & Chartered, would be in a position where the two companies could go on expanding their business without injecting new capital, and that could have happened under section 7.

I pointed out in one of our discussions that it did not seem right to me that if this company is to get started mainly through an exchange of shares with the shareholders of the Eastern & Chartered, that it should then be in a position where it could go on increasing its capital by issuing debentures to the public, getting its money that way, and buying with the proceeds shares of the Eastern & Chartered; in other words, using borrowed money to increase the capital of its subsidiary, Eastern & Chartered.

So to meet that point, clause 8 has been suggested, but I am not sure in its present form, because of those words in lines 18 and 19, that it accomplishes its purpose. If the words "other than an investment made by way of an exchange of shares of the company," were deleted, I think it would accomplish its purpose. However, as it stands, and as I read it, it says this: "No investment other than an investment arising by way of an exchange of shares of the company". So it sets aside shares arising by way of an exchange and the subject matter is investments in cash, as I see it, in the shares of the subsidiary trust company. The words "No investment other than" would exclude any exchange shares. One is talking in clause 8 of investment in Eastern & Chartered shares made by way of cash purchase. So no investment of that kind "shall be made by the company under the authority of section 7 hereof, if, after the making of such investment,"—well, such investment, as I read it, means a cash investment—"the aggregate cost to the company of investments so made and then held by the company would exceed the aggregate of the company's then unimpaired paid up capital and reserve, . . ."

I must say I was unaware of the proposed capitalization until Mr. Robinette outlined it a few minutes ago; but under the proposed capitalization there will be about $2,750,000 put into the company by the subscribers. The amount of the capital in all, amounting to about $30 million, will arise through an exchange of shares of the loan company with the Eastern & Chartered shareholders. I think the $30 million, Mr. Robinette, you referred to as capital, you meant as capital and reserve?

Mr. ROBINETTE: Oh, yes.

Mr. MACGREGOR: The two together. So assuming that course is followed, capital and reserve will be about $30 million. How much of it arose by way of cash? Just $2,750,000. So as I read clause 8 as it stands, no cash investment may be made if after the making of such investment the aggregate cost to the

company of cash investments so made and then held by the company would exceed the aggregate of the company's then unimpaired paid up capital and reserve. So as I see it, $30 million may be taken up out of borrowed money, which I understood clause 8 was to prevent.

Senator HAYDEN: As I read the act, clause 8 does refer to borrowed money.

Mr. MACGREGOR: As I read clause 8, it is investments made in Eastern & Chartered by way of a cash purchase. If that is the subject of clause 8, one is just talking about cash purchases, either proposed or having been made in that way. All that clause 8 says by way of limitation is that the aggregate cost of all cash purchases and then held shall not exceed—not the aggregate of the cash purchases, but the aggregate of the whole unimpaired paid up capital and reserve, most of which arose through an exchange of shares.

Senator HAYDEN: Yes; but after all, the shares of the trust company have a market value in the market place. It is the equivalent of cash, surely?

Mr. MACGREGOR: Then the situation is that the company, being capitalized in this way, may have used borrowed money to the extent of $30 million.

Senator HAYDEN: If I issue shares in exchange for shares having a market value of $55, where is the suggestion I am borrowing money to do that?

Senator BEAUBIEN (*Bedford*) If the shares are $55 and you issue one million new shares, the new shares would not be worth $55.

Senator HAYDEN: If you issue new shares and get something worth $55 a share for it, surely you stand behind the shares you issue?

Mr. MACGREGOR: That is not the point I have in mind, with all respect, senator. My point is, where will the proposed loan company get the money to make this cash purchase in the shares of Eastern & Chartered?

Senator HAYDEN: It will have to raise more money by subscribed capital.

Mr. MACGREGOR: But that may not be the position. Take the actual position Mr. Robinette outlined. The first step will be cash sales of shares of the proposed loan company to the extent of $2,750,000. The next step will be an exchange of shares of the loan company for shares of Eastern & Chartered, and that will amount to about $30 million, but practically all of it arose through the exchange of shares. What is to prevent the loan company at that point from issuing debentures to the public and with the proceeds buying another $30 million worth of Eastern & Chartered stock? If they do that the money they are using comes from the public through debentures, and that, as I understand it, was the very thing section 8 was supposed to stop.

Senator HAYDEN: I think you are mixing two things. We have argued this a number of times. I suppose we have not got any further than the present discussion indicates, because if you are going to borrow money on debentures then the shares of the trust company that are already in the portfolio provide an excellent leverage in making the debentures very attractive on a sale to the public. But the idea we thought you had in mind was that you might use some of that borrowed money to purchase additional shares of the trust company.

Mr. MACGREGOR: That is exactly what can be done under clause 8.

Senator HAYDEN: We put clause 8 in so the company could not borrow money and use that money for that purpose.

Mr. MACGREGOR: That is my very point.

Senator LEONARD: I think it is a question of whether we really have done what it was apparently intended to do. My suggestion would be that counsel for the applicant might very well consider whether those words "other

than an investment made by way of exchange of shares" are the way of expressing what apparently is intended by this section, namely, that the World Mortgage Corporation was not acquiring the shares of the Eastern & Chartered with borrowed money, but was using its own issued capital for that purpose. I think that is the intention of section 8, but the phraseology, using those words, "other than investment made by way of exchange" may throw some question mark on it.

Mr. MACGREGOR: I respectfully suggest the remedy is to delete these words, "other than an investment made by way of an exchange of shares of the "company,".

Senator LEONARD: Or put the words "including an investment" in.

Mr. MACGREGOR: If you exchange shares, the paid capital of the loan company automatically goes up.

Senator HAYDEN: Are you suggesting if the company issues shares on an exchange for outstanding shares of the trust company, that that is not a consideration the equivalent of cash which the company has received for those shares?

Mr. MACGREGOR: No, I am not saying that.

Senator HAYDEN: Having accomplished that, where are they borrowing money to acquire shares?

Mr. MACGREGOR: I just say they can.

Senator MCCUTCHEON: But they cannot acquire more shares than their unimpaired paid-up capital and reserve. If, following Mr. Robinette's outline, they have unimpaired paid-up capital and reserve, to start with, of some $30 million, of which $2¾ million is cash and the balance is represented by shares at $55 value of the trust company, it is true that under the act they may be able to go out and borrow a great deal of money on debentures, but, surely, under section 8 they can only buy a couple of million dollar more shares because then their total investment in such shares will come up to the total for their unimpaired capital and reserve?

Mr. MACGREGOR: That is not the way I see it, senator. I thought the intention of clause 8 was to ensure that the investment of this loan company in the shares of the Eastern & Chartered would not, in the aggregate, exceed its own paid-up capital and reserve. Under the proposed method of organization, stopping at the last step described by Mr. Robinette,—namely, where there is a paid-up capital and reserve in the loan company of about $30 million—it would have shares of the trust company in the same amount on the asset side. So far, so good. But at that point I do not see anything to prevent the mortgage company, under clause 8, from issuing debentures to the public and using the proceeds to the extent of $30 million, and taking up another $30 million of shares by way of a cash purchase of Eastern & Chartered, in which case the result then is that the loan company shows in its balance sheet capital and reserves still at $30 million, but on the asset side, not an investment of $30 million, but $60 million in shares of Eastern & Chartered, which is the very thing I say I thought clause 8 was supposed to prevent.

Senator HAYDEN: That is where you lost me some months ago, and I am still lost.

Mr. MACGREGOR: That was a different point, senator. That was the "double duty" aspect of capital in the parent subsidiary set-up.

Senator HAYDEN: If, for instance, you said in clause 8, "No cash investment," and then the words, "other than an investment made by way of an exchange of shares..." came out and you simply said, "No cash investment shall be made by the Company under the authority of section 7..."—which would lead to the impairment of the capital—

Senator LEONARD: I think there is no difference between what is intended and what Mr. MacGregor is saying. It is just a question of whether the result has been accomplished or whether there is still the opportunity for the loophole Mr. MacGregor has pointed out. I think Mr. Robinette made it quite clear it was intended to acquire shares of Eastern & Chartered Trust Company only through the issue of shares of World Mortgage Corporation, not through the use of borrowed money.

Mr. ROBINETTE: That is quite right, senator. This clause 8 was put in as a result of some suggestions made by Mr. MacGregor. The drafting of it in its present form may be open to the objection Mr. MacGregor presently states. What we intended was that no cash investment shall be made by the company.

Senator LEONARD: And you are really qualifying the word "investment" in order to confine it to cash, and you are putting in those words, "other than an investment made by way of an exchange"?

Mr. ROBINETTE: Yes.

Senator LEONARD: So it is purely a question of draftsmanship. The draftsmanship has not apparently met Mr. MacGregor's point of view, but I think that that can be made clear. I think those words can be struck out.

Mr. MACGREGOR: I think if they were it would accomplish the object.

Mr. ROBINETTE: They can be stricken out as long as they are not interpreted as derogating from the clear power in section 7.

Senator LEONARD: To make an exchange.

Senator MCCUTCHEON: Or, "including an investment" would take care of it.

Senator LEONARD: Yes, I think that would take care of it.

Senator HAYDEN: I think if you said, "Subject to section 7, no investment..." that would take care of it.

Mr. ROBINETTE: "No investment, including an investment made by way of an exchange"—that would be satisfactory, senator.

Senator HAYDEN: Which one?

Mr. ROBINETTE: "No investment including an investment made by way of an exchange."

The ACTING CHAIRMAN: You would replace "other than" by "including".

Senator THORVALDSON: Striking out "other than".

Mr. MACGREGOR: I think if these words were deleted it would still be even better.

Mr. ROBINETTE: We are changing "other than" to "including".

The ACTING CHAIRMAN: Shall this amendment carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall I put the question?

Mr. MACGREGOR: May I say one other thing? I can only add one additional point. If this precedent is to be set, I would hope it will be delayed until the new rules are made available. If it is passed I think it will necessitate reconsideration of certain provisions in the Loan Companies Act because the act as it now stands just does not contemplate parent-subsidiaries of this kind generally. I think one thing that should be considered would be the extending of the borrowing limit rule. I think if this kind of relationship is to exist generally then the borrowing limit, and by that I mean the extent to which the company may get funds from the public whether by deposits or through debentures, in relation to its paid capital and reserve, should be limited not

only in respect of each company separately, but also on the basis of a consolidated statement of the two companies.

Senator THORVALDSON: Don't you require a capitalization of thirty million plus immediately as a result of the change? You ask for capitalization of twenty million which may be increased to forty million, but don't you require that right away?

Mr. ROBINETTE: No, it would be capital and reserve.

The ACTING CHAIRMAN: Are you ready for the question?

Senator BURCHILL: I think Mr. MacGregor made a very capable presentation here this morning, and he has put before us a question as to whether we are going to create a precedent. I think we should decide that. I have every faith in this proposition, but this group this morning is pretty well representative of high finance.

Senator MCCUTCHEON: I am retired, senator.

Senator BURCHILL: Mr. MacGregor has certain laws and rules to administer. This morning we are going to take it out of his hands and lay down a precedent. Justification has been shown for what has been done in the past, but I want the committee to realize what we are doing now. It is a big question. If we do this, there is nothing to prevent anybody else coming in here and asking for the same thing as these gentlemen are asking for this morning.

The ACTING CHAIRMAN: The result would be that the bill would be postponed indefinitely. It might be delayed for years. If the committee is not satisfied the only thing it can do is vote against the bill.

Senator MCCUTCHEON: Put the question.

The ACTING CHAIRMAN: Are you ready for the question? Will anybody propose the bill as amended?

Senator MCCUTCHEON: I so move.

The ACTING CHAIRMAN: Shall the bill carry as amended?

Senator BURCHILL: On division.

The ACTING CHAIRMAN: Honourable senators, that concludes our consideration of this bill.

Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-34, An Act to incorporate Nova Scotia Savings & Loan Company

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The Honourable PAUL H. BOUFFARD, *Acting Chairman*

WEDNESDAY, JUNE 17, 1964

WITNESSES:

Mr. K. R. MacGregor, Superintendent of Insurance. Mr. Hector McInnes, Counsel for the petitioners.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21090—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 10th, 1964.

"Pursuant to the Order of the Day, the Honourable Senator Isnor moved, seconded by the Honourable Senator Fergusson, that the Bill S-34, intituled: "An Act to incorporote Nova Scotia Savings and Loan Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Isnor moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21090—1½

REPORT OF THE COMMITTEE

WEDNESDAY, June 17, 1964.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-34, intituled: "An Act to incorporate Nova Scotia Savings & Loan Company", have in obedience to the order of reference of June 10th, 1964, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

Paul H. Bouffard,
Acting Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 17th, 1964.

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

Present: The Honourable Senators: Aseltine, Baird, Blois, Bouffard, Brooks, Burchill, Cook, Connolly (*Ottawa West*), Croll, Fergusson, Flynn, Gershaw, Gouin, Hugessen, Irvine, Isnor, Lang, McLean, Molson, Pearson, Reid, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt and Walker. (26)

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

In the absence of the Chairman and on Motion of the Honourable Senator Taylor (*Norfolk*) it was Resolved that the Honourable Senator Bouffard be elected Acting Chairman.

On Motion of the Honourable Senator Walker it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-34.

Bill S-34, intituled: "An Act to incorporate Nova Scotia Savings & Loan Company", was considered clause by clause.

The following witnesses were heard:

Mr. K. R. MacGregor, Superintendent of Insurance.

Mr. Hector McInnes Q.C., Counsel for the petitioners.

On Motion of the Honourable Senator Croll it was Resolved to report the Bill without amendment.

At 10.00 a.m. the Committee concluded its consideration of Bill S-34.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 17, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-34, to incorporate Nova Scotia Savings & Loan Company, met this day at 9.30 a.m.

Senator PAUL H. BOUFFARD (*Acting Chairman*), in the Chair.

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

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

The ACTING CHAIRMAN: Honourable senators, we are ready to proceed. We have a quorum. Senator Isnor, is there anything you wish to add?

Senator ISNOR: No, Mr. Chairman, except that we have representatives from the company here in case you should require them to answer questions. Mr. K. R. MacGregor is familiar with the background, the law clerk has given approval and the single section which requires approval of the Income Tax Department has received that approval.

If Mr. MacGregor gets through and there are questions, I am sure either Mr. McInnes, the solicitor for the company, or Mr. Guy, the general manager of the company, will be pleased to answer.

The ACTING CHAIRMAN: Would you rather have Mr. McInnes testify first?

Senator ISNOR: No. Mr. MacGregor first.

Mr. K. R. MacGregor, Superintendent of Insurance: Mr. Chairman and honourourable senators, although the circumstances of this case and the form of the bill appear to be rather unusual, the fact is that the objectives sought to be attained are quite simple.

Briefly, this is a case of a very old provincial building society that wishes to be transformed into a joint stock loan company of the usual kind; and, secondly, to be transformed from provincial status to federal or dominion status.

The existing provincial society goes away back to 1850. I shall not weary the committee with details about its history, because I noticed that Senator Isnor went into that very thoroughly upon second reading of the bill.

Nevertheless, I think I should mention that this very old provincial society with head office in Halifax is almost unique in the country now. Although building societies were quite common in Great Britain, they have been relatively uncommon in Canada. The act under which this society was formed in 1849 was entitled an Act Respecting the Regulation of Benefit Building Societies, as I recall. It followed very closely the old English act of 1836, the Building Societies Act. Consequently, this society is now more than 100 years old, in fact, 114 years.

The society is in quite sound financial condition. At the end of 1963 it had assets of $25,211,531. On the liability side it had debentures that it had

issued, totalling $18,418,725. It had accepted deposits amounting to $3,049,617. It had accrued tax liabilities of $125,276 and other miscellaneous liabilities of $202,353. So that the total liabilities amounted to $21,795,971.

In addition of course it had capital and reserves as a protective margin for the debenture holders and depositors. It had special reserves of $383,000, a general reserve of $1,200,000, capital amounting to $1,715,926 and surplus, or a balance in profit and loss account, of $116,634, making total capital and reserves of $3,415,560. So, in a word, it had capital and reserves of about $3½ million against debentures and deposits and other liabilities of $21,800,000.

Now, I am sure a question arises in the minds of members, why does this old society want to change from its existing building society status to a joint stock loan company of the ordinary kind? I think the second objective needs no explanation, namely, to change from provincial to federal status.

These old societies had a peculiar type of capital. It is not permanent capital, but temporary capital. When a person buys a share in this kind of society he has two alternatives. He may take a fully-paid share, or he may purchase a share on the instalment plan; but in both cases the shares mature at the end of a specific term—in their case, usually fourteen years. So in the first alternative, namely, where a person takes a paid-up share or fully-paid share, the purchaser pays $240, and he is entitled to an increment on that $240 of five per cent per annum, which is not paid to him in cash, but accumulates to his credit; so that at the end of 14 years his original investment of $240 has doubled, and the share matures for $480.

In addition, in this society, they pay bonus interest at two or three per cent, which is paid to the holder in cash. That deals with fully-paid shares. I might say that most shares in this society are of the fully-paid type.

Perhaps to continue: When the share matures for $480 at the end of 14 years, it is up to the society whether they pay it out in cash to him or pay it out partly in cash and permit him to retain or leave say half, that is $240, in the society, and do this all over again.

The shareholder has no inherent rights at the end of that term to demand that his money be left in the society.

The other type of share, the instalment share, is quite similar except that the purchaser undertakes to pay $2 a month for 101 months, and also is guaranteed an increment of four per cent on his accumulated credit so that at the end of the term the share matures for $240.

These shareholders, in practice, might upon maturity take their $240 and purchase a fully-paid share of the first type; but again such a shareholder has no inherent rights to demand that his money be left in the society. Consequently, a capital structure of this kind is not of the permanent type that one sees in an ordinary joint stock company; and this type of capital could lead to quite unstable conditions, because it would be up to management how much capital they keep or repay at the end of the term.

So, also, of course, there are disadvantages from the practical standpoint, in that a share of this kind cannot be traded on an exchange. It is a private matter as between the shareholder and the society.

Without going into details, and I do not think it is my place to do so, the tax status of a society of this kind has been quite a problem over the years. I am not sure of the earlier tax history, that is, the income tax history of this society. I have not taken time recently to look it up. However, I do know that since at least 1938 it has been a question in the minds of the tax department whether these increments added to the accumulating credit of the shareholders are of the nature of a dividend to a shareholder or of the nature of interest on a bond or debenture. Apparently, many discussions were held with the tax authorities in older days; but beginning in 1938 an arrangement was made

with the tax department whereby 60 per cent of these accumulating increments would be treated really as bond interest. However, in 1957 that arrangement was terminated by the income tax department, and since then all of these increments, as well as all cash bonuses, have been treated really as dividends to shareholders. So that the society for income tax purposes since 1957 has received no credit against its taxable income for these payments out as an ordinary company would, say, on its bond indebtedness.

Now, when I go back to my earlier mention of the objectives sought to be attained by this bill, namely, to transform the existing society into a joint stock loan company of the usual kind, the course that one would ordinarily think of would be that followed by provincial insurance companies that seek dominion status. The committee has been familiar with cases of that kind, not at every session, but quite frequently for a good many years, where a provincial insurance company seeks to transfer to dominion status, and where the usual practice is to come to Parliament to obtain an act incorporating a new dominion insurance company with power in it to take over the assets and liabilities of the provincial company. That would be the straightforward course to follow. However, there are tax problems. In the case of provincial insurance companies that practice was so common that a special provision was put in the Income Tax Act several years ago, namely, section 82, subsection (15) which ensures that in the transformation of a provincial insurance company to a federal insurance company, there being no distribution of funds or anything of that kind, the undistributed income of the provincial company is simply put in the hands of the dominion company. However, that subsection does not apply to the transformation of a provincial loan or building society of this kind to dominion status. Consequently, if this society had followed the usual course of simply seeking incorporation of a new dominion loan company with power to take over by agreement the assets and liabiliites of the provincial society, it would have been subjected to a very heavy tax on the undistributed income in the hands of the provincial society.

Seemingly the only way in which this provincial society may be transformed to dominion status without a prohibitive tax burden is to do so by way of the amalgamation route under section 85 I of the Income Tax Act, and that is why this bill is in the form in which it now appears, and why it is substantially longer than one might normally expect.

What is being done here, is first of all, to incorporate a new dominion loan company, and, secondly, to provide for the amalgamation of that new dominion loan company with the existing provincial building society. Now, for that purpose it is not necessary that the new dominion loan company have a large capital. The existing society is in a very sound condition. All it wishes is to be transformed to dominion status and really to continue on substantially as it is. That is why the amount of capital stated in connection with the new dominion loan company is so small—namely, only $12,500 before the new dominion company may begin business. It is true that the authorized capital of the new dominion company is set at $5 million in clause 3, which may be increased to an even larger sum; but in clause 5 the amount of $12,500 is mentioned as the amount that must be subscribed and paid before the company may commence business. However, at the top of page 2, in subclause (2) of clause 5, it is made clear that the new dominion company may not carry on any business as a loan company by itself except such as is necessary to consummate this amalgamation.

Members may ask how the amount of $12,500 was settled upon. The explanation is simply this; the Loan Companies Act requires that every loan company have at least five directors and the minimum share qualification for a director of such a company is $2,500, so that this minimum amount of $12,500

simply permits the new company to be organized in accordance with the minimum requirements of the Loan Companies Act.

The new dominion company will not and may not carry on any business under this bill, if passed, except such business as may be necessary to consummate the amalgamation with the provincial society.

Clauses 1 to 7 are really the clauses found in the model bill in the schedule to the Loan Companies Act. Clauses 8 to 13, inclusive, are specifically designed to accommodate the amalgamation of the new dominion company now being formed with the existing provincial society.

Again, members may ask why is this necessary? Is there not machinery in the Loan Companies Act covering amalgamations? There is a section 90A in the Loan Companies Act covering the amalgamation of two dominion loan companies; but there is no authority in the Loan Companies Act covering the amalgamation of a dominion loan company and a provincial loan company or society, as in this case. In fact, the situation is exactly the same in that respect as obtained in 1961 when the Canada Permanent Trust Company, being a dominion trust company, sought to amalgamate with the Toronto General Trusts Corporation, an Ontario provincial trust company, and a special act was necessary for that purpose. I may say that these clauses 8 to 13 follow almost verbatim the corresponding clauses in that special act in 1961 relating to the two trust companies, being chapter 77 of the Statutes of 1961.

The ACTING CHAIRMAN: Would it be necessary to have a provincial act also to authorize a building society to amalgamate with a federal company?

Mr. MACGREGOR: Yes, Mr. Chairman. I was about to turn to that particular point. The existing provincial society has no power under the Building Societies Act of Nova Scotia to amalgamate. Consequently, in preparation for this desired transformation the society sought and obtained at the last session of the Nova Scotia Legislature a special act specifically for this purpose, and that act was passed by the Nova Scotia Legislature. I am not sure of the chapter number, but it was introduced as Bill No. 70 in the Nova Scotia Legislature at the last session.

Senator REID: Will the old company disappear?

Mr. MACGREGOR: Yes, the old company will disappear, as will any company in a merger or amalgamation of two companies. The two will marry or wed or merge so as to become one corporate entity, the two in this case being a provincial society and the new dominion loan company.

Senator CROLL: I understand you are recommending this bill in its present form?

Mr. MACGREGOR: Yes, I see no reason to oppose it. It seems a pity everyone has been put to so much trouble to attain this objective, simply because of tax difficulties, when in this case there is no thought or desire to distribute any moneys. All that is desired is to transform an existing provincial society into a federal loan company of the usual kind and to continue on—

Senator BURCHILL: And to continue on the same kind of operations as the former company did?

Mr. MACGREGOR: Yes, obtaining money from the public in the form of debentures and deposits.

Senator CROLL: Mr. Chairman, I move the bill.

Mr. MACGREGOR: Mr. Chairman, there is only one other point I would like to mention, and that is the last clause of the bill, clause 14, which is essentially an income tax matter.

There have been so many doubts over the years about the status of this society for income tax purposes that the officers of the company and its solicitors have over many years, and certainly recently, had very intensive discussions

with the tax department, and this clause 14 has been inserted, I understand, for clarification, to make sure that notwithstanding the peculiar status of this society the amalgamation is of a kind that may properly be dealt with under section 85I of the Income Tax Act. Just as an illustration of the doubt that may arise, section 85I provides for the amalgamation of two corporations.

"(1) In this section, an amalgamation of two or more corporations means a merger of such corporations . . . . ."

"Corporation" is defined to include an incorporated company.

These building societies were not incorporated companies, but just as in Britain so in Canada, authority was given by the provincial act, the Building Societies Act, to declare by an order in council that this kind of society shall be a body corporate. It was not until 1948 that an order in council was passed in Nova Scotia declaring this society to be a body corporate. But one may still ask the question: is it nevertheless an incorporated company within the meaning of section 85I? Certainly, from the practical standpoint it is or ought to be so treated for tax purposes; but there are these academic or technical points that may arise.

The ACTING CHAIRMAN: It is due to the difficulty over income tax?

Mr. MACGREGOR: That is correct, Mr. Chairman, and that clause has been approved by the Income Tax Department. However, so far as the tax aspect of the bill is concerned, I leave it to the society and representatives of the Tax Department to speak for themselves on that.

Senator REID: Is this the first time a bill of this nature has come before you?

Mr. MACGREGOR: Yes, senator, in exactly this form. I think we have had all other possible combinations: we have had the transformation of a provincial insurance company to a federal insurance company; the amalgamation of a dominion trust company and a provincial trust company—but this combines the two, this is the merger of an old provincial building society and a new federal loan company so as to form one continuing federal loan company.

Senator REID: One of the senators said the bill should be passed wholesale, but I want to hear the sections called.

The ACTING CHAIRMAN: Would the committee care to pass it section by section?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Will section 1, being the incorporation, pass?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 2, being the provisional directions?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 3, capital stock?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 4, amount to be subscribed before general meeting?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 5, commencement of business?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 6, head office?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 7, Loan Companies Act to apply?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 8, amalgamation?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 9, agreement for amalgamation?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 10, submission of agreement to shareholders, and so forth?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 11, approval of Governor in Council?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 12, effect of agreement: approval of the agreement by the Governor in Council and the subsequent approval of it by the Lieutenant Governor in Council of the province of Nova Scotia?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 13, evidence of approval?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 14, the application of the Income Tax Act?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: I don't know whether you want it or not, but Mr. MacGregor points out there is no French name for this organization. I don't know whether they want one or not. That is their own business. Senator Isnor, is it correct that you don't need a translation of the name?

Senator ISNOR: Perhaps Mr. McInnes could answer that.

Mr. MCINNES: It certainly could be done. The business of the society which has now been carried on for many years is mainly conducted in Nova Scotia with some business being done in New Brunswick, mainly in the south, in the Saint John area. Heretofore it has not been thought necessary, and certainly in the early days it was not necessary, and I think up to the moment the directors of the society have not considered it will be necessary, although it may be that at some future time—

The ACTING CHAIRMAN: You can always come back then.

Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee thereupon concluded its consideration of the bill.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act.

The Honourable PAUL H. BOUFFARD, *Acting Chairman*

WEDNESDAY, JUNE 17, 1964

WITNESS:

Mr. Walter E. Duffett, Dominion Statistician.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21088—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex Officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 11th, 1964.

"Pursuant to the Order of the Day, the Honourable Senator Lang moved, seconded by the Honourable Senator Reid, that the Bill S-35, intituled: "An Act to amend the Corporations and Labour Unions", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21088—1½

REPORT OF THE COMMITTEE

WEDNESDAY, June 17th, 1964.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-35, intituled: "An Act to amend the Corporations and Labour Unions Returns Act", have in obedience to the order of reference of June 11th, 1964, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

Paul H. Bouffard,
Acting Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 17th, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.10 a.m.

Present: The Honourable Senators: Aseltine, Baird, Blois, Bouffard, Brooks, Burchill, Cook, Connolly (*Ottawa West*), Croll, Fergusson, Flynn, Gershaw, Gouin, Hugessen, Irvine, Isnor, Lang, McLean, Molson, Pearson, Reid, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vaillancourt and Walker. —(26)

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

In the absence of the Chairman and on Motion of the Honourable Senator Taylor (*Norfolk*) it was RESOLVED that the Honourable Senator Bouffard be elected Acting Chairman.

On Motion of the Honourable Senator Cook it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-35.

Bill S-35, intituled: "An Act to amend the Corporations and Labour Unions Returns Act", was considered clause by clause.

The following witness was heard:

Mr. Walter E. Duffett, Dominion Statistician.

On Motion of the Honourable Senator Baird it was RESOLVED to report the Bill without amendment.

At 11.30 a.m. the Committee adjourned to the call of the Chairman.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 17, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-35, to amend the Corporations and Labour Unions Returns Act, met this day at 11.10 a.m.

Senator PAUL *H.* BOUFFARD (*Acting Chairman*) in the Chair.

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

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

The ACTING CHAIRMAN: We have a quorum, and we are here to give consideration to amendments to Bill S-35. We have with us this morning, Mr. Walter E. Duffett, Dominion Statistician; Mr. S. A. Goldberg, Assistant Dominion Statistician; Mr. D. Traquair, from the Dominion Bureau of Statistics; and Mr. H. F. Herbert, Director, Planning and Development Branch, Department of National Revenue.

Mr. Duffett, would you give the committee an explanation of the bill, please?

Mr. Walter E. Duffett, Dominion Statistician: Mr. Chairman, honourable senators, I have a brief statement here by way of explanation and background, following which I shall be glad to provide information about particular features of the bill.

The Corporations and Labour Unions Returns Act came into force on January 1, 1963, and is administered by the Dominion Statistician. This act affects some 30,000 corporations and about 200 unions, but it is with the corporation portion that we are principally concerned at the present time.

The act was assigned to the Dominion Statistician, partly, I believe, because it was desired to emphasize the confidential nature of certain of the information to be filed under it, and partly because the Dominion Bureau of Statistics has a good deal of experience in collecting and processing statistical information. We are very conscious of the importance of obtaining such information with a minimum of inconvenience to business firms, and of the importance of assembling it as efficiently and economically as possible.

It was, in fact, pointed out by the Minister of Justice, in introducing the original legislation, that it was to some extent experimental and subject to modification. One rather urgent modification was evident from the fact that a financial statement was required from the corporations to which the bill applied, a financial statement not very different from that which was to be filed with the income tax authorities. The first step that was taken, therefore, was to specify by regulation that a copy of this latter statement, as filed with the income tax department, could be filed with the Dominion Statistician as compliance with this portion of the act.

This provision, while it helped respondent companies, did not fully satisfy them and suggestions were received from any firms that a single statement,

the one received by income tax authorities, should be used instead. Furthermore, this change did nothing to meet the disadvantage that an expensive and broadly similar system of tabulation of these statements was required in the two separate government agencies, the income tax office and the office of the Dominion Statistician.

There was, also, the probability that the two sets of published statistics, being prepared by separate staffs, would show different results and cause confusion.

As was indicated in a statement by the Minister of Trade and Commerce on July 2, 1963, the Dominion Statistician was asked to confer with the staff of the Department of National Revenue to see to what extent the parallel operations of the two agencies could be integrated. By the proposals in the present bill the very efficient statistical collection facilities of the Department of National Revenue will be used to meet the requirements of both groups. Returns to both agencies will be prepared by the companies and submitted at the same time, and it is believed that additional economies will result among accounting staffs of the firms since a variety of information regarding the activities of the company can be assembled in the course of a single operation.

These advantages to both the respondent firms and to the Dominion Statistician require the Dominion Statistician, in using the tax return, to preserve the same sort of secrecy of corporation tax returns as now exists. This is met in this amendment by repealing a subsection 14(5) of the present Corporations and Labour Unions Returns Act which may give officials of government departments access to these financial statements under certain specified circumstances.

The question naturally arises as to whether this loss of access by government is too high a cost to pay for the advantages to be gained. It would seem that this is not a high cost, particularly since during the 17 months that the legislation has been in effect access to individual corporation records by government departments has not been necessary, and need for information has been satisfied by summary tabulations which we have made for them.

It is, of course, possible that such access to individual statements might be useful at some future time, but against this must be put the annual reporting cost and inconvenience to some 30,000 reporting corporations. However, if information along these lines were needed by government, the first step would be to see whether this could be done by detailed summaries, classified by industry and by company size, which would give a picture of the position of the industry or groups of firms. If, however, this proved inadequate and if the Government felt it could only proceed by having information about a particular firm, then a request to this effect could be made to the firm involved. Alernatively, the firm might provide a clearance, authorizing access by a government department to information obtained under the Corporations and Labour Unions Returns Act, information which would be in the possession of the Dominion Statistician. A similar procedure is used from time to time in connection with information reported to the Dominion Bureau of Statistics under the Statistics Act and seems to meet the need.

There are other and very important economies to be secured by a single tabulation operation to meet the needs of both the Dominion Bureau of Statistics and the Department of National Revenue after the data is submitted to Ottawa. This is also made possible by this amending act.

The Department of National Revenue now examines, punches and tabulates information on about 28,000 companies—this represents a sample of the total of perhaps 150,000 companies—for its own purposes, and in order to publish the annual volume known as "Taxation Statistics".

The staff of the Dominion Statistician will be required to make similar tabulations under the Corporations and Labour Unions Returns Act for about 30,000 companies, most of which are the same companies. There are advantages—

Senator ISNOR: What was that last remark? Did you say "mostly the same companies"?

Mr. DUFFETT: Yes, mostly the same companies. We will be required to make similar tabulations under the Corporations and Labour Unions Returns Act for about 30,000 companies, most of which are the same. In fact, the National Revenue figures are up to about 28,000 now.

Clearly, there are advantages in combining these operations in a single tabulation, since the tabulation is a time-consuming one, involving the examination of from 50 to 100 items for each company, the preparation of a year-to-year comparative statement for most large companies, the preparation of standardized worksheets, followed by punching and machine tabulations. The resulting combined data, as contemplated by this legislation, will be prepared on a single consistent basis, avoiding a degree of confusion which would otherwise be difficult—perhaps impossible—to avoid. This integrated tabulation program is made possible by clause 4 of the amending bill, which gives the Dominion Statistician access to National Revenue Tax Returns.

In conclusion, I think I should emphasize that these amendments do not affect the information on directors and share ownership, generally described as Section A information, which is now made available to the public, and which was one of the principal objectives of the original legislation.

Senator REID: Mr. Chairman, I do not think this witness informed us as to what department he is with.

Mr. DUFFETT: I am the Dominion Statistician.

Senator REID: I did not know just who you were. I should like to ask you when this act was first put into effect.

Mr. DUFFETT: On January 1, 1963.

Senator BURCHILL: In a few words, what this bill does is to eliminate the necessity of firms having to make out two returns?

Mr. DUFFETT: Yes, sir.

Senator BURCHILL: Everything can be done on the first return? As a businessman I can say that I am very, very thankful, because the load that is on the staff of an ordinary business firm in making out returns is terrific. It sometimes takes a staff of two working fulltime to complete a return, so I offer many, many thanks for this. As I understand it, when one return is put in the two departments collaborate, and a lot of work is eliminated?

Mr. DUFFETT: This is correct, sir.

Senator ISNOR: What about the form you send out? Is that being revised? You send out a form to be filled in that differs from the average income tax return?

Mr. DUFFETT: The financial information that is obtained under this act consists of a financial statement in the form supplied by the corporation. We do not require it in any particular form. In addition to that, the Corporations and Labour Unions Returns Act requires certain information on payments to non-residents in connection with royalties and matters of that kind. This is information not ordinarily collected by the Department of National Revenue, and for this we use our own form.

The ACTING CHAIRMAN: But the two are combined?

Mr. DUFFETT: The two will be submitted at the same time.

Senator HUGESSEN: Before I ask the witness a question may I say that I think this is the first time I have ever seen the Dominion Statistician in the flesh? I want to tell him how we all appreciate very much the valuable and informative reports we receive.

Mr. DUFFETT: Thank you, sir.

Senator HUGESSEN: Clause 4 of the bill makes the income tax returns of corporations available to the Dominion Statistician for these purposes?

Mr. DUFFETT: Yes, sir.

Senator HUGESSEN: And you say that by repealing subsection (5) of section 14 you eliminate the possibility of any of the officials of the Dominion Statistician having to give information which they obtain from these forms to anybody else?

Mr. DUFFETT: Yes, sir.

Senator HUGESSEN: Should not that be put in a more positive way? It provides that the Dominion Statistician shall have access to, and be able to examine, these corporation returns, but where is there any positive statement that he shall not supply information to anybody else?

Mr. DUFFETT: That is in the original Corporations and Labour Unions Returns Act, which states in section 14(1):

> Except as provided in this section, all information contained in any statement—

and so on

> —is privileged, and no official or authorized person shall, knowingly,
>
> (*a*) communicate or allow to be communicated to any person any such information (hereinafter in this section referred to as "privileged information") obtained under this Act, or
>
> (*b*) allow any person to inspect or have access to any statement or other writing containing any privileged information obtained under this Act.

Senator HUGESSEN: Does that wording include corporation income tax returns examined by the Dominion Statistician?

Mr. DUFFETT: Yes, it would cover that.

Senator HUGESSEN: You are satisfied of that, are you, Mr. Hopkins?

Mr. HOPKINS: Yes.

The ACTING CHAIRMAN: Are there any other questions?

Senator ISNOR: I think that point was gone into quite fully three years ago in the committee.

Senator HUGESSEN: Yes, but we are setting up a new form here.

Senator BAIRD: What was the name of the previous Dominion Statistician?

Mr. DUFFETT: The name of my predecessor?

Senator BAIRD: Yes.

Mr. DUFFETT: I succeeded Mr. Herbert Marshall.

Senator COOK: I have just one question. Section 14A says "The Dominion Statistician or any official described in subsection (4) of section 14". Who are the officials described in subsection (4) of section 14?

Mr. DUFFETT: These are essentially persons employed under the Statistics Act. Section 14(4) reads:

> An official who is an officer or other person employed in the execution of any duty under the Statistics Act or any regulation thereunder may

(*a*) communicate or allow to be communicated to any other such official any privileged information obtained under this Act, and

(*b*) allow any other such official to inspect or have access to any statement or other writing containing any privileged information obtained under this Act.

The purpose is to allow the staff of the Dominion Bureau of Statistics to work with this material.

Senator COOK: Section 14A says: "The Dominion Statistician or any official described in subsection (4) of section 14", and then at the top of the next page it says "or any such official". That still applies to your officials?

Mr. DUFFETT: Yes.

The ACTING CHAIRMAN: Is it agreed that the committee should now discuss the bill clause by clause?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 1? This is a relieving provision.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Clause 2, concerning returns filed with the Minister of National Revenue?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Clause 3?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Clause 4, which includes section 14A?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Clause 5 concerning the regulations which may be made by the Governor in Council?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee thereupon concluded its consideration of the bill.

Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To which was referred the Bill S-36, intituled: "An Act to incorporate the Association of Universities and Colleges of Canada".

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, NOVEMBER 4, 1964

WITNESSES:

Dr. J. H. Corry, Principal, Queen's University. Dr. G. C. Andrew, Executive Director, Canadian Universities Foundation. Monsignor Jacques Garneau, Associate Director, Canadian Universities Foundation. Dr. G. F. Curtis, Dean, Faculty of Law, University of British Columbia.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21556—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden. *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodroow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, July 20th, 1964.

"Pursuant to the Order of the Day, the Honourable Senator Cameron moved, seconded by the Honourable Senator Dessureault, that the Bill S-36, intituled: 'An Act to incorporate the Association of Universities and Colleges of Canada', be read the second time.

After debate, and—

The question being put on motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cameron moved, seconded by the Honourable Senator Dessureault, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

21556—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 4, 1964.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.15 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Blois, Bouffard, Burchill, Choquette, Cook, Crerar, Croll, Davies, Fergusson, Gershaw, Hugessen, Irvine, Isnor, Kinley, Leonard, Molson, Pearson, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Walker, White and Woodrow—26.

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

Bill S-36, "An Act to Incorporate the Association of Universities and Colleges of Canada", was read and considered.

On Motion of the Honourable Senator Blois it was resolved to recommend that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

Dr. J. H. Corry, Principal, Queen's University.

Dr. G. C. Andrew, Executive Director, Canadian Universities Foundation.

Monsignor Jacques Garneau, Associate Director, Canadian Universities Foundation.

Dr. G. F. Curtis, Dean, Faculty of Law, University of British Columbia.

On Motion of the Honourable Senator Hugessen it was resolved to amend clause 7 of the Bill as follows:

1. *Page 2, line 32:* after "body" insert "may become or".

On Motion of the Honourable Senator Bouffard it was resolved to report the Bill as amended.

At 10.35 a.m. the Committee adjourned to the call of the Chairman.

Attest:

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 4, 1964.

The Standing Committee on Banking and Commerce to which was referred the Bill S-36, intituled: "An Act to incorporate the Association of Universities and Colleges of Canada", have in obedience to the order of reference of July 20, 1964, examined the said Bill and now reports the same with the following amendment:

1. *Page 2, line 32:* after "body" insert "may become or".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 4, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-36, to incorporate the Association of Universities and Colleges of Canada, met this day at 9.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: We have before us Bill S-36, to incorporate the Association of Universities and Colleges of Canada. As this is a bill originating in the Senate may I have the usual motions with respect to the recording and printing of the proceedings?

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

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

We have a number of representatives here supporting this bill. We have Dr. J. H. Corry, Principal of Queen's University; Dr. G. F. Curtis, Dean of the Faculty of Law, University of British Columbia; Dr. G. C. Andrew, Executive Director, Canadian Universities Foundation; Monsignor Jacques Garneau, Assistant Director, Canadian Universities Foundation; Dr. E. F. Sheffield, Director of Research, Canadian Universities Foundation, and of course we have the parliamentary agent for the bill, Mr. Joseph Konst.

We will start with Senator Cameron. Senator you were the sponsor of this bill. Have you anything further to say?

Senator CAMERON: No, Mr. Chairman, other than to call on Dr. Corry, Principal of Queen's University.

The CHAIRMAN: Our usual practice is to have some statement of the purpose of the bill and then, if necessary, to look at it clause by clause. In the course of this examination, Dr. Corry, if any of your associates wish to make a contribution, we will be glad to hear them.

Dr. J. H. Corry, Principal, Queen's University: Mr. Chairman and honourable senators, Bill S-36 for which we are seeking approval would give corporate form to an association of universities and colleges of this country and it would also take over an existing corporation, the Canadian Universities Foundation, which was set up in 1959 for certain very special purposes of this association of universities and colleges.

I would say, by way of background, that an association of universities and colleges in this country has existed since 1911, but I think it would be fair to say that up until World War II it met only occasionally, somewhat after the fashion of annual conventions of various professional and other bodies, for the purpose of shop talk and exchanging views among people who were teaching some subjects or who had to do with some aspects of university work.

Universities at that time were pretty much enmeshed in their own regions, serving local communities and not having wider interests or applications than that.

In World War II this Association of Universities and Colleges became a link between the federal Government and the universities, for serving our common purpose in the war. It would be fair to say that the contribution of our universities in that period was maximized because of the existence of this body and its ability to maintain links with the federal Government.

There were two changes in organization of this body—in 1956 and in 1959—with which I will not burden you. However, I should explain that in both these changes we were feeling our way towards a more effective kind of organization to serve the changing purposes and responsibilities that the universities were coming to have.

First, the Canadian Universities Foundation was set up, with one of its main purposes to distribute the federal grants that were then being made to Canadian universities. The second of the changing purposes of the universities, with their changing needs, was to provide a wide range of services to the several universities of the country in the face of the demands that they expand very rapidly to take a greatly increased number of students and offer a much wider variety of courses of instruction; to develop extensively graduate work in Canadian universities, so that we would not be losing our students to the United States and other countries to do graduate work and then finding that they did not come back at all.

The other important purpose, and one that has become increasingly significant in the last few years, is of course helping with what the universities regard as their international responsibility, to help as much as they can to improve education in the newly developing countries of the world. This has become a very significant part of the work of this organization. Foreign governments, wanting to find out what Canadian universities can do for them, cannot come and consult every separate university across the country, except at a loss of time and effort. They can refer to this national association and get the answers they want very quickly.

These are changing purposes and development of our responsibilities for which we want a better organization to serve the purposes of all universities and colleges in the several provinces.

I might just say here, in support of this, that higher education has now become in this country, as in every other country, an extraordinarily complex undertaking. It has changed out of all recognition in the 40 years I have had to do with it. Because it grows physically in quantity, the business of managing universities is now extremely complicated also.

Every university finds problems which are baffling to it and about which it has to get answers. They have been finding increasingly that other universities have the same problems, and the sensible thing therefore is to develop further a common organization for carrying on some of these inquiries and serving each of the universities and colleges in the several provinces in a way that they would find it almost impossible to do for themselves.

For these purposes we have established and developed fairly rapidly in the last few years a secretariat based in Ottawa, which carries on a great deal of work in research and in the development of information, all of which serves the several universities.

This is the main objective, Mr. Chairman, that we have in mind in asking for approval of this bill.

In relation to the actual bill itself I shall not say very much because I think that if questions are raised they should be answered by those witnesses here who are professionally qualified to answer questions, being familiar with the framing of the bill before you.

What I should say is that we have been carrying on the reorganization of activities under two separate organizations, a voluntary association, the Canadian Conference of Universities and Colleges, and the Canadian Universities Foundation, a corporation for limited purposes. We are not interested in any new departures, but only to develop further the kind of things we have been doing and to do them more efficiently. We discovered in the last few years that the secretariat, which tries to serve both the voluntary association and this corporation, gets involved in a great deal of duplication in bringing the same material before both bodies. That occurs at a time when the universities are under such heavy demands and when we do not want to be engaged in any kind of wasteful effort that we can possibly avoid.

There is one other reason I wish to mention. The Canadian Universities Foundation as presently organized is such that, as we have discovered, there is no satisfactory way of ensuring that we get onto the present corporation a fair representation of the universities of the different regions and, of course, of the universities of the two official languages. The new proposal is a way of trying to meet that serious objection through the present form.

The third and final point is, perhaps, a somewhat amusing one. We find that to be described as a "foundation" persuades people that we have money to give away, and we are always receiving applications for these purposes. In fact, the foundation was set up for the purpose of receiving money rather than for the purpose of giving it away to other people. It seemed desirable that we should try to get ourselves incorporated under the name of an association which would represent actually what it is. It is an association of the several provincial universities to serve their common purposes in a more adequate way.

Mr. Chairman, I think that is all I have to say.

Senator CROLL: You said "all the universities and colleges". Is that literally true?

Dr. CORRY: It is not literally true that they are all members; it is not literally true that every one of them is a member. There are certain qualifications for membership that they have to satisfy. There are a few that have not satisfied them, either because they have not asked to come in or because their instruction is not, in the view of the organization, on a sufficiently high level to justify their being admitted. Still others are in process of being admitted. I think that questions were raised, on the second reading of this bill, about several universities that were not on this list. The answer with respect to all those that were mentioned is that they are in process of being admitted. It takes a certain amount of time, when new universities are established, to get themselves in a position that they can qualify for membership. I think this is understood among them and all the other universities; and there is certainly no complain I know of on this score.

Senator LEONARD: As you know, I have an interest in some of the universities of Ontario, and in the Senate chamber I particularly mentioned York, Brock, Trent, Lakehead and Laurentian, which at least are all new. The answer which Senator Cameron gave at the time indicated that they would in due course be in this association. Subsequently I received a letter from Dr. Gibson, a president of Brock University, which indicated he had some reservation about this aspect of the legislation. Perhaps Dr. Gibson's letter was communicated to Senator Cameron. I wonder whether Dr. Corry could make any comment, particularly with respect to those that I have mentioned, being the newer universities in Ontario which are definitely going to be of the same status.

Dr. CORRY: Oh, yes, indeed.

Senator LEONARD: That is, of the same status as those listed in the schedule. In fact, with their consent, I would like to see their names appear in the schedule.

Dr. CORRY: I think whether their names can appear in the schedule will really depend on whether they have qualified for membership at the time the schedule is to be printed. I am not very clear which of the several of these institutions have now fully qualified for membership. They have not all, but they are in the process of qualifying for membership.

Senator CROLL: Are the conditions of membership onerous, in any way?

Dr. CORRY: Dr. Andrew might express those qualifications more clearly, and with the economy of time that is available.

Senator DAVIES: Dr. Corry, does that mean that all money for universities will be thrown into one big pot for distribution?

Dr. CORRY: No. This body has no power over particular universities, and does not channel any money to them, except the federal grants that are now being made to the universities of this country.

The CHAIRMAN: Dr. Andrew?

Dr. G. C. Andrew, Executive Director, Canadian Universities Foundation: Mr. Chairman, the situation with regard to membership is this, that applicants for membership are supposed to have had at least 200 full-time students registered each year for three years. They are supposed to have legislative powers for the educational program that they purport to perform. Thirdly, they are supposed to give evidence to a visiting committee that they are in fact qualifying for the work of a college of university standard.

May I now speak to the point about Dr. Gibson? Dr. Gibson has been in communication with us on this. He has been closely associated with the association for some time. His point was that in the first three years when they were qualifying for membership, this was the period of time the association could be of special help to them. So we have invited all new institutions like that of Dr. Gibson's to come to the meetings, and to have available to them the services of the association in the fullest measure.

The question revolves around consideration of whether it is not advisable to have a full-year membership or a certain period to see if the institution is going to grow above 200 members, because there are certain very small institutions that never grow. It would, in the view of the vast majority, be undesirable to open the door to institutions not likely to have that standing. In the case of institutions like York, Trent, Brock, Lakehead, and Laurentian, the services of the association are fully available to them, and every opportunity is given for consultation. Indeed, we have consulted with all these institutions and rendered such assistance and advice as we can offer and that they wish to have.

Senator CROLL: Would you care to name one or all of the universities you are thinking about below that level of 200, over a period of some time?

Dr. ANDREW: I can name one institution, Ste Annes, in Nova Scotia, which has been in existence for a long time but has never grown tall.

Senator LEONARD: I would have thought there would have been enough flexibility so that all these institutions which we know definitely are going to become large should not have to wait for four or five years to become full-fledged members of the association.

I think in the case of all those I have mentioned, they are bound within this limit of 200 students a year, within a reasonable length of time. There-

fore, it seems to me that as soon as possible, perhaps by introducing some flexibility into your membership rule, you could get these institutions into full membership.

Dr. ANDREW: This is exactly one of the things that is in the bylaws. One is hoping that at the earliest possible time we can devise a formula to allow a kind of provisional membership for those people to participate as soon as possible, and to get advice as soon as possible. There is, I think, full agreement now between Dr. Gibson and ourselves on this particular point. Indeed, we have invited him to try and devise an appropriate form of bylaw.

The CHAIRMAN: I was wondering if you could tell us what services are available to members which would not be available to those who have yet to qualify for membership, but who would be called into meetings, etc.?

Dr. ANDREW: The services that will be available to members, but not available for others?

The CHAIRMAN: Yes.

Dr. ANDREW: None.

The CHAIRMAN: What is the difference then, between being a member and just being welcomed at the meetings?

Dr. ANDREW: Well, the institutions that are obviously going to grow to membership within three years we have invited to partake of as many services as they want.

Senator BOUFFARD: I should like to know whether all the classical colleges would be members.

Dr. ANDREW: They are all members, all entitled to the privileges of membership through their parent institutions—Laval University, Montreal; Sherbrooke; Ottawa.

The CHAIRMAN: I believe that Msgr. Garneau wants to supplement the answer to the previous question.

Msgr. Jacques Garneau, Associate Director, Canadian Universities Foundation: I must say that no institution becomes a member if it does not ask for membership physically. At the present time there are examples of classical colleges which are eligible for membership in their own right because they meet all conditions and have had 200 students at the college level of instruction for more than three years in succession. In that category we have the College Sainte-Marie, Loyola College, College Jean-de-Brébeuf and Marianopolis College.

The classical colleges at Laval University have not asked for membership. They seem to be satisfied, up to this time, with the membership evaluation at the University.

The CHAIRMAN: Thank you.

Senator PEARSON: I have in mind Brandon College, Manitoba, which is also in the schedule. If that college, or any other college, has membership, what advantage would there be in being associated?

Msgr. GARNEAU: One advantage they have is voting powers. They come to the meetings in their own right.

Senator PEARSON: In other words, they do not have a voting right?

Msgr. GARNEAU: They have a voting right, but they are not always included in the mother institution's delegation. For instance, Laval University has 30 affiliated colleges, and there may be a delegation of 13 that is available to Laval University, and perhaps five or six will be superiors of affiliated institutions. Without membership and representation, superiors of those

institutions would not become aware of what is going on at the association. But when an institution is a member in its own right, representatives would come to meetings and have direct representation.

Senator HUGESSEN: My question relates to the same question of addition of other universities in the future, but it is a technical one relating to the draftsmanship of the bill. I believe Dr. Curtis was responsible for the drafting of the bill, was he not? I was a little puzzled. I see in section 1 that references are made to the universities that are contained in the schedule and are the present members of the association. Then you go on to say in section 1:

> . . . together with such other corporations, organizations or bodies as may become members of the corporation as hereinafter provided, . . .

Then you say in section 3 (1), at the end of the section:

> . . . and such other corporations, organizations or bodies as are from time to time admitted to membership pursuant to this Act.

But I do not see anything in the remainder of the act relating to the addition of universities.

Dr. CURTIS: It is under section 7 relating to bylaws.

Senator HUGESSEN: Section 7 says:

> The Association may enact, amend and repeal by-laws for any and all purposes of the Association not inconsistent with the provisions of this Act, including the terms and conditions upon which a corporation, organization or body shall cease to be a member.

Do you think that is quite clear—because in section 1 it is "hereinafter provided," with specific reference to the new universities.

Dr. CURTIS: That is right.

Senator HUGESSEN: Isn't there a bit of a lacuna there?

Dr. CURTIS: The actual technical reading we left to our counsel, I may say, senator. The intention certainly was, of course, that the matter of membership would be covered by bylaw. That is, a bylaw would be passed once the incorporation of the association went through, and that bylaw would provide machinery for membership.

Senator HUGESSEN: Would it not be advisable to amend the first paragraph of section 7 by adding to the words:

> . . . including the terms and conditions upon which a corporation, organization or body *may become or* shall cease to be a member.

Dr. CURTIS: I agree, senator. That was the intention. It would clarify it, in my judgment.

The CHAIRMAN: "shall become"?

Senator HUGESSEN: No, "may become".

The CHAIRMAN: "or shall cease"?

Senator HUGESSEN: Yes.

The CHAIRMAN: Are you prepared to accept that suggestion, Dean Curtis?

Dr. CURTIS: Yes, by all means, sir.

The CHAIRMAN: There is a motion amending section 7.

Mr. KONST: I think the provision "including the terms and conditions upon which a corporation, organization or body shall cease to be a member" was included for greater certainty in the event anybody was to suggest the bylaw for that purpose was not within the general terms of the introductory clause of that section. It was not intended to limit it in any way.

Senator HUGESSEN: No, but a court might read it the other way, that this was a limitation, that that is the only provision you are putting in for allowing new members or letting old members get out.

The CHAIRMAN: The committee approves of amending section 7 to add the words "may become or" before the words "shall cease"?

Hon. SENATORS: Agreed.

Dr. CORRY: This is as much as I thought I should say by way of general explanation, and one or other of us would be willing to answer such questions as might be asked.

Senator LEONARD: Are there at the present time any bylaws or rules of the association in the nature of compulsion of the minority by the majority of members?

Dr. CORRY: If that were so, I am sure we could never have got consent, Senator Leonard, for this from the body as a whole; and certainly unanimous consent was given. But so as not to let it rest on this inference, I shall ask Dean Curtis to speak to it.

Dr. CURTIS: Honourable senators, this is the product of a committee consisting of Dr. Bissell, Dr. Bonneau, the Reverend Father Legare, Dr. Davidson Dunton and myself. We took all these points back to the executives of both existing bodies. We then took this to meetings of the university community last autumn and again this spring. So it comes to you with the unanimous agreement of the total university community in Canada.

On the point of the proposed bylaw—which, of course, has no standing until the association is formed—any bylaw has, in the first instance, to receive a two-thirds majority. The bylaws themselves are very careful in the matter of the exclusion from membership, the point that was mentioned earlier. The protection of the minority is that no member can be excluded except, first of all, on the recommendation of the executive committee, and then followed by a two-thirds vote of the body. Otherwise there is no provision for coercion, and that is the tradition of the university community.

Senator LEONARD: I would assume that.

Dr. CURTIS: It is a very strong tradition.

Senator LEONARD: I merely asked the question so it could be placed on record.

The CHAIRMAN: I should inform the committee that our Law Clerk has consents executed under seal of all the universities and colleges which are in the schedule, so at this stage there is certainly unanimous consent.

Senator CRERAR: I should like to ask a question. The objects of the association to be incorporated are set out in section 2 in a very general way, "to foster and promote the interests of higher education in Canada." Are there any suggestions as to how this might be done, or what you have in mind to accomplish this purpose?

Dr. CORRY: Mr. Chairman, Senator Crerar, I said in my general explanation the purpose of this organization was to serve the universities and colleges of this country by providing a great variety of services, of information and investigation relating to the operation of universities which it would not be possible for each university to do by itself, except at a heavy outlay of expense, time and energy. What we are trying to do here is to create an organization which will serve the several universities and colleges of the country. It is not being set up in an attempt to impose anything on them, but, on the contrary, to serve them and to enable them, in turn, to serve the purposes of higher education more effectively in their own provincial locations. This, in general,

is the objective. We do this very largely by the research and information service that has been established here, which studies a broad variety of questions that the universities themselves are all interested in, and informs them of the results; which from time to time calls meetings of groups interested in particular aspects of the problem, and which holds discussions on them in Ottawa. Within the last week, at the annual meeting, we had a discussion of this very vexed question of the year-round operation of universities, which you hear talked about a great deal. This was a discussion into which considerable preparation went by the secretary in Ottawa, securing the most knowledgeable people we could find to come and talk about it. Everyone who came to it went away with not only a great deal of new knowledge about the problems of the year-round operation but also of a whole range of considerations that apply to such a matter as this. This is the kind of thing we do to serve and promote higher education in Canada. I do not know to what extent this answers your question. If you would like to know the range of services, I think, again, it is better to ask Mr. Andrew to speak to them.

Senator CRERAR: Would it come within the purview of the association, for instance, to consider, say, the standards of entrance to universities and to endeavour to get some uniformity, if possible, in that and to raise the standards of entrance to universities?

I may be wrong, Dr. Corry—and, of course, if I am it is not a new thing at all—but it seems to me that there is a tendency on the part of at least some of our universities to put undue emphasis on the importance of bigness, the number of student bodies, and the character of the buildings they get. It is interesting to note the tendency towards expensive buildings, a lot of glass, steel and bronze, and everything else of that kind; but somehow I think this has resulted in a tendency in the public mind to associate the success of the university with its equipment, buildings, and all that sort of thing.

I remember some years ago when there was a matter before this committee and Dr. Stewart, who is now the head of the Board of Broadcast Governors and who was then the head of the University of Alberta, was before us. We got some comments on the number of fall-outs after the first and second year in university. It would be interesting to have information on that. Naturally, parents want their children to have a university education. Many of them are not really suited for a university education, but we seem to pour many of these people into the mill and hope that something will come out in the end. My question, after this long harangue, is this: Would it be part of the function of the association to be set up to try to improve that situation to place emphasis, if possible, somewhere else? I have not travelled much, but I have been in Great Britain and on the Continent of Europe, and I have seen very successful universities with a prestige and standing that are operating in buildings built 300 years ago. Are we tending in our educational experience to put too much emphasis on buildings and not enough on teaching? Am I right or am I wrong?

Dr. CORRY: Mr. Chairman, Senator Crerar, Queen's University has as its second motto that you don't have to be big in order to be good. Therefore I can understand sympathetically what Senator Crerar is saying. He asks me whether this corporation we are talking about could have as one of its purposes the rising of standards of education in the country generally. I am sure I would hope we would do everything we could to encourage and promote this in every way possible, but I would want to be on record as reminding everybody that each of the universities we represent is an independent body that cherishes its autonomy. It would be the worst possible kind of enterprise for us to try to use any control over individual universities, and I am sure this cannot even be contemplated. On the other hand, I have no doubt at all that at the meetings and in the information and data gathered we do help a great

deal to encourage the improvement of standards. This is one of our constant purposes, for there is not much use talking about promoting a higher education unless you try to improve its quality.

I do not have any great concern about being bigger or having a larger quantity, but I think I must add that there is now an enormous demand for college and university education among the young people of this country. This cannot be turned back and resisted merely because we say now there is not enough space. The goal towards which we must work and what we must try to establish is a reasonably high standard of admission which will ensure that we are getting people who are worth while taking. This is easier to say than to do.

I would add further that none of the tests by which you determine their qualifications on admission is anything like 100 per cent accurate. You are then faced with the decision whether to take a risk and give a boy a chance rather than raise the standard to the point where you know you will be excluding substantial numbers of very good people. I cannot offer any ready or easy answer as to how you actually arrive at the effective level of admission that will at the same time exclude the people who will drop out. This is not easy, but I assure you we all work at it all the time.

Senator CRERAR: Would you agree that the emphasis in universities is tending to be, shall I say, technological? By this I mean that a young fellow goes to university and he gets a degree. He may become an electrical engineer, for instance, or a geologist. I have met many of these people and I have reached the conclusion that they are very skilful in the particular field in which they have specialized. We have developed some excellent electrical engineers, geologists and scientists in one particular branch or another of science, but we find they are not educated people. How would you deal with that situation?

It is perfectly amazing to me to meet persons who are very skilled in their own particular field, but when you discuss literature or poetry or art with them their minds are a blank. In their field they are highly skilled, but when they come out with a degree from a university they are skilled only in their own particular field.

Dr. CORRY: Senator Crerar, you insist on asking me all the difficult questions. I think the first answer is that a university can, and I think all our universities do, give our youth an opportunity to educate themselves in the sense in which you and I understand the word "education" and in the way in which we would like to see them educated. But we cannot force this on them. How much they make of the opportunity depends upon themselves. I am sure you can find many people who have come out of university with the precise limitations you have noted. I would say that this has been very marked in the last 50 years, but there has been a very substantial change. This is true at least of Queen's University, and I think it is true of others as well. Recently there has come a recognition that high specialization or knowledge in depth is not of very much use in the world today unless men also have the breadth of education about which you are speaking. This emerges in all sorts of ways. Youngsters are much more interested now in broader questions that raise issues of religion, philosophy and art than they were when I was a student. Also the specialties are breaking down in the sense that you cannot treat physics and chemistry as separate subjects any more. The growing points of these subjects are reaching common ground. This is happening in biology in relation both to physics and chemistry, and I found to my astonishment that the Dean of the Faculty of Medicine at Queen's, when he heard we were going to do a special post-graduate research for the Bell Telephone Company in engineering, said "That is wonderful, it will help to pep up our Department of Physiology." It took him an hour to explain to me why it was that physiology and electronics had a connection with one another. It is clear to me that in

the growing points there is a coming together. I have great hope that we have moved out of the era in which narrow specialization was thought to be the higher goal in education, and everybody is coming to see that we must educate more broadly.

Senator CRERAR: I think we must conclude from what you say that the association, when it is incorporated and gets going, will be giving some consideration to these problems we have raised. I think it is all for the good, and I am for your association 100 per cent.

The CHAIRMAN: Then I take it you are going to vote for the bill?

Senator CRERAR: Oh, I think that would follow.

Senator BOUFFARD: There is one question I would like to ask. In many provinces—and Quebec is an example—a young man studying for the bar receives his education at the university but that education is formulated by the bar association. At the end of the course the student has to pass the university examinations, but he then has to pass another examination before he can be admitted to the bar. This happens with respect to other professions as well.

I would like to know whether there is any movement afoot to avoid the two examinations. Has consideration been given to the possibility of the legal and other professions agreeing with the universities that the student need pass only the one examination; that the passing of the examination set by the university would be sufficient for admission to the bar, or other professional institutions. At the present time such a student has to pass two examinations and, as a matter of fact, two kinds of examinations. I do not say that the bar formula is perfect—far from it—but it seems that the passing of the university examinations cannot be relied upon by the various law societies to qualify a young man for admission to the bar. Do you propose to discuss this matter?

Dr. CORRY: Mr. Chairman, this is one matter that I think has not so far come before the Canadian Association of Universities and Colleges. There is no reason why it should not be taken up as a matter to be discussed, and if the committee appointed to look into it makes recommendations, then these can be sent to the universities and law societies for their consideration. I repeat that the objects are to serve universities and colleges in every possible way.

Senator BOUFFARD: And the students?

Dr. CORRY: Yes.

Msgr. GARNEAU: May I add one thing? In these matters we are dealing with the privileges of long established corporations such as the provincial law societies and medical associations. The regulations of professionel associations in the provinces may vary. In the Province of Quebec it has been understood with the College of Physicians and Surgeons that the fourth year internship operated by the university serves the purpose of the medical association, and is left at that. On the other hand, with the bar association the universities may carry through the course for the granting of a degree—and, as you know, Senator Bouffard, a degree can be obtained after the third year—and a law student is not admitted to the bar association before he has completed a further internship, shall I say, at the university, but at the end of that time he does not have to pass a really strenuous examination because he has already earned the degree.

The question of agreements with professional associations is a matter that the association could discuss, but I do not think the association itself, as a national body, could solve the problems with respect to the various provincial

associations. It could help the universities of the various provinces to look into these problems, and perhaps facilitate their entering into agreements with the professional associations.

Senator BOUFFARD: I think, Monseigneur Garneau, that if the Bar of Quebec was represented at the examinations given by the universities it might help in solving that problem, and would avoid the necessity for two examinations. As a matter of fact, the university examination is not too good, and it is not a recognition of the good teaching that is being given. I am sure that a close examination of this problem will lead to its settlement.

Msgr. GARNEAU: I believe, Mr. Chairman, that the agreements with the medical association have gone further than those with the bar association. However, a similar arrangement could be worked out.

Senator FERGUSSON: Mr. Chairman, I would like to ask one question of Dr. Corry or Dr. Andrew. Mount Allison University in New Brunswick, although receiving some very large donations and bequests, has set the number of pupils that it will accept during any one year at 1,200. At the same time that university is not remaining static because it is putting up some very fine new buildings, and the staff is being increased and, perhaps, improved. The purpose it has in mind is to get away from this tendency towards bigness, and to concentrate on trying to achieve excellence. I should like to know what you feel on this subject. Do you know of any other universities that are doing something similar—universities that have limited the number of pupils in order to improve the teaching they are giving?

Dr. CORRY: Mr. Chairman, I cannot answer the question with certainty. Queen's University is limiting its intake, but it is doing this in association and in agreement with the Government of Ontario because it is thought that Queen's University, confined as it is by the river and the town, simply cannot expand economically at the same rate as other institutions. But, what Mount Allison's position is—whether it is a determination to go it alone, and remain small whatever comes—I cannot say. Probably there are not very many universities and colleges in this country that will reach this determination. I wonder if Dr. Andrew has something particular to say about this.

Dr. ANDREW: Mr. Chairman and Senator Fergusson, this is a determination of Mount Allison University. In the last few years there has been a renewed interest in what is called the liberal arts college as opposed to the university, and in the idea of limiting enrolment in order to concentrate on excellent undergraduates. The question of how many graduate schools a given area can afford is now a matter of some importance, and Dr. L. H. Cragg of Mount Allison University is very much interested in our having a discussion of this very subject—the role of the liberal arts college in relation to the university—at our next year's conference, or at a special conference. There is a high degree of possibility that this matter will come up in the form that Senator Fergusson has referred to it, as a particular concern of the conference, over the next couple of years.

Senator BURCHILL: May I ask a question, Mr. Chairman?

The CHAIRMAN: Yes, Senator Burchill.

Senator BURCHILL: I presume there are many smaller colleges and universities that are not members of this association?

Dr. CORRY: Mr. Chairman, Dr. Andrew will be able to give you precise figures.

Senator BURCHILL: My question is this: Is it a function of the association to direct in any way the apportionment of the federal grant to the various universities? I know that a few years ago there was some dissatisfaction expressed with the way the federal grant was distributed. Some of the smaller

colleges were not happy, and they blamed the larger institutions for taking all the funds. Is that still the case?

Dr. ANDREW: Mr. Chairman, this is quite an involved matter. We are the agent for the distribution of federal grants. We are also charged by the legislation to inspect the institutions that qualify for federal grants in order to make sure that they are offering education at the college or university level. To the best of our knowledge—and we have spent much time on defining a formula—we are not aware of any grievance with respect to the formula at the moment.

There are institutions—for example, Red Deer Junior College in Alberta, which is affiliated with the University of Alberta—which, if they are recognized by the provincial universities, we do not have to inspect. Because of its affiliation with the University of Alberta, the Red Deer Junior College qualifies for a federal grant, and there are others which qualify through the parent university. Some of them were on the original list provided by the provinces, and they qualify directly. To the best of our knowledge, most of these problems have been sorted out, although I am never sure that a small affiliated institution is entirely happy with its relationship with the government or its sister body.

The CHAIRMAN: Senators, before I call for a vote on the bill I should tell you that the Law Clerk reports that the bill is in proper legal form. He has also given me a memorandum on another point that was raised in the course of the debate on second reading, namely, the question of the legislative competence of Parliament to enact a bill of this character. The memorandum of our Law Clerk with respect to this point reads as follows:

> In my opinion, the enactment of this bill is within the legislative competence of Parliament and does not constitute an invasion of the provincial sphere of jurisdiction in relation to "education" as set out in section 93 of the British North America Act, 1867.
>
> The bill assumes no legislative jurisdiction over education within any province, nor does it delegate any such jurisdiction to the proposed corporation. What it does is to give a formal charter—that is to say, give corporate form—to an unincorporated body already exercising similar functions which are nation-wide and thus clearly extra-provincial in character. The objects of the proposed corporation are promotional only—to give aid and support to higher education in this country—and it is specifically provided that provincial laws shall be complied with by the Corporation.
>
> In my opinion, therefore, the bill does not constitute an invasion of the provincial legislative jurisdiction in the field of education or an interference with its autonomy in that field. Indeed, if Parliament does not possess the power to incorporate such an institution, it could not be incorporated at all in Canada, and it has been said more than once that, between them, Parliament and the provincial legislatures possess a totality of legislative power. (See, e.g., Lord Hobhouse in Bank of Toronto v Lambe (1887) 12 App. Cas. 575.)
>
> There are of course many precedents for the present type of incorporation, including the two religious bills passed by the Senate at the present session. Indeed, to refuse this bill on constitutional grounds could cast grave doubts on the status of a good many religious and eleemosynary institutions, both Catholic and Protestant, now incorporated by Parliament and operating throughout Canada.
>
> As Laskin has said in his "Canadian Constitutional Law", at p. 655:—
>
> > "Provincial legislative authority in relation to education is not incompatible with federal authority in the field by way of grants in aid or institutional contributions."

Moreover, the Massey Report of 1951 has this to say on pages 7 and 8 thereof:—

> "There is no general prohibition in Canadian law against any group, governmental or voluntary, contributing to the education of the individual in its broadest sense."

Are you ready for the question?

Hon. SENATORS: Yes.

The CHAIRMAN: Shall I report the bill as amended?

Hon. SENATORS: Agreed.

The CHAIRMAN: Carried.

Senator CAMERON: Mr. Chairman, before we adjourn, there is one distinguished member of this group whom I did not introduce. In view of the importance of research, I would like to introduce Dr. E. F. Sheffield, Director of Research of the Canadian Universities Foundation.

Senator LEONARD: I feel we should pay a tribute to Dr. Sheffield for the work he has been doing, which has been of enormous help to all those interested in universities throughout Canada.

Hon. SENATORS: Hear, hear.

The committee adjourned.

Second Session—Twenty-sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To which was referred the Bill S-44, intituled: "An Act to incorporate The Royal College of Dentists of Canada".

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, NOVEMBER 25, 1964

WITNESSES:

Mr. Joseph H. Konst, Parliamentary Agent;
Mr. Gordon D. Watson, Q.C., Counsel for the petitioners.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21674—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden. *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 4, 1964:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Smith (*Queens-Shelburne*), seconded by the Honourable Senator Inman, for second reading of the Bill S-44, intituled: "An Act to incorporate The Royal College of Dentists of Canada".

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

The Bill was then read the second time.

The Honourable Senator Smith (*Queens-Shelburne*) moved, seconded by the Honourable Senator Molson, that the Bill be referred to the Standing Committee on Banking and Commerce.

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

J. F. MacNEILL,
Clerk of the Senate.

21674—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 25, 1964.

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

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Bouffard, Brooks, Burchill, Cook, Crerar, Croll, Davies, Fergusson, Flynn, Gélinas, Gershaw, Gouin, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, McLean, Molson, O'Leary (*Carleton*), Pearson, Power, Reid, Roebuck, Taylor (*Norfolk*), Thorvaldson, Vaillancourt and White.—(35)

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

On Motion of the Honourable Senator Thorvaldson it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the Committee proceedings on Bill S-44.

Bill S-44, "An Act to incorporate The Royal College of Dentists of Canada", was considered.

The following witnesses were heard:

Mr. Joseph H. Konst, Parliamentary Agent.

Mr. Gordon D. Watson, Q.C., Counsel for the petitioners.

On Motion of the Honourable Senator Leonard it was resolved that the said Bill be reported with the following amendments:

Page 4, line 13: Strike out "its business and affairs" and substitute therefor "the business and affairs of the College".

At 10.45 a.m. the Committee adjourned until 2.00 p.m. this day.

Attest:

F. A. JACKSON,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, November 25, 1964.

The Standing Committee on Banking and Commerce to which was referred the Bill S-44, intituled: "An Act to incorporate The Royal College of Dentists of Canada", has in obedience to the order of reference of November 4th, 1964, examined the said Bill and now reports the same with the following amendment:

Page 4, line 13: Strike out "its business and affairs" and substitute therefor "the business and affairs of the College".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 25, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-44, to incorporate The Royal College of Dentists of Canada, met this day at 9.30 a.m.

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

The CHAIRMAN: The second bill we have before us is Bill S-44, an act to incorporate The Royal College of Dentists of Canada.

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

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

The CHAIRMAN: Mr. J. H. Konst is present as the parliamentary agent of the petitioners. I shall ask him to introduce the people who are appearing.

Mr. J. H. Konst: Mr. Chairman and Honourable Senators, attending today before the Standing Committee on Banking and Commerce are Dr. Remy Langlois, Doctor of Dental Surgery, who is the president of the Canadian Dental Association; Donald Werden Gullett, Doctor of Dental Surgery, and Secretary of the Canadian Dental Association; William Gordon McIntosh, Doctor of Dental Surgery, assistant secretary of the Canadian Dental Association; Mervyn Allen Rogers, Doctor of Dental Surgery, Chairman of the Committee on Specialists and Specialization, and Mr. Donald George Watson, Q.C., of Toronto, the solicitor for the Canadian Dental Association.

At this time I will ask Mr. Watson to speak to you.

The CHAIRMAN: Just a moment. Senator Smith, you are the sponsor of this bill. Have you anything that you want to say at this time?

Senator SMITH (*Queens-Shelburne*): No. I have nothing to say at this time. It is in good hands.

The CHAIRMAN: Certainly, it will be in good hands with Mr. Watson.

Mr. Donald George Watson, Q.C.: Mr. Chairman and members of the committee, the dental members of the upper chamber who explained the purpose and intent of this bill on second reading in the Senate covered the subject so fully that my task can be very brief.

I should tell you that the college, the incorporation of which is sought by this bill, is, first, not a teaching body. It is not concerned with teaching as such, it is not a licensing body, and it is not a disciplining body. Those are functions of the various provincial associations, and provincial organizations to which control of the profession is entrusted in each province.

I should indicate that this college is organized simply as something that will provide an accolade of achievement to a man who has won his spurs in the province in which he is licensed. It is a recognition of excellence in the profession.

This bill is patterned on, and attempts to parallel very closely, the bill which incorporated some 40 years ago the Royal College of Physicians and Surgeons. We hope to have the same situation in the dental profession as exists in the medical profession.

Each of the provincial associations, responsible for the administration of the profession in each province supports the bill now before you. The bill is engendered and sponsored by the Canadian Dental Association which represents 99 per cent of all dentists in every province in Canada. The bill is the result of four years of study under a committee under the chairmanship of Dr. Rogers. It has received careful consideration and support. We come before you now asking that the bill be approved in the form in which it is submitted, subject to one minor amendment suggested by counsel to the committee.

On page 4, line 4, clause 11, the bill reads "for the government and management of its affairs". This might lead to the conclusion that the word "its" refers to the affairs of the council rather than to the affairs of the college. Therefore, it is proposed to amend it so that the clause will read "for the government and management of the business and affairs of the college". That amendment has been suggested and it is quite acceptable, I understand, to the sponsors and petitioners for this bill.

The CHAIRMAN: Is the amendment agreed to?

Hon. SENATORS: Agreed.

The CHAIRMAN: This bill follows the main outline of others bills we have had. Are you ready to report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.

Second Session—Twenty-Sixth Parliament
1964

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To which was referred the Bill S-45 intituled: "An Act to incorporate the Canadian Institute of Actuaries".

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, NOVEMBER 25, 1964

WITNESSES:

Mr. R. Humphrys, proposed Vice-President; Mr. G. J. Gorman, Parliamentary Agent; Mr. E. S. Jackson, Chairman, Committee on Accreditation and Qualification of Actuaries.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21676—1

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—50.
Gelinas	O'Leary (*Carleton*)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 4, 1964:

"Pursuant to the Order of the Day, the Honourable Senator McCutcheon, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill S-45, intituled: "An Act to incorporate Canadian Institute of Actuaries", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21676—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 25, 1964.

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

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Bouffard, Brooks, Burchill, Cook, Crerar, Croll, Davies, Fergusson, Flynn, Gelinas, Gershaw, Gouin, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, McLean, Molson, O'Leary (*Carleton*), Pearson, Power, Reid, Roebuck, Taylor (*Norfolk*), Thorvaldson, Vaillancourt and White.—(35)

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

On Motion of the Honourable Senator Croll it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the Committee proceedings on Bill S-145.

Bill S-45, "An Act to incorporate Canadian Institute of Actuaries", was considered.

The following witnesses were heard:

Mr. R. Humphrys, proposed Vice-President.

Mr. G. J. Gorman, Parliamentary Agent.

Mr. E. S. Jackson, Chairman, Committee on Accreditation and Qualification of Actuaries.

On Motion of the Honourable Senator Baird it was resolved that the said Bill be reported without amendment.

At 10.45 a.m. the Committee adjourned until 2.00 p.m. this day.

Attest.

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 25, 1964.

The Standing Committee on Banking and Commerce to which was referred the Bill S-45, intituled: "An Act to incorporate Canadian Institute of Actuaries", has in obedience to the order of reference of November 4th, 1964, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 25, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-45, to incorporate Canadian Institute of Actuaries, met this day at 9.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: I call the meeting to order. The first bill we have to consider this morning is Bill S-45, an act to incorporate Canadian Institute of Actuaries.

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

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

The CHAIRMAN: Senator McCutcheon, you sponsored this bill in the Senate. Have you anything you would like to say at this time before we hear from those who are appearing in support of the bill? Perhaps I should tell the committee who they are. Present with us today is Mr. Richard Humphrys, the proposed Vice-President; Mr. E. S. Jackson, Chairman of the Committee on Accreditation and Qualification of Actuaries, and Actuarial Vice-President; Mr. Sam Eckler, member of the Committee on Accreditation and Qualification of Actuaries; and Mr. Leon Mondoux, a member of the Committee on Accreditation and Qualification of Actuaries.

Senator MCCUTCHEON: I have nothing to say in addition to what I said in the Senate, Mr. Chairman, other than to mention that in addition to being one of the sponsors of the bill Mr. Humphrys is also the Superintendent of Insurance. Mr. G. J. Gorman is here as Parliamentary Counsel. I think Mr. Humphrys will make an opening statement, and I suggest that he be now asked to do so.

The CHAIRMAN: Yes. Mr. Humphrys, would you make your opening statement?

Mr. Richard Humphrys, Superintendent of Insurance: Mr. Chairman and Honourable Senators, the President of the Canadian Association of Actuaries, the body that is asking for this incorporation, was to appear as head of our delegation. Unfortunately, due to illness, he is not able to come, and consequently I, as vice-president, am speaking in his stead.

I should say first that I am interested in this bill from two aspects—as an actuary, a Fellow of the Society of Actuaries, a member and officer of the Canadian Association of Actuaries, and as the Superintendent of Insurance. In the latter capacity I am, of course, vitally interested in questions relating to the solvency and financial standing of insurance companies, employees'

pension plans, fraternal benefit societies, and all questions requiring actuarial advice to the Government and Government departments, since the actuarial branch of the Department of Insurance acts in this regard.

I think that my remarks to this committee should be confined to the aspects as they appear from the point of view of the Insurance Department. I would like to leave to Mr. Jackson, who is a member of the council of the present association, and also chairman of the committee of the association that has studied this matter for some years, to speak on the questions relating to the profession as a whole in Canada, and the significance of this move to the profession.

From the point of view of the Department of Insurance and the insurance statutes there has always been great importance placed on the qualification of actuaries. In the statutes real responsibilities are placed on actuaries for producing actuarial reports, and for completing the actuarial calculations that are necessary in connection with insurance and pension plans. These matters have long been recognized in the statutes. In fact, of my five predecessors in the office of Superintendent of Insurance four have been actuaries, including the first Superintendent appointed in 1875. Until 1919 there was no specific definition of an actuary in the federal statutes. Prior to that time actuarial reports were made, and life insurance companies, in their own interests, had established standards of qualification for their own actuarial staffs. In the years preceding 1919, however, a good many problems arose in connection with fraternal benefit societies. Many of these societies had been organized and started with inadequate actuarial advice and as a result many painful reorganizations took place to avoid complete failure.

In 1919 there was an extensive amendment to the Insurance Act to set up a stronger framework of supervision for fraternal benefit societies. The variety of societies then existing made it impracticable to prescribe bases of reserves in the statute; and accordingly the approach taken was to require reports and valuations by qualified actuaries and to require these reports to be submitted to the Insurance Department.

Included in the reports, as a requirement, was a personal professional certificate on the part of the actuary certifying to the adequacy of the reserves.

This of course made it vital that the actuaries submitting these reports should be of a high standard. Accordingly, the legislation at that time defined an actuary for the purposes of the law to be a Fellow of the Actuarial Society of America, or of the Institute of Actuaries in Great Britain or of the Faculty of Actuaries in Scotland. These were the three recognized actuarial bodies which had members active on this continent. They all had examinations to qualify members, and membership of these bodies was recognized as being the highest standard of actuarial qualification.

Senator BURCHILL: Before you could join one of these institutes that you speak of, you had to pass certain examinations?

Mr. HUMPHRYS: That is correct, senator. Each of the three organizations had an extensive pattern of examinations to ensure a high standard of qualification.

At the time that legislation was adopted there were transitional provisions to take care of those who had been making actuarial reports in previous years but who did not meet these particular qualifications.

Those definitions have continued practically unchanged to the present time, but the transitional provision was dropped in 1950 as being no longer necessary. All persons making actuarial reports of this type are able now to meet the qualifications prescribed at that time.

In connection with a great number of pension plans submitted for approval or registration by the Minister of National Revenue with a view to seeking tax exemption for contributions, it has been necessary to require actuarial certificates as to the adequacy of contributions and the calculation of liabilities. This has led to a prescription of a standard of actuarial qualification along the lines of that included in the Insurance Acts.

In the department's own staff the same standard of qualification is required in the senior actuarial positions. Thus, all through the work of the department it is vital to have a standard of actuarial qualification and competency and integrity that enables the department to rely on the quality of the actuarial work and actuarial reports submitted.

The department welcomes this move to recognize in more formal fashion a Canadian organization of actuaries. Hitherto there has been no organization in Canada that prescribes a standard of membership such that it could be recognized in federal statutes and still maintain the high standards that we now have. We therefore welcome this move and we hope that the new organization, if it is approved by Parliament and becomes organized, will provide a means of establishing a standard of actuarial competency and training by reference to a Canadian body.

While our present definitions are in terms of nonresident societies it should be made clear that the Society of Actuaries, although incorporated in the United States, is truly an international body, because it has a recognized standard on this continent and Canadians seeking to become professional actuaries write the examinations of this society and qualify for membership in it.

Canadians have always taken an active part in the affairs of the society, being on the Board of Governors, frequently being the head of the society, and being active in all its committees.

Mr. Chairman, that completes the remarks I would like to make from the viewpoint of the Department of Insurance. If the honourable members would like to hear any further remarks as respects the profession as a whole, Mr. Jackson will be glad to deal with that aspect or answer questions in that regard.

Senator ROEBUCK: In clause 4 of the bill you say:

(1) In addition to the general powers accorded to it by law

To what do you refer? Is it the common law or any special law?

Mr. HUMPHRYS: I would say that the reference is to the general powers that a company incorporated by special act would have, under the Companies Act.

Senator ROEBUCK: That is what you mean by that—what you get in the Companies Act?

Mr. HUMPHRYS: Yes.

Senator ROEBUCK: And you are an incorporated body now, are you?

Mr. HUMPHRYS: No.

Senator ROEBUCK: But you will be when this bill is passed?

Mr. HUMPHRYS: Yes.

Senator ROEBUCK: When this bill is passed, will you have a monopoly of the name "actuary"?

Mr. HUMPHRYS: No, sir.

Senator ROEBUCK: That is, anybody else can use the name, notwithstanding this bill?

Mr. HUMPHRYS: That is correct. There is nothing in this bill that would prevent anyone from calling himself an actuary.

Senator ROEBUCK: I see also that you are reserving to yourselves the power to pass by-laws, setting out who shall be members, and:

> The number and qualification of the members, the various classifications of members, the voting and other rights attaching to each classification, the conditions of, circumstances and manner of entry into and termination of membership and generally the conditions, privileges and obligations attaching to membership in the Institute, shall be such as may be determined from time to time by its by-laws.

That is to say, you are not stating in this bill what the conditions of membership shall be, what the privileges are that you claim for yourselves, or anything else. It is wide open for you to state what you please about membership, privileges, qualifications and all that sort of thing. Do you think that ought to be in the bill? Should we not know something about what you are going to do, before we give you power to do it?

The CHAIRMAN: This is ordinarily done in this fashion, senator, in private bills.

Senator ROEBUCK: I do not think it is as wide as that, by any means.

Senator MCCUTCHEON: You have a group of persons coming here to be incorporated for the purposes designated in the bill. There is nothing unusual.

Senator ROEBUCK: But the purposes are not designated in the bill. That is the point I am making.

The CHAIRMAN: See clause 2 of the bill.

Senator MCCUTCHEON: They come here and there is nothing monopolistic about it. As the witness has said, any person is entitled to call himself an actuary hereafter, just as he has been entitled to call himself an actuary heretofore. Surely it is within the normal powers for this group to determine who shall be the future members. The initial membership is spelled out in the clause to which you were referring.

Senator ROEBUCK: Following that general power, undefined or almost undefined, you state it shall have the general powers accorded it by law, and then you add to that all such powers as you care to give to yourselves by by-law. On top of that, you add this:

> Members of the Institute may designate their membership or class of membership therein by appending to their names such abbreviations, not contrary to law, as may be provided in the by-laws of the Institute.

I suppose that the letters on which you will finally settle will include the initial at least of the word "actuaries".

Mr. HUMPHRYS: I would expect that would be so, senator.

Senator ROEBUCK: And when you have settled on the letters to follow your name, will that not be exclusive?

Mr. HUMPHRYS: No. We would not so interpret it.

Senator ROEBUCK: You have stated in the act that you have the right to choose the letters. What letters are used now?

Mr. HUMPHRYS: The present organization does not have in its by-laws any specific designation of letters; but the other organizations establishing qualification of actuaries use letters to designate membership in the society. The Society of Actuaries use the designation F.S.A.—Fellow of the Society of Actuaries; the British Institute uses F.I.A.—Fellow of the Institute of Actuaries; and the Scottish organization uses F.F.A.—Fellow of the Faculty of Actuaries.

Senator ROEBUCK: I suppose it is obvious what letters you would use?

Mr. HUMPHRYS: It would be a matter for by-law, but I would think letters would designate the name of the organization—probably Fellow of the Canadian Institute of Actuaries.

The CHAIRMAN: Senator Roebuck, while on that point, there was a question raised on second reading about the use of these letters. I have the opinion of our Law Clerk, and I think this is the proper place to read it. He states as follows:

> In my opinion, this bill is in proper legal form.
>
> However, a question was raised in the debate on second reading of this bill as to the propriety of permitting members of the Institute to append abbreviations to their names.
>
> In my opinion, such appendages would be for identification only and would not be tantamount to the conferment of a university or college degree. Moreover, I find that such a provision was made without precedent, in that similar provision was made with respect to the Royal Architectural Institute of Canada: see section 6 of chap. 87 of the Statutes of 1955.

Senator ISNOR: Mr. Chairman, I should like first to ask Mr. Humphrys: (a) how many members of his staff are qualified under the terms of this bill as actuaries; (b) what effect the bill would have on the carrying out of the duties of his staff.

Mr. HUMPHRYS: On our staff we have 15 employees who are members of the Canadian Association of Actuaries. All of those persons would become members of this organization, because one of the provisions of this bill would include in the new organization all members of the existing association. Ten members of our staff are fellows of either the Society of Actuaries, the Institute of Actuaries, or the Faculty of Actuaries, and five members are associates of the Society of Actuaries.

Senator ROEBUCK: Would the latter class, which you have just mentioned, be included?

Mr. HUMPHRYS: The latter class would be included, yes, sir.

As to the effect on our staff of the enactment of this bill: it would not have any immediate effect, and in the future we would continue to require a standard of qualification and training of the same quality as we now require for appointment to our senior actuarial positions. I would hope and expect that this new body, if formed, would establish qualifications for its membership such that it would be possible in the federal statutes and in requirements for staff qualification, to recognize membership in the Canadian Institute of Actuaries as being an adequate standard of qualification.

Senator CROLL: Mr. Humphrys, relating to Bill S-44, to incorporate the Royal College of Dentists of Canada, which is to follow this bill, its members are graduates of a recognized dental school in Canada, in the same way as are members of the medical and legal professions. The persons to be covered by this bill appear to be members of any one of three societies, namely, the American, British or Scottish, which are completely outside of this country.

Mr. HUMPHREYS: Yes.

Senator CROLL: And whatever qualifications or examinations that were necessary to take, they took, and became members?

Mr. HUMPHRYS: Yes.

Senator CROLL: In addition to the powers which Senator Roebuck pointed out, such as passing by-laws from time to time, once you incorporate you will also be in a position to allow them to attach abbrevations, whatever they may be, to differentiate them. Moreover, you may make it a first or second-class

membership, whatever it might be, which I do not understand. Does that not put you in much the same position as these faculties to which I made reference?

Mr. HUMPHRYS: It contains that capacity, Senator Croll. Up to the present time, there has been no body in Canada establishing a standard of examination, or training or qualification as an actuary. Accordingly, Canadians seeking to enter the profession turn to one of these three recognized bodies. By reason of our close association with the United States, Canadian generally seeking this status have turned to the American body. It has become very much an international body because of the large participation of Canadians in its membership. As a matter of fact, Canada has long done quite a good export trade in actuaries to the United States.

While the basic qualifications and techniques of actuaries are international, I believe that as a country grows in size and develops economically it creates its own economic environment, to a point where gradually, but steadily, knowledge of the local conditions and environment becomes of increasing importance in dealing with matters requiring actuarial advice. Therefore, I think it is a sound move to increase the stature of the Canadian organization of actuaries so that in the future, if it appears desirable, the organization can take to itself some of the steps having to do with accreditation of actuaries for which we rely on these bodies in other countries.

Senator CROLL: But, Mr. Humphrys, a man who graduates from the faculty of dentistry is a dentist, and having graduated, becomes first class. Of course, he may become second class later on. But you undertake to designate membership, or class of membership.

Mr. HUMPHRYS: Yes, sir. I can explain that. In view of the circumstances now existing within the actuarial profession, the three bodies to which we have referred, each have two classes of membership, namely, "associate" and "fellow". The associates have passed a number of the examinations, leading to a certain standard. The fellows have passed a further series of examinations. These are the two classes of membership that are common in the profession as it now exists.

Senator MCCUTCHEON: Such as B.A. or Ph.D.

The CHAIRMAN: Yes, or such as B.A. or M.A.

Mr. HUMPHRYS: The reason for different classes of membership is with that particular possibility in mind and recognition of the traditional method of qualification within the actuarial profession.

Senator CROLL: Well, you say there is nothing here to prevent any man who is not a member of any of these organizations from practising as an actuary, and there are some in this country who do that?

Mr. HUMPHRYS: There may be; there are very few.

Senator CROLL: I would not know. Would you not know as a member?

Senator LAMBERT: Ten, according to the sponsor of the bill.

Senator CROLL: I asked how many are not members.

Senator MCCUTCHEON: Members of the association number some 500. I know of no person today practising as an actuary who has not the qualifications to belong to the association. As Mr. Humphrys said, there may be one or two, but the fact is that they are not recognized, and have not been recognized, since 1919, by the Government of Canada or by the Department of Insurance. In 1919, as Mr. Humphrys said, there were some transitional provisions put in the act so that people in that situation could continue to certify statements for governments and for government departments. In 1950 it was decided that they would all be regarded as such and so those provisions were discontinued.

The CHAIRMAN: But there is no statutory limitation. What you are talking about is that there are standards established for jobs in the government service for corporate work, and for life insurance companies. If one doesn't conform to those standards one just doesn't get the job.

Senator ROEBUCK: I suppose when you have certain obligations attached to membership they will include the fees which you charge on entrance to the profession. But there is no limitation on the amount you may charge?

Mr. HUMPHRYS: It will be for the members themselves to decide, senator.

Senator ROEBUCK: I suppose other societies do the same.

The CHAIRMAN: Even the Law Society.

Senator ROEBUCK: Yes, it is increasing, too. It is now $175 for this year. The $70 covers the right to practise and $100 covers defalcations of other crippled lawyers.

Senator LAMBERT: I would like to draw attention to the second clause of the bill, subsection (b): "to promote the application of actuarial science to human affairs". I assume that in the past this has been, as indicated in the first paragraph of the bill, a voluntary association for the purpose of cultivating high professional standards within the profession itself. This incorporation would tend to create a higher standard than exists at the present time. In other words, special issues and special problems would become attached to the application of actuarial science to human affairs. In the past has the Association of Canadian Actuaries presented their point of view, or can you give us an example of such, to Parliament or to a parliamentary committee in relation to this?

Mr. HUMPHRYS: The Association as such has not put forward any views. It has been the practice of the Association, and in fact a strong principle of this organization not to present views as an association. It has been regarded as an association of professional actuaries, to meet and exchange views and opinions among themselves and to discuss matters of concern to them. It was also to concern itself with the entry into the profession of new recruits, and the standards of qualification. But because of the variety of membership and the variety of views, it has been felt that actuaries presenting representations should present them on the basis of their own professional standing and on their own personal responsibilities. As a consequence, up to the present, at least, the Association has not expressed views as an association.

Where requests have been received by the Association for an expression of views on actuarial matters, the procedure adopted has been to put forward the names of some members of the Association who have taken a particular interest in or are particularly qualified to deal with the matters concerned, and to have them, in their individual professional capacity, put forward their views.

Senator LAMBERT: In connection with this incorporation, would the corporation under this subsection (b) of section 2 consider itself obliged morally or otherwise to express its opinion or views on subjects that would be related to human affairs, for example, legislation?

Mr. HUMPHRYS: It is not the present intention to have the organization of actuaries as such express views. It would be our hope, however, that with the increasing stature of the organization it could take steps that would result in public recognition of the profession of actuary, and would result in a greater tendency on the part of businesses and governments to turn to actuaries with a recognized standard of qualification for views in matters where actuaries are particularly qualified to advise and give opinions.

Senator CROLL: As a matter of fact, actuaries are now expressing their views on human affairs in connection with the Canada Pension bill.

Mr. HUMPHRYS: Yes.

Senator CROLL: In that respect you are already in business. In clause 5, subclause (2), I note the words "not contrary to law" what does that mean? I know of no law either pro or con that I can think of at the moment.

Senator MCCUTCHEON: I suppose they could not designate themselves as Ph.D.'s. That would be contrary to law.

Mr. Gregory J. Gorman: What we had in mind in drafting that was that there are certain designations such as M.D. to designate medical doctor, and of course this institute will be precluded from using any initials in that category. It was felt that as a precaution we should put that phrase in that particular clause of the bill.

The CHAIRMAN: They could not say, for example, they were D.A.'s—doctor of actuaries. In fact the expression D.A. has another connotation.

Senator ROEBUCK: Somebody pointed out that lawyers charge fees, but the lawyers police their own organization. I know what a distasteful business it is to have to throw somebody out by the back of the neck. Would this association have any powers or is it its intention to police its organization as the lawyers do?

The CHAIRMAN: You mean discipline?

Senator ROEBUCK: Yes, and the dismissal of members for professional misconduct.

The CHAIRMAN: There is an expression in clause 5 which speaks of terms of membership.

Mr. E. S. Jackson: There is a distinction here between an actuary and a member of the medical profession or the legal profession or a chartered accountant. The right to practise medicine is limited by law, but anybody can call himself an actuary and practise as an actuary. We hope through publicity to make the public realize that there is a Canadian Institute of Actuaries, incorporated by act of Parliament, and we hope to make them aware of this, and that all leading actuaries in Canada are members of this organization. This is a protection to the public so that if there is a member calling himself an actuary but who is not a member of the organization the public thinks "Let us look into him and see if he has that expertness or not." But, he can still practice as an actuary.

So far as the profession within the group is concerned we plan—and this is only at the exploratory stage at present—to have a code of ethics. We plan to have a body of actuaries within our association that conducts itself in a proper manner. This is only in the planning stage, but we have the intention of setting up a code of ethics, and if people do not conform we shall throw them out of the organization. Of course, at the present time, if such a person were thrown out of our organization that would do nothing to his livelihood. It might hurt his reputation, and we would hope it would.

Senator ROEBUCK: I think that is an answer to my question.

Senator CROLL: Mr. Humphrys, suppose I want to become an actuary and you say to me: "We are sorry; we will not have you." You could say that for many reasons. Perhaps I am not competent—

Senator ROEBUCK: They might not like the colour of your hair.

Senator CROLL: Yes. What is my recourse in that event?

Mr. HUMPHRYS: Are you raising your question, Senator, in connection with reports that might be acceptable to the Department of Insurance, or are you raising your question with respect to practice as an actuary in Canada?

Senator CROLL: I am not talking to you now in your other capacity. Suppose I have been calling myself an actuary for some time. I may not be

overly qualified, but that does not make any difference. I want to become an actuary, but for some reason or other you say: "No." What recourse is there for me?

Mr. HUMPHRYS: There is no recourse, but on the other hand that does not stop you from continuing to do what you are doing.

Senator MCCUTCHEON: Or from calling yourelf an actuary.

Senator CROLL: Except, as Mr. Jackson has indicated, you have established those few designated letters as being the mark of an actuary suitable to be accepted across the country, but for these other people there is no recourse at all. Such a person must take whatever the actuarial society decides?

Mr. HUMPHRYS: Yes, sir.

Senator CROLL: May I just follow that up? In our general legislation—the legislation that governs you in the department—is that a course that is followed

Mr. HUMPHRYS: Yes, sir. We consider that so far as the public statutes are concerned, where they rely on reports and calculations made by actuaries, it is most important in the public interest to see to it that the persons who are making those reports—the persons upon who we rely to produce adequate and sound calculations—are persons of the highest standard of qualification.

Senator CROLL: Yes, but the man I am talking about has no recourse to the courts. He has no recourse to any body. He must abide by the decision made, and it is final?

Mr. HUMPHRYS: That is correct, sir, but Parliament has made the decision in the statutes, and has designated a standard of qualification.

Senator CROLL: Parliament has nothing to do with the drawing up of by-laws. You draw them up.

Mr. HUMPHREYS: Yes, but in the statutes that now exist, in which actuaries are defined as being members of these three existing organizations, this particular distinction has been made, and Parliament in so designating is relying on the standards for membership established by these organizations. So long as those standards are sound then Parliament is justified, in my opinion in so relying upon them, but if those standards were reduced then changes would have to be made.

Senator CROLL: By "Parliament" you mean "the Government"?

Mr. HUMPHRYS: No, I am referring to Parliament when it passed the Insurance Act, for example.

Senator CROLL: To what section of the Insurance Act are you referring?

Mr. HUMPHRYS: Section 100 reads:

> The term "Actuary" in this Part means a Fellow by examination of the Institute of Actuaries of Great Britain, the Faculty of Actuaries in Scotland, or the Society of Actuaries.

Senator CROLL: Yes, and the purpose of this bill is to follow that definition?

Mr. HUMPHERYS: Well, the purpose of this bill is to establish a Canadian organization which will establish its own qualifications for membership. It is the intention to use these qualifications at the present time, but the organization would not be restricted to these. If it wished to set its own examinations or to establish some other qualification for membership then it would be open to it to do so. But, in this definition Parliament is relying on the standards of qualification imposed by these societies for their own members.

Mr. JACKSON: Could I speak on that particular point? It seems to me, Senator Croll, that the fear you have is caused by the fact that at the present

time in Canada anybody can call himself and actuary. We propose to lessen this fear by at least having a Canadian organization to which anybody who feels he is entitled to call himself an actuary can apply for membership. He will not have to apply for membership in a foreign society.

Senator CROLL: There is nothing we can do about foreign organizations. They are not part of the scope of our investigation, but sooner or later this organization will take on a character of its own and it will be recognized. I put to you the proposition that at some time for some reason that may be good someone will have a grievance, and he has no place to go except back to the organization. There is no room for appeal to any other body in Canada?

Senator FLYNN: I suggest as an answer to the objection raised by Senator Croll that the actuarial profession is not at present regulated under provincial laws. The provincial legislatures are the bodies which regulate the practice of any profession. If the institute does not establish standards that are fair to all actuaries then any legislature can set up regulations. They can pass laws to regulate the practice of the actuarial profession in any given provinces. The institute as contemplated is the same thing as the Canadian Bar Association, which is founded upon the provincial bar associations. At present there is no such thing so far as the actuarial profession is concerned, but it will come.

The CHAIRMAN: Senator Baird?

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

Senator THORVALDSON: I second that motion.

Senator BOUFFARD: I understand that Laval University graduated 26 actuaries last year who were all taken up by insurance companies. Will these people who have passed examinations be *ipso facto* members of the association, or will they have to pass some other kind of examination?

Mr. JACKSON: The situation in Canada and throughout the world—at least, in the United States, Canada and Great Britain—is that universities give courses in actuarial science, but they are only in the preliminary area of straight mathematics. No university gives a course in all aspects of actuarial science. The procedure at Laval, Queen's, the University of Toronto and the University of Manitoba, which are the pre-eminent universities giving such courses in Canada, is that the students are required to take a general course when they are at the university, and they pass three or four of the actuarial examinations of the Society of Actuaries. Then, when they pass one more they become an associate of the society, and when they pass one more they become fellows. This is how actuaries in Canada become qualified. The university degree by itself does not qualify a man as an actuary, according to custom in Canada and the United States.

The CHAIRMAN: There is a motion before the committee to report the bill without amendment. Are you ready for the question? Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: Senator Smith, you were sponsor of this bill. Have you anything to say at this time?

Senator SMITH (*Queens-Shelburne*): I have nothing to say. I think the matter is in good hands.

The CHAIRMAN: It certainly will be in good hands with Mr. Jackson.

Mr. JACKSON: Mr. Chairman, and honourable members of this committee, the dental members of the upper chamber who explained the purpose and intent of this bill on second reading in the chamber, covered the subject so fully that I think my task can be very brief. I should point out to the committee that primarily the college, the incorporation of which is sought by this bill

is, first, not a teaching body, it is not concerned with teaching as such, it is not a licensing body, it is not a disciplining body. Those are functions of the various professional associations and professional organizations to whom control of the profession is entrusted in each province.

I should indicate that this college is organized simply as something that will provide the accolade of achievement to a man who has earned his spurs in the particular province in which he is licensed. It is a recognition of excellence in the profession. It is patterned on, and attempts to parallel very closely, the bill which incorporated some 40 years ago the Royal College of Physicians and Surgeons, so that we hope to have the same situation in dental profession as exists in the medical profession.

Each of the provincial associations thus responsible for the administration of the profession in each province, support the bill which is now before you. The bill is sponsored and engendered by the Canadian Dental Association, which represents 99 per cent of all dentists in every province in Canada. The bill is a result of four years of study under a committee under the chairmanship of Dr. Rogers. It has received very careful consideration and support. We come before this body now, asking that the bill be approved in the form in which it is submitted, subject to one minor amendment suggested by counsel to the committee. On page 4, line 4, clause 11 now reads: "for the government and management of its business and affairs", which might lead to the conclusion that the word "its" referred to the affairs of the council rather than to the affairs of the college. It is proposed to amend that so that the clause will read "for the government and management of the business and affairs of the college". That amendment has been suggested and it is quite acceptable, I understand, to the sponsors and petitioners for this bill.

The CHAIRMAN: Is that amendment agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: Are there any questions to Mr. Watson? This bill follows the main outline of other bills we have had. Are you ready to report the bill, with the amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: It is carried.

Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To which was referred the Bill S-46, intituled:

"An Act to incorporate Settlers Savings and Mortgage Corporation".

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, NOVEMBER 25, 1964

WITNESSES:

Mr. R. Humphrys, Superintendent of Insurance;
Mr. V. John Swystun, Barrister and Solicitor.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

21678—1

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (*Bedford*)	Hayden	Pouliot
Beaubien (*Provencher*)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson (*Shelburne*)
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Cook	Lang	Taylor (*Norfolk*)
Crerar	Leonard	Thorvaldson
Croll	Macdonald (*Brantford*)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (*Carleton*)	

Ex Officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 4, 1964:

"Pursuant to the Order of the Day, the Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill S-46, intituled: "An Act to incorporate Settlers Savings and Mortgage Corporation", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21678—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 25th, 1964.

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

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Bouffard, Brooks, Burchill, Cook, Crerar, Croll, Davies, Fergusson, Flynn, Gelinas, Gershaw, Gouin, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, McLean, Molson, O'Leary (*Carleton*), Pearson, Power, Reid, Roebuck, Taylor (*Norfolk*), Thorvaldson, Vaillancourt and White. (35)

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

On motion of the Honourable Senator Thorvaldson it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the Committee proceedings on Bill S-46.

Bill S-46, "An Act to incorporate Settlers Savings and Mortgage Corporation", was considered.

The following witnesses were heard:

Mr. R. Humphrys, Superintendent of Insurance.

Mr. V. John Swystun, Barrister and Solicitor.

On motion of the Honourable Senator Beaubien (*Bedford*) it was RESOLVED to report the said Bill with the following amendments:

Page 1, line 19: Strike out "Hypothèque" and substitute therefor "d'Hypothèques".

At 10.45 a.m. the Committee adjourned until 2.00 p.m. this day.

Attest.

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 25th, 1964.

The Standing Committee on Banking and Commerce to which was referred the Bill S-46, intituled: "An Act to incorporate Settlers Savings and Mortgage Corporation", has in obedience to the order of reference of November 4th, 1964, examined the said Bill and now reports the same with the following amendment:

Page 1, line 19: Strike out "Hypothèque" and substitute therefor "d'Hypothèques".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 25, 1964.

The Standing Committee on Banking and Commerce, to which was referred Bill S-46, to incorporate Settlers Savings and Mortgage Corporation, met this day at 9.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

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

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

The CHAIRMAN: Honourable senators, we have a number of persons identified with the Settlers Savings and Mortgage Corporation, who are appearing as witnesses in case there are any questions you wish to ask. They are: Dr. Alexander H. Cottick, Dentist; Mr. John Shanski, Lumber Merchant; Mr. Ernest John Klassen, Manufacturer, Mr. V. John Swystun, Barrister and Solicitor, Mr. R. Humphrys, Superintendent of Insurance and Mr. George Perley-Robertson, Barrister.

Before I call on these gentlemen, I would ask Senator Thorvaldson, who sponsored the bill, whether he has anything to add?

Senator THORVALDSON: No, Mr. Chairman, with the exception that our Senate Law Clerk has suggested one small amendment to clause 1, and that no doubt will be dealt with by counsel for the petitioners.

The CHAIRMAN: Who will speak first? Mr. Humphrys, would you give your views on this bill?

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, this bill to incorporate Settlers Savings and Mortgage Corporation is in the standard form for incorporating a loan company subject to the Loan Companies Act. It has no special features to which I need to call your attention. The capital of the company is said to be $1 million, which may be increased to $5 million. There will be a requirement that at least $500,000 be subscribed before the company has its first meeting; and at least $250,000 paid before it starts business.

Senator BOUFFARD: How do you increase the $1 million to $5 million?

Mr. HUMPHRYS: The company does it itself by by-law. In accordance with its usual custom, the department has become informed as to the background and references of all the incorporators and we find they are men of the highest standing in their community. It is my understanding that the company proposes to be active, at least in the beginning, in making real estate mortgages in and around Winnipeg, Manitoba, but not necessarily to confine itself to the province. I do not have any other comments.

The CHAIRMAN: Do they propose to accept deposits initially, or do you have some rule in connection with that?

Mr. HUMPHRYS: My understanding is that the company does not propose to accept deposits at least in the initial year or two, until it becomes well established. The usual custom of the department is to request that new loan companies do not accept deposits until they become established. As I understand it, the intention is to raise perhaps additonal funds by issuing capital or selling debentures to the public.

Senator PEARSON: Is it proposed to accept mortgages only on housing property, or on housing and farms?

Mr. V. John Swystun: We have set no policy as to that. We have not got that far. At the present time I think we would find ourselves mainly dealing with mortgages on dwelling houses and on commercial property.

Senator PEARSON: In what city?

Mr. SWYSTUN: In all cities. We intend to do so from Montreal to Vancouver.

Senator HOLLETT: And no business in the east?

Mr. SWYSTUN: We might go to the east, to the Maritimes. We will see how it goes.

The CHAIRMAN: Are there any other questions? I should direct your attention to the fact that a slight amendment has been suggested by our Law Clerk in page 1, line 19, that the word "Hypotheque" be made plural by adding "s" and that "d' " be prefixed, and an acute accent added. Is that so approved?

Hon. SENATORS: Agreed.

The CHAIRMAN: It is carried. Furthermore, Senator Hugessen, in the course of the second reading of this bill, raised a question as to a member of Parliament, either a senator or a member of the House of Commons, being one of the petitioners for incorporation. Our Law Clerk has written an opinion on that, which I will read into the record of today's proceedings. The full text is as follows:

> A question was raised during the debate on the second reading of this Bill as to the constitutional propriety of Senators petitioning Parliament for private bills, and also as to their being named in such bills as provisional directors of the companies to be thereby incorporated.
>
> I have been unable to discover anything in the British North America Act, the Senate and House of Commons Act or the Rules of the Senate, which would constitute any impediment in this regard. There are many precedents to the contrary, one of which is to be found in connection with an Act to incorporate Desjardins Mutual Life Assurance Company, chap. 60 of the Statutes of 1959, in which a senator, so-described, was a petitioner named in the Act as a provisional director. A further precedent to the same effect is to be found in an Act to incorporate Kinross Mortgage Corporation, chap. 73 of the Statutes of 1963, in relation to which the late Gordon Peter Campbell was both a petitioner and provisional director.
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> The only qualification of significance would appear to be in Rule 53 of the Senate Rules, which reads as follows:
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> > "No senator is entitled to vote upon any question in which he has any pecuniary interest whatsoever, not held in common with the rest of the Canadian subjects of the Crown; and the vote of any senator so interested will be disallowed."

This rule simply provides for the disallowance of the vote of a senator upon any question in which he has a pecuniary interest.

In fact, the parliamentary rule appears to be to the effect that any citizen has an inherent right to petition Parliament so long as the technical rules as to the form of such submission are observed. As I have said, there is nothing in the Rules of the Senate which would disqualify a Senator either from being a party to the petition for a private bill or from being named therein as a provisional director. The basic provision in this regard stems from the resolution of the Imperial House of Commons adopted in 1669, from which the present position evolved:

> "That it is the inherent right of every commoner in England to prepare and present petitions to the House or Commons in case of grievance, and the House of Commons to receive same."

This principle, somewhat narrowly expressed in the beginning, has been enlarged and extended so as to include both Houses of Parliament, petitions for private bills as well as for the redress of grievances, to all citizens and residents, and even, as a matter of grace, to aliens residing outside Canada: see Bourinot's 4th edition, pp. 234. Certainly, the basic right of petitioning Parliament as a whole is not denied to Senators in respect either of bills or grievances.

Senator REID: What is the full meaning of that?

The CHAIRMAN: The full meaning is that a senator may be one of the applicants for incorporation of a company.

Senator HOLLETT: The same thing applies to the House of Commons?

The CHAIRMAN: Yes, there is no differentiation; we are not being derogated to a second-class position. We can be applicants. Shall I report the bill as amended?

Senator POWER: I raised the question about the translation of the word "Settlers" in the name of the corporation. I think they made a mess of that.

The CHAIRMAN: Of course, senator, if we pass this in the form in which it is today, we shall not be creating a hybrid for the first time. We have done it many times, taking an English name and leaving it as part of the French name. The purpose is for identification, and it can still have a French characteristic.

Senator POWER: No. The whole story is that this appears to be a group of settlers, and they want to indicate that they are settlers.

The CHAIRMAN: Obviously they think they are.

Senator DAVIES: What is the meaning of the word 'Settlers" in this particular instance?

Mr. SWYSTUN: Senator, I might point out that it took the exploratory committee approximately five months to arrive at a name. As you can see from the names of the members of the exploratory committee, all are descendants of parents who came from Europe. Our parents were all settlers; most of them homesteaded out in the west. The first word we picked was "Pioneers." We wrote to the Superintendent of Insurance, and got in touch with our counsel, and we received two full sheets listing companies with the name "Pioneers," and so on, in different provinces. So we could not use that. We went to "Apex" and to "Keystone," and found that somewhere in some province was someone dealing with loans or mortgages which had that name, so we could not use names in competition with theirs. Then, as though an angel in heaven were

looking after us, we struck on the name "Settlers," which is exactly descriptive of our fathers and forefathers; and, lo and behold, not one company in Canada was using the name "Settlers." I think that is a good omen.

The CHAIRMAN: After that very impassioned presentation, I think there should be a motion to report the bill as amended. Shall I report the bill as amended?

Honourable SENATORS: Agreed.

The committee adjourned.