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Standing Committee on
Banking and Commerce,
1964/65.
Minutes of proceed-
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HOUSE OF COMMONS

Standing Committee on
Banking and Commerce

1964 - 1965

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HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LARRY PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

TUESDAY, JULY 7, 1964

Respecting

Bill S-34, An Act to incorporate Nova Scotia Savings & Loan Company

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WITNESSES:

Hector McInnes, Q.C., Parliamentary Agent; R. Guy, General Manager, Nova Scotia Savings and Loan Company; K. R. MacGregor, Superintendent of Insurance.

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

21244—1

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Larry Pennell, Esq.
Vice-Chairman: R. Gendron, Esq.
and Messrs.

Addison
Aiken
Armstrong
Asselin
(*Notre-Dame-de-Grâce*)
Basford
Bell
Berger
Blouin
Cameron
(*High Park*)
Cameron
(*Nanaimo-Cowichan-The Islands*)
Caouette
Casselman (*Mrs.*)
Côté
(*Chicoutimi*)
Douglas
Frenette
Flemming
(*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Guay
Hales
Jewett (*Miss*)
Kindt
Klein
Lloyd
Macaluso
Mackasey
McCutcheon
McLean (*Charlotte*)
Monteith
More
Moreau
Morison
Nowlan
Nugent
Otto
Pascoe
Ryan
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

TUESDAY, March 24, 1964.

Ordered,—That the following Bills be referred to the Standing Committee on Banking and Commerce:

Bill S-9, An Act respecting Scottish Canadian Assurance Corporation.

Bill S-8, An Act respecting The General Accident Assurance Company of Canada.

FRIDAY, April 14, 1964.

Resolved,—That the following Members do compose the Standing Committee on Banking and Commerce:

Messrs.

Addison,
Aiken,
Armstrong,
Asselin (*Notre-Dame-de Grâce*),
Bell,
Cameron (*High Park*),
Cameron (*Nanaimo-Cowichan-The Islands*),
Caouette,
Casselman (Mrs.),
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Crossman,
Crouse,
Danforth,
Douglas,
Flemming (*Victoria-Carleton*),
Gelber,
Gendron,
Grafftey,
Grégoire,
Habel,
Hahn,
Hales,
Jewett (Miss),
Kelly,
Kindt,
Klein,
Leblanc,
Lloyd,
Mackasey,
Matte,
McCutcheon,
McLean (*Charlotte*),
Monteith,
More (*Regina City*),
Moreau,
Morison,
Olsen,
Otto,
Pascoe,
Ryan,
Rynard,
Scott,
Tardif,
Thomas,
Vincent,
Wahn,
Whelan,
Woolliams—50.

(Quorum 15)

Ordered,—That the said Committee be empowered to examine and inquire into all such matters and things as may be referred to it by the House; and to report from time to time its observations and opinions thereon, with power to send for persons, papers and records.

WEDNESDAY, April 22, 1964.

Ordered,—That the names of Messrs. Pennell, Basford, and Gray be substituted for those of Messrs. Kelly, Crossman, and Habel respectively on the Standing Committee on Banking and Commerce.

TUESDAY, April 28, 1964.

Ordered,—That the Standing Committee on Banking and Commerce be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto; and that the quorum of the said Committee be reduced from 15 to 10 Members, and that Standing Order 65(1)(*d*) be suspended in relation thereto.

21244—1½

Ordered,—That the name of Mr. Nugent be substituted for that of Mr. Crouse on the Standing Committee on Banking and Commerce.

THURSDAY, May 7, 1964.

Ordered,—That Bill S-14, An Act respecting The Dominion Life Assurance Company, be referred to the Standing Committee on Banking and Commerce.

TUESDAY, May 12, 1964.

Ordered,—That the following Bills be referred to the Standing Committee on Banking and Commerce:

Bill S-12, An Act respecting Allstate Insurance Company of Canada.

Bill S-15, An Act to incorporate Evangeline Savings and Mortgage Company.

TUESDAY, June 2, 1964.

Ordered,—That Bill S-18, An Act respecting The Montreal Board of Trade, be referred to the Standing Committee on Banking and Commerce.

TUESDAY, June 16, 1964.

Ordered,—That the name of Mr. Macaluso be substituted for that of Mr. Hahn on the Standing Committee on Banking and Commerce.

TUESDAY, June 16, 1964.

Ordered,—That the following Bills be referred to the Standing Committee on Banking and Commerce:

Bill S-30, An Act respecting The Dominion of Canada General Insurance Company.

Bill S-31, An Act respecting The Casualty Company of Canada.

THURSDAY, June 18, 1964.

Ordered,—That Bill S-28, An Act respecting the Quebec Board of Trade, be referred to the Standing Committee on Banking and Commerce.

THURSDAY, June 18, 1964.

Ordered,—That the name of Mr. Marcoux be substituted for that of Mr. Olson on the Standing Committee on Banking and Commerce.

FRIDAY, June 19, 1964.

Ordered,—That the name of Mr. Nowlan be substituted for that of Mr. Danforth on the Standing Committee on Banking and Commerce.

THURSDAY, June 25, 1964.

Ordered,—That Bill S-34, An Act to incorporate Nova Scotia Savings & Loan Company, be referred to the Standing Committee on Banking and Commerce.

FRIDAY, June 26, 1964.

Ordered,—That the Standing Committee on Banking and Commerce be authorized to sit while the House is sitting.

THURSDAY, July 2, 1964.

Ordered,—That the name of Mr. Guay be substituted for that of Mr. Leblanc on the Standing Committee on Banking and Commerce.

MONDAY, July 6, 1964.

Ordered,—That the names of Messrs. Berger, Frenette, and Blouin be substituted for those of Messrs. Matte, Marcoux, and Chrétien respectively on the Standing Committee on Banking and Commerce.

Attest

LÉON-J. RAYMOND,
The Clerk of the House.

REPORTS TO THE HOUSE

APRIL 28, 1964.

The Standing Committee on Banking and Commerce has the honour to present the following as its

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto;

2. That its quorum be reduced from 15 to 10 members and that Standing Order 65(1)(*d*) be suspended in relation thereto.

Respectfully submitted,

LARRY PENNELL,
Chairman.

Concurred in this day.

JUNE 16, 1964.

The Standing Committee on Banking and Commerce has the honour to present its

THIRD REPORT

Your Committee recommends that it be authorized to sit while the House is sitting.

Respectfully submitted,

LARRY PENNELL,
Chairman.

Concurred in June 26, 1964.

JULY 9, 1964.

The Standing Committee on Banking and Commerce has the honour to present its

FIFTH REPORT

Your Committee has considered Bill S-34, An Act to incorporate Nova Scotia Savings and Loan Company, and has agreed to report it without amendment.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issue No. 1) is appended.

Respectfully submitted,

LARRY PENNELL,
Chairman.

NOTE: The Second and Fourth Reports deal with Private Bills, Proceedings of which were not published.

MINUTES OF PROCEEDINGS

THURSDAY, April 23, 1964.
(1)*

The Standing Committee on Banking and Commerce met this day at 10.10 o'clock a.m. for organization purposes.

Members present: Messrs. Addison, Aiken, Basford, Crouse, Flemming (*Victoria-Carleton*), Gelber, Gendron, Gray, Hahn, Mackasey, Matte, McCutcheon, McLean (*Charlotte*), Moreau, Olson, Pennell, Ryan, Rynard, Thomas, Whelan (20).

The Clerk attending, and having called for nominations, Mr. Hahn moved, seconded by Mr. McLean (*Charlotte*), that Mr. Pennell be elected Chairman of the Committee.

There being no further nominations, Mr. Pennell was declared elected as Chairman.

Mr. Pennell thanked the Committee for the honour conferred on him.

On motion of Mr. Moreau, seconded by Mr. Matte, Mr. Gendron was elected Vice-Chairman.

On motion of Mr. Basford, seconded by Mr. Rynard,

Resolved,—That a Sub-Committee on Agenda and Procedure, comprising the Chairman and six members to be designated by him, be appointed.

On motion of Mr. Moreau, seconded by Mr. Crouse,

Resolved,—That permission be sought from the House to print such papers and evidence as may be ordered by the Committee.

On motion of Mr. Gelber, seconded by Mr. Thomas,

Resolved,—That the Committee recommend to the House that its quorum be reduced from 15 to 10 members.

At 10.20 o'clock a.m., the Committee adjourned to the call of the Chair.

M. Slack,
Clerk of the Committee.

TUESDAY, July 7, 1964.
(4)

The Standing Committee on Banking and Commerce met at 10.15 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Berger, Basford, Cameron (*High Park*), Frenette, Gendron, Gelber, Gray, Grégoire, Guay, Klein, Lloyd, Moreau, Morison, Otto, Pennell, Ryan, Thomas, Vincent (18).

In attendance: Gerald Regan, M.P., Sponsor of Bill S-34; Hector McInnes, Q.C., Parliamentary Agent; R. Guy, General Manager, Nova Scotia Savings and Loan Company; Mr. K. R. MacGregor, Superintendent of Insurance.

On motion of Mr. Berger, seconded by Mr. Grégoire,

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* The 2nd and 3rd meetings deal with Private Bills, for which Proceedings were not published.

Resolved: That the Committee cause to be printed 750 copies in English and 300 in French of the Minutes of Proceedings and Evidence relating to Bills S-28 and S-34.

The committee first considered Bill S-28, the proceedings of which are recorded separately.

The committee then proceeded to consideration of Bill S-34, An Act to incorporate Nova Scotia Savings and Loan Company.

On the Preamble:

Mr. Regan, Sponsor of the Bill, introduced the Parliamentary Agent, Mr. McInnes, and the witness, Mr. Guy.

Mr. MacGregor was called, made a statement and was questioned.

The Preamble, Clauses 1 to 14 inclusive, and the Title were severally carried.

The Bill was carried without amendment.

Ordered: That Bill S-34 be reported without amendment.

At 12.20 p.m., on motion of Mr. Grégoire, the Committee adjourned until 3.00 p.m. to resume consideration of Bill S-28.

DOROTHY F. BALLANTINE,
Clerk of the Committee.

EVIDENCE

TUESDAY, July 7, 1964.

The CHAIRMAN: I will call the Preamble of Bill No. S-34, An Act to incorporate Nova Scotia Savings and Loan Company, and would invite the sponsor, Mr. Regan, to introduce the parliamentary agent and any witnesses he may wish to call.

Mr. REGAN: Thank you, Mr. Chairman and members of the committee.

This is an act to incorporate the Nova Scotia Savings and Loan Company. To explain the purpose of this legislation we have Mr. MacGregor, director of insurance, and Mr. Hector McInnes, solicitor and Parliamentary Agent. We also have with us Mr. Ross Guy, general manager of the company.

I propose, if it is agreeable to the committee, to have Mr. MacGregor first give an explanation of the purpose of this proposed legislation.

The CHAIRMAN: Thank you, Mr. MacGregor, would you kindly come forward please? All members of the committee I am sure are aware that Mr. MacGregor is the superintendent of insurance.

Mr. K. R. MACGREGOR (*Superintendent of Insurance*): Mr. Chairman and honourable members, I feel that in view of the discussion and the hour I should endeavour to be as brief as possible.

Although the form of this bill S-14 to incorporate Nova Scotia Savings and Loan Company may appear to be rather unusual and perhaps a bit complicated, actually its purpose is quite simple. Stated briefly, this bill would transform a very old Nova Scotia building society called the Nova Scotia Saving, Loan and Building Society, having a very peculiar form of capital, into a federal joint stock loan company of the usual kind.

Looking at the bill, this purpose would be accomplished by first incorporating a new federal loan company called the Nova Scotia Savings and Loan Company, and this part of the purpose is dealt with by clauses 1 to 7, inclusive.

Secondly, the new federal loan company would be given the power to amalgamate with the existing provincial society, and that part of the purpose is covered by clauses 8 to 13 inclusive.

Clause 14 at the end of the bill is included for technical reasons relating to income tax.

May I simply say that the existing society was incorporated by the province of Nova Scotia away back in 1849 and began business in 1850. It has operated successfully for 114 years and during the last 40 years or more under the supervision of our department, even though it is a provincial organization.

The purpose of the existing society has been to accept money from the public in the form of deposits or debentures, or as capital—and I should like to say a few words later about the peculiar nature of its capital—and with these funds to lend them out mainly on real estate mortgages. The society is in quite a sound financial position.

At the end of 1963, the liability side of its balance sheet showed debentures amounting to, and I will give round figures, $18,419,000. It had accepted deposits amounting to $3,050,000 and had other miscellaneous liabilities amounting to $327,000, making total liabilities of $21,796,000.

Still on the liability side of the balance sheet, it had capital in the amount of $1,716,000, a general reserve of $1,200,000, special reserves of $383,000, and

a surplus or a balance in its profit and loss account of $117,000. When you add the capital and these reserves to the total liabilities you get the society's total assets, namely, $25,212,000.

The question may be asked, what is the peculiar kind of capital of this society? First of all these old building societies, although quite common in England, have been quite uncommon in Canada and this to my knowledge is the only one left of its kind here.

Mr. GELBER: Could you give me the capital reserve figures again?

Mr. MACGREGOR: The capital and reserves added together amount to $3,416,000.

Mr. GELBER: What is the special reserve fund?

Mr. MACGREGOR: The special reserve is $383,000, really against their mortgages, but the general reserve is $1,200,000.

Mr. GELBER: Does that come out of earnings or is that paid in reserves?

Mr. MACGREGOR: It came out of earnings over the years.

Mr. GELBER: How old is the society?

Mr. MACGREGOR: 114 years.

Mr. GELBER: I see.

Mr. RYAN: You say the net worth now is $25 million?

Mr. MACGREGOR: That is the total amount of assets, Mr. Ryan. The total is $25,212,000.

Unlike an ordinary joint stock company, however, with permanent capital, the capital of this society is of a temporary nature. Over the years in accordance with its governing constitution and rules, it has sold shares to the public either on a fully paid basis or on an instalment basis. The fully paid shares have been sold for $240 and carry interest or a dividend of five per cent, which is not paid out in cash but which accumulates, with the result that at the end of 14 years the $240 share matures at double the amount, namely $480. At that time the shareholder does not have the full say whether he may leave his money with the company or not. It is up to the management of the company at that time to decide whether they want to keep the money in whole or in part.

The instalment shares were sold on the basis of $2 per month payable for 101 months and they carry interest or a dividend of four per cent which also accumulates, with the result that at the end of 101 months the instalment share matures for $240. Sometimes in the past the $240 has been taken to purchase a fully paid share.

However, members of the committee I am sure will readily see that capital of this kind might be quite unstable, and it is conceivable, although it has never happened to my knowledge, that the management might require upon maturity that a lot of this capital be repaid, and the society might be left in the hands of a relatively small group of management. That is one disadvantage of the present situation; the instability that capital of this kind carries with it.

Secondly, of course, shares of this kind cannot be traded or listed on an exchange.

Thirdly, the peculiar nature of this capital has given rise to very considerable uncertainty for income tax purposes. Over the years the income tax department has seemingly had very considerable difficulty in making up its mind whether the accumulating interest or dividends in respect of these shares should be treated like bond interest and, therefore, allowed as a deduction from taxable income of the society or whether it should be treated like dividends paid out of earnings.

Back in 1938 an arrangement was made or an agreement was reached with the income tax department, on an arbitrary basis whereby 60 per cent of these

accumulations credited each year would be treated virtually as bond interest and allowed as a deduction in respect of the taxable income of the society. The other 40 per cent would not be so treated. In 1957 the tax department changed its mind again and said from that date on all of these accretions would be treated the same as dividends and would be paid out of earnings. Consequently since 1957 the society has not been able to deduct any of these credits to its shares as an expense for income tax purposes.

For all of these reasons the society for quite some time has been contemplating a transformation or change of its status so that it would be a joint stock loan company of the usual kind. That is the whole purpose of this bill along with the purpose, as I mentioned earlier, of changing from provincial to federal status.

The ordinary and direct way to accomplish a transformation of a provincial company to a federal company, and I am speaking more particularly of the insurance field with which I am most familiar, would be to incorporate a new federal company with power to take over by agreement the assets and liabilities of the provincial company. However, this procedure gives rise to very substantial income tax under the Income Tax Act on the undistributed income of the provincial company upon the winding up and disappearance of that company.

That problem was recognized a good many years ago in the insurance field because there were many provincial insurance companies coming to parliament from time to time seeking federal status. So a special provision was put in the Income Tax Act—section 82 subsection (15)—making it clear that there would be no income tax incurred in an insurance case where no money would be paid out to shareholders and it is simply a transformation from provincial to federal status. However, that subsection does not apply to a loan company. This is the first case in which we have had a provincial loan company seeking to become a federal loan company. The only way in which that can be done under the existing Income Tax Act without incurring a prohibitive tax is through the amalgamation route utilizing section 85I of the Income Tax Act. This whole procedure has been referred to the income tax department. As a result, the society, the law clerk and parliamentary counsel of the Senate, and I think all concerned, have a copy of a letter from the income tax department stating that the procedure adopted in this bill carries their approval and they have no objection to it.

I might say a word about one feature of the first seven clauses which, as I mentioned, are really designed to incorporate the new federal loan company.

Hon. members will notice that the capital mentioned in clause 5 as required to be subscribed and paid before the new company may commence business is extremely small, being only $12,500, but in that connection I would draw the attention of the committee to subclause (2) of clause 5 at the top of page 2 which makes it clear that prior to amalgamation the new company shall not carry on any business except such as is necessary to consummate the amalgamation. All that is necessary is to create the new federal loan company as a vehicle to amalgamate with the existing provincial society. The existing provincial society has a great deal of capital; it is in a good financial position. The reason for the $12,500 which appears in clause 5 is simply to accord with the minimum requirements of the Loan Companies Act under which this company will operate.

A loan company must have a minimum of five directors, and the minimum share qualification for a director is $2,500. That is where the $12,500 comes from.

I think it may be unnecessary to go through clauses 8 to 13 in detail, all of which relate to the proposed amalgamation of the new federal loan company with the existing provincial society. Clauses 8 to 13 may appear a little complicated, but may I say that they follow very closely the amalgamation provisions in the Loan Companies Act which apply generally to all federal loan companies. The reason it is necessary to make special provision in this bill for this case is that the amalgamation provisions in the Loan Companies Act apply only to the amalgamation of two federal loan companies; they do not apply to the amalgamation of a federal loan company with a provincial company or society.

Members may ask if there is any precedent for this kind of amalgamation procedure. In answer I may say that there is. In 1961 a federal trust company, the Canada Permanent Trust Company, desired to amalgamate with an existing provincial trust company, namely the Toronto General Trusts Corporation. A special act of parliament was passed in 1961, being chapter 77 of the statutes of that year.

I might say for the information of the committee that clauses 8 to 13 in the present bill follow almost verbatim the corresponding sections of the special act that was passed in 1961 amalgamating a federal trust company with a provincial trust company.

Clause 14, being the final clause of the bill, is included for technical income tax purposes, as I mentioned. I do not feel it is my responsibility to justify or explain in detail an income tax clause; I would prefer to leave that to the society itself or to the tax department. However, I have already stated that the tax department has gone over the whole procedure and has approved it. Clause 14 is not there to enable the existing society to avoid tax; it is there for clarification and to remove any possible doubt there might be of a technical nature that this procedure is appropriate under section 85I of the Income Tax Act. As an example, the first thing clause 14 states is that the amalgamation hereinbefore referred to shall be deemed to be an amalgamation within the provisions of section 85I.

Mr. LLOYD: Mr. MacGregor, you have said that there was a letter from the income tax department. Did that letter refer to this section of the act or the wording of this act? Did the income tax department indicate that this particular provision in the act was not objected to by them? I ask this because I think that the answer may shorten the proceedings.

Mr. MACGREGOR: I will read, Mr. Lloyd, from a letter from the income tax department addressed to Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Senate, Ottawa:

> Dear Sir: Re Nova Scotia Savings & Loan Company.
>
> This will acknowledge receipt of your letter of May 12 regarding the above mentioned company. As requested we have examined clause 14 and advise that this department has no objection to the inclusion of this clause in the bill.

Mr. LLOYD: I submit, Mr. Chairman, that with such a document before us that section would be covered.

Mr. MACGREGOR: I would say that the tax situation of this particular society is not unknown to the income tax department; it has been the subject of discussion for at least 30 odd years, to my knowledge, and as far as I can see it has been discussed back almost to the beginning of the Income Tax Act.

Mr. LLOYD: Before we continue, may I say that I am satisfied with the general explanation that Mr. MacGregor has given for our information. There are one or two pertinent questions with respect to the actions of the company

in fully advising its shareholders what it is doing and what steps they have complied with to ensure that the interests of shareholders have been fully taken care of.

The CHAIRMAN: Are you directing these questions to Mr. MacGregor or to Mr. McInnes?

Mr. LLOYD: These questions would be directed to Mr. McInnes.

Mr. MACGREGOR: May I make one observation first? This bill, of course, would become an act of parliament, and I am sure there may be questions in the minds of the members with regard to the powers of the existing provincial society to amalgamate and follow this procedure. I may say in this connection that a special act of the Nova Scotia legislature was passed at the last session to permit this and to provide for it precisely. That act is referred to at the top of page 4, lines 2, 3 and 4. It is an act respecting the Nova Scotia Savings Loan and Building Society, chapter 109 of the statutes of Nova Scotia, 1964.

Mr. RYAN: Has your department presently licensed the existing provincial company in any way?

Mr. MACGREGOR: We do not license Nova Scotia loan and trust companies. However, back in the early twenties an agreement was made between the government of Nova Scotia and in fact the government of New Brunswick too, and later Manitoba, and the federal government, whereby our department would inspect provincial loan and trust companies and virtually act in the same capacity as their legislation requires some provincial official to act. Briefly, we get annual statements from all loan and trust companies in Nova Scotia, New Brunswick and Manitoba. We examine these companies annually at the head office, but they are not licensed by us as federal companies are licensed.

Mr. RYAN: Does this company carry on business outside the province of Nova Scotia?

Mr. MACGREGOR: It operates mainly in the Halifax-Dartmouth area but also in southern New Brunswick.

Mr. RYAN: Is it strictly for income tax purposes that a federal act is being sought here?

Mr. MACGREGOR: No. I think it is for competitive and prestige reasons that it desires federal status. One of its biggest competitors is the Eastern Canada Savings and Loan Company, which is a federal company.

Mr. RYAN: Under this proposed plan of amalgamation will the provincial charter presently existing ultimately disappear or will there be a continuation of both charters?

Mr. MACGREGOR: The provincial society and the new federal company will merge and amalgamate as provided for under this bill so as to become one corporate entity, and the two separate partners will disappear.

Mr. LLOYD: You said, Mr. MacGregor, that the provincial government passed an act. I presume we would assume that when that act was passed all considerations with respect to shareholders were fully examined by that legislative authority?

Mr. MACGREGOR: I believe so, and I am satisfied that is so because a proposed change in structure and status of this kind has been under consideration in the society not just for a year but, to my knowledge, for at least six or seven years.

The CHAIRMAN: Could Mr. McInnes come forward as we will start going through the bill?

On the preamble.

Shall the preamble carry?

Preamble agreed to.

Causes 1 to 7, inclusive, agreed to.

On clause 8—*Amalgamation.*

Mr. GELBER: I have a question on clause 8, Mr. Chairman. I presume that all contracts undertaken by the previous company are enforceable by the successor company?

Mr. MACGREGOR: Most certainly.

The CHAIRMAN: Shall clause 8 carry?

Clause agreed to.

Clauses 9 to 14 inclusive, agreed to.

On the title.

Shall the title carry?

Title agreed to.

Shall I report the bill without amendment?

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: The meeting is adjourned.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LARRY PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, JULY 7, 1964

Respecting

Bill S-28, An Act respecting the Quebec Board of Trade.

WITNESSES:

Mr. Renault St-Laurent, Counsel, and Mr. Roger Vezina, General Manager, Quebec Board of Trade; Mr. Adrien Begin, Chairman, Levis Chamber of Commerce.

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

21302—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Larry Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison
Aiken
Armstrong
Asselin
(*Notre-Dame-de-Grâce*)
Basford
Bell
Berger
Blouin
Cameron
(*High Park*)
Cameron
(*Nanaimo-Cowichan-The Islands*)
Caouette
Casselman (*Mrs.*)
Côté
(*Chicoutimi*)
Douglas
Frenette
Flemming
(*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Guay
Hales
Jewett (*Miss*)
Kindt
Klein
Lloyd
Macaluso
Mackasey
McCutcheon
McLean (*Charlotte*)
Monteith
More
Moreau
Morison
Nowlan
Nugent
Otto
Pascoe
Ryan
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

REPORT TO THE HOUSE

July 9, 1964

The Standing Committee on Banking and Commerce has the honour to present its

SIXTH REPORT

Your Committee has considered Bill S-28, An Act respecting The Quebec Board of Trade, and has agreed to report it with the following amendments:

Clause 1

Amend sub-clause (1) to read:

"The name of the Corporation, in English, is hereby changed to Board of Trade of *the District of* Quebec, and, in French, to Chambre de Commerce *du District de* Quebec."

Clause 3

In line 4, delete the words "metropolitan area" and substitute therefor the word "district".

In paragraph (c), line 16, delete the words "metropolitan area" and substitute therefor the word "district".

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issue No. 2) is appended.

Respectfully submitted,

LARRY PENNELL,
Chairman.

21302—1½

MINUTES OF PROCEEDINGS

TUESDAY, July 7, 1964
(4)

The Standing Committee on Banking and Commerce met at 10.15 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Berger, Basford, Cameron (*High Park*), Gelber, Frenette, Gendron, Gray, Grégoire, Guay, Klein, Lloyd, Moreau, Morison, Otto, Pennell, Ryan, Thomas, Vincent (18).

In attendance: Mr. J.-C. Cantin, M.P., Sponsor of Bill S-28; Mr. Renault St. Laurent, Counsel, Quebec Board of Trade; Mr. Roger Vezina, General Manager, Quebec Board of Trade. *Appearing in opposition*: A. Begin, Chairman, Levis Chamber of Commerce; R. Gauthier, Chairman, Lauzon Chamber of Commerce; M. Moffat, Secretary, Charlesbourg Chamber of Commerce; F. Boilard, Chairman, Beauport Chamber of Commerce.

Also present: Dr. P. M. Ollivier, Q.C., Parliamentary Counsel.

The Chairman presented the First Report of the Subcommittee on Agenda and Procedure, which is as follows:

> The following have been appointed to act, with the Chairman, on the Sub-Committee on Agenda and Procedure: Messrs. Bell, Côté (*Chicoutimi*), Grégoire, Gendron, Nowlan and Scott.
>
> Your Sub-Committee met on June 24, 1964, to consider the Notice of Motion then standing in the Chairman's name on the House Order Paper for approval of the Committee's Third Report, requesting power to sit while the House is sitting.
>
> Your Sub-Committee agreed to the Chairman's suggestion that he move the motion with the rider that the Committee will not sit while the House is sitting unless there has first been agreement by the Sub-Committee.

On motion of Mr. Berger, seconded by Mr. Grégoire,

Resolved: That the Committee cause to be printed 750 copies in English and 300 copies in French of the Minutes of Proceedings and Evidence relating to Bills S-28 and S-34.

The Committee then proceeded to consideration of Bill S-28, An Act respecting the Quebec Board of Trade.

The Chairman explained that no French shorthand reporter was available for this meeting and the members agreed to accept the English interpretation of proceedings in French as part of the official record. (*Note*: It was later found that, because of technical difficulties, it was impossible to transcribe all of the morning proceedings and this portion of the evidence is therefore incomplete.)

On the Preamble

Mr. Cantin, M.P., the Sponsor of the Bill, introduced the Promoters, Mr. St. Laurent and Mr. Vezina.

Mr. St. Laurent was called and made a statement.

Mr. Guay introduced the witnesses appearing in opposition to the Bill, and Mr. Begin stated the reasons for opposition.

Mr. St. Laurent and Mr. Vezina were questioned.

The Chairman interrupted the questioning to point out that witnesses appearing in connection with another Bill were waiting and suggested that the Committee should defer further consideration of Bill S-28 until S-34 had been heard.

On motion of Mr. Basford, seconded by Mr. Gelber,

Resolved: That the Committee continue with consideration of Bill S-28 until 11.50 a.m., at which time the Committee will proceed to consideration of Bill S-34.

And the questioning continuing, at 11.50 a.m. the Committee proceeded to consideration of Bill S-34, the proceedings of which are recorded separately in Proceedings No. 1.

The witnesses and Dr. Ollivier withdrew.

At 12.20 p.m., on motion of Mr. Grégoire, the Committee adjourned until 3.00 p.m. this day.

AFTERNOON SITTING

(5)

The Committee reconvened at 3.30 p.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Berger, Cameron (*High Park*), Gelber, Grégoire, Guay, Klein, Lloyd, McCutcheon, Moreau, Morison, Pascoe, Pennell (12).

In attendance: The same as at the morning sitting.

The Committee resumed consideration of Bill S-28.

The Chairman said he understood that during the lunch adjournment the promoters and opponents of the Bill had arrived at a solution satisfactory to both parties.

Mr. St. Laurent was called and explained that the promoters were willing to accept amendments to the Bill which would delete references to "Metropolitan Quebec" and replace it by the phrase "District of Quebec".

The Preamble was carried.

On Clause 1

Mr. Lloyd moved, seconded by Mr. Berger, that sub-clause (1) be amended to read:

"The name of the Corporation, in English, is hereby changed to Board of Trade of *the District of* Quebec, and, in French, to Chambre de Commerce *du District de* Quebec."

Sub-clauses 2 and 3 were carried.

Clause 1 was carried, as amended.

Clause 2 was carried.

On Clause 3

Mr. Grégoire, seconded by Mr. Guay, moved that Clause 3 be amended by deleting the words "metropolitan area" in line 4 and substituting therefor the word "district".

Paragraphs (*a*) and (*b*) were carried.

Mr. Berger, seconded by Mr. Guay, moved that paragraph (*c*) of Clause 3 be amended by deleting the words "metropolitan area" in line 16, and substituting therefor the word "district". Carried unanimously.

Paragraphs (*d*) to (*g*) inclusive were carried.

Clause 3 was adopted, as amended.

Clauses 4 to 15 inclusive and the Title were severally carried.

The Bill was carried, as amended.

Ordered: That Bill S-28 be reported, as amended.

Mr. St. Laurent thanked the Committee for their courteous hearing.

At 4.00 p.m. the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

NOTE: The Evidence which follows is incomplete.

EVIDENCE

TUESDAY, July 7, 1964.

The CHAIRMAN: Perhaps I could say one word at this stage. So there is no misunderstanding the committee members agree and the people appearing are agreed that we carry on under the present arrangement. I understand also that the other parties who are opposing the bill are agreed to this arrangement. Does the committee agree to that?

Mr. LLOYD: There is one good thing about this arrangement, Mr. Chairman. Those of us who are attempting to learn French will have the opportunity, if these gentlemen speak a little more slowly, of following the discussion.

The CHAIRMAN: Mr. St. Laurent would you kindly come forward please?

You have heard the discussion, and I would also appeal to you to be kind enough to slow down from your usual speed of conversation. I will now give you the floor in order that you may proceed to outline the purpose of the bill before we start dealing with it in detail.

Mr. Renault ST. LAURENT (*Counsel, Quebec Board of Trade*): Mr. Chairman, with the 25 per cent Irish blood I have in my veins, if I may be permitted, I will carry on in the language or tongue of my father's mother.

Mr. Chairman, I have the honour to represent the board of trade of Quebec which is the second oldest board of trade or chamber of commerce in Canada, having been organized in 1809 not as a corporation but under the name of the Quebec Committee of Trade. The purpose of that organization was to make sure that there was solidarity of Quebec merchants who had to face the United States competition in the West Indies market and the northern Europe competition in the English market.

At the time of its incorporation in 1842 it was incorporated under statute which was passed during the period of the union of governments under the name of Quebec Board of Trade. The name given to it in French then was Le Bureau de Commerce de Québec.

I should like to point out here that the oldest board of trade or chamber of commerce in Canada is the Halifax board of trade. I understand that one of my confreres from Halifax is here this morning and I am pleased to mention that fact in his presence.

The purpose of our bill, Mr. Chairman, is to modernize and consolidate the corporate structure of the Quebec chamber of commerce, or board of trade, and to change its name in English and French. This does not involve a complete change of name. We wish to add to the name the word "metropolitan" in English and "metropolitain" in French, the name then being in English, the Board of Trade of Metropolitan Quebec and in French, la Chambre de Commerce de Québec Métropolitain.

The act repeals all former statutes which relate to the corporation and the bill in itself amounts to a restatement of the corporation's organization, its functions, duties and powers.

The problem that seems to exist at the present time as far as those who may be opposed to our bill is concerned relates to the fact that we are asking to add the word "metropolitan" to our name. Perhaps it might be good here to mention what the dictionaries say about "metropolitan". Unfortunately I do not have an accurate definition of the word in English from the Webster or

Oxford dictionaries, but according to French dictionaries, and I should like to refer to the French Robert dictionary, the definition of metropolitan indicates that this word has reference or applies to a capital. According to Larousse the word metropolitain refers to the capital of a state. According to Ouillet this word refers to a capital, and by extension to a large city.

Our proposal, Mr. Chairman, of adding the word "metropolitan" and "metropolitain" to our corporate name is to better define in the mind of the public, and in especially the minds of some 5,000 people who are in correspondence annually with the board of trade from outside Quebec, the territory which for many years has been the object of the Quebec board of trade's major endeavours.

I should like here to mention some of the things that the board of trade of Quebec has been doing in the interest of the metropolitan area. It has, for instance, worked for the sharing of the sales tax for the whole Quebec region. It has initiated inquiries on tourism for the entire region. It has promoted and organized what is well known to all of you gentlemen, the famous winter carnival which has been most profitable not only to metropolitan Quebec. I was told by the president of the carnival last year that for the last week end of festivities, rooms were reserved from Three Rivers down to St. Jean-Port Joli to accommodate people from everywhere who had come for this last week end of the carnival. Surely this initiative is of great benefit to metropolitan Quebec, the district of Quebec and a greater region than the one covered by the district of Quebec, and I speak now of the judicial district of Quebec.

The board of trade has participated in the preparation of or has prepared a report on the cement industry which eventually brought about the establishment of one of the largest and most modern cement plants in Canada. That plant is situated in the municipality known as Villeneuve. Villeneuve is outside the limits of the city of Quebec but it is within what mght be known as metropolitan Quebec.

Several studies were made and reports submitted in respect of the port of Quebec, all for the purpose of directing more trade to the port of Quebec.

The Quebec board of trade has made representations and submitted reports in connection with improving air services for the metropolitan area and for the establishment of a new airport, which airport as you all know is not located within the city limits but within another suburban municipality known as Ancienne Lorette.

Recommendations have been made by the Quebec board of trade in respect of the establishment of a postal terminal and we also are responsible, to some extent, for the door to door mail delivery in the whole area, not only within the limits of the city of Quebec.

In 1954-55 the Quebec board of trade was most anxious to establish a year round contact by highway with Chicoutimi, and the government was not convinced that this was—the expression in French is "rentable". The board of trade took the initiative of accepting subscriptions from several members of the board who invested an amount of $10,000 to keep that road open or part of the road open and eventually convinced the government that it was feasible and was in the interest of improved trade and industry in that whole area.

The Quebec board of trade submitted a brief supporting the establishment of a t.v. station in Quebec and has also worked towards the establishment of a C.B.C. t.v. station which is about to go into operation shortly. The first station was established in Quebec in 1954. It is a private station.

The board of trade of Quebec also submitted a brief to the Fowler commission on radio and t.v., and I think I am not mistaken when I say that it was probably the only one which presented such a brief to the commission.

The Quebec board of trade presented a brief on the economic prospects of the Quebec metropolitan region. This brief was submitted in 1958 to the royal commission on economic prospects in Canada.

The board submitted briefs on export trade and has taken part in arbitration of business hours in the entire Quebec region. It has published a tourist map on one side covering old Quebec and on the other side the whole area, and I think last year distributed 35,000 copies of that map. Surely, gentlemen, this was not just done for the city of Quebec.

I am taking the time of this committee to mention these things simply to establish that the Quebec board of trade does not have limited activities, but activities which spread beyond the limits of the city of Quebec, and have been most beneficial to the whole area which comprises 10 or 12 local boards.

There has also been some work done in connection with improving the highways, and there was a brief submitted in connection with the installation of an ocean liner terminal at Wolfe's cove which has been in operation now for many years.

The board initiated a study in respect of the improvement of rail communications and, as you all know, there is now a fast train that runs out of Quebec in the morning travelling to Montreal in two hours and 45 minutes, returning to Quebec in the evening, enabling the businessman to make a business trip to Montreal, and vice versa, at a very attractive travelling rate. I submit that the Quebec board of trade had a lot to do in that connection.

The responsibilities and preoccupations of the Quebec board of trade, or of a board of trade which has its head office in the principal urban agglomeration of the metropolitan region, are definitely different I submit, from the board of a suburban municipality which can think and operate locally and is localized in its interests.

Some objection may be made to the fact that there might be some confusion with the name of a corporation which is not a board of trade or chamber of commerce and which was created at the initiative of the Quebec board of trade some years ago. This corporation is known in French as "Le Bureau d'industrie et de Commerce de Québec, Inc"., and in English as: "Industry and Trade Board of Greater Quebec Inc." That organization or corporation was founded for the purpose of promoting and developing industries which were already established, and to look around to see if there was a possibility of finding new industries to establish themselves in the region of Quebec. The purpose of that corporate entity, different from the Quebec board of trade, was to do certain things which the Quebec board of trade might have wanted to do if they had been within its jurisdiction, and to obtain the financial co-operation of local boards to undertake certain things which were quite costly.

At the time when this was created the industrial commissioner of the city of Quebec had ceased to exist. It was felt that instead of having a man who was appointed and paid by the city of Quebec to act as industrial commissioner they would create this new corporation which would fulfil the functions that had been carried out by the person who had been in the position of industrial commissioner of the city of Quebec.

With your permission, Mr. Chairman, before completing my presentation I would like to refer to the fact that Quebec city is the capital of the province of Quebec, Greater Quebec or metropolitan Quebec embraces an area in which possibly 350,000 people reside. It is felt by the Quebec board of trade that because of its situation it would be quite proper for it to be given the right to add to its name the word "metropolitan". It feels that in some respects it is in the same position in the province of Quebec as is Winnipeg in Manitoba, Vancouver in British Columbia or Toronto in Ontario. It was not very long ago, Mr.

Chairman, that the Toronto board of trade obtained from your committee the right to add to its name the word "metropolitan".

I would like to point out here that the matter of prestige is very important as far as the Quebec board of trade is concerned, because the Quebec board of trade has representation on the Chamber of Commerce of Canada and is also represented on the council of the International Chamber of Commerce. It is felt that because of the things it has done in the past and the things it is called upon to do, its prestige would be increased if the word "metropolitan" was added to its name. This addition gives no additional power whatsoever. It does not give any jurisdiction over the other areas. The local boards can continue to do the things they have done in the past; it simply adds to the prestige of the Quebec board nationally and internationally.

Furthermore, I would like to point out that of the approximately 1,500 members of the Quebec board of trade, about one third are not domiciled and do not reside within the limits of the city of Quebec. All the important and large industries in that area—and I think that covers the south shore also—are members of the Quebec board of trade.

In case the committee is interested, Mr. Chairman, I have here a list, which may not be the final list but which is a long list, of corporations and of individuals who are successful in business in that large metropolitan area and who are active members of the Quebec board of trade.

That, Mr. Chairman, covers my submission.

The CHAIRMAN: Acting upon the advice of the two authorities surrounding me here, I would suggest that Mr. Guay should introduce those who are opposing this bill, that they then make an opening statement, and that we will then come back to the preamble and to the witnesses.

Mr. St. Laurent, would you be good enough to stand down for the moment.

Mr. Guay, are you introducing witnesses or are you speaking to the bill?

Mr. GUAY: I will introduce, Mr. Chairman.

(*Interpretation*):

Mr. GUAY: Mr. Chairman, contrary to rumours in the area of Quebec, I do not wish to object to this bill for chauvinistic reasons. If I oppose it, it is because I know the problems in this region in the province of Quebec very well. I must admit that within the regional organization the problems which concern metropolitan Quebec are not necessarily the same as those of Quebec or the city of Quebec.

The most pertinent argument to my mind is that of the autonomy of the chambers of commerce. Autonomy means just one thing, and that is that in the next two or three years the regional chambers will perhaps disappear.

(*Text*)

Mr. BASFORD: Mr. Chairman, I thought Mr. Guay was simply introducing the people who are opposing this bill. Is he making a statement in connection with the bill?

The CHAIRMAN: I was not sure whether Mr. Guay was acting as a spokesman on the preliminary explanation or whether he was going to introduce the witnesses who would give the explanation. Would you be kind enough to clear that up in the minds of the committee, Mr. Guay? Are you going to give the explanation of your group's position in so far as the group is concerned?

(*Interpretation*)

Mr. GUAY: I do not take the place of those who are going to give testimony; I simply wish to make a preliminary statement.

I have received 30 to 35 telegrams from chambers of commerce. We have 4 witnesses with us this morning.

The board of trade for metropolitan Quebec is looking after the interests of this region and the regional board of trade which groups 12 boards of trade . . .

* * *

Note: The remainder of the proceedings of the morning sitting is not available. (*See Minutes of Proceedings.*)

AFTERNOON SITTING

The CHAIRMAN: I call the committee to order.

I am happy to report that there have been some negotiations between the applicant and the respondent. Perhaps Mr. St. Laurent will explain just what agreement they have reached.

Mr. ST. LAURENT: I am sure it was the desire of the board of trade of Quebec, as well as of the other boards of trade who are represented here, to try to reach some agreement that would put an end to this discussion which seemed to be going to last much longer than any one of us would have hoped. So, after consulting with the powers that be so far as the Quebec board of trade is concerned, I came here this afternoon to propose—and this has been suggested—to those who were objecting to the word "metropolitan" that we drop the word "metropolitan" and replace it by the words "district of Quebec" so the name of the corporation, in English, would be The Board of Trade of the District of Quebec and in French it would be la Chambre de Commerce du District de Québec. We would make a further change in section 3 in the first paragraph where reference is made to the metropolitan area of Quebec, replacing that term by the words "of the city and district of Quebec in particular and of the province of Quebec and Canada in general". We suggest in section 3 (*c*) that the words in the 16th line, "and metropolitan area of Quebec", be replaced by "and district of Quebec" so that it would read "and other trades in the city and district of Quebec".

Mr. MOREAU: I presume, Mr. Chairman, this will still satisfy the status seeking on the part of the Quebec Board of Trade.

Mr. St. LAURENT: In line four of section 3 the words "metropolitan area of Quebec" should be replaced by the words "district of Quebec".

The CHAIRMAN: Do I take it, Mr. St. Laurent, that you are proposing three amendments in clause 1 and the same amendment twice in clause 3? Am I correct?

Mr. ST. LAURENT: Yes. The name of the corporation in English and French will be changed in section 1 by, in the English text, replacing the words "Board of Trade of Metropolitan Quebec" by the words "Board of Trade of the District of Quebec". That is, we suggest the deletion of the word "metropolitan" and the substitution of the words "the district". In the French text the words would be "la Chambre de Commerce du District de Québec", deleting the word "métropolitain".

Mr. GRÉGOIRE: Accepté.

Mr. ST. LAURENT: Mr. Chairman, in clause 3 (*c*) we would replace the words "metropolitan area" by the word "district". It would then read "in the city and district of Quebec".

The CHAIRMAN: Have you finished, Mr. St. Laurent?

Mr. ST. LAURENT: Yes, I have.

The CHAIRMAN: Will Mr. Guay please say something so we will be sure that we are on common ground. Is the proposed amendment agreeable to those who were opposing the original bill?

Mr. GUAY: Yes, it is.

The CHAIRMAN: You have nothing more to add?

Mr. GUAY: No.

The CHAIRMAN: I suggest that we consider the sections and when we reach the necessary stage someone from the body of the committee should move the necessary amendment.

I call the preamble. Shall the preamble carry?

Preamble agreed to.

On clause 1—*Name in English and French.*

Shall clause 1 carry?

Mr. LLOYD: I move that clause 1, subsection (1) be amended as recommended.

Mr. BERGER: I second the motion.

The CHAIRMAN: It is moved by Mr. Lloyd, seconded by Mr. Berger, that clause 1 subclause (1) be amended as recommended to the committee.

Amendment agreed to.

Clause 1, as amended, agreed to.

Clause 2 agreed to.

On clause 3—*Objects.*

Mr. GRÉGOIRE: I move the amendment, seconded by Mr. Guay, that the clause be amended as recommended.

The CHAIRMAN: There is now a motion to amend clause 3. It is moved by Mr. Grégoire, seconded by Mr. Guay, that clause 3 be amended to read:

> 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 district of Quebec in particular, and of the province of Quebec and Canada in general...

Amendment agreed to.

We now come to 3(c).

Mr. BERGER: I move that we change subclause (c) as recommended.

The CHAIRMAN: It is moved by Mr. Berger and seconded by Mr. Guay that subsection (c) be amended to read:

> (c) to organize, if necessary, a stock exchange and to promote the centralization of the grain, produce, provision and other trades in the city and district of Quebec.

Amendment agreed to.

Clause 3 as amended agreed to.

Clauses 4 to 15, inclusive, agreed to.

Title agreed to.

Does the bill carry as amended? Shall I report the bill as amended?

Bill as amended agreed to.

There is one other matter.

I would like to congratulate the respondents and the applicants. It was quite a lesson to the English Canadians to see how well our French Canadian confreres can resolve their differences.

Mr. ST. LAURENT: I thank you very much, Mr. Chairman, for having given us all this time. I wish to express my sincere thanks to the committee for having been so patient with us. Possibly we were not too clear in our explanations at some times but I gather that now we have reached this agreement the committee is satisfied. I am sure the Quebec board of trade will be very happy about it.

The CHAIRMAN: Due to the electronic mechanisms we were unable to get all the translations this morning, and this now poses a problem. In view of the happy resolution of our differences I would welcome a suggestion from the committee.

Mr. GRÉGOIRE: The solution I might suggest is that the Chairman of the committee report to the house that it is necessary to instal mechanical devices or electric tape recorders in all committee rooms.

The CHAIRMAN: I might further point out that this room wil soon be ready for the same type of equipment as that installed in room 308.

Mr. GRÉGOIRE: We have it now.

The CHAIRMAN: It is not quite finished.

Mr. GRÉGOIRE: I think we have been told that our remarks have been recorded.

The CHAIRMAN: Perhaps Mr. Small can tell us.

Mr. Alex SMALL (*Director of Legislative Services, House of Commons*): There is just a shortage of connecters. Once the connecters are available this will be set up in the same manner as room 308. Our next phase will be to go into all other committee rooms as quickly as possible.

The CHAIRMAN: In the meantime, however, we all appreciate Mr. Grandmaison coming here.

Mr. GRÉGOIRE: If the report does not make sense, then there is no point in having it printed.

Mr. LLOYD: Leave that to the steering committee.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

THURSDAY, OCTOBER 1, 1964

Respecting

Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act.

WITNESSES:

The Hon. Mitchell Sharp, Minister of Trade and Commerce; Mr. W. E. Duffett, Dominion Statistician; Mr. H. F. Herbert, Director, Planning and Development Branch, Department of National Revenue; Mr. D. A. Traquair, Administrator, Corporations and Labour Unions Returns Act.

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

21304—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison
Aiken
Armstrong
Asselin
(*Notre-Dame-de-Grâce*)
Basford
Bell
Berger
Blouin
Cameron
(*High Park*)
Cameron
(*Nanaimo-Cowichan-The Islands*)
Caouette
Côté
(*Chicoutimi*)
Douglas
Frenette
Flemming
(*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Hales
Jewett (*Miss*)
Jones (*Mrs.*)
Kindt
Klein
Lloyd
Macaluso
Mackasey
McCutcheon
McLean (*Charlotte*)
Monteith
More
Moreau
Munro
Nowlan
Nugent
Otto
Pascoe
Ryan
Rynard
Scott
Tardif
Thomas
Vincent
Wadds (*Mrs.*)
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

MONDAY, July 13, 1964.

Ordered,—That the name of Mr. Kelly be substituted for that of Mr. Guay on the Standing Committee on Banking and Commerce.

WEDNESDAY, July 15, 1964.

Ordered,—That the name of Mrs. Jones be substituted for that of Mr. Chaplin on the Standing Committee on Banking and Commerce.

THURSDAY, July 30, 1964.

Ordered,—That Bill S-37, An Act respecting The Guarantee Company of North America, be referred to the Standing Committee on Banking and Commerce.

(*Note: The Proceedings on this Private Bill were not printed.*)

MONDAY, September 21, 1964.

Ordered,—That Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act, be referred to the Standing Committee on Banking and Commerce.

WEDNESDAY, September 30, 1964.

Ordered,—That the names of Messrs. Greene and Munro be substituted for those of Messrs. Morison and Kelly on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House

21304—1½

MINUTES OF PROCEEDINGS

THURSDAY, October 1, 1964.
(7)

The Standing Committee on Banking and Commerce met at 10.10 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Armstrong, Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Côté (*Chicoutimi*), Douglas, Gelber, Gendron, Gray, Greene, Macaluso, McLean (*Charlotte*), More, Nowlan, Otto, Pennell, Ryan, Rynard, Vincent, Whelan—(20).

In attendance: The Hon. Mitchell Sharp, *Minister of Trade and Commerce*; Mr. W. E. Duffett, *Dominion Statistician*; Dr. S. A. Goldberg, *Assistant Dominion Statistician*; Mr. D. C. Blyth, *Director, National Accounts and Balance of Payments Division, Dominion Bureau of Statistics*; Mr. D. A. Traquair, *Administrator, Corporations and Labour Unions Returns Act, Department of Trade and Commerce*; Mr. H. F. Herbert, *Director, Planning and Development Branch, Department of National Revenue.*

The Committee proceeded to consideration of Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act.

On motion of Mr. Cameron (*Nanaimo-Cowichan-The Islands*), seconded by Mr. Whelan,

Resolved,—That the Committee cause to be printed 750 copies in English and 300 copies in French of the Minutes of Proceedings and Evidence relating to Bill S-35.

On Clause 1

The Chairman called Clause 1 and introduced the witnesses.

The Minister made a brief statement and answered questions, assisted by Mr. Duffett, Mr. Herbert and Mr. Traquair.

The questioning being concluded, the Minister withdrew.

Mr. Douglas, seconded by Mr. Aiken, moved that the Canadian Labour Congress and the Canadian Chamber of Commerce be given the opportunity of appearing before the Committee, and if they wish to do so they should be asked to so indicate to the Chairman within a week.

Mr. Côté (*Chicoutimi*) moved, seconded by Mr. Gendron, that the Quebec Federation of Labour and the Confederation of National Trade Unions also be given the opportunity to appear.

The motion, as amended, was carried.

At 11.50 o'clock a.m., on motion of Mr. Gray, the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

THURSDAY, October 1, 1964.

(All the evidence adduced in French and translated into English was recorded by an electronic recording apparatus, pursuant to a recommendation contained in the Seventh Report of the Special Committee on Procedure and Organization, presented and concurred in, on May 20, 1964.)

The CHAIRMAN: Gentlemen, I see a quorum and I invite you to come to order.

The matter before the committee this morning is the consideration of Bill No. S-35, to amend the Corporations and Labour Unions Returns Act.

I might say that there is one formality which I suggest we should deal with at once, and this is a motion in regard to printing. I would invite a motion from the committee that we receive authorization for printing. For your guidance I might say that in the past the committee has authorized the printing of 750 copies in English and 300 copies in French of the minutes of proceedings and evidence. I merely mention that for your information.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I move that authorization be given for the printing of 750 copies in English and 300 copies in French.

Mr. WHELAN: I second that motion.

The CHAIRMAN: Are you ready for the question? All those in favour? All those opposed?

Motion agreed to.

The CHAIRMAN: Gentlemen, we are privileged to have with us this morning the Hon. Mitchell Sharp, Minister of Trade and Commerce, who needs no introduction. On his immediate right is Walter E. Duffett, dominion statistician. To his right is Mr. D. A. Traquair, administrator of the Corporations and Labour Unions Returns Act. We also have Mr. H. F. Herbert, director of the planning and development branch of the Department of National Revenue, Dr. S. A. Goldberg, assistant dominion statistician of the dominion bureau of statistics and Mr. C. D. Blyth, director of the bureau of statistics who is also connected with the international balance of payments division.

With your approval I will follow the usual procedure, that is to call the first clause of the bill, and then I will invite the Minister of Trade and Commerce to make a statement. Following his statement I will open the meeting to questions so that we can hear the witnesses who are now before us.

On clause 1—*Relieving provision.*

The CHAIRMAN: Shall clause 1 carry?

I will now invite the minister to make a statement if he wishes.

Hon. MITCHELL SHARP (*Minister of Trade and Commerce*): Mr. Chairman, gentlemen, during the second reading of this bill I described its purpose. Perhaps for the convenience of the committee I might summarize it very briefly. At the present time the corporations covered by the Corporations and Labour Unions Returns Act are required to supply financial information of a similar kind to both the dominion statistician and to the Department of National Revenue. Undoubtedly there is a duplication here for the taxpayer. Indeed, the duplication is of such a character that many corporations supply to the dominion statistician, under the Corporations and Labour Unions Returns Act, financial information which they already supply under the Income Tax Act. Some

of them say "Here are the returns we filed. They seem to us to satisfy your requirement as well as the income tax requirements."

There is also duplication within the government. The dominion statistician is required to tabulate, analyse and publish the information he receives under this act. The Minister of National Revenue follows an almost identical operation in the course of producing the "green book" of taxation statistics. Having in mind this duplication, the cabinet directed that a study be made of the economies that might be achieved by minimizing or eliminating the duplication, and after consultation among all the interested departments the dominion statistician recommended the amendments proposed by this bill.

In brief, these amendments eliminate the need for filing a separate financial statement under this act by giving the dominion statistician access to the financial statements filed with the Department of National Revenue by corporations. In order to protect the secrecy of the income tax returns the bill eliminates or removes the strictly limited access that was given to certain government officials for policy reasons to individual returns which are now filed under the Corporations and Labour Unions Returns Act.

Perhaps I should say a word about that because some members of the committee may be concerned about restricting access to information that is now supplied under the Corporations and Labour Unions Returns Act. The study that the cabinet put in hand revealed that the policy needs of the government departments for information about corporations could be satisfied either from other sources or from summaries prepared by the dominion statistician which did not disclose the operation of individual firms. This is an important point. I noticed that there are some members in the house who were critical of this bill because it enlarged access to financial information filed by corporations under the Income Tax Act. Less attention was paid to the more important effect of this bill which was to protect or to restore the secrecy of financial information given by individual corporations which was required to be filed under the Corporations and Labour Unions Returns Act. However, as I have said, the study that was put in hand by the dominion statistician at the request of the cabinet showed that it was not necessary to make all the returns filed under this act available to government officials for policy purposes, that all the needs could be satisfied either by asking the corporations to let the government have access to information that they requested or, alternatively, by summaries which did not reveal the position of individual corporations.

During discussions on second reading several members asked me to express an opinion on the utility of the act itself. My general comment on this question is that it is premature to reach a conclusive opinion on how useful this act is, and I do not think that either I or any member of this committee could reach a conclusion until the first report is published, and that will be some time before the end of the year.

Looking at the speech made by the then minister of justice, Mr. Davie Fulton when he introduced this bill, it seems to me that he made rather extravagant claims. On the other hand, there is no doubt that this act will provide a good deal of interesting information not now available about the extent of foreign ownership, as well as information about a variety of payments to non-residents such as dividends, interests, royalties, classified in a way that was never possible before. The dominion statistician can, of course, testify that this is so. So that while I think that some of the expectations aroused by Mr. Fulton cannot be realized, my present view is that the act will provide useful information as a background for policy decisions.

Now, as with any novel piece of legislation, experience has shown that this act has some deficiencies. It is our view, however, that it would be premature to propose substantive amendments. The amendment that is before you today is not a substantive amendment going to the root of this legislation. It deals only with administration and with the simplification of methods of collection. However, I do not think that we should propose substantive amendments until there has been an opportunity for the government, for parliament, and for the public, to study the first report and to ascertain whether the information that is available and can be published is of a kind that the government and parliament and the public need for the purpose of studying this very serious question of the extent and implications of foreign ownership.

The CHAIRMAN: Thank you, Mr. Sharp. Before I invite questions from the committee I suggest that you may direct questions to any one of the witnesses. If they feel, in their collective wisdom, that another witness can better answer the question, they will pass it along.

There will be a further meeting of the steering committee, as the present witnesses do not necessarily include all the witnesses that the committee may wish to hear. That question was raised earlier on and I am bringing it to your attention. As you raise your hand, the Chair will attempt to state your names. I invite questions at this time.

Mr. AIKEN: Mr. Chairman, I have several questions and some of them I want to address to the other officials who are here. Firstly, I would like to address a question to the representative of the Department of National Revenue, Mr. Herbert.

Mr. Herbert, what concerns me, and what did concern me on second reading of the bill, was the fact that there appears to be some change in the security provisions of income tax returns of a corporation. I appreciate that the dominion statistician is a government official and that there is a good deal of security within the department, but does the Department of National Revenue have any concern at all for the increase in the number of the people who may examine income tax returns?

Mr. H. F. HERBERT (*Director, Planning and Development Branch, Department of National Revenue*): We certainly would not want to see the gates opened wide to the examination of income tax returns. I think the public of this country was quite well satisfied in the past with the confidentiality of the information they gave us, but I must say that in the case of the dominion bureau of statistics we regard their reputation for the preservation of secrecy as equal to if not exceeding our own. To tell a few tales out of school, there were times in the past when we would have liked to receive information from them for our purposes and we have been shown the door.

Mr. AIKEN: But this situation is now going to be changed because you are now going to have an interchange of information.

Mr. HERBERT: We still cannot get the information. This is very one-sided. The dominion statistician is now to have access to information from corporations although under the Corporations and Labour Unions Returns Act he does have access to about 90 per cent of the information anyway.

Mr. SHARP: This question was raised by Mr. Lambert when he asked what was the degree of similarity between the information provided under this act and under the Income Tax Act with respect to financial information. As Mr. Herbert has said already, we receive, under this act, 90 per cent of the financial information that is provided under the Income Tax Act. Therefore, as far as the corporations that do report under this act are concerned, we already obtain, under this act, the information that is provided under the Income Tax Act, with certain exceptions that are rather irrelevant.

Mr. AIKEN: That was my next question. I think perhaps I should address it to Mr. Duffett. I would like to know what information is contained in the income tax returns that is not contained under the bill we are considering, for example, the statements of assets and liabilities, statements of receipts and disbursements of a corporation now included under the Corporations and Labour Unions Returns Act.

Mr. WALTER E. DUFFETT (*Dominion Statistician, Dominion Bureau of Statistics*): We are aware that this was a matter of concern to you, Mr. Aiken. What we have done is to have a copy made of the corporation income tax returns, and we have designated on it those items which are already obtained by the dominion bureau of statistics under this legislation and those items which are not, the latter being additional information to which we would have access. Now, if the committee would like to see samples they could be made available for you to look at.

Mr. AIKEN: I would like that very much. There are a few things which I would like to find out specifically, and one of them relates to assets, liabilities, receipts and disbursements; in other words annual statements. Are they now included in the Corporations and Labour Unions Returns Act?

Mr. DUFFETT: Yes. As Mr. Sharp pointed out, a number of corporations, in accordance with the provisions of the labour unions returns act, simply provided us with copies of financial statements such as they supply to the Department of National Revenue. It is provided in the Corporations and Labour Unions Returns Act that this is acceptable.

Mr. AIKEN: My next question is directed to the minister. I am sure that the government wants to maintain the security of income tax returns, therefore would it not be more in keeping with democratic principles to permit a corporation to file a notice with the dominion statistician under this act, permitting him to examine its income tax returns, rather than to make it compulsory? Maybe this would bring about the same result, but would it not perhaps be better to allow it to be done on a voluntary basis rather than opening the gate in any way to an examination of income tax returns?

Mr. SHARP: This is now permitted and some corporations do it. I have some examples here which, however, I do not think it is necessary to put forward because I think the point is well understood. Voluntary action would still leave the administration of it very complicated and would also have the effect I think that some corporations would be a little concerned about providing this financial information on the misunderstanding that they were giving it to someone who might reveal it.

Mr. AIKEN: I am sorry, perhaps you misunderstood me. My question was not directed towards filing a copy of the income tax return but merely towards filing a permission for the dominion statistician to examine it, as is provided in this act in a compulsory manner. Is this done?

Mr. SHARP: Perhaps the dominion statistician, who has had more experience with this, could answer it better.

Mr. DUFFETT: This is indeed a possibility, and this is what is done now. It says that the corporations may do this if they wish, and they do.

Mr. AIKEN: Do they file a copy of their income tax return with you or do they merely file permission with you to examine it?

Mr. DUFFETT: No, they file a copy of a financial statement which is identical to the one filed with the department. A number of corporations have, in addition, when filling out the claim for exemption that was provided for all corporations, pointed out to us that this information is filed with the income tax department. They have also suggested to us that it should be utilized there.

Now, to pursue your question a little further as to whether it might not be a good idea to make this thing voluntary, the economies involved in this proposal are of two kinds, one is an effort to reduce the duplicate reporting by corporations, and the other is to make it possible for the dominion bureau of statistics to take over the publication of the book on taxation statistics which is published by the Department of National Revenue. This will make it possible to eliminate a very expensive kind of internal duplication that exists within the government. For this purpose it is of course necessary for us to have access to the returns of all companies.

Mr. AIKEN: Well, Mr. Chairman, I do not want to take the time of other members at this meeting but there is just one more question which I should like to ask now, and then I could perhaps come back later.

Since the bill has become public knowledge have any representations been received from any individual corporations or organizations either in favour of or in opposition to the bill? Have there been briefs submitted on behalf of organizations such as the chamber of commerce, in opposition to the provisions of the bill?

Mr. DUFFETT: No, the bill became public knowledge when it was presented to the Senate in June. We have not heard any objections from any corporations or individuals. The bill has received a fair amount of publicity through various financial services. We have not received any formal representations in favour of it. We have had occasional conversations with chartered accountants, and members of my staff have met in Montreal during the summer with the Canadian Institute of Chartered Accountants, and in informal conversations the idea was commended. This was not put on the formal agenda. If it had been a matter of concern to them, they would have put it on their agenda, I assume.

Mr. AIKEN: I think that the cutting down of the filing of returns is a very worthy objective, and to that extent I have no objection to the bill. It is merely the cutting down of paperwork at the expense of security that concerns me. I should be glad to defer to some other member of the committee.

Mr. MCLEAN (*Charlotte*): Is it not true that any shareholder of a corporation can obtain a financial statement of the corporation? I believe it is not secret. Your share is not published but you can write in and get the financial statement of the company.

Mr. SHARP: You can get the financial statement that is published, but I am not sure that you can get the one that is filed with the income tax department!

Mr. MCLEAN (*Charlotte*): There is some difference there. They will tell you the amount of their sales but they will not write them down. If this is so, I do not see where the secrecy comes in. I can see that in the case of individuals there would be quite an amount of secrecy, but I do not see it in regard to corporations. Is this going to increase the paperwork of the corporations?

Mr. SHARP: It is going to reduce the paperwork considerably.

Mr. MCLEAN (*Charlotte*): Because we are getting too much paperwork now in the corporations.

Mr. MACALUSO: Mr. Duffett, in reading the proceedings of the Senate committee on banking and commerce I was concerned to see that almost 90 per cent of the same companies are tabulated by the Department of National Revenue as by the dominion bureau of statistics.

Mr. DUFFETT: It may not be 90 per cent. The Department of National Revenue tabulates roughly 28,000 companies. We will be tabulating between 25,000 and 35,000 companies. Many of these companies are the same, in fact the vast majority of them are the same because it is my understanding that the Department of National Revenue tabulate all the large companies and a

sample of the smaller ones. Perhaps Mr. Herbert could better answer this in detail.

Mr. HERBERT: Our analysis in producing our "green book" is done in part on a hundred per cent examination of large returns and a sampling of small returns. The aggregate number that we analyse is very close to the aggregate number which the dominion bureau of statistics analyse, and to the extent that we are both looking at the large ones this is where the 90 per cent relativity comes in. It is not 90 per cent in terms of numbers but 90 per cent in terms of total profits and total assets. As you know, many of the returns which are filed with us are very small, many of them are semidormant or inactive companies, but they still must file returns under the income tax law. These are probably of minimum value to d.b.s.

Mr. MACALUSO: As I understand it, the purpose of the bill is to eliminate filing by one company of two returns. I also understand that the two departments would collaborate and that d.b.s. would be able to take over the function of the Department of National Revenue and would make use of their information. The only problem is the problem of security, of the officials of d.b.s. obtaining information from the Department of National Revenue dealing with capital stocks, payable taxes, revenues received, and so on, and of this information getting out to other parties and to the public.

Mr. SHARP: One of the points that may be overlooked is that under the act itself and under a section that is not being amended the corporations covered by the act are required to provide information about shareholdings that is published and that is available to the public.

Mr. MACALUSO: That is generally available anywhere?

Mr. SHARP: No. If you look at the information requested under section (A) you will find that the information is directed towards ascertaining the extent of foreign ownership, and that is information that is available to any taxpayer or to any Canadian. That information is published.

Mr. MACALUSO: It is general public knowledge.

Mr. SHARP: Yes.

The CHAIRMAN: Are there any further questions on this clause?

Mr. AIKEN: Mr. Chairman, I have another question I should like to ask. I should like to ask the minister why there has been a basic change in the bill which includes all corporations under clause 4 rather than a limited group of corporations which were previously included. As I understand the effect of clause 4, which will be the new section 14(*a*), it will be that there will now be no limit on the size of a corporation or its income or anything else, and it will now include all companies instead of a limited group of people.

Mr. SHARP: This is not strictly true, it is certainly not true about section B, that is information which continues to be gathered only from corporations included in the act. I will let Mr. Duffet deal with the question relating to section B so that the position will be quite clear.

Mr. DUFFETT: We will indeed have access to all corporation returns under this amendment. However, so far as the Corporations and Labour Unions Returns Act is concerned, it will still apply to the same group of corporations to which it now applies. Access to all corporations is necessary for a number of reasons. From a strictly administrative point of view I do not think it would be practicable for the Department of National Revenue to establish certain files to which we could have access and certain files to which we could not have access, particularly since from year to year the number of companies which come under the Corporations and Labour Unions Returns Act increases and changes. There may perhaps be as many as 2,000 additional companies coming under the Corporations and Labour Unions Returns Act each year. A further

reason for having access to all returns is the one that has been mentioned in connection with the "green book". If the dominion bureau of statistics is to take over publication and analysis of the green book, it becomes necessary for us to have access to all returns.

On the matter of confidentiality, the position of d.b.s. may perhaps not be fully recognized. The fact is that in the course of our regular activities we have access to information which, in my opinion, is infinitely more confidential than anything which appears in the returns received by the Department of National Revenue. We receive a variety of information on inventories on a monthly basis, outstanding orders on a monthly basis, capital expenditures, the international flow of funds, the imports and exports of individual companies, the use of materials, the average earnings of employees, the quarterly profits, and so on. All this is exceedingly confidential. We receive information on the assets and liabilities of corporations, and a very large amount of other data of a confidenial character. So that confidential information is not strange to the bureau of statistics.

I think perhaps it might be appropriate to mention why it is that the Corporations and Labour Unions Returns Act was assigned to the dominion bureau of statistics in the first place. This was not a task which we particularly sought, I may say, and the reason why the job was assigned to us was described by Mr. Fulton in introducing the bill. If I may be permitted to do it, I would like to read a sentence of what he said.

> It was suggested that since it is important that the confidential parts of the reports be kept strictly confidential, they should not be required to be filed with the departments of the secretary of state and of labour respectively, but with an organization which, from the very nature of its operations and functions, is accustomed to the receipt and custody of confidential statistics. It was represented to us that industry and business, as well as unions, are anxious to co-operate with the government in carrying out the purposes of this bill, and that the business segment especially would find it much more acceptable from this point of view if the returns were to be filed with the dominion bureau of statistics, which has established an enviable reputation, and has the trust and confidence of all those who are required to furnish returns to it.

Mr. AIKEN: I have another question. To what extent can published statistics reveal facts and make them available to competitors in business which have a very limited field or in which there are a limited number of companies? This is one thing that also concerns me. It may cause no difficulty in a large field where there are a large number of companies on which the statistics would be published and would reveal nothing about any individual corporation, but to what extent are there limited lines of business where published statistics could reveal information to foreign competitors?

Mr. DUFFETT: There are indeed in a country of the size of Canada a number of areas where there are relatively small numbers of firms operating. The problem of possible disclosure to a competitor is taken into account in both the Statistics Act and in the Corporations and Labour Unions Returns Act. The Statistics Act is more strict in this respect than the Corporations and Labour Unions Returns Act, but the latter act has a clause governing this point. Perhaps I might read it:

> In any report described in subsection (1) the statistical summary and analysis contained therein shall be so presented or shown as not to disclose particulars of, or identify or permit identification of the source of, information contained in any statement comprised in section B of a return filed by a corporation or union as required by this act.

Mr. HERBERT: May I interject here? We are faced with the same problem with our "green book". There are certain industries where the number of participating companies is very few, but we have been careful to group those industries with other industries so that individual facts are not disclosed.

Mr. AIKEN: May I then ask whether the amendment to the act will bring about any change to the situation?

Mr. DUFFETT: I should like to add one further point. All three of the acts with which we are concerned, namely the Income Tax Act, the Corporations and Labour Unions Returns Act and the Statistics Act, have penalties for disclosure of confidential information. One does not ordinarily depend on penalties alone to prevent disclosure; we depend on careful internal arrangements and careful selection of the staff, and so on. As far as d.b.s. is concerned, I do not think an employee of the bureau has ever been subject to a penalty for leaking information because I do not recall any information being leaked, but it so happens that the penalty in the case of the dominion bureau of statistics is considerably more severe than in the case of the Department of National Revenue. In practice it does not mean very much but it indicates the determination on the part of those who created the legislation and who established the bureau to make sure that this matter was regarded very seriously by the staff. If, for example, an employee of the bureau of statistics were to disclose information which might have an effect on the market value of any product or article or which is used for speculative activities, he becomes liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding five years, or both. I consider this to be very substantial.

Mr. AIKEN: May I ask about the production of information in court? Is there any difference between information in the hands of the Department of National Revenue and information in the hands of d.b.s.?

Mr. DUFFETT: To my knowledge we have never been required to submit any material of a confidential nature to the courts.

Mr. HERBERT: You are asking me for a legal opinion. I can only say what I know of our own operations. I think there was a decision which said that in certain criminal actions we should be required to produce returns.

Mr. NOWLAN: It is the normal practice for the minister to write a letter, and that has been accepted by the court.

May I ask Mr. Herbert a question? Is this the first, shall we say, invasion of the confidentiality of national revenue returns?

Mr. HERBERT: Yes, this is the first change in law which does give access to our returns.

Mr. RYNARD: Mr. Chairman, in the proceedings of the Senate committee on banking and commerce I read that the Department of National Revenue now examines, punches and tabulates information on about 28,000 companies —this represents a sample of a total of perhaps 150,000 companies. It is also said that 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. In his opening remarks today the minister said that they were one and the same, or at least almost the same.

Mr. SHARP: I am not a statistician and I will ask Mr. Duffett to answer this question.

Mr. DUFFETT: The answer is this, the Corporations and Labour Unions Returns Act requires corporations above a certain size to file returns, and there is now between 25,000 and 30,000 of those. In the preparation of the green book some 28,000 companies are analysed. These two groups of companies are not identical although they are largely so because the Department of National Revenue analyses the very large companies.

Mr. RYNARD: Can those two be brought together?

Mr. DUFFETT: No, they will not be brought together because the Corporations and Labour Unions Returns Act is designed to apply, by its terms, to companies above a specified size in terms of assets and earnings, whereas this analysis is designed to be typical of all companies of all sizes. The purposes are different.

Mr. SHARP: I should like to say a word on the desirability of the dominion statistician having the responsibility for publishing taxation statistics. As any member of the privy council knows, there is a constant problem of avoiding the decentralization of statistics gathering in the government. The dominion bureau of statistics was established originally for the purpose of centralizing the collection and publication of statistics so that, in a sense, the action that is now being proposed here, would have the effect of carrying another step forward this very desirable objective. As Mr. Duffett has said, the confidentiality of information is at least as well preserved in the bureau as it is in any department of government. My view is that there is no risk in giving the dominion statistician the responsibility for the publication of this report.

Mr. GELBER: Mr. Chairman, I am very interested in the mechanical processes anticipated in obtaining this information from the income tax returns. Do I understand that they would be obtained in the data processing centre here in Ottawa?

Mr. HERBERT: No, under this proposed change of law the copy of the corporation's return which ordinarily comes to Ottawa—which is not by the way the working copy which our tax assessors use—is a statistical copy routed through d.b.s. which will extract the data required to produce the statistic, and it is tabulated in the d.b.s.

Mr. GELBER: So the information will be mechanically obtained as envisaged in this amendment.

Mr. DUFFETT: So far as the d.b.s. is concerned what will happen is that information will be transposed ultimately to punch cards which will then be processed mechanically. The magnitude of this tabulation job is perhaps not readily realizable. It is a pretty expensive operation. Some measure of this is indicated by the work which the Department of National Revenue does now. They transcribe about 50 items from the financial statement for the 25,000 to 28,000 companies which amounts to about 1,250,000 items simply lifted from one piece of paper and put on to a punch card. This is not the end of the process because in the tabulating or reporting of material from corporation returns it is important that this should be consistent from one year to the next. So that, as there is in the Department of National Revenue, there will have to be some comparison with the previous year to be sure that there have not been writeups, writedowns or reorganizations of one kind or another which call for further work on the statistics to make them comparable.

I may say that I have had some personal experience with this problem and I realize what a substantial job we are taking over. Some years ago I worked in the research department of the Bank of Canada. At that time the Bank of Canada had a sample of some 700 corporations, and the analysing and tabulation of this took two senior people, one an economist and another a chartered accountant. We are confronted with a situation which involves not 700 corporations but 25,000 corporations, and I have no illusions about how big a job it is going to be.

Mr. GELBER: I am just wondering, Mr. Duffett, whether the objections do not, in some measure, stem from the feeling that this information could be obtained by a process done by the assessors. I am wondering whether you are not anticipating something much more mechanical.

Mr. DUFFETT: We will not use the returns used by the assessors.

Mr. GELBER: In other words, will the individual returns of the corporations not be studied in detail to obtain this information?

Mr. DUFFETT: It will be necessary to examine them carefully so as to be sure that there has been no change from year to year which would throw out the statistics, changes in arrangements of the facts on the balance sheet. We are exclusively concerned with the financial statement.

Mr. HERBERT: Perhaps I could briefly describe the mechanics of how the data gets from the return to the statistical book. The returns are examined by clerks who have been trained to tabulate the items in which we have been interested, such as gross assets, liabilities, and so on. They transcribe these by hand, and they examine the enclosed financial statements in order to get this data. This material is transcribed to sheets which are then key punched. We then go to the process of converting that to the magnetic tape, and, under programmed instructions the computer does the tabulations which summarize the assets by industry, by region, by size, and so on. That is the process in brief.

Mr. GELBER: Is it anticipated under this amendment that detailed work will be done in d.b.s. or in the Department of National Revenue?

Mr. HERBERT: It will shift from us to d.b.s., and with our grateful thanks because we are not statisticians but tax collectors. They will bring to it the expertise which is needed.

Mr. DOUGLAS: I should like to put a question to Mr. Duffett. You mentioned the fact that there is a great deal of information which you get from the corporations under this Corporations and Labour Unions Returns Act which is not contained in the income tax returns.

Mr. DUFFETT: This is true, but I think it is not quite what I said at the time. What I said at that time was that we obtained a great deal of information from a variety of other sources rather more confidential than the financial statement which would come to us through the Department of National Revenue. What you say is quite right, that the Corporations and Labour Unions Returns Act provides us, in addition to financial statements, with other kinds of information; that is what is called section A information on the ownership, the nationality of directors, and so on. This information is published. There is, in addition, information on payments to non-residents by all corporations to which the act applies and by all trade unions. In the case of the corporations, this kind of information on payments to non-residents which includes dividends, payments for copyrights, payments for management fees, and so on is required. This is really quite interesting information and it will continue to be collected. In all probability it will be supplied at the same time as firms make their income tax returns, and it will be routed through the collection process of the Department of National Revenue to us.

Mr. DOUGLAS: Do I take it then that the corporations will not in the future, in the event this bill passes, report to you directly as they have been doing in the past, and that you will be getting all your information through the Department of National Revenue?

Mr. DUFFETT: It will come to us indirectly through the Department of National Revenue but it will also constitute a report under the Corporations and Labour Unions Returns Act. In this respect, so far as the payments to non-residents are concerned, this simply utilizes the facilities of the Department of National Revenue as a channel through which material may be filed.

Mr. DOUGLAS: Are there any problems when the corporations report to you directly, as they are now required to do under the act? If you are not satisfied with the return how will you deal with this problem if you receive the information indirectly through the Department of National Revenue? Will you have to ask the Department of National Revenue to communicate with them or can you do it directly?

Mr. DUFFETT: It will be dealt with directly by us. Their obligation to report under the act is not diminished.

Mr. DOUGLAS: No, but is your authority to ask for further information in any way diminished?

Mr. DUFFETT: No.

Mr. DOUGLAS: You are satisfied you will be able to get all the information you have been able to get hitherto?

Mr. DUFFETT: Yes.

Mr. DOUGLAS: The primary purpose of the act, I take it, is to give to the country some idea of the degree of foreign ownership. Is that right?

Mr. DUFFETT: Correct.

Mr. DOUGLAS: Is the information you are getting now and will continue to get through the Department of National Revenue adequate for this purpose?

Mr. DUFFETT: I am not sure this is a question I should answer. I am a statistician, not a policy maker. I can say this, however, that it will be very helpful in that it will provide information which is not now available. It will go some distance to answering these questions.

Mr. DOUGLAS: In what way will it give you additional information which you are not getting now?

Mr. DUFFETT: It will provide the public with a great deal of information regarding the distribution of shares, the nationality of the officers and directors of foregin companies operating in Canada, and so on. This information is not only submitted to us, it is also available to the general public for their examination. The payments to non-residents, appears in section B, or the confidential portion of the act, which does include more information than we can now obtain. In connection with the work on the balance of international payments, some information along these lines is obtained, but for the items which it covers it will be more complete because it covers all the large companies.

Mr. DOUGLAS: How do you deal with the problem of shares which are held in trust? Are you able to get this type of information?

Mr. D. A. TRAQUAIR (*Administrator, Corporations and Labour Unions Returns Act*): We have not yet been able to get information from shares held in trust, we are not able to measure the magnitude of the problem. We know there are some shares that are held in trust, and in some cases a banker will hold the shares of a corporation as collateral for a loan that he has made. Until we can assess the magnitude of the problem, we will not be able to interpret how important it is.

Mr. DOUGLAS: What about the shares held by trust companies?

Mr. TRAQUAIR: This is in the same category.

Mr. DOUGLAS: Have you no idea of what the percentage of the total this might represent?

Mr. TRAQUAIR: We do not know yet.

Mr. DUFFETT: We will know in due course.

Mr. SHARP: This is one of the reasons why I said in my opening remarks that until we complete the analysis of the first year's returns we are not really in a position to know how adequate this legislation is for the purpose for which it is intended.

Mr. DOUGLAS: Once you get this information you will have some idea of the magnitude of the problem but you still will not have any solution as to how to apply this information. I think the problem is still before us.

Mr. SHARP: At least we will know how inadequate it is.

Mr. DUFFETT: When we know how serious are the omissions in the act we will have a better idea of it.

Mr. TRAQUAIR: In some cases a number of corporations have asked us whether they are the legal owners. In many cases the corporation itself does not know the beneficial owner of the shares.

Mr. DOUGLAS: What information are they required to give?

Mr. TRAQUAIR: Who is the legal owner.

Mr. DOUGLAS: They are not required to give the beneficial owner. After you have compiled this information, what general use is made of it, apart from the report?

Mr. DUFFETT: It becomes part of the general body of statistical information which is available for use in the country. One thing that attracts we as the dominion statistician about this is that it may make it possible for us to reduce somewhat the kind of information we obtain in other questionnaires. How far this can go I do not know, but it is our intention, once this machine is operating, to have a look at the entire range of corporation information which we obtain to see how this can be further streamlined.

Mr. BASFORD: Mr. Duffett was speaking a while ago regarding the representations which had been received from business on the operation of the act or the operation of the amendments. I was wondering whether you received representations from the Canadian Labour Congress or any suggestions for changes to these amendments.

Mr. DUFFETT: These amendments have very little effect on the labour side of the operation. The only effect is this: that, as the minister pointed out, the original legislation provides, for certain specified purposes officials of other government departments may have access to these returns. This clause is being removed so far as it affects corporations and so far as it affects labour unions. The labour unions therefore acquire an additional element of confidentiality in the process of this amendment.

Mr. BASFORD: Since the original act was passed have you received any complaints from labour?

Mr. DUFFETT: We received a number of inquiries on how the unions are expected to conform to the act. Any new piece of legislation has tag ends that have to be worked out, explained, and discussed, but there have been no formal objections.

Mr. TRAQUAIR: Yes, we met with the unions when the act was passed initially. We had two meetings with the unions and we set out to them what was possible under the act and what was not possible. The unions supplied to us information as a result of this meeting.

Mr. DUFFETT: The unions were concerned with problems of conforming to the act. They were not there to express views about the act itself and about its intentions.

Mr. BASFORD: They now appear to have no difficulty in conforming to it.

Mr. DUFFETT: That is right. So far as the unions are concerned the act I think is not unduly burdensome. A union is defined as an organization which has locals, and this means that the information is not obtained from all local unions all across the country. This would otherwise create very considerable difficulties but the act intends the information to be obtained from larger organizations which have pretty adequate accounts.

Mr. GREENE: Is there any information made available from the beneficial holders of shares, stock broker accounts or from financial houses which would enable you to complete the statistical data?

Mr. TRAQUAIR: No, only that obtained through registration.

Mr. GREENE: There is nothing in the registration which compels persons who normally hold stocks from naming the beneficial owner?

Mr. TRAQUIRE: That is right, there is not.

Mr. AIKEN: Mr. Chairman, I would like to probe just for a minute into the physical set-up of the new system, and to ask Mr. Duffett whether the people from his department go to national revenue and in that office do their summary of the returns, and particularly whether they will take from the national revenue any copies of returns to the point where they may create a second set of returns? My question is whether the names of individual corporations will ever come out of the Department of National Revenue or whether they will merely be tabulated right within the department's office. This is the thing that has really concerned me. I might say that I would be much more satisfied if they merely tabulated, in an impersonal way, the returns that they filed in the national revenue office.

Mr. DUFFETT: In fact this might be answered by Mr. Herbert, but the procedure is as we have described it; that in the first place there are two copies of the taxation returns, one is retained in the regional office or the local offices and is the one used for assessment. The one that is now used for statistical purposes will come to us first. We will take from it the information that we require, and we will necessarily have to take the name of the corporation because we want to be satisfied that that corporation has complied with the Corporations and Labour Unions Returns Act. The file will then be sent to the Department of National Revenue and will be put in the files. I expect there will be occasions from time to time when it will be necessary to refer back to this financial statement. If, for example, there is a communication from the company on depreciation or if there is reorganization of some sort, it may be necessary to refer back. In those cases we would go to the Department of National Revenue and ask to see the company's files. However, we must keep a record in the D.B.S. of the name of the company because we are required to satisfy ourselves that this company has reported and that it has reported correctly. Just to repeat what I said before, we get this information now to all intents and purposes. These yellow sheets contain some additional information which the Department of National Revenue gets for its own purposes and which will pass under our eyes but which is of no particular interest to us.

Mr. AIKEN: In other words, then, there will not be two places where there is a complete set of income tax returns of corporations, one in the Department of National Revenue and one in the d.b.s.?

Mr. DUFFETT: No.

Mr. AIKEN: The final resting place of the return, after you have taken what you need from it, will be back with the Department of National Revenue?

Mr. DUFFETT: Yes.

Mr. HERBERT: There will be one other copy, the main working copy in our district office, which is the one the assessor uses to beat the taxpayer with.

The CHAIRMAN: Are there any further questions?

Mr. GELBER: Mr. Duffett, can you give us any general idea of the number of personnel in your department who will be handling these individual returns?

Mr. DUFFETT: The establishment which was set up to look after the Corporations and Labour Unions Returns Act initially was estimated to be about 90. It is too soon yet to say how large this group will be. It will have certain additional duties in connection with the production of the green book. I suppose that a small number of these people will be dealing with the

individual returns while the others will be recording the information, tabulating it, adding it and so on. I think it is at this point difficult to say how many people will have detailed access to the data. Perhaps Mr. Herbert's experience is significant in this respect.

Mr. HERBERT: Within our work over the years in the production of the statistics in the green book we have had a staff of 22 clerks, and this has been fairly stable over the years, even with the growth of the number of corporations. By modifying our work we have been able to hold to that figure. It is envisaged that this entire group will transfer to d.b.s. and will carry on doing the same sort of work.

Mr. GELBER: The number of people involved is relatively small. It is not that large a problem in terms of the number of people who have access to these returns?

Mr. DUFFETT: We have handed a great deal of information to the dominion bureau of statistics which I think is rather more confidential than most of this.

Mr. GELBER: There is another point that interests me, and that is that we are going to have returns examined twice. The Department of National Revenue assessors examine the returns to get the information they require, and now you are going to be obliged to look at the returns. I presume the Department of National Revenue has a more detailed and therefore slower job.

Mr. DUFFETT: The Department of National Revenue job is a different one from ours. Ours is to assemble and tabulate the material. The Department of National Revenue will be concerned only with returns from an assessment point of view.

Mr. GELBER: Does the Department of National Revenue satisfy you that the return one year is comparable with the previous year and limit your job to that of a computation of totals.

Mr. DUFFETT: I think it will be our responsibility to satisfy ourselves that there has been no substantial change in the presentation of the data from one year to the next.

Mr. GELBER: Their assessor could not do that for you?

Mr. DUFFETT: He might, but we feel it would not be appropriate for us to deal with the assessors in the Department of National Revenue.

The CHAIRMAN: Are there any further questions?

The minister has another pressing appointment. He is prepared to stay, of course, but if you could raise all the questions on clause 1 the minister might then be excused, with the approval of the committee.

Mr. NOWLAN: I would like to raise one point while the minister is here. This has been referred to under clause 3 which repeals subsection 5 of section 14. I would like someone to comment on this.

As Mr. Duffett has stated, it has been shown in the yellow sheet here that there is some information required under this act which is not required by the Department of National Revenue. We referred to something which I think sometimes may be highly important. These are secret payments under patents, copyrights, royalties and such things, which may be going from a subsidiary here to another corporation, and there is a provision in section 5 which gives very wide powers to obtain information. That was put in deliberately as government policy which we thought at that time was desirable, and it has certainly been carried out by the present government with regard to foreign control, secret payments and so on.

What provision will there be under this act for obtaining that information if subsection 5 of section 14 is repealed?

Mr. DUFFETT: There will be no provision under this act for obtaining this information. This is a matter we have considered very carefully and which we have discussed with other government departments in order to know how they felt about giving up this access and whether in fact access to detailed information of this kind was important enough to justify the elements of duplication that were necessarily involved. The government departments, after considering this matter carefully, were of the opinion that they did not require the information.

During the period since the act has been in effect, no government department has approached us to obtain access to a corporation's returns for the purposes contemplated.

Mr. NOWLAN: That is only a period of a year or so.

Mr. DUFFETT: There has been a period of a year and a half since returns were in our hands.

Mr. NOWLAN: But there will not be any access to information—

Mr. DUFFETT: That is correct.

Mr. NOWLAN: —which will not be provided by the Department of National Revenue.

Mr. DUFFETT: I think the feeling generally is that if the government department—for example the Department of Finance—requires information of this kind, it is highly unlikely that a company would fail to provide it. It can be done in two ways. It could be provided directly or it could be provided by the company issuing to the department concerned a clearance to have access to the information in the hands of the dominion bureau of statistics. This is done now in connection with a certain amount of material which we collect occasionally.

If a corporation wishes to make information available for another government department and it does not wish to go to the trouble of making duplicate returns, they issue a clearance for that purpose.

Mr. NOWLAN: All you will be getting in the future is averages and computations of averages rather than specific cases?

Mr. DUFFETT: This is true, unless another arrangement is made.

Mr. NOWLAN: Where there are two corporations involved, one public and one private, information of that kind will not be available to you?

Mr. DUFFETT: It will not be available to government departments.

Mr. NOWLAN: Then government, in preparing policy, will have to use other sources of information or will have to use intuition, or whatever may pass for intuition, in formulating policy?

Mr. DUFFETT: Yes.

Mr. MACALUSO: May I ask a supplementary question?

The CHAIRMAN: Mr. Macaluso.

Mr. MACALUSO: I notice in the evidence of the Senate standing committee on banking and commerce that a question arises whether the advantages to be gained can be justified in view of what government departments will be giving up.

It has been stated that the requirements have been satisfied by summary tabulations which you have made for them. To which summary tabulations do they have access for information they cannot now obtain otherwise?

Mr. DUFFETT: There have been one or two cases in which they have required information which has its origin in the Corporations and Labour Union Returns Act but which did not involve access to individual returns.

Mr. TRAQUAIR: The question did concern particular returns, and rather than supplying the information to the department we were able to produce a tabulation which would show the information they wanted to have and which satisfied their inquiry.

Mr. MACALUSO: Is there any other information apart from this information? Is there any other source from which this information will be available?

Mr. DUFFETT: In the first place I should repeat that information regarding the degree of foreign ownership in the company will still be available as it is now; this is section A information. Information on these other details, such as payments for royalties and so on, is not generally available to the best of my knowledge. There may be cases where the companies themselves make this public, but detailed information by companies is not generally available.

Mr. GREENE: I am a little disturbed by some of your recent answers.

In regard to section 5 you say that no government department has made any inquiry of you in regard to the returns under this section in the past year. Is that correct?

Mr. DUFFETT: Yes.

Mr. GREENE: Or in the past year and a half. Does any other government department have any more right to information filed here than does the public under the sections that permit you to release this?

Mr. DUFFETT: No.

Mr. GREENE: Therefore there is no change in any way, shape or form? No government department has any rights to any information unless under statute. Is that correct?

Mr. SHARP: May I just make one point? It may be that a government department would say to the dominion statistician that they are interested in a particular question relating to the degree of foreign ownership or to payments that are made to non-residents. They may say to the dominion statistician that they would like to get as much information about that subject from his returns as they can without revealing the position of an individual company. The dominion statistician would have every right under this legislation to provide the government with such an analysis.

By having this information we are able to obtain summaries of a relevant kind to which the public itself would not have access because it would not be published in the report.

Mr. GREENE: I see. This is what was disturbing me. The kind of request to which you are referring was not made and was not anticipated. You did not anticipate specific requests about specific companies?

Mr. DUFFETT: This could quite properly have been made. If a government department had been engaged in compiling certain legislation and had written to me and said they required the return of the A.B.C. company for this purpose, I would have supplied it; but this has not happened.

Mr. GREENE: There again I am back on the same point. Can any department ask for specific information about a specific company under any section here and have it supplied?

Mr. DUFFETT: They can under this present legislation, but this right is being withdrawn by the amendment.

Mr. DOUGLAS: This is the point about which I would like to ask the minister. Under the legislation as it now stands any department of government can secure from the dominion statistician information—

Mr. DUFFET: For a particular purpose.

Mr. DOUGLAS: —with regard to items such as patents and so on. By rescinding section 5, this process will be discontinued.

Mr. SHARP: That is right.

Mr. DOUGLAS: May I ask the minister why? Why are they watering down the act in this respect?

Mr. SHARP: This is the issue that is raised by this bill. This is the main issue. It has been found on further examination that the government departments do not feel it is necessary to see the individual returns. They can obtain the information about these payments or other information in a summary form which will serve their purposes just as well.

The bill withdraws the privilege of obtaining individual returns because it was felt that it was not worth the added expense of collecting two sets of documents in order to obtain it. It was felt that the economies that would be effected by the simplification proposed in the bill were more valuable than the right to have access to individual returns on the grounds that the relevant information could be obtained by summaries just as well as by looking at the individual returns of a company.

This is the decision that has been made by the government, and that is the issue raised in this bill.

Mr. DUFFET: May I add a word to that? The immediate reason for withdrawing this access was that we will now be using information obtained by the income tax people. It is to ensure that information obtained in the course of the operation of the Department of National Revenue will not by any indirect channel reach other government departments.

Mr. DOUGLAS: This really means now that in order to prevent this duplication other departments of government will be denied access to information which they now enjoy under the present legislation.

Mr. SHARP: That is right, and it is our experience that this information can usually be obtained. I would hesitate to say it can invariably be obtained but we have not had any adverse experience. Usually a corporation will give information of this kind to the government by way of a clearance to look at the individual returns. We have not had any experience to the contrary. Of course, we may have experience to the contrary, and this is one of the risks that is involved in the bill that is before the committee now.

Mr. DOUGLAS: In order for a department of government to obtain this information they would have to get clearance before obtaining access to particular information with regard to patents, copyrights, royalties and so forth?

Mr. DUFFET: The access in the act is not wide open; it is access for a specific purpose. It never was expected to be widely used. It is for official or authorized persons to have access in connection with the formulation of any law in Canada.

Mr. NOWLAN: That is a fairly wide phrase.

Mr. DOUGLAS: It would mean the Department of Labour could not seek information regarding trade unions or the Department of Finance would be denied information regarding royalties and patents enjoyed by a subsidiary.

Mr. DUFFET: By this channel, yes.

Mr. DOUGLAS: It seems to me we are giving up a great deal for a minor saving.

Mr. NOWLAN: The minister said this would avoid duplication. This will only be raised when some specific department or the government as a whole, or a minister responsible for formulating policy, asks some specific question on some phase or facet of this information. We would not generally be turning it out as we do with income tax returns or anything of that kind. It would be a specific inquiry raised by the government on a specific problem.

Mr. SHARP: May I put it in this way? In return for the possibility that at some time in the future we might want to know the royalties paid by an individual company, we should incur expenses of something like $75,000 to $100,000.

Mr. NOWLAN: Where would that expense be incurred?

Mr. SHARP: That is the cost of the duplication now involved.

Mr. NOWLAN: This would only be raised if you pass that specific section.

Mr. SHARP: No, as long as the legislation remains in its present form we must have duplicate returns. We do not think it would be advisable to open the income tax returns to anybody except the officials who are concerned with the assessments.

Mr. NOWLAN: The point is, is it not, that some of this information is not now included in your income tax returns but it is included under the general powers of this bill which are now being repealed.

Mr. SHARP: Yes, there is certain additional information, and this is a question of judgment. The government has examined the question carefully with all the departments. They are of the view that it is not worth while incurring this very heavy additional expenditure by the government and by the corporations themselves in order to provide, at some time in the future, under conditions that cannot now be foreseen, information about an individual corporation that that corporation would deny if asked for.

Mr. GRAY: Mr. Chairman, I think that the answer to the question that Mr. Douglas asked is that the amendment as proposed will also withdraw the right to look at the particular return of a particular labour union.

I also have another question which I should like to ask. I gather from what you said, Mr. Sharp, that the type of information required in the year of operation of this act for the purpose of policymaking by various government departments has only been in the nature of summaries or extracts of information, by industry and by size of the firm.

Mr. SHARP: That is right.

Mr. GRAY: The experience has not been to look at the individual returns.

Mr. SHARP: That is right. If you look at the act, the information required from trade unions appears under Section B, comprising:

(i) a financial statement for the reporting period, consisting of

(A) a balance sheet showing the assets and liabilities of the union, made up as of the last day of the reporting period, and

(B) a statement of income and expenditure for the reporting period, in such form and containing such particulars and other information relating to the financial position of the union as may be prescribed by the regulations, and

(ii) in the case of a union having its headquarters situated outside Canada, a statement showing separately total amounts paid or credited to the union in the reporting period by, on behalf of or in respect of members resident in Canada as or on account of each of the following, namely:

(A) initiation fees,
(B) members dues per capita,
(C) health and welfare assessments,
(D) death benefit assessments,
(E) strike benefit assessments,
(F) fines, and
(G) work permits.

The information about the affairs of an individual union is not such that, in the opinion of the Department of Labour, any policy decision would be made on the basis of that information. The information available from all the unions would be just as satisfactory as the information available from an individual

union. If it were not so, we would have every reason to think that the union would give us access to the information if requested.

Mr. GRAY: I gather that the same conclusion is reached as regards individual firms as well.

Mr. SHARP: Except that the information with respect to individual corporations is much more extensive because of the nature of the operations themselves.

Mr. GRAY: And therefore it has not proved necessary so far to formulate a policy with respect to the business firms nor to look for returns from individual firms. Am I right then in saying that the real reason for which you have proposed this change is to maintain intact the scheme of confidentiality under the Income Tax Act?

Mr. SHARP: Exactly, that is the primary purpose; otherwise, of course, we would have retained subsection (5) of section 14. I think the house and the members of this committee would really have some misgivings about making available to a government department information from tax returns for the purpose of formulating policy.

Mr. GRAY: Which, without this amendment, would have been available.

Mr. SHARP: Exactly.

The CHAIRMAN: Are there any further questions? If the committee will permit me, may I say that I had difficulty in getting the steering committee together. I do not say that in a critical way. When we did get together everybody was not represented. The question of what witnesses we should call was raised at that time and it was suggested by some that we might hear someone from the trade unions. It was decided that we would hold this bill in abeyance pending the hearing of witnesses who were immediately available. You have to make up your own minds on whether you want clause 1 to carry or to stand in view of the fact that you may want to hear other withnesses.

Mr. DOUGLAS: Have any other witnesses asked to be heard?

The CHAIRMAN: No, this was the only group from which it was suggested we might hear. We might also hear from the trade unions, but it was decided to forgo a decision pending the interrogation of the present witnesses, and then the committee would make up its mind.

Mr. DOUGLAS: Have the trade unions asked to be heard?

The CHAIRMAN: No, that is why the question was raised this morning.

Mr. AIKEN: Mr. Chairman, I think I was the one to raise the most violent objection to clause 4 which was the clause concerning confidentiality of income tax returns. I still feel uneasy about enlarging the present provisions, but it seems to be an amendment which would further the provisions of the original act for the purpose of the original act. There does not seem to have been any objection by any private organization and no great objection by the Department of National Revenue. The evidence seems to indicate that the confidentiality will be well preserved. I cannot see how calling any other witnesses would be of any assistance. I have been satisfied myself about the confidentiality provisions. I feel that, particularly since the returns will not reside in the d.b.s. but will return to the Department of National Revenue, there will be no greater circulation of these returns. Speaking strictly personally I am satisfied with clause 4.

Mr. SHARP: May I just say one word at this point? I do think that it will be very useful, when the first report under this act is filed, for the committee to give it consideration, and I would hope that the report would be referred to this committee for examination and discussion. I am not satisfied that the act is in such form as to accomplish the purposes that parliament intended when it was enacted, and I am sure that amendments will be appropriate.

The CHAIRMAN: The minister may then be excused, gentlemen, and the officials will remain for our consideration of the bill clause by clause if it is decided that we should proceed.

I would merely ask you whether you feel we should have other witnesses, other than those we have now before us. I would welcome some guidance from the committee.

Mr. BASFORD: Speaking for myself, I, like Mr. Aiken, am entirely satisfied.

Mr. DOUGLAS: I wonder whether it would not be wise at least to offer the trade unions an opportunity to appear to express whether or not they have any opinions on this matter, whether they are perfectly satisfied and whether they wish to appear.

The CHAIRMAN: Your suggestion is to write to them, I understand.

Mr. DOUGLAS: And ask them whether they are interested in appearing. If they are not interested, then we shall proceed.

The CHAIRMAN: In that case we would have to stand clause 1, as a matter of fact we will have to stand all the clauses.

Mr. MACALUSO: Does Mr. Duffett know whether any representation has been made by the trade union officials or by the C.L.C. or by any other officials? Have you had any discussion with them?

Mr. DUFFETT: There have been no representations, I suspect because the act has a negligible effect on them. The only effect it has is to make it impossible for the government departments to have access to their financial returns. Otherwise, it has no other effect.

Mr. MACALUSO: They are not hurt in any way by these amendments nor are they helped by them. What is happening is that they have to file one report instead of two.

Mr. DUFFETT: It does not affect them.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would it be possible that if the trade unions had been considered in these amendments their proceedings might have been simplified?

Mr. DUFFETT: Their proceedings could not be simplified in this way in the sense that trade unions do not make reports to the Department of National Revenue.

Mr. MACALUSO: I see no purpose in calling them.

Mr. AIKEN: They are not adversely affected at all; in fact, as I see it, it makes the ability to secure their returns much more difficult to the government.

The CHAIRMAN: I told the steering committee I would raise the question here.

Mr. DOUGLAS: I do not think the trade unions are adversely affected but it seems to me they should be given the opportunity to appear since they are the only other group involved.

The CHAIRMAN: I should think the Canadian Labour Congress would be the people to ask. If they are not interested in coming, then we will be able to proceed.

Mr. MORE: Mr. Chairman, are the labour unions affected at all by the amendments proposed here?

Mr. DUFFETT: No, except that their returns will have less restricted circulation than they might have had before.

Mr. MORE: Then they could have appeared before.

Mr. DOUGLAS: They may not have known any more than most of us that the Senate was considering the bill. I do not think they are adversely affected, but they may have some feelings about the comparison of treatment in that this legislation does affect corporations in certain ways. They may feel that there is some discrimination in terms of treatment. I do not know, as I have never had representations from them. If they do not have representations to make I do not see why we should not proceed, but I feel they should be given an opportunity to come here.

Mr. WHELAN: Knowing how efficient the C.L.C. is I would think they are quite aware of this because they follow all these things very closely. It is my understanding from meeting them that they keep in touch with all these things, and knowing how efficient they are I think they would have made representations here if they were at all concerned.

Mr. MACALUSO: I would think that with the amount of publicity this has had—I am speaking with somewhat more than a little experience with trade unions—if they had any interest in this we would have heard from them long before now. I speak on this not in opposition to it but I speak with a feeling that I know from personal experience the workings of the trade union movement and the people involved at the official level.

Mr. AIKEN: Mr. Chairman, I want to concur with what Mr. Douglas has said. I also feel that some organization which might represent the corporations ought to be given a similar opportunity. We have been sitting here and discussing this bill among ourselves. We have been assured that there have not been any representations. I, for my own satisfaction, would like to know that this bill has officially come to the attention of both the labour unions and the chamber of commerce, if that is the appropriate organization; that it has been considered and that no representations are to be made. I think it is our duty to these people. If nothing comes, then we will merely pass the bill.

Mr. DOUGLAS: I remind you that this bill was only sent to the banking and commerce committee last week. While we are familiar with the fact that it has been sent to the Senate, I do not know to what extent those affected are aware of it. It seems to me it would be a comparatively simple thing to put a phone call through to the Canadian Labour Congress and to the Canadian Chamber of Commerce asking them whether they want to make any representations. If they do not, let us meet and pass the bill.

The CHAIRMAN: Do you so move?

Mr. DOUGLAS: Yes, I will move this.

Mr. AIKEN: I will second it.

The CHAIRMAN: It has been moved by Mr. Douglas, seconded by Mr. Aiken, that communication be made with the C.L.C. and with the chamber of commerce, pointing out to them that they are entitled to make representations before the committee, if they so desire.

Mr. GELBER: Mr. Douglas spoke of an informal inquiry.

Mr. MACALUSO: Why cannot we make just a phone call?

Mr. AIKEN: I think that would be too informal.

(*Translation*)

Mr. CÔTÉ (*Chicoutimi*): Should you submit the problem to the Canadian Congress of Labour it might also be well to submit it to the Confederation of National Trade Unions as well as to the Quebec Workers Federation.

Mr. GRAY: Mr. Chairman, this is a good idea because this represents a group of 200,000 workers.

(*Text*)

The CHAIRMAN: The difficulty of the Chair is that I do not want to invite someone of whom you may be critical. I want to be clear to whom I am to send the invitations. I am not trying to be an obstructionist but I want to be clear on whom to invite.

Mr. DOUGLAS: My motion specifies the Canadian Labour Congress and the chamber of commerce. I understand Mr. Côté made an amendment including others.

The CHAIRMAN: I understand Mr. Côté's amendment to the motion is that the federated workers of Quebec be included.

(*Translation*)

Mr. CÔTÉ (*Chicoutimi*): Yes, Mr. Chairman.

(*Text*)

The CHAIRMAN: Is there any seconder on that?

Mr. GENDRON: I will second the amendment to the motion.

Mr. NOWLAN: I think there should be a time limit.

Mr. DOUGLAS: Let us say within a week or ten days.

The CHAIRMAN: Are you ready for the question? The motion as amended reads as follows:

> That a notice be sent to the C.L.C., to the Canadian Chamber of Commerce and to the federated workers of Quebec to invite them to make representations regarding this bill to this committee, and to signify their intention within one week.

All those in favour of the motion? All those against?

Motion as amended agreed to.

The CHAIRMAN: Is it your wish to go through the bill clause by clause at this stage while we have our witnesses here and to stand the bill pending the return to this communication, or do you want to adjourn at this time?

Mr. GRAY: I would suggest that while we do not wish to inconvenience the officials who have come here, if we are going to get some suggestions from the groups that we have invited, perhaps we should examine this bill clause by clause after we have heard them.

The CHAIRMAN: I take it that the suggestion is that we should adjourn at this stage?

Mr. GRAY: I am prepared to move that we adjourn now.

Mr. NOWLAN: I second the motion.

The CHAIRMAN: It is moved and seconded that the committee adjourn until the call of the Chair.

Motion agreed to.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

TUESDAY, OCTOBER 20, 1964

Respecting

Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act.

WITNESSES:

Mr. W. E. Duffett, Dominion Statistician; Mr. D. A. Traquair, Administrator, Corporations and Labour Unions Returns Act.

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

21306—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison
Aiken
Armstrong
Asselin
(*Notre-Dame-de-Grâce*)
Basford
Bell
Berger
Blouin
Cameron
(*High Park*)
Cameron
(*Nanaimo-Cowichan-The Islands*)
Caouette
Côté
(*Chicoutimi*)
Douglas
Frenette
Flemming
(*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Hales
Jewett (*Miss*)
Jones (*Mrs.*)
Kindt
Klein
Lambert*
Lloyd
Macaluso
Mackasey
McCutcheon
McLean (*Charlotte*)
Monteith
More
Moreau
Munro
Nowlan
Nugent
Otto
Pascoe
Ryan
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

*Replaced Mrs. Wadds on October 19.

ORDER OF REFERENCE

MONDAY, October 19, 1964.

Ordered,—That the name of Mr. Lambert be substituted for that of Mrs. Wadds on the Standing Committee on Banking and Commerce.

Attest.

LEON-J. RAYMOND,
The Clerk of the House.

21306—1½

REPORT TO THE HOUSE

OCTOBER 20, 1964.

The Standing Committee on Banking and Commerce has the honour to present its

EIGHTH REPORT

Your Committee has considered Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act, and has agreed to report it without amendment.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issues No. 3 and 4) is appended.

Respectfully submitted,

LAWRENCE T. PENNELL,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, October 20, 1964.
(8)

The Standing Committee on Banking and Commerce met at 10.00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gendron, Klein, Lambert, Lloyd, Mackasey, Moreau, Nugent, Nowlan, Pascoe, Pennell and Thomas—(15).

In attendance: Mr. W. E. Duffett, Dominion Statistician; Mr. D. A. Traquair, Administrator, Corporations and Labour Unions Returns Act, Department of Trade and Commerce.

The Committee resumed consideration of Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act.

The Chairman reported that, as directed by the resolution passed at the last meeting, he had written to the Canadian Labour Congress, the Canadian Chamber of Commerce, the Quebec Federation of Labour and the Confederation of National Trade Unions, offering these organizations the opportunity to make representations on this Bill to the Committee. He read the replies into the record, indicating that the organizations concerned were satisfied with the intent of the Bill, and did not wish to appear.

On Clause 1

Mr. Duffett and Mr. Traquair were questioned and Clause 1 was carried on division.

Clause 2 was carried.

On Clause 3

Mr. Duffett was questioned and the clause was carried.

Clauses 4, 5 and 6, the Title and the Bill were severally carried, and the Chairman was directed to report the Bill without amendment.

At 10.45 a.m. the Committee adjourned to the call of the Chair, on motion of Mr. Moreau.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

TUESDAY, October 20, 1964.

The CHAIRMAN: I see a quorum, gentlemen, and I would invite the committee to come to order.

The members of the committee will recall at our last meeting, when considering bill S-35, we went through it clause by clause. At that time we heard the minister and the officials from the department. However, we stood each clause pending notification to the Canadian chamber of commerce, the Canadian Congress of Labour and, what turned out later, to be the Quebec confederation of workers, as well as to the confederation of national syndicates.

I am sure it would be interesting to members of the committee if I read a copy of the letter I sent out. This letter which I am about to read was sent out to Mr. Jodoin, but it is similar to the letters I sent out to the other organizations.

Dear Mr. Jodoin:

Bill S-35, an act to amend the Corporations and Labour Unions Returns Act, was recently referred to the standing committee on banking and commerce. Before reporting the bill back to the House of Commons, a motion was unanimously adopted that the Canadan labour congress be extended the courtesy of making representations before the committee regarding the amendments to this act.

For your convenience I am enclosing a copy of bill S-35. The committee is desirous of dealing with this bill as expeditiously as possible, and I would therefore respectfully ask that a reply be returned within one week.

Representations may be made in person before the committee, or in writing. For your information and without desiring to influence your decision whether to make representations or not, allow me to say that this legislation has as its purposes:

(1) The elimination of the duplicate filing of some 25-30,000 corporate financial statements which must be filed with the dominion statistician under the act, and which are also filed with the Department of National Revenue for income tax purposes.

(2) The elimination of duplication of the substantial load of analysis and tabulation of these financial statements which both agencies are now required to carry out. To attain these objectives it is necessary to give the dominion statistician access to corporate income tax returns from which he will record and tabulate financial statistics before they are filed with the Department of National Revenue. On occasion his staff may wish also to consult files of these returns held by the department—the files in question do not contain the forms used by departmental assessors, which are retained in the field.

To preserve the same sort of secrecy as is now accorded these financial statements, the corporations and Labour Unions Returns Act is being

amended (see section 3 of the amending act) to remove the right of access by departments, now provided by section 14(5) of the act, to corporation and trade union financial statements now filed under the act. Thus, while the amendment gives the dominion bureau of statistics access to corporation returns filed with the Department of National Revenue, it has the effect of adding to the confidentiality of the statements now filed with both organizations.

As you will realize, these changes affect trade unions only by removing the right of access to their financial returns by government departments, and would therefore add a measure of confidentiality in favour of trade union returns.

If you require further details about the procedures contemplated, the dominion statistician will be glad to provide them. His name is Walter E. Duffett, and his telephone number is 992-0031.

Yours sincerely,

Larry T. Pennell, Q.C., M.P.,
Chairman,
Standing Committee on Banking and Commerce.

As I stated, similar letters went out to the other groups, as requested by the committee. But, as you would realize, necessary alterations were made. Letters went out to the chamber of commerce, to the Quebec confederation of workers and to the confederation of national syndicates.

I received the following letter from the Canadian chamber of commerce, under date of October 13, in reply to my letter of October 5. It is addressed to myself as Chairman of this committee.

Dear Mr. Pennell:

This will acknowledge with thanks your letter of October 5 inquiring as to the chamber's view with respect to the amendments incorporated in bill S-35.

The officers of the chamber have reviewed these amendments and wish to advise you that they are in accord with them. We regret the delay in replying to your letter but unfortunately, we were unsuccessful in reaching you by telephone at an earlier date.

Yours sincerely,

(Sgd.) D. L. Morrell,
General Manager.

We also received a letter from Mr. Jodoin, dated October 13 addressed to your Chairman, which reads as follows:

Dear Mr. Pennell:

I have for acknowledgement your letter of October 5 with reference to possible representations by the Canadian labour congress concerning bill S-35. May I first of all express my appreciation for your thoughtfulness and consideration in inviting the congress to make such representations.

My colleagues and I have given very careful consideration to bill S-35. We have examined it in the light of the Corporations and Labour Unions Returns Act both as to principle and details. If we understand the proposed amendments correctly, they would serve to eliminate

a certain amount of duplication that now exists and would add to the confidentiality of the returns now being made. We note, however, that the amendments are aimed primarily at the returns which are required by corporations; the bill is silent on part II of the act dealing with trade unions.

The Canadian labour congress has, on various occasions, stated its objection in principle to the Corporations and Labour Unions Returns Act. We did so in our memoranda to the government of February 2, 1961, December 11, 1962, and March 14, 1962. We understand that the function of the standing committee on banking and commerce is to deal exclusively with bill S-35 and accordingly our views on the act would not be germane to your work. The Canadian labour congress will seek a more appropriate opportunity to make further representations expressing its views concerning the act in general, and more particularly with regard to its administration as it affects trade unions. Our experience since the act took effect indicates that such representations would be in order. It is a matter of regret to us that your committee is apparently not the appropriate place for making such representations. Thanking you again for your courtesy, I am,

Very truly yours,

(Sgd.) Claude Jodoin,
President.

I also have a letter from the Canadian Manufacturers' Association dated October 16, 1964, addressed to Miss Ballantine, the clerk of our committee, which reads as follows:

Dear Miss Ballantine:

Thank you very much for your letter of the 15th, advising that if it is the wish of the C.M.A. to make representations to the standing committee on banking and commerce during its consideration of bill S-35, this can be arranged for the meeting on October 20.

The opportunity presented is greatly appreciated, but my organization has reached a decision not to make any representations concerning this bill. Under the circumstances, there will be no C.M.A. representation at the committee meeting on October 20.

Yours faithfully,

(sgd) Willis George,
Ottawa Representative.

I might say that while we did not formally extend an invitation, and the Chair was not directed to do so, our deliberations came to the attention of the Canadian Manufacturers' Association, who made oral inquiries, as a result of which I requested our clerk to send them a letter. I have read to you their reply.

I have had no reply from Mr. Legault, the secretary of the Quebec confederation of labour although I sent a letter, which was similar to the others, in French. Also, a week later I sent a telegram to him in French respectfully requesting a reply. I have received no answer from either of the two organizations.

I sent a request by telegram to the Canadian chamber of commerce and they have responded. But, as I say, the other two have not replied. The letters went out on October 5. Now, the direction of the Chairman was that one week

should be given for reply. After a week elapsed, or eight days, I sent a telegram, and still no reply. It is now October 20.

Mr. AIKEN: In view of what has been said I assume that no one is going to make representations, and we have done everything we can to cover that particular field.

The CHAIRMAN: If it is the committee's wish then, having stood all the clauses, I suppose it now is in order to go back over them and, if it is the wish of the committee, we then will carry them.

Mr. Duffett, has something to add since his appearance here last meeting.

Mr. W. E. DUFFETT (*Dominion Statistician, Dominion Bureau of Statistics*): Mr. Chairman, the Canadian institute of chartered accountants was in touch with me. I had a telephone call from the secretary of the institute yesterday afternoon inquiring about the procedures envisaged under the legislation. He wished to be reassured that there was no intention of extending access to income tax forms beyond that contemplated by this proposed legislation. He said they were in favour of the legislation and, if there should be an opportunity, he would wish me to convey this to the committee.

The CHAIRMAN: With that explanation, shall clause 1 carry?

On clause 1—*Relieving Provision.*

Mr. NUGENT: Mr. Chairman, I mentioned this before. I am wondering if there is some explanation why we have not had the first report under the act as it was and the information that it puts forward so that we might be able to form an opinion whether the method of return was adequate for the specialized purpose for which this information was sought.

Now, the problem of foreign control of Canadian corporations and so on is still very current. The Minister of National Revenue or the Minister of Trade and Commerce mentioned there would be a report in this connection coming up later this year. We have had no indication of when that report would be received. Has the committee been provided with any report so that we might peruse it? It seems to me that if we are considering an act which is going to change the method of making a report it is only common sense that we take a look at the work actually done under the act before in order to see if it needs changing.

Mr. DUFFETT: We are hoping it will be possible to get a report out before the end of the year. The reason there has not been a report until now is that the initial work and the setting up of the records required in order to produce a report are very laborious. Also, the process of deciding which firms shall be eligible under the act is laborious. I think we received claims for exemption from some 85,000 firms. Each of these claims had to be examined carefully and, in some cases, it was necessary to consult our legal adviser in order to determine whether or not the firms in question were eligible. In addition to this there is a problem of acquiring and training staff. It has not been possible until now to arrange the preparation of the first report.

Mr. NUGENT: Do I gather from what you have said that the act was not in force long enough for any concrete results to be tabulated under the act as it was?

Mr. DUFFETT: No tabulations have been made, but some concrete results exist in the form of filing of section A material regarding the ownership of the corporation with the Secretary of State for External Affairs and the Department of Labour in the case of labour unions.

Mr. NUGENT: That is merely the gathering of information. However, there has been no progress made in assessing and collating it.

Mr. DUFFETT: No. This process is underway at the present time.

Mr. NUGENT: The act gave the department, I believe, the right to make regulations in respect of the form in which the information should be given. Has the work gone far enough to ascertain whether or not the information required under the Income Tax Act is quite satisfactory for the purpose for which this survey was to be taken? In other words, is there any information in respect of any inefficiency in the information supplied under the Income Tax Act?

Mr. DUFFETT: Yes, we believe this to be the case because many firms already have supplied us with duplicates of the forms they now supply to the Department of National Revenue, so we know precisely, in most cases at least, what we shall be obtaining.

Mr. NUGENT: That is, in filing information under the Income Tax Act; but, I thought when this act was originally passed the purposes were not identical. There was the thought that the information would not necessarily be identical. But, for the specific purpose of this act I thought additional or different information would be required. Has the work progressed long enough to ascertain whether or not additional information would be required?

Mr. DUFFETT: Beyond that required by the Corporations and Labour Unions Returns Act?

Mr. NUGENT: No, beyond that required by the Income Tax Act.

Mr. DUFFETT: Well, the Income Tax Act requires a financial statement. The Corporations and Labour Unions Returns Act requires a financial statement. These are similar. In addition, the Corporations and Labour Unions Returns Act requires information on payments to non-residents by corporations. This information is not reported under the Income Tax Act and will continue to be reported under the Corporations and Labour Unions Returns Act.

Mr. LAMBERT: By an amendment to the Income Tax Act returns now.

Mr. DUFFETT: No. This will continue to be a return under the Corporations and Labour Unions Returns Act. It is supplementary information.

Mr. LAMBERT: Which will be made direct to you?

Mr. DUFFETT: It will be submitted, in all possibility, at the same time as firms submit their income tax statement, so it will come to us through the collection machinery of the Department of National Revenue.

Mr. LAMBERT: You say in all probability. Has no decision been reached in this regard to date?

Mr. DUFFETT: I think it is almost certain. Am I not correct in this, Mr. Traquair?

Mr. D. A. TRAQUAIR (*Administrator, Corporations and Labour Unions Returns Act*): This is a permissive section; that is, the act does not say the firm has to do it this way. The act permits the firm to do it this way.

Mr. DUFFETT: If the firm wishes to submit this additional information on payments to non-residents directly to us, that is acceptable.

Mr. LAMBERT: Well, how do you marry it to their income tax return? Do you do this by going into the Department of National Revenue's files?

Mr. DUFFETT: It is not necessary to link these two immediately. This information on payments to non-residents stands by itself.

Mr. NUGENT: I am still trying to figure out the reasoning on this. I thought when this legislation was first passed that they would be setting up, after they had a look at it, special regulations in respect of exactly the type of information or the form in which companies could submit information that would be most useful to the department, especially with regard to this question of foreign control and balance of payments.

From their work so far, can one of the witnesses tell us what reasoning led them to abandon this idea and to expect the income tax return was sufficient.

Mr. DUFFETT: To answer the first part of your question, the Corporations and Labour Unions Returns Act specifies that the financial statement shall be in a form and contain such particulars and other information as may be prescribed by regulations. This is as far as our powers go in specifying the information to be submitted under the act. The balance of the information, payments of one kind or another to non-residents, rent, royalties, copyrights and so on, is specified in the original act and may not be changed by regulation. In respect of the financial statements supplied to us, it is specified in the regulations that firms may supply to the dominion statistician the same financial statements as they submit to the income tax department, and we have found this to be satisfactory.

Mr. NUGENT: That is the thing; you say you found this satisfactory while you had the power to make regulations, and that power was given because it was thought the income tax returns might not be satisfactory. We have not had the first report to date. This work has not been collated or analysed. But, the decision was made. Have you had enough experience to say these things when you have not even analysed it? Is it not early to say that is satisfactory, or has the original purpose been abandoned?

Mr. DUFFETT: No. Financial statements have been carefully looked at. This power to specify by regulations the form of financial statements was needed primarily in the case of trade unions and, particularly, in the case of the international unions. The international unions have only one financial statement, and that is the one covering the whole of their North American operations, which creates obvious difficulties because, naturally, we are interested in obtaining as broad information as possible on the operations of the unions in Canada, and the regulations have attempted to specify the sort of information that trade unions should supply.

There is a further consideration so far as trade unions are concerned, and that is since they do not make returns to the Department of National Revenue for income tax purposes there is no particular standardization in the form in which the trade unions financial returns could be made. So, it becomes particularly necessary to have the right to specify the form in which they should be made. But, in the case of corporations, the requirements of the Department of National Revenue are pretty well understood and fairly specific, and the returns provided to the Department of National Revenue, so far as we can tell by examining the forms, are quite adequate for the purpose of the act.

Mr. NUGENT: Well, in respect of these returns, the general information supplied to the Department of National Revenue in a summary form always have been available for statistical purposes in any event with regard to balance of payments.

Mr. DUFFETT: No. I am sorry; in total, that is right. This has been so in the aggregate form. What has happened is that the Department of National Revenue has compiled a book known as "Taxation Statistics" summarizing the information, which has been available to the public.

Mr. NUGENT: So, that summary in aggregate form was available long before we passed the act? I am faced with the difficulty of sorting out in my mind why we now are changing our minds and deciding that that information, in effect, is still fine, and it is not necessary to make special regulations to have specific information or the information submitted in the special form. Somewhere along the line this idea was dropped.

Mr. DUFFETT: The report published by the Department of National Revenue is for corporations, only in very broad groups. It may be necessary for us to reclassify these. In many cases it will be necessary for us to examine the individual financial statement together with what our corporations tell us about these payments to non-residents. It may be necessary, as I say, to look at our corporations separately, in order to arrive at an understanding of the way in which the corporation operates.

Mr. NUGENT: What I am trying to get at right now is this. You are giving up the power to make regulations asking for this information in a specific form for your specific purpose and this is before you have had adequate time to examine the information already collected. Is this not being a bit premature?

Mr. DUFFETT: I think probably not. As I see it, the most important part of this legislation, so far as corporations are concerned, is the latter part, which deals with payments to non-residents. These are those things which are of a particular interest to persons being concerned with the relations between Canadian companies and their parents. The financial statements, so far as we can tell, are standard financial statements containing the sort of things one would expect to find in any financial statement.

Mr. LAMBERT: However, you have agreed between you that this, in effect, is an extension of what was being required for your purposes from a limited number of corporations to all corporations in that now you will have access to corporate returns by all corporations?

Mr. DUFFETT: This is correct.

Mr. LAMBERT: Could you also tell us why this additional power which is given to the dominion statistician is taken through the Corporations and Labour Unions Returns Act.

Mr. DUFFETT: I suppose it could be done otherwise, but the reason that it is done under the Corporations and Labour Unions Returns Act is that there was duplication under this act, and we wished to make it clear that the availability of corporation returns from the Department of National Revenue satisfies the reporting requirements of the Corporations and Labour Unions Returns Act. The reason it is useful to have access to all corporations returns, in the first place, is that it would be difficult administratively to specify that we should have access to certain returns but not to others. Corporations grow year by year and it is our expectation that something in the order of 1,500 corporations a year, by reason of growth, will become eligible under the Corporations and Labour Unions Returns Act. If there was a segregation in any way of the returns in national revenue it would be necessary to take the necessary steps to include them under the access arrangements. The major reason for access to all returns is that it is intended, in addition, that we could take over from the Department of National Revenue the publication of the so-called green book. This report covers all large corporations and a substantial sampling of small corporations. So, in order to compile these statistics, it is necessary to have access to the forms of small corporations.

Mr. LAMBERT: I understand that, but I think it is a bootlegging way of doing it. I think you are working through the wrong act; there should have been an amendment to the dominion statistician's act or some other appropriate act, but not this act. What you are accomplishing or trying to accomplish is being done indirectly.

Mr. DUFFETT: In so far as the first objective is concerned, that is avoiding duplicate reporting, under the Corporations and Labour Unions Returns Act it would have been necessary to have an amendment to the Corporations and Labour Unions Returns Act.

Mr. LAMBERT: Why not in the regulations by merely saying that if the corporations wish it would be satisfactory to file a copy of their financial statements which they file under the Income Tax Act?

Mr. DUFFETT: They are already permitted to do this. They are permitted to file a copy of their financial statement. But, it has been suggested to us by many firms this is an unnecessary duplication and they prefer us to deal directly with the Department of National Revenue.

Mr. LAMBERT: I am sorry, I just do not buy it.

The CHAIRMAN: Shall clause 1 carry?

Clause agreed to.

Mr. LAMBERT: On division, Mr. Chairman.

Clause 2 agreed to.

On clause 3.

The CHAIRMAN: Shall clause 3 carry?

Mr. NOWLAN: Mr. Chairman, you will remember in connection with clause 3 I raised an objection to a repeal of those two subsections. It was discussed at some length. The minister said it was a matter of government policy which had been arrived at after careful consideration and that the various people with whom you have communicated have been advised and have seen the bill. I therefore think it is a mistake to repeal that section, but I believe that at the end of the year the whole matter should be reviewed.

The CHAIRMAN: My recollection confirms your remarks, Mr. Nowlan.

Mr. NUGENT: The minister said, I believe, that the report would be forthcoming and that they would take a look at it when they have seen the report. That is one of the reasons I would voice an objection and say that some of this is premature, that it is easier to see the first report at least before you start considering whether a first review is necessary.

The CHAIRMAN: As I recall, the minister said when he tabled the report, that we could come back to it at that time.

Mr. NOWLAN: That is right.

Mr. GELBER: May I ask Mr. Duffett a question? I understand that these changes are in no way going to limit the amount of information. You will still have the same amount of information as you have at the present time for these purposes. Is that correct? What I mean is we do not have to await an evaluation of the information we receive but we are merely changing the procedure of collecting that information.

Mr. DUFFETT: Correct. We will be receiving the same information because in the regulations it is specified that corporations may now, if they wish, submit to us copies of the financial statements which they submit to the Department of National Revenue.

Mr. GELBER: There is no particular reason why we should wait for an evaluation of the first report because we are simply changing our procedure and not the information that we are going to have. Would you agree with that?

Mr. DUFFETT: That is the way I see it.

Mr. GELBER: Actually your department is now going to be obliged to examine many more returns than it does at the present time, so your burden is going to be increased.

Mr. DUFFETT: We will have to examine more returns in connection with the preparation of the corporation portion of the report on taxation statistics.

Mr. GELBER: But you are going to examine all corporation returns?

Mr. DUFFETT: Not necessarily. We will examine returns of all large corporations because this is required under the Corporations and Labour Unions Returns Act, and in part in preparation of the green book. We will examine a sample of the returns of the small firms in order to include them in the report on the taxation statistics. There will be some increase in work.

Mr. GELBER: Do you think your department will examine the returns of the corporations as soon as they are submitted?

Mr. DUFFETT: The procedure was outlined I think at the last meeting here. It is that there are two copies of taxation returns: One remains in the regional office for assessment, the other copy is sent to Ottawa. It will pass through the bureau of statistics and we will take from this return the information which we need and then file it with the Department of National Revenue. We will therefore see it fairly promptly.

Mr. GELBER: So your information really will be examined much more quickly than if you were to depend on the Department of National Revenue to produce the information for you through their assessors?

Mr. DUFFETT: Through the green book, that is what you have in mind, is it?

Mr. GELBER: If you are examining individual reports what will happen is that you will now have two sets of officials, two different departments, examining the corporations' income tax returns. I presume the reason your department is doing it is in order to get the information sooner.

Mr. DUFFETT: Yes, this is not very different from what happens now. There are now two financial statements submitted to the Department of National Revenue, one of which is used by the assessors, while the other comes to Ottawa for preparation of the report on taxation statistics. We will see the latter in very much the same way as the clerks in the Department of National Revenue see it now.

Mr. GELBER: You would not depend on them to produce the information you want, would you?

Mr. DUFFETT: It would not be very practical for us to use the report on taxation statistics for our purposes because it takes a year and a half to two years for this report to come out.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would it be correct, Mr. Duffett, to say that you will be passing on to the Department of National Revenue the report from the corporation after you have extracted from it what information you require?

Mr. DUFFETT: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Will the corporation which has filed this with you be covered with regard to the legal requirements of making a return to the Department of National Revenue within a specified time?

Mr. DUFFETT: The report comes first to the Department of National Revenue and then to us.

Clause agreed to.

The CHAIRMAN: Shall clauses 4 to 6, inclusive, carry?

Clauses 4 to 6, inclusive, agreed to.

The CHAIRMAN: Shall the title carry?

Title agreed to.

The CHAIRMAN: Shall the bill carry?

Bill agreed to.

The CHAIRMAN: Shall I report the bill without amendment?

Agreed.

The CHAIRMAN: Gentlemen, that concludes the business immediately available before this committee. If it meets with your wishes I would propose to call the steering committee together very quickly so that we might arrange the witnesses for Bill No. C-123, the one relating to the insurance, loans and trust companies. I anticipate that there will be a number of people who desire to make recommendations. I have already received one communication from the Canadian Life Insurance Officers Association advising me as follows:

> In furtherance of Mr. Kent's conversation with you yesterday I wish to say that representatives of the association would like to be present when your committee is discussing Bill C-123 to amend, among other statutes, the federal insurance acts.
>
> You mentioned to Mr. Kent that a possible date for your hearings on the bill would be Tuesday, October 27. It would suit us to have representatives present on that day.

As there was a possibility that we might be meeting on October 22 I said that subject to direction of the committee we would do so. I merely point out that I anticipated there would be a number of groups and individuals who would like to make representations. It is my intention to call a steering committee meeting very quickly to draft a list of the witnesses and to get the hearings underway expeditiously.

Mr. NOWLAN: If I am on that steering committee, and I think I am, I hope you will meet before Thursday afternoon because I will be away for three or four days.

The CHAIRMAN: I had at the back of my mind a meeting on Thursday morning.

The meeting is adjourned.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

THURSDAY, OCTOBER 29, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

WITNESS:

Mr. Richard Humphrys, Superintendent of Insurance.

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

21308—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison
Aiken
Armstrong
Asselin (*Notre-Dame-de Grâce*)
Basford
Bell
Berger
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Hales
Jewett (*Miss*)
Jones (*Mrs.*)
Kindt
Klein
*Lambert
Lloyd
Macaluso
Mackasey
McCutcheon
McLean (*Charlotte*)
Monteith
More
Moreau
Munro
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

*Replaced Mr. Ryan on October 22.

ORDERS OF REFERENCE

THURSDAY, October 15, 1964.

Ordered,—That Bill C-123, An Act to amend certain Acts administered in the Department of Insurance be referred to the Standing Committee on Banking and Commerce.

THURSDAY, October 22, 1964.

Ordered,—That the name of Mr. Chrétien be substituted for that of Mr. Ryan on the Standing Committee on Banking and Commerce.

Attest.

LEON-J. RAYMOND,
The Clerk of the House.

21308—1½

MINUTES OF PROCEEDINGS

THURSDAY, October 29, 1964.
(9)

The Standing Committee on Banking and Commerce met at 10.15 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Armstrong, Basford, Bell, Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Gendron, Greene, Kindt, Lambert, Macaluso, Mackasey, McCutcheon, Moreau, Otto, Pennell, Scott and Thomas (18).

In attendance: Mr. R. Humphrys, Superintendent of Insurance; Mr. William Fox, Executive Officer, and Mr. H. A. Urquhart, Loan and Trust Companies Branch, Department of Insurance.

The Chairman presented the Second Report of the Sub-Committee on Agenda and Procedure, which recommended as follows:

(*a*) That the Committee meet on Thursdays at 10.00 a.m. and on Fridays at 9.30 a.m. until consideration of Bill C-123 is completed;

(*b*) That the Committee invite the Superintendent of Insurance to attend on Thursday, October 29th, and Friday, October 30th, to explain the purpose of the Bill and to answer questions; (*Note:* the meeting called for October 30th was later postponed to November 3rd);

(*c*) That the All Canada Insurance Federation and the Canadian Life Insurance Officers Association, who have indicated that they wish to make representations on Bill C-123, be invited to attend on Thursday, November 5th, and Friday, November 6th, respectively;

(*d*) That witnesses be asked to provide 75 copies of their briefs preferably in advance of the meeting to permit study by the members;

(*e*) That witnesses be advised that they should be prepared to summarize their briefs at the meeting, rather than read the entire brief;

(*f*) That witnesses who do not submit a written brief should be asked to advise the Chairman or the Clerk in advance of the meeting of the general areas which they expect to cover in their presentation;

(*g*) That, as a general practice, the Committee will not sit while the House is sitting, except to accommodate out-of-town witnesses.

On motion of Mr. Moreau, seconded by Mr. Bell, the report was approved.

The Committee proceeded to consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman called Clause 1 and introduced the witnesses.

It was agreed to consider the Bill clause by clause, allowing each clause to stand, in order to permit Mr. Humphrys to explain the purpose of each clause and to be questioned.

Mr. Moreau gave notice of a number of amendments, prepared in the Department of Insurance, which he proposed to move at a later date. (See Notices of Motion of Proposed Amendments appended to these Minutes of Proceedings.)

Mr. Humphrys explained the purpose of Clause 1, was questioned and the Clause was allowed to stand.

Mr. Humphrys made a brief statement on Clause 2, explained the purpose of the proposed amendment to this Clause and was questioned. The Clause was permitted to stand.

The witness explained Clause 3 and the proposed amendment thereto, and was questioned.

At the request of Mr. Basford, the witness agreed to provide a list of companies which are subject to this Act, as well as a list of companies not coming under the provisions of this Act, such lists to be appended to these Proceedings. (*See Appendix A to today's Evidence*)

Clause 3 was allowed to stand.

The Chairman read into the record letters received from the Canadian Life Insurance Officers Association and the All Canada Insurance Federation in reply to letters from the Clerk of the Committee, inviting them to appear before the Committee.

The Committee agreed that copies of the proposed amendments should be sent to the above-mentioned and other organizations who had expressed the wish to make representations on this Bill.

At 12.30 p.m., the Committee adjourned until 10.00 a.m., Tuesday, November 3, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

APPENDIX TO MINUTES OF PROCEEDINGS OF THE STANDING COMMITTEE ON BANKING AND COMMERCE, OCTOBER 29, 1964.

NOTICES OF MOTION

OF

PROPOSED AMENDMENTS TO

BILL C-123, AN ACT TO AMEND CERTAIN ACTS ADMINISTERED IN THE DEPARTMENT OF INSURANCE.

(Notice given by Mr. Moreau, October 29, 1964.)

That sub-clause 2 of clause 2 be amended by striking out line 9 on page 2 and by substituting therefor the following:

"and has, *subject to section 45,* one vote for each share held by him subject"

That clause 3 be amended

(*a*) by striking out lines 3 to 9 on page 7 and by substituting therefor the following:

"long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day.

Change of status of corporate resident.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of a life company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 16C and 16D, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of a life company is reduced, the directors of the life company may, notwithstanding subsection (2) of section 16C, allot shares of the capital stock of the life company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(*b*) by renumbering subsections (4) to (6) of section 16F on page 7 as subsections (6) to (8) respectively; and

(*c*) by striking out line 33 on page 7 and by substituting therefor the following:

"section (7) of this section.

Conclusions reached by directors.

(9) In determining for the purposes of sections 16B to 16F whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to

the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 16E or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

That clause 4 be amended by striking out lines 34 to 36 inclusive on page 7 and by substituting therefor the following:

"4. (1) Section 45 of the said Act is repealed and the following substituted therefor:

Change in capital stock.

"45. (1) Notwithstanding anything contained in its Act of incorporation or in this Act, if the subscribed stock of a company is fully paid, the company may, by a by-law made by the directors and confirmed by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for considering the by-law, divide the capital stock of the company into shares of *one dollar* each or any multiple *thereof but not exceeding* one hundred dollars each.

Voting rights qualified.

(2) Where pursuant to subsection (1) the capital stock of a company registered to transact the business of life insurance is divided into shares the par value of which is less than five dollars each, a holder of the shares shall have as a shareholder of the company only the number of votes that equals the product obtained by dividing the total par value of all his shares in the capital stock of the company by five."

(2) The said Act is further amended by adding thereto, immediately after section 45A thereof, the following section:"

That sub-clause 1 of clause 5 be amended by striking out lines 42 to 44 inclusive on page 8 and by substituting therefor the following:

"under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

That sub-clause 6 of clause 5 be amended by striking out line 13 on page 11 and by substituting therefor the following:

"or of a province, state or municipality of that"

That sub-clause 1 of clause 13 be amended by striking out lines 8 to 10 inclusive on page 18 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

That sub-clause 8 of clause 13 be amended by striking out line 14 on page 21 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

That sub-clause 1 of clause 19 be amended by striking out lines 35 to 37 on page 24 and by substituting therefor the following:

"19. Subsection (6) of section 37 of the *Foreign Insurance Companies Act* is repealed and the following substituted therefor: 1960-61, c. 16, s. 4(2)

"(6) Where a separate and distinct fund with separate assets is maintained pursuant to subsection (5), the assets of the fund so maintained shall be available only to meet the liabilities arising under policies in respect of which such fund is maintained, *except that amounts transferred to the separate and distinct fund from other funds of the company may, subject to the approval of the Superintendent, be withdrawn from the separate and distinct fund and transferred to such other funds as the directors may determine.*" Segregation of assets.

20 (1) Paragraph (b) of section 1 of Schedule I to the said Act is repealed and the following substituted therefor:"

That sub-clause 1 of clause 19 be amended by striking out lines 5 to 7 inclusive on page 25 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

That sub clause 8 of clause 19 be amended by striking out line 46 on page 27 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

That clauses 20 to 39 be re-numbered as clauses 21 to 40 respectively.

That clause 29 be amended

(a) by striking out lines 45 to 47 on page 37 and lines 1 to 4 on page 38 and by substituting therefor the following:

"be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by Change of status of corporate resident.

it while it is a non-resident shall be deemed, for the purposes of sections 36B and 36C, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 36B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value, but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(*b*) by renumbering subsections (4) to (6) of section 36E on page 38 as subsections (6) to (8) respectively; and

(*c*) by striking out line 28 of page 38 and by substituting therefor the following:

"section (7) of this section.

Conclusions reached by directors.

(9) In determining for the purposes of sections 36A to 36E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 36D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

That clause 37 be amended

(*a*) by striking out lines 45 to 48 on page 49 and lines 1 to 3 on page 50 and by substituting therefor the following:

"the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day.

Change of status of corporate resident.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 51B and 51C, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 51B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(*b*) by renumbering subsections (4) to (6) of section 51E on page 50 as subsections (6) to (8) respectively; and

(c) by striking out line 27 on page 50 and by substituting therefor the following:

"section (7) of this section.

(9) In determining for the purposes of section 51A to 51E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 51D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge." Conclusions reached by directors.

That the following new clause 41 be inserted and the present clauses 40 and 41 renumbered as clauses 42 and 43 respectively:

"41. The said Act is further amended by adding thereto, immediately after section 61 thereof, the following section:

"61A. (1) Notwithstanding anything in section 60 but subject to subsection (2) of this section and to such terms and conditions as may be prescribed by the Treasury Board upon the report of the Superintendent, a loan company may invest its funds in the fully paid shares of a trust company to which the *Trust Companies Act* applies. Investment in trust company.

(2) No investment shall be made by a loan company under subsection (1), if, after the making of such investment, the aggregate cost to the loan company of the investments made under subsection (1) and the investments made under section 60 in shares of such trust companies then held by the loan company would exceed the aggregate of the loan company's then paid-up capital and reserve." Limitation.

EVIDENCE

THURSDAY, October 29, 1964.

The CHAIRMAN: Gentlemen of the committee, I see a quorum. I call the meeting to order.

The purpose of the meeting today is to consider Bill No. C-123.

With your permission I would advise you that your subcommittee on agenda and procedure met on Thursday, October 22, and agreed to recommend as follows:

(a) That the committee meet on Thursdays at 10 a.m. and on Fridays at 9.30 a.m. until consideration of Bill C-123 is completed;

(b) That the committee invite the superintendent of insurance to attend on Thursday, October 29 and Friday, October 30, to explain the purpose of the bill and to answer technical questions;

(c) That the All Canada Insurance Federation and the Canadian Life Insurance Officers Association, who have indicated that they wish to make representations on Bill No. C-123, be invited to attend on Thursday, November 5 and Friday, November 6 respectively; and that the Dominion Investment Association, who have also indicated that they wish to make representations, be invited to attend;

(d) That witnesses be asked to provide 75 copies of their briefs, preferably in advance of the meeting to permit study by the members;

(e) That witnesses be advised that they should be prepared to summarize their briefs at the meeting, rather than read the entire brief to the committee;

(f) That witnesses who do not submit a written brief should be asked to advise the chairman or the clerk in advance of the meeting of the general areas which they expect to cover in their presentation;

(g) That, as a general practice, the committee will not sit while the house is sitting, except to accommodate out of town witnesses in emergency.

Mr. MOREAU: I so move.

Mr. BELL: I second the motion that the steering committee's report be adopted.

Mr. BASFORD: I have one caveat to that report.

I think some of us have a caucus tomorrow morning.

The CHAIRMAN: Probably a word of explanation is in order. It is hoped that we may complete the clause-by-clause explanation of the bill today, and in that event the committee would not sit tomorrow. This, of course, is still at the option of the committee. Perhaps we could hold that decision until the close of today's meeting. The Chair will entertain a motion to adjourn at any suitable hour; and your caveat is noted, Mr. Basford.

I will now call for the adoption of the motion. All in favour of the motion please indicate.

Motion agreed to.

The CHAIRMAN: Gentlemen, we have with us today Mr. Humphrys, who is the deputy minister and who is properly entitled superintendent of insurance. He has with him two officials of the department, Mr. Fox on his immediate

right, the executive officer of the department, and Mr. Urquhart, the administrative officer.

It has been suggested that Mr. Humphrys should go through the bill clause by clause, setting out the meaning of each section in plain English so that when the witnesses appear next week we will all be conversant with the bill and equipped to examine the witnesses.

I propose now to call each clause. I will then ask if clause 1 carries, and then clause 2. When each clause has been explained and there are no further questions I will assume that the clause will stand. We will go through the bill clause by clause, standing each one in turn. My procedure is to call each clause and then stand it.

Mr. LAMBERT: I would suggest that for this procedure in which we will be receiving explanations the clauses would not be called in any way nor would they be carried. I think that can only be done when we come to the end and have heard the representations which are to be made.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do they not have to be called?

Mr. LAMBERT: They will only be called in order to facilitate the discussion.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): The chairman said they would be stood.

The CHAIRMAN: Yes, I will stand them afterwards. However, I think Mr. Lambert's suggestion is one of common sense and I am prepared to proceed along the lines he suggests.

Mr. MOREAU: I suggest the clauses be called in any event because that will tend to limit the discussion to a particular clause; and then, as I understand it, you will stand the clause.

The CHAIRMAN: The Chair is in the hands of the committee here. I do not want to take too much time on this point; it is just a matter of accommodating the committee so we can get on with the business of the meeting.

Let me just say that I will call the clauses but not in a formal way.

Mr. OTTO: You are the chairman; go ahead.

Mr. MOREAU: If it is in order, I would like to give notice of some amendments.

The reason for which I would like to do this at this time is that the members of the committee will recall the Minister of Finance saying that he would be prepared to accept any suggestions from members or from people in industries concerned. There have been a number of suggestions made to the department or to the minister which are embodied in some amendments for which I would like to give notice of motion. The purpose of producing them at this time would be to give members of the committee a chance to see them, to give our witness a chance to explain them, and to give advance copies of them to the witnesses we are going to receive in the future.

I do not know whether or not this is in order, but I think the proceedings of the committee would be facilitated if this course were followed.

Mr. SCOTT: Would we not deal with these amendments as we came to the clauses concerned?

The CHAIRMAN: Mr. Moreau indicated to me earlier that he proposed to give notice of these amendments and that he would table them immediately so that every member of the committee would have the amendments in front of him. The superintendent is conversant with these proposed amendments, and as we go to each clause he can explain the impact of the proposed amendments.

Mr. OTTO: Mr. Chairman, is Mr. Moreau putting in his amendments on behalf of the Minister of Finance?

The CHAIRMAN: He has given notice of motion that he proposes to put forward the amendments.

Mr. MOREAU: I understand these amendments have been prepared by the Department of Finance for the consideration of the committee. I am taking the responsibility of moving them in the committee.

The CHAIRMAN: They are prepared, I understand, Mr. Moreau.

Mr. MOREAU: Yes.

The CHAIRMAN: Will you distribute them to the members of the committee so that we may have them before us as we go through the bill.

You are now giving notice of motion that you propose to put forward these amendments?

Mr. MOREAU: I can list the clauses.

The CHAIRMAN: The notice of motion, I understand from Mr. Moreau, is being prepared in the French language. Copies are not available at this moment but they will be available very shortly.

I now invite your attention to the remarks of Mr. Humphrys whom I shall ask to commence with clause 1.

On Clause 1—*Provisions applicable to all companies.*

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): I would like to say in my introductory remarks that the purpose of this bill is to effect amendments in some of the investment powers in the insurance companies, trust companies, and loan companies; to enact a measure that will permit the retention in Canada of ownership and control of life insurance companies, trust companies and loan companies incorporated by parliament that are not now under foreign control; and also to effect a number of other administrative amendments which I will explain as we come to them.

This bill, as you know, deals with four different acts. As a consequence, there is a good deal of repetition in it. In particular, some of the investment changes are repeated several times, so the actual content of the bill is not quite so formidable as it appears from its bulk.

Part I of the bill deals with the Canadian and British Insurance Companies Act. It has amendments affecting Canadian companies and also amendments affecting the assets that may be vested in trust in Canada by British companies for the protection of Canadian policy holders.

Part II deals with the Foreign Insurance Companies Act and enacts amendments parallel in every way to those for British companies.

Part III deals with the Trust Companies Act; and Part IV deals with the Loan Companies Act.

Clause 1 is an application clause, and the changes there are to make sure that the proposed new sections dealing with limitations on non-resident ownership and control apply to all companies, regardless of when incorporated.

Certain provisions of the bill now apply only to companies incorporated since 1910, but clause 1 will make sure that these provisions, and also the provision dealing with the grant of a French or English version of a company's name, apply to all companies.

The CHAIRMAN: Are there any questions on clause 1?

Mr. OTTO: You are inviting questions on the interpretation?

The CHAIRMAN: Yes, so the purport of the bill is clearly in everyone's mind.

As there appear to be no questions on this, may we pass to clause 2, Mr. Humphrys.

Clause 1 stands.

On Clause 2—*Qualifications of directors.*

Mr. HUMPHRYS: Clause 2 changes the required qualifications to act as a shareholder's director of an insurance company. At present, the requirements are the ownership of shares of stock of a par value of at least $2,500 or shares on which at least $500 has been paid as capital. The new proposal will reduce the requirement to shares on which at least $250 has been paid as capital.

I should make it clear that that measures the amount that has been paid to the company as capital; it does not necessarily measure the cost of the shares because the market price of the shares might be very much higher.

The purpose of this is to reduce the required qualification for directors because in the case of some of our life insurance companies shares having an amount of $250 paid might mean 25 shares at $10 par value and in some cases the shares are selling at $300, $400 and even $700 a share. So the present requirement of fifty $10 shares would require an investment of perhaps $30,000 or $40,000 to qualify as a director, which is unreasonably high. By cutting this to $250 paid, the requirement will be from a minimum of a few hundred dollars to a maximum of $17,000 or $18,000 depending upon the market value of the shares in question.

Mr. LAMBERT: Mr. Chairman, in this connection and in view of the other requirements of the act, what evidence will be required by the superintendent of insurance or other persons that the shares are being held by the person designated absolutely in his own right and that there is not in existence some sort of trust agreement?

Mr. HUMPHRYS: The requirement in law is that the shares be held absolutely in his own right if he is to qualify, so it is up to the company to determine that anyone proposed for the board fits this qualification. We have examiners in the department who look into it from time to time, and if we have any reason to think that the shares are not absolutely in the shareholder's right, we question it; and if necessary we will obtain a declaration or an affidavit from him. This has not given rise to any difficulty whatsoever.

Mr. LAMBERT: I noticed it existed in the previous one.

Mr. HUMPHRYS: Yes.

Mr. LAMBERT: But then there were no disabilities, were there—

Mr. HUMPHRYS: No.

Mr. LAMBERT: —in so far as the ownership of shares or, shall we say, the residential qualifications of any director were concerned?

Mr. HUMPHRYS: Yes, there is presently a requirement that the majority of the directors shall be residents and citizens of Canada, and this is looked into now.

Mr. LAMBERT: There is no provision for a statutory declaration? Unless you as superintendent of insurance exercise a discretion to call for a statutory declaration there is nothing that puts a shareholder on his mettle to prove that he is not holding some trust declaration on behalf of someone else behind his formal ownership?

Mr. HUMPHRYS: There is no penalty in the law, and no requirement that everyone proposed as a director shall submit a declaration. However, the eligibility requirement is in the law and I think that any corporation would be even more concerned than the department to make sure that every director is properly qualified, because if they had someone on the board who was not properly qualified any action that the board took would be called into question. Therefore, I think every company is very keen to make sure on its own that its directors are qualified under the law. The point has not given rise to any difficulty.

Mr. LAMBERT: Hitherto it has not given rise to any difficulty?

Mr. HUMPHRYS: No.

Mr. LAMBERT: But, with the new implications, do you feel satisfied that this requirement is sufficient without calling for a formal statutory declaration either within the regulations or within the act?

Mr. HUMPHRYS: Very definitely.

Mr. LAMBERT: You are satisfied?

Mr. HUMPHRYS: Yes. I do not believe that the new provisions relating to the ownership of shares would change this problem at all.

Mr. LAMBERT: I see.

Mr. KINDT: Is there a time requirement in order to register as one eligible for being a director?

Mr. HUMPHRYS: Not under the statute.

Mr. KINDT: Can one go out and gather up half a dozen people whom one wants as directors and let them buy $250 worth of shares and then become directors or become eligible.

Mr. HUMPHRYS: They have to be elected at the meeting, of course, but there is no time limitation.

Mr. KINDT: There is none in this new bill?

Mr. HUMPHRYS: No.

The CHAIRMAN: Are there any further questions on clause 2?

Mr. MOREAU: One of the amendments proposed is in regard to clause 2.

Mr. HUMPHRYS: Clause 2 is in two parts. I have dealt with subclause (1). Subclause (2) is on the next page. This is one of the cases in which an amendment is proposed.

Subclause (2) as presently in the bill amends a section of the act that deals with the voting rights of shareholders. The present law states that each shareholder who has paid in cash all calls on his shares is entitled to attend and vote at all general meetings and to have one vote per share.

In the proposed provisions dealing with non-resident ownership, there are some cases where a shareholder will not be entitled to vote, so these underlined words are inserted to call attention to subsequent sections where this right will be modified.

The amendment to which Mr. Moreau has referred will add the words "subject to section 45" in line nine because that section will modify the rule of one vote per share. Therefore, this subclause is really calling attention to subsequent places in the act where the rules otherwise applicable are modified.

Mr. SCOTT: Mr. Chairman, before we leave the first subsection may I say that it strikes me there is some merit to the suggestion that the directors be required to make a declaration under the Canada Evidence Act that they are the holders in full right of the shares.

Since we may not have the benefit of hearing this witness again, could he give us his comments on the reasons why that should not be done, if any.

Mr. HUMPHRYS: I would say first that I do not think it is necessary because, though this requirement has been in the law for a great many years, in all my experience in the department and from any knowledge that I have gained of experience before my time, this has never given rise to any difficulty. As I said at the outset, the companies are even more concerned than we because if this situation developed I believe it might very well call into question the actions of the board. Therefore, in my experience no one who is not properly qualified has tried—and I cannot conceive of anyone trying—to become a shareholders' director.

This change, of course, will reduce the investment required to qualify, so to that extent it would make it easier.

Mr. SCOTT: You undertake no investigation to make sure that they do?

Mr. HUMPHRYS: Not specifically. We have examiners who look into the condition of companies' affairs, and when they do that they look into the question of directors' qualifications to see that they own the required number of shares. We do not require a statutory declaration. It has never been a problem, and I would not wish to take the initiative of putting the additional requirement on the companies when I feel there is no problem to be dealt with.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Will there not be an added problem to be dealt with?

Mr. HUMPHRYS: I would not think so, Mr. Cameron, because already the law requires that the majority of the directors be Canadian citizens and residents of Canada. That has been in the law for some years now, and these new requirements dealing with non-resident ownership of shares will still contain room for a substantial proportion of non-resident ownership quite adequate to qualify a non-resident to act as a director if the rest of the shareholders who have voting rights wish to elect him as such.

I think it would not be right to take the view that non-residents should never be directors, because our Canadian life insurance companies do a large volume of business outside Canada and I believe it is reasonable that there should be representatives from other countries on the boards.

Mr. OTTO: On that point, Mr. Humphrys, you said that if any of the directors were not themselves holding the shares in their own right, it would call into question the actions of the board.

Is it not right to say that it not only calls into question the acts of the board but that it makes the actions of the board void? Therefore the company would be very, very careful to see that the meeting was composed of all directors who were fully qualified; and to substantiate your argument, Mr. Humphrys, companies would be very careful to see that each director was properly qualified.

Mr. HUMPHRYS: That is my opinion.

Mr. OTTO: You said only that it called into question, but I say to you that it is quite possible and in fact probable that it makes the meeting void if all the directors are not fully qualified.

Mr. HUMPHRY: I would not on my own undertake to give a legal opinion on that. From the department's point of view if there were some doubt we would take an opinion from the Department of Justice and obtain their advice on it. It is a point of company law.

In any event, I believe it is a situation that any corporation would wish to avoid.

The CHAIRMAN: Are there any further questions on subclause (1)?

Mr. Humphrys, I would invite you to go back to subclause (2) and state very briefly the effect of the amendment if carried.

Mr. HUMPHRYS: The effect of the amendment would call attention to a subsequent place in the bill where the rule that a shareholder has one vote per share will be modified.

Mr. KINDT: Can you in a few words summarize your views, Mr. Humphrys, of what may be accomplished by this restriction on voting rights of foreigners? What are the good effects and what are the bad effects?

Mr. HUMPHRYS: This would be on clause 3.

The CHAIRMAN: The suggestion was made at the beginning, Mr. Kindt, that at this meeting we would just go through each clause and explain the

meaning. Later, the minister will be appearing before the committee, and other witnesses. I suggest your question might more properly be directed to the minister than to one of the officials.

Does that meet with your approval, Mr. Kindt?

Mr. KINDT: Yes.

The CHAIRMAN: Thank you. Clause 2 stands.

On Clause 3—*Definitions.*

Mr. HUMPHRYS: This clause of the bill proposes the enactment of five new sections, and these are the sections that deal with the question of limiting the degree of non-resident ownership and control of life insurance companies incorporated by parliament that are not now under non-resident control.

I think the best way for me to explain the plan and the content of these sections would be to go through them section by section. As we pass through them I will try to explain the plan.

The first of the five sections is numbered 16B, as you will see. This is a definition section. Subsection (1) of the proposed section 16B defines what is to be considered as a non-resident for subsequent purposes in the bill. Essentially, these non-residents are defined as individuals who are not ordinarily resident in Canada, and corporations, including in that term associations, partnerships or other organizations, that are incorporated or formed out of Canada.

The definition also includes Canadian corporations that are under the control of non-residents; it includes trusts established by non-residents or trusts where a majority of those having the beneficial interest are non-residents; and it includes Canadian corporations controlled by a non-resident trust.

Then, for convenience and subsequent reference, a resident is stated to be anyone who is not a non-resident.

Mr. LAMBERT: What are the criteria within the department of insurance for the definition of "ordinarily resident".

Is this the income tax provision that a minimum of ordinary residence of 180 days in Canada shall deem a person to be a resident of Canada?

Mr. HUMPHRYS: There is nothing in the legislation or regulations promulgated by the department that would define this term. From the way in which the plan is proposed, the responsibility for allowing or refusing to allow a transfer of shares rests upon the board of directors of the corporation that has issued the shares, and it would be up to the directors to decide whether the proposed transferee is ordinarily resident in Canada or not. I believe from the way the plan is proposed they could use their discretion in making a judgment; I do not think they would have to be bound by any particular rule.

Even if a man were here for a year or two years, if his posting were temporary, and it was intended, and he knew it was intended, that he would go back to his own country, the ordinary view would be that he is not ordinarily resident in Canada. I think there may be borderline cases, but essentially it is an area where the directors would have discretion to look at the case and make up their minds what they think about it.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Does that not mean that you are leaving in the hands of the board of directors the right to define what is or is not a non-resident?

Mr. HUMPHRYS: Substantially, yes.

Mr. LAMBERT: What if you disagree? Because of the penalties on non-residents, I would have thought for the purposes of the act and for the clarification of all the boards of directors of companies covered by these acts there would be established a yardstick as in the Income Tax Act.

Mr. HUMPHRYS: I think to attempt to define it on an arbitrary formula would weaken the effectiveness of the plan rather than strengthen it.

It is true that directors would have some discretion, but I think in dealing with these matters there will inevitably be cases, not only with regard to this question but also with regard to the question of control, where someone's discretion will have to be used, and the essence of this plan is to give discretion for transfers to the board of directors.

The plan also provides for a limitation of voting rights in certain circumstances, so even if the directors allow the transfer of shares and the transfer is valid, it does not necessarily mean that for voting the transferee has received the status of a resident, for purposes of the act.

The legislation makes it a matter of law whether a person can exercise voting rights or not in certain circumstances, so if a dispute arises it would be a matter for the court to determine whether the person was ordinarily resident in Canada or not.

Mr. LAMBERT: May I respectfully submit that here is an area of uncertainty that I do not think will be beneficial to the plan as envisaged by the legislation.

Mr. HUMPHRYS: I think it should be kept in mind on points such as this that these provisions are not of the same nature as the provisions of taxing statutes. There is not the same prize, if I may use that word, for finding a loophole as there might be in the case of a taxing statute because what we are essentially dealing with here is a question of control, and there is no real motive or incentive to find room to get a share or two. If it does not involve a large block of shares it is not going to have much effect on the control of the company.

I believe there may be some borderline cases where a question of opinion might be involved, but I do not think cases so involved will be numerous enough to cause a real problem in administering the section.

Mr. MOREAU: What objection would there be to the relatively simple yardstick of Canadian citizenship?

Mr. HUMPHRYS: It would insert additional administrative difficulties because there are a great many people in Canada who have lived here for many years, perhaps most of their lives, and who may not be Canadian citizens.

Mr. MACKASEY: Why would they not be Canadian citizens?

Mr. HUMPHRYS: Perhaps they are British subjects but not Canadian citizens.

In setting this up and putting the responsibility on the directors, the plan attempts to keep the administrative problems within reasonable confines.

Mr. MOREAU: It seems to me that the onus of establishing Canadian citizenship could still be left to the board of directors.

Mr. HUMPHRYS: Yes, but I was trying to clarify my answer by indicating that the plan as proposed lays certain responsibilities or duties on the board of directors, and in so doing it is important to keep the scope of the administrative problems within some reasonable area.

As presently drafted the plan requires the directors to look at the question of residence only when they are considering a transfer. They do not have to go further and inquire into his citizenship; they do not have to inquire into beneficial ownership of the shares; so this simplifies their problem to some extent without, I think, weakening the purposes and effect of the plan.

You could require citizenship. It would mean that for every transfer even for small shares, and where you know the person and it is fairly obvious where he is living, nevertheless you would have to get a declaration from him with regard to citizenship. It adds problems that it was thought could be avoided,

and it was considered it would be sufficient to go only as far as the residence question. I think to put in a citizenship requirement would add further difficulties; it would tighten it up. It is a question of judgment whether the additional tightening up would warrant the additional problems in operation.

Mr. BASFORD: In section (c) (iii) what are your criteria for control?

In answering the question I would ask you to address your mind to the problem of a publicly held company with very widespread shareholders where it is possible for one person or one group of people in fact to control the company while holding a relatively small number of shares if the rest of the shareholders are widely dispersed and separate.

Mr. HUMPHRYS: There is no definition of the term in these proposed sections, and the problem there is not unlike the problem of residence that we were just discussing.

The intention is to leave the question of control to be looked into by the directors, and to judge the case on the circumstances so far as they can learn them.

There are a wide variety of cases, problems and circumstances dealing with this question of control. I think generally one could start from one extreme and say it would nearly always be accepted that where an individual has a majority of the voting shares he controls the corporation. But going from there to the opposite extreme where the shares are very widely spread in small blocks, looking also at the problems that would be thrown up by corporate empires, as you might say, with parents and subsidiaries and voting trusts and a wide variety of circumstances, it seems that the feasible course is to put on the directors the obligation to look at each case and to form their own view, and let them make their decision on that basis in accordance with the circumstances as they find them.

Any effort at writing in a definition by formula would almost inevitably sweep in some cases that perhaps you did not want to sweep in and perhaps leave out others that should be swept in—for example, perhaps a majority of shares of a Canadian company or a majority of the voting interest might be in the hands of non-residents. However, if it was widely spread in small blocks, I do not think it could be properly held that the corporation was under the control of non-residents, because I think the concept or the idea of control implies the power to direct in some continuing fashion the affairs and fortunes of the corporation.

It does not mean merely to a temporary power to dominate a meeting. For example, by gathering together enough proxies to swing a vote, I do not think a holder of the proxies would normally be considered to control the company. He might have the dominant voice at a particular meeting, but I think the concept of "control" carries with it some continuing power.

Mr. BASFORD: Having left it to the board of directors to determine in their own minds the question of control, what happens if you are not satisfied with the opinion they arrive at?

Mr. HUMPHRYS: If they approve a transfer acting in good faith, the transfer of shares is valid. So the opinion or the area of discretion is left with the directors. The safeguard in so far as the public interest is concerned is the provision that if a non-resident owns or controls more than 10 per cent of the shares of one of these companies he cannot vote at all. Therefore, an incentive to find a way through the restrictions that would otherwise apply is removed. If he gets the shares because in the opinion of the directors of the corporation he is a resident, although in fact he is a non-resident, then if he attempts to vote those shares he may leave himself open to a penalty. Furthermore, any action taken at a meeting at which such voting takes place may be voided by the company at a subsequent meeting. There is still the safeguard that if a

person is a non-resident he cannot vote if he has more than 10 per cent of the shares.

Mr. BASFORD: It would seem to me obvious that three different Rockefellers could own 8 per cent of the shares and quite clearly in the context of Canadian business, could control that company.

Mr. HUMPHRYS: The proposal defines certain circumstances in which shareholders will be associated with each other. The definition of "association" is in subsection (2) of 16B and sweeps in the main types of cases where you might expect shareholding to be split up within a corporate structure. It does not attempt to describe every possible association. In the circumstance or illustration that you mentioned in which perhaps three brothers each have 8 per cent of the shares and agree to vote in concert, they might, it is true, have the largest single voice in the meeting. But there is a limitation of 25 per cent on the total shares that can go out to non-residents, so under this limitation they would not be able to get more than 25 per cent if there were three brothers working on it.

The problem thrown up by that particular illustration is not, I think, the kind of problem that gave rise to this plan. The problem that is being dealt with by this plan is the problem of persons seeking to buy, or buying, a complete controlling interest.

The experience we have had on the question of non-residents buying control of existing insurance companies has been that this pressure comes from outside insurance interests and from individuals or groups who are interested in buying control—real control, by which I mean a majority of the voting interest, not merely temporary control which would be on the basis of perhaps a large block of shares but not a dominant block.

While the possibility does exist of persons working in concert who are not deemed by this act to be associated, it is a kind of arrangement that is not likely to result in a majority of the voting interest being held by the persons concerned, or an arrangement that is a continuing one, or one that would lead to permanent alienation of control of a Canadian enterprise.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Did I understand you to say just now that the onus does not rest on the directors to determine the beneficial owners of the shares or to determine whether or not the titular owners are in fact the real owners?

Mr. HUMPHRYS: No.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It rests with you? If you have any suspicion you investigate it? Is that the case?

Mr. HUMPHRYS: The only case in which this question would arise, Mr. Cameron, is where people propose to vote the shares. Then the statute says that if anyone votes the shares in circumstances described in a subsequent section he is leaving himself open to penalty, and the actions taken at the meeting at which he votes are voidable.

If the department knew of a case where votes were being cast that should not be cast we could take the same action that we would take in connection with any other violation of the statute.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): To come back to the case suggested by Mr. Basford where a comparatively small group has effective control of a corporation, would the directors of such a company not be, in effect, the nominees of that small group? And are you not under this legislation asking those people to investigate themselves to find out whether the basis of their control is legal or illegal under the terms of this act? They do not have to find out whether or not the shares that have been voted to put them in as directors are in effect owned by those people or not; you do not put any onus on them for that, and yet you are asking them to police themselves.

Mr. HUMPHRYS: The persons who vote the shares or who act as proxies for persons who are prohibited from voting are themselves liable to penalty. So if anyone casts votes in circumstances in which voting is prohibited, he himself is liable to a fine or a jail sentence, or both. In addition to that, the action taken at the meeting is voidable.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I know, but what grounds have you for supposing that your department will be able to unearth any private arrangements or secret arrangements with regard to the ownership of these shares? When you do not put any onus on the directors to themselves check on this, it seems to me there is quite a large hole in the legislation, a hole for large wagons to be driven through.

Mr. HUMPHRYS: I think the fact that there are fairly serious penalties on anyone who votes when he should not vote is itself a very substantial deterrent to anyone taking this action at a meeting.

The fact that the penalty exists and the fact that the actions taken at the meeting are voidable creates a circumstance in which it is virtually inconceivable that anyone would invest a very large amount of money in attempting to buy a company only to have his control or his power to direct the company rest on such a questionable and unstable basis. There just would be no point in a foreign investor attempting to buy a company in such circumstances.

I know that non-residents often regard shares of Canadian life insurance companies and other companies as good investments—but they are not that good.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): When you leave the power of definition of a resident or a non-resident in the hands of this same board of directors, where are you?

Mr. HUMPHRYS: The definition is not left in their hands as far as voting is concerned.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What yardstick do they use? You say there is no yardstick here.

Mr. HUMPHRYS: They must use their own opinion on the question of transfer, but on the question of voting it is the law that is speaking, and any person who is in this status—

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What definitions are applied there? What yardstick is applied there for resident or non-resident with regard to voting?

Mr. HUMPHRYS: The yardstick as defined here is a person who is ordinarily resident in Canada or a corporation formed outside.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But you have already told us that the directors are the only ones who have the power to interpret that and make the definition.

Mr. HUMPHRYS: I said the obligation on the directors under the plan extends to the question of allowing or refusing to allow the transfer of shares; and in order to make a determination of whether to allow or refuse to allow they must form an opinion on whether the proposed transferee is a non-resident or not. However, the provisions dealing with voting rights state that if a non-resident, together with associates, owns directly or indirectly more than 10 per cent of the shares, no one shall exercise the voting rights on those shares. If anyone does, it is up to him to decide, and he knows whether he is a resident or not. If he votes when he is a non-resident, then he may leave himself open to a penalty.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): How does he know whether he is resident or non-resident?

Mr. HUMPHRYS: As the provisions are drafted, if a dispute were to arise it would have to be left to a court to determine.

Mr. BASFORD: You are talking of someone who, within the statutes, is clearly not entitled to vote, but we are talking about a person who is clearly entitled to vote and where there is some question. I question whether it should come down on this side or on the other side.

I am suggesting to you, for example—and I am mentioning names but not in order to malign anyone—that a Canadian director of the Mercantile Bank who is also a director of an insurance company, if he has any possibility of voting in different ways is not going to vote against the interests of the Chase Bank of New York.

Mr. HUMPHRYS: Of course. Even if you were to legislate that all the directors must be Canadian citizens resident in Canada, you cannot legislate how they are going to vote on any particular issue; I agree with you. The only suspension of voting rights proposed in this plan takes place in the case of a non-resident who owns more than 10 per cent of the shares, so you do not have to worry about the small shareholder because there is no suspension of voting rights for him. If he has the shares he can attend and vote. It is one of the aspects of this plan that, in order to make it work, directors do not have to investigate the status of every shareholder. The suspension of voting rights, the penalties provided for exercising voting rights, and prohibitions against exercising voting rights apply only in cases of relatively large blocks of shares, and it seems highly unlikely that it would be all that difficult to determine the residence status of those few shareholders who own blocks of shares in excess of 10 per cent.

Furthermore, the purchase of 10 per cent of the shares of any of these corporations is not a small investment, and investors are careful of their own investments and are looking to their own interests. There would be no motive or incentive to put a large investment into a corporation in regard to which your status would be in question.

Mr. BASFORD: Do you have a list of the companies operating under this act?

Mr. HUMPHRYS: We have a list of the Canadian life insurance companies that are registered with our department—companies that are subject to this act—and I also have a list of those that would be subject to these provisions by reason of still being under Canadian control.

Mr. BASFORD: I wonder if they could be tabled and appended to today's proceedings?

Mr. HUMPHRYS: I would be glad to do that.

The CHAIRMAN: I am advised there would be no objection to that, Mr. Basford.

Mr. OTTO: Mr. Chairman, with great respect I wonder whether you are going to succeed in having Mr. Humphrys only interpret the meaning of the sections and not the purpose, because it seems we are going all over the place. I must say I am still confused—in fact more confused now—on the term "ordinary resident". However, I think the minister will be able to define those words more clearly when he comes before us.

Mr. HUMPHRYS: So far as the definition is concerned in the bill as proposed, the situation is as I have described it.

Mr. OTTO: In section 16B(c) (ii) the words "a corporation incorporated, formed or otherwise organized elsewhere than in Canada" are used. Is the meaning of this subsection that it will be considered a non-resident corporation if it was originated elsewhere? For instance, an English insurance company may have been originated and formed before Canada itself, and even if

95 per cent of the shares are owned by Canadians now would that still be considered to be a foreign corporation or non-resident regardless of where the shares are held at the present time?

Mr. HUMPHRYS: That is correct.

Mr. OTTO: And the same thing would apply, for instance, for the Seven Arts Production, which I believe was a New York company. Of course, this was not in the field of insurance. If all the shares were held by Canadians would it still be considered a non-resident corporation?

Mr. HUMPHRYS: Under this definition, yes.

The CHAIRMAN: As we get to the other sections I think you will find the benefit of the method we are using now will become more evident. This definition is a little tedious, I know.

Are there any further questions on clause 3?

Mr. KINDT: I have one other point to make before we leave that.

I gain the impression that the enforcement of the provisions of the act is purposely left to a large extent to the corporations themselves.

Mr. HUMPHRYS: I would say that is correct.

Mr. KINDT: Therefore it has been necessary in writing this to choose such words as "ordinarily resident". In other words, it is like trying to pin an eel with a blunt fork, and that term is just that.

If it were going before the courts at a later time you would not leave "ordinarily resident" in the act as it now stands? It seems to me that this opens the door. You could crawl in and out. Any corporation or board of directors could vary that one way or the other. If you want a fine line determined in court you could not turn back to the organic act and find the purpose of such terms as "ordinarily resident".

I think it is necessary for us to get the point of view of the department and to find out what they have in mind in reference to this act. I think it hinges on the fact that the corporations are supposed largely to look after it themselves.

Mr. HUMPHRYS: That is right, and I would suggest also that if the question is so finely drawn that it is difficult to decide whether an individual is a resident or not a resident, it probably does not matter very much whether he gets the shares or does not get the shares because the question involved would not then relate to control—non-resident control—of the corporation.

In any event, if as I have said he knew that he was in fact a non-resident, then his voting power would rest on a very questionable status. The probability of anyone making a large investment in a corporation on such a dubious foundation is quite small.

Mr. KINDT: It would also be impossible to administer it if you nailed it right down in the form of a definition?

Mr. HUMPHRYS: It would be very difficult to draw a definition that would do what you want to do, because once you get a definition, then you open the way to persons setting themselves about circumventing the rule by merely qualifying under the definition. For example, if you set a definition of one year's residence if there were advantages otherwise accruing, this would almost be an invitation to persons to establish their one year and say, "Now I am home free."

By leaving it without a specific definition but with the intention fairly clearly indicated, you greatly reduce the possibility or probability of anyone attempting to gain control or have the major voice in a corporation by finding some way through or around a technical provision.

The CHAIRMAN: May we then proceed to the next subclause, Mr. Humphrys?

Mr. HUMPHRYS: Subsection (2) of 16B deals with the question of associations, and I think the problems there are much as we have discussed. This defines circumstances in which shareholders are deemed to be associated one with another, and the intention is to permit shares owned by non-residents to be lumped together where it seems likely that the exercising of the voting rights of those shares will be under a common direction.

This definition is necessary in connection with the later provision that suspends voting rights in the case of blocks of shares exceeding 10 per cent that are owned by non-residents and their associates.

Section 16C on page 3 of the bill is the main operative section of the proposal. This is the section that places the obligation on the directors to refuse to allow the transfer of shares that is, the entry of the transfer of shares in the company's books, in the circumstances defined in paragraphs (a), (b), (c) and (d). The legislation in existing provisions states that unless the transfer of a share is registered on the books of a company it is not valid. Therefore the control is placed in the hands of the directors in connection with their power to allow or refuse to allow the entry of a transfer in the books of the company.

The circumstances in which directors are required to refuse to allow the entry of a transfer to a non-resident are four. The first is where there is already 25 per cent of the shares in the hands of non-residents. They cannot permit any further transfers, that would increase the non-resident holding—but this does not prevent them from allowing transfers between one non-resident and another. The second circumstance is where non-residents hold less than 25 per cent of the shares but the transfer under consideration would push that holding over 25 per cent. The third circumstance is where the transferee, together with shareholders associated with him, already owns more than 10 per cent of the shares. This would cause them to refuse to allow the transfer to him of any more shares; and this would apply whether the transfer was from a resident or from another non-resident. The fourth circumstance is where the transferee together with associates owns less than 10 per cent of the shares but the transfer, if approved, would push his holding over 10 per cent.

The plan, then, is to put a limit of 25 per cent on the shares that can be transferred to non-residents, and a limit of 10 per cent on the shares that can be held by any one non-resident together with shareholders associated with him.

The section also provides that an allotment of shares shall be treated in the same fashion as a transfer, and it provides that default in complying with the provisions of the section does not affect the validity of the transfer.

These may seem odd, but as we have noted in the earlier discussion, there may be borderline cases. There may be cases of the transfer of small blocks of shares where, if this provision were not put in, title to the shares might be under question, and you might have a situation in which years later the title to the small block of shares that were transferred in good faith might be drawn into question. Therefore, in order to avoid that very difficult situation it is provided that if a transfer is allowed on the books of the company it is valid. However, the directors who knowingly permit any transfer which should not be permitted are subject to penalty. The word "knowingly" is put in there so that if they act in good faith they are not going to find themselves subject to penalty.

That is the obligation resting on the directors. It is to be noted that in carrying out these obligations they need look at residence only. There may be circumstances where a resident buys shares and has them registered in his own name, but a non-resident is in fact the beneficial owner. If that situation arises, then in the subsequent section, which I will come to in a moment, the

voting rights are suspended. However, if the directors were required to investigate the beneficial ownership of the shares it would put a considerably larger degree of responsibility and administrative difficulty on them. It would raise a great many difficulties in the ordinary market operations where it may happen that one shareholder as nominee holds shares for a number of non-residents, and in fact the beneficial owners may change from time to time without a transfer on the books of the company. Looking at this plan as a whole it is not necessary to require the directors to make this further investigation; consequently the responsibility on them extends only to the question of transfers and only on questions of residence, not the beneficial ownership.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is there any obligation on the part of the companies to report to your department the proportion of non-resident ownership at any particular time?

Mr. HUMPHRYS: The companies reporting to us always supply us with the list of shareholders showing the name and residence of the shareholders. In the present circumstance the directors do not have the power to call for complete disclosure of residence or beneficial ownership of the shares, but in a subsequent section in this plan they are given power to enact bylaws that would enable them to investigate in great detail the status of the shareholders lists, and we will get that information.

Mr. OTTO: In section 1 of 16C we see the words "directors of a life insurance company shall refuse to allow in the book or books referred to in section 15..."

I do not know what section 15 says but I want to put my point in this way. If the board of directors authorized at a meeting of the board of directors the transfer of a large block of shares to John Jones or Mr. Rockefeller, as Mr. Basford has said, and instructed the secretary of the company at such time or times which are not specified to make those transfers in the share registry book, this may go on—as it does go on in some companies—for years without having the actual transfer made effective in the transfer book because there is no time limit. In the meantime there is a vote. The present shareholder according to the share registry book votes by proxy or at the instructions of the purchaser. Does this definition of book or books also include the minute book of the company or only the share transfer book?

Mr. HUMPHRYS: Only the share transfer book.

Mr. OTTO: There is no provision in any act that I know of that enforces the secretary of the company to make the share transfer in the share transfer book in accord with the minutes of the meeting. So it is quite possible that the board of directors may authorize the sale of shares or the transfer of shares but no entry having been made in the share transfer book the transaction would not come under this provision.

Mr. HUMPHRYS: That is possible, but the law provides that if a transfer is not entered in the book it is not valid for any purpose other than showing the rights of two parties between one another.

Mr. OTTO: You can exercise the same control through rights as you can through shares.

Mr. HUMPHRYS: I think perhaps the next section bears on that problem.

In section 16D (1) it is stated that where a resident holds shares of the capital stock of a life insurance company in the right of or for the use or benefit of the non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.

So in the circumstances that you describe, if the shares remain registered in the name of a resident but have in fact been sold to a non-resident, then the resident would be holding those shares for the use or benefit of the non-resident because the purchaser would surely expect the dividends. Therefore in the circumstances no one would be permitted to exercise the voting rights pertaining to those shares.

Mr. BASFORD: I may be anticipating a little, Mr. Humphrys, and if so please tell me.

I understand section 16C does not apply to companies to which on a prescribed day there was a majority of non-resident ownership.

Why do we not have section 16(c), in these provisions at least, relating to the balance of the Canadian ownership in non-resident companies so that the element of non-residency cannot at least be increased?

Mr. HUMPHRYS: One of the principles running through this plan is not to interfere with the existing holdings, not to take away the existing rights that shareholders have. Where a non-resident has purchased a control of a Canadian company, in effect these provisions do not attempt to recapture the shares. What they are attempting to do is to prevent further companies passing under non-resident control.

Mr. BASFORD: May I interrupt? I appreciate and quite frankly I agree with it. If someone now has 75 per cent control of the company, I am not in favour of thumping him over the head so that he gets rid of it, but I am concerned with the balance of the 25 per cent which in the case I am thinking of would be Canadian owned. Under the legislation, that remaining 25 per cent could next month be sold to non-residents.

Mr. HUMPHRYS: That is correct.

Mr. BASFORD: I am concerned with the hardship involved in at least preventing that 25 per cent from becoming non-resident.

Mr. HUMPHRYS: I think perhaps the answer to your question is that the purpose of this plan is to prevent the sale of the control of the companies that are now under Canadian control. This plan, where a company is already under non-Canadian control does not attempt to deal with the preservation of a minimum proportion of Canadian ownership. I do not feel that I am in a position to give an opinion on whether or not that would be a desirable thing to do. This plan does not attempt to deal with that situation. That is as far as I can go. If your question is "Why does it not?", I think perhaps the minister should more properly answer it.

Mr. BASFORD: Do you have a list of companies that would be excluded?

Mr. HUMPHRYS: Yes.

Mr. BASFORD: Could they be tabled?

Mr. HUMPHRYS: Yes.

Mr. BASFORD: What is the degree of American control of the companies that are excluded?

Mr. HUMPHRYS: It varies. In most cases it is practically complete, but in some cases it may range from 75 per cent up. There are 13 such companies registered with our department.

Mr. GREENE: There is no practical reason, from the standpoint of administration, why they could not be included with respect to minority holdings. It is purely a question of policy. Is that correct?

Mr. HUMPHRYS: I would not think that the administrative problems would be any more difficult than are now being faced under this plan. I should add also that the law already requires that a majority of the directors be Canadian citizens resident in Canada, whether the majority of the voting interests is in the hands of a non-resident or not.

The CHAIRMAN: Can we move on to section 16D?

Mr. HUMPHRYS: Section 16D(2) deals with the question of voting rights. I have already touched on subsection (1). It provides that where a resident holds shares for the use or benefit of the non-resident, the resident, that is the shareholder, shall not either in person or by proxy, exercise the voting

rights. I noted earlier that the directors, in considering transfers, need only to look at the residence of the transferee. If the transferee is buying the shares for the use or benefit of the non-resident, this subsection will remove the voting rights. This removal of voting rights applies regardless of how many shares may be involved in this particular operation.

The second subsection provides that where a non-resident, together with associates, holds directly or indirectly more than 10 per cent of the shares, then no one shall exercise the voting rights. That prohibition applies not only to the shareholder but also to anyone acting as proxy for him. So that if the shareholder does not show up to vote at the annual meeting, there would be no question, but if he does show up to vote, it is incumbent on him to see to it that the prohibition described in section 16D does not apply to him. Otherwise, if he does attend and votes, he is leaving himself open to penalty of a fine or imprisonment or both. The section goes on to provide that if someone votes, notwithstanding this prohibition, then the fact of so voting does not of itself void action taken at the meeting, but any action taken is voidable at a subsequent meeting within one year. This seems essential because otherwise the holder of a small number of shares might, through ignorance or misunderstanding, vote, and one would not want the proceedings at the annual meeting to be called into question because of an action that could have no possible effect on the outcome. However, the person concerned would nevertheless leave himself open to penalty.

Mr. AIKEN: Might I ask a question at this point? This is a purely personal obligation on the part of the holders, and there is no other means of supervision of it. Is that right?

Mr. HUMPHRYS: It falls in the same category as any other violation of the statute. The penalties are applicable on a summary conviction.

Mr. BASFORD: I am a little concerned about subsection (4) which I have not had sufficient time to think out. The proceedings are void and voidable at the option of the company. What Mr. Aiken said was that to comply with that section is a purely personal obligation. I cannot for the life of me imagine circumstances where a man would exercise his option and declare it void, can you?

Mr. HUMPHRYS: The presence of this provision would deter any non-resident from attempting to control the company by disregarding the prohibition otherwise provided. He would know that even if he had attended and voted, even if no one challenged his right to vote or attempted to apply the penalties to him, that anything done at the meeting is voidable by the other shareholders. It is therefore a practical impossibility to control a company in any continuing fashion on a basis such as that. So the presence of this statutory provision would, I believe, act as an effective deterrent to anyone attempting to cast his vote regardless of the prohibition, even if he were prepared to submit to the penalty in order to dominate the meeting. In such a case the rest of the shareholders could reverse the action taken.

Mr. BASFORD: I can appreciate the difficulties you raised. You say that if these provisions are not observed, then the proceedings should not be void because to make them automatically void would create an intolerable situation in companies, I think. However, what thought has been given to making them also voidable at the option of the governor in council or the superintendent of insurance or the Minister of Finance?

Mr. HUMPHRYS: This plan, as has already been noted, is based on the principle of placing the obligation on the directors of the company and on the shareholders concerned. We have already noted that there are areas where it may be necessary to exercise discretion. One can conceive of a plan where that discretion would be placed in the hands of government officials or in the

hands of the governor in council or in the hands of a committee of the cabinet. However, the plan as proposed, leaves the element of discretion with the directors with the thought that it is sufficient as designed to effect the purpose, which is to prevent control of companies now under Canadian control passing into foreign hands. It does not put the government or a government official in the position of supervising the actions at an annual meeting. It rather attempts to say that the decisions at the company meeting shall be taken predominantly by Canadians. If the shareholders of the company, those who have voting rights, are satisfied with the actions taken, then the actions are accepted. One can conceive of a plan, of course, for putting more discretion in the hands of government officials, but this plan attempts to deal with the problem without going any further than seems absolutely necessary in interfering with the company's own operation.

Mr. BASFORD: Do you have the right—and this may be a legal question which you might not want to answer—to apply to a court for an injunction restraining individuals or companies from breaching any of these provisions, an injunction restraining them from entering transfers, or voting, or this sort of thing?

Mr. HUMPHRYS: I cannot answer that. I would have to get legal advice on that. We can take action if the provisions of the statute are violated, but whether we can seek an injunction I do not know.

Mr. BASFORD: You can take action by way of a summary conviction after the event, but I want to know whether you can take action before the event?

Mr. HUMPHRYS: I do not know.

Mr. AIKEN: Is that not really covered by the previous section, the essence of preventing transfers under 16C? Is 16D not merely a penalty section to back up the non-transfer rules?

Mr. OTTO: Section 16C applies to directors.

Mr. HUMPHRYS: Notwithstanding the prohibition in 16C as to transfer of shares, there may be some circumstances where non-residents will acquire ownership of shares that do not involve a transfer on the books of the company. For example, a resident could move or an association could be formed among non-residents leading to control of blocks of shares in excess of 10 per cent. To meet these circumstances section 16D is put in, that is to prevent non-residents gaining control of a company through those means.

Mr. GREENE: Does the Department of Insurance presently have some policing or investigatory power over the companies in respect of present rules applicable to life companies?

Mr. HUMPHRYS: Yes.

Mr. GREENE: Is it contemplated by regulation or otherwise that those investigatory powers will be augmented to permit officials of the department to determine whether these new rules are complied with from year to year by the various companies?

Mr. HUMPHRYS: Yes, indeed. In our regular supervision and examination of companies we look into all aspects of the governing statutes to see to it that they are complied with.

Mr. BELL: Do you not envisage a great many references of different deals that may be taking place, such as those that the combines director might now have and on which you will be asked to express yourself, either in a legal way or in a semi-legal way, regarding their desirability? I think you are going to have a great many of the problems that we have under the Combines Investigation Act now. As Mr. Greene suggests, the difficulty is going to be to police it afterwards. You can threaten them with a penalty when they first talk about what they are going to do.

Mr. HUMPHRYS: We do not expect a great number of these problems, Mr. Bell. I think we have spent quite a bit of time this morning in discussing what you might refer to as borderline cases. They are obviously the difficult cases and they must receive attention, but the normal flow of share transfers, I think, will give rise to very few problems of this type. I think that the borderline cases that will be encountered will be relatively few. The presence of this plan and these provisions in the statute will deter non-residents who might otherwise be interested in buying control of a company from doing so. There are many other ways to invest money, and to be faced with a complex pattern such as this would mean, to a non-resident who is seeking a large investment to control a company, that he would turn elsewhere. It would not make sense to me to put a large investment in an area that gives rise to any doubts or difficulties of this type.

Mr. BELL: In other words, the plan is more or less a window dressing or public relations rather than any great idea to police this?

Mr. HUMPHRYS: I would not agree with that as stated. However, I would suggest that the presence of the plan might result in a great reduction in the desire to gain control of companies subject to these rules.

Mr. BASFORD: One year in jail for violating provisions hardly seems window dressing to me.

Mr. BELL: But we already heard from the witness that there is not going to be any use of this as it will not be necessary.

Mr. OTTO: Mr. Humphrys, in your remarks on section 16D(1) did you say that a shareholder may not transfer or give a proxy to a non-resident?

Mr. HUMPHRYS: I did not say that.

Mr. OTTO: I did not quite hear you, because this does not change the present rule. In other words, if I have a substantial number of shares to my own benefit in an insurance company, and I want to give a proxy to a non-resident who happens to be a shareholder because I trust his judgment even though my shares may amount to 50 per cent, there is nothing to prevent me from giving him a proxy to vote for me.

Mr. HUMPHRYS: That is correct.

Mr. AIKEN: I was going to ask whether the result of the evidence on this particular section is that major companies and reputable firms, when they know that this provision is here, are going to make no effort to circumvent the normal flow of business, and that it is mainly put there to provide the penalties in case they do and to hold up that block against such a transfer. Is that right? Conversely, the people who are most likely to come under the penalty would be small groups or individuals.

Mr. HUMPHRYS: I think it is highly unlikely that any non-resident would attempt to gain control of a Canadian company by finding a loophole or a channel through this provision. It would strike me as being a most unwise investment of a substantial amount of money. In preparing a plan to prevent such takeovers one must, of course, deal with the whole question of the transfer of shares. However, even small shareholders are not likely to find themselves in a borderline position with sufficient frequency for it to be a problem. Furthermore, small shareholders do not usually bother to attend or to vote at meetings, and it is only if they vote or attempt to vote that the penalties would apply.

Mr. OTTO: I have one other question which I meant to ask before. Does this provision 16D also apply to an optionee of shares? Suppose I am a non-resident and I have an option to purchase shares from a resident. Does that come under any part of this section or do I have to be the beneficial owner?

Mr. HUMPHRYS: I would not think such an option would come under this section. It would be a private arrangement that would not be the concern of these provisions. These provisions refer only to shares that are held by regis-

tered shareholders or shares held for the use or benefit of another party. Therefore, until the option is exercised, I would not think that the shareholder is holding the shares for the use or benefit of the optionee.

Mr. OTTO: You are not interpreting it in the same way as the income tax department, that an optionee does not come under any part of this trust other than for his own use. An option is not, in your eyes, effective until exercised?

Mr. HUMPHRYS: I would not think so under this act.

The CHAIRMAN: Let us deal now with bylaws.

Mr. HUMPHRYS: Section 16E on page 5 gives the director power to pass bylaws that enable them to explore the shareholder's list. They can require declarations in such terms and at such times from the shareholders as they see fit that will reveal the residence of the shareholder, the beneficial ownership of the shares and any associations that exist between the registered shareholders.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Why has this been made permissive and not mandatory? Would it not help, in your job of policing this legislation, if this were made mandatory?

Mr. HUMPHRYS: To make it mandatory it would be necessary to lay down the specific circumstances under which they could call for the declarations, put in the time limits and put in a variety of provisions which would be difficult and may be unduly restrictive on the corporation. As the statutes lay very definite obligations on the directors, the directors can determine a bylaw which they think will be necessary to enable them to carry out their obligations and then place that before the shareholders so that the shareholders can be satisfied with the procedure adopted.

It is important to avoid the possibility of a situation where the directors might be able to march into an annual meeting and say, "We want declarations from you all, and if you do not submit declarations, you cannot vote". This would be putting an unreasonable amount of power in the hands of the directors. But if the directors must state their plan and then go to the shareholders and say, "This is what we propose to do in calling for information from existing shareholders or from persons who propose to become shareholders or transferees", then the shareholders can be satisfied that the directors are not acting unreasonably, and each company can design the plan that best fits their own circumstances.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But we seem to be taking particular interest in the shareholdings and the transfer of shareholdings in this particular type of company. It would seem to me simpler to make it legal that from now on every transaction of shares in this particular type of company would entail the accomplishment of a statute declaration regarding residency.

Mr. HUMPHRYS: There are a great many transfer of shares that involve small blocks where the circumstances may be well known and where it is quite unnecessary to go into the formality of a statutory declaration. By leaving some element of discretion with the directors we enable the normal investment flow or operation of the company to continue with a minimum of added restrictions, provisions, rules, regulations, and so on, while giving them full authority to get whatever information they need to apply the terms of the act. It is important, in designing provisions such as this, not to create administrative problems that would interfere with normal and incidental investment that could have no possible influence on the question of control.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Surely a statutory declaration should not be so onerous as to impede transactions?

Mr. HUMPHRYS: It is open to the directors to so require if they feel it is necessary. There is a clear obligation on the directors and I think they can be expected to take what action they feel is necessary to enable them to discharge their obligations.

Mr. BELL: Would there be any way whereby, for instance, in their desire to put a transaction through, the stock would be put under a fictitious name, or a certain period of time could be allowed during which they could make their moves? What would prevent this?

Mr. HUMPHRYS: So long as a stock is registered in the name of a resident, there would be nothing to prevent it regardless of who is the beneficial owner, but the registered shareholder, if he shows up to vote, knows whether he is holding a stock for someone else's use or benefit, and if he does so and shows up, he is leaving himself open to penalty. There is a prohibition against these votes in those circumstances. For the reason that the beneficial ownership of a block of shares might be transferred without there being any transfer on the books of the company, the obligation on the directors is restricted to questions of transfers registered on the books; the other provision is put in which will remove the voting right where shares are held by a resident for the use or benefit of a non-resident.

Mr. BELL: In other words, the onus in the first instance is on the person who votes.

Mr. HUMPHRYS: Yes.

Mr. BELL: Suppose a lot of proxies were collected, what responsibility to determine the legitimacy of the proxies is there on the person who votes the proxies?

Mr. HUMPHRYS: This provision says that no one shall exercise the voting rights either in person or as proxy. If someone undertakes to act as a proxy, then he himself is liable to the penalty. It is incumbent on anyone who accepts the nomination as proxy to satisfy himself there is no prohibition against the exercise of his voting rights. I would expect that the proxy form would contain some kind of a declaration; otherwise a person would be most unwise to act as proxy.

Mr. OTTO: I thought you said this provision applies only where someone holds shares in trust for someone?

Mr. HUMPHRYS: No.

Mr. OTTO: This prohibition 16D does not apply to every shareholder?

Mr. HUMPHRYS: Subsection (1) of proposed section 16D applies where a resident holds shares for the use or benefit of a non-resident. That would take in the case where the beneficial owner is a non-resident.

Mr. OTTO: Let us suppose that I am a non-resident and I have given an option to John Jones who happens to be a resident and who owns a large block of shares, and I say I have bought an option to purchase those shares for a specified sum at a specified time and in the meantime I want the proxy to those votes; he gives me the votes. Is there anything prohibited in that whole area? If any proxies were collected by a shareholder or by a director the prohibition would apply only if he happened to collect some proxies which were owned by a resident for the benefit of a non-resident; it would not apply to the purchase of any number of shares which happened to be owned by non-residents?

Mr. HUMPHRYS: No; there is no prohibition against collecting proxies of itself whether on behalf of non-residents or not. However, clause 16D specifies circumstances in which no one may exercise the voting rights pertaining to

the shares and where that prohibition exists. Then neither the shareholder himself nor anyone acting as his proxy may cast those votes.

Mr. OTTO: In other words, you are saying where it has been the custom for certain directors or certain large blocks of shareholders to collect other proxies indiscriminately, now they will have to be much more discriminating to make sure they do not get shares owned by a shareholder on behalf of someone else?

Mr. HUMPHRYS: Yes. If a resident gives his proxy, then the person who acts as his proxy should satisfy himself that the shares in question are not held by the resident on behalf of a non-resident. If the proxy comes to him from a non-resident, he also should satisfy himself that that non-resident, together with associated shareholders, does not own more than 10 per cent of the shares.

Mr. MACKASEY: Does the responsibility lie on the person accumulating the proxies to establish whether or not the proxies are in order?

Mr. HUMPHRYS: It rests on the person casting the vote, whether it be the proxy or the shareholder.

Mr. MACKASEY: How would the person who accumulates these proxies determine whether the person who might send in these proxies from California, for instance, is a Canadian resident or a non-resident?

Mr. HUMPHRYS: The answer to that, I think, is that no one would act as the proxy for anyone else unless he were satisfied he was not leaving himself open to penalty by so doing; he would ask the shareholder who has signed the proxy also to sign whatever declaration is needed to satisfy him that the shareholder was not prohibited from voting. It would be a question of designing an appropriate proxy form and putting the necessary information on it so that the shareholder could indicate his status.

You must keep in mind that this prohibition of voting rights applies only in two circumstances; one is in the case of a non-resident who, together with associates, owns more than 10 per cent, and the second is where a resident is holding shares as nominee for a non-resident. So, he knows. There will not be many cases where a small shareholder does not know whether he has voting rights or not. It is only in the exceptional case that voting rights are suspended.

Mr. MACKASEY: It is all right to minimize the rights of the individual shareholder as insignificant when compared to people with blocks of 10 per cent or more, but in proxy fights these independent shareholders become a pretty potent force.

Mr. HUMPHRYS: Yes.

Mr. MACKASEY: The individual shareholder who owns 2 per cent and 3 per cent can become quite a deciding factor in whether or not a company remains Canadian or non-Canadian.

Mr. HUMPHRYS: Yes.

Mr. MACKASEY: It seems to me there should be a grave responsibility on an individual shareholder, whether he owns one share or 1,000, to satisfy his conscience with regard to whether or not he is Canadian or non-Canadian according to the terms of the act.

Mr. HUMPHRYS: The act does not remove the voting rights for that shareholder if he has one share, whether he is a resident or not.

Mr. MACKASEY: Because he has less than 10 per cent?

Mr. HUMPHRYS: Yes.

Mr. MACKASEY: In the hands of one particular person who is seeking power, or for some particular reason is searching for these proxies, these individuals can represent more than 10 per cent.

Mr. HUMPHRYS: Yes; but in this legislation there is no intention to prevent shareholders as a group having their voice heard in the management of a company. If the shareholders want to combine through proxies and vote out the management, they can do so as is their right. However, a proxy is good only for one meeting; so it does not throw up the problem that is really being dealt with by the provisions; it does not throw up the problem of continuing permanent control.

Mr. MACKASEY: Can a non-resident director accumulate at any time more than 10 per cent of proxies from non-resident shareholders?

Mr. HUMPHRYS: Yes.

Mr. MOREAU: Could it be that any director or any person collecting proxies could collect more than 10 per cent of non-resident proxies provided the beneficial interest of any particular group did not represent 10 per cent.

Mr. HUMPHRYS: That is correct; but the bill also puts a limit of 25 per cent on the total number of shares that can be owned by non-residents. It is important not to take away from shareholders as a group the right to manage their own company; but the ability to combine through proxies and express a concerted view at a particular meeting is a different question to that of permanent ownership of a controlling interest.

Mr. BASFORD: You have implied that the person accepting the proxy has an obligation to find out whether the share is a votable share?

Mr. HUMPHRYS: Yes.

Mr. BASFORD: It seems that the wording in subclause (3) denies that.

Mr. HUMPHRYS: I would not think so, Mr. Basford. The obligation is there. I do not think it is likely that persons concerned deliberately would not try to find out and then say I am ignorant and therefore I am not liable. I think every company concerned will so design its proxy form that this information would be elicited. As I noted, the cases involved will be few in any event, because they involve only two categories, one involving large blocks of non-resident shares and the other where shares are held by resident nominees.

Mr. BASFORD: Why not take the word "knowingly" out of subclause (3); then there is no doubt about it?

Mr. HUMPHRYS: I would not make such a recommendation. I believe as the provision is drafted it will be effective for the purpose intended. If any shares are voted where the violation has not been known to the person concerned, I would not want to recommend that penalties be imposed on him.

Mr. BASFORD: I do not see where you create the obligation on the part of the person holding the proxy to determine that these shares are voting shares.

Mr. HUMPHRYS: Subclause (3) says:

> Every person who knowingly contravenes a provision of this section is guilty of an offence—

Then in subclause (2) it says:

> —no person shall, either as proxy or in person, exercise the voting rights—

Mr. BASFORD: Thank you.

The CHAIRMAN: Just so that you may govern yourselves accordingly, the Chair is going to suggest that we break off at 12.30.

Mr. GREENE: You are not disturbed with the same connotation in the previous clause with regard to directors; it is only if they knowingly transfer?

Mr. HUMPHRYS: Yes.

Mr. GREENE: You do not think it should go beyond that; that is, that there should be some degree of investigation before the transfer is made?

Mr. HUMPHRYS: There are considerable responsibilities being placed on the directors, but the plan is designed so that it does not place obligations on them that are so onerous and so detailed that it would create a great problem in the normal flow of investment transactions. If an odd small transfer is made where perhaps it should not have been made and the directors are exercising ordinary and diligent discretion, I think it would be rather harsh to hold out the possibility of a penalty being imposed on them at some future time. Under the proposal here the penalty is only if they knowingly violate the section. I think you have an adequate deterrent for careless disregard of the requirement, but with some reasonable degree of protection for directors who act in good faith.

As a practical matter I cannot conceive from my own experience, of any board of directors doing other than acting in the greatest responsibility with this section as they do with relation to other requirements in the statute.

Mr. GREENE: In respect of clause 16E, it seems to me that these powers in this clause are powers which generally are vested within a corporation either under the life insurance act or the Companies Act. Is there any reason they had to be re-enunciated in clause 16E; do the draftsmen believe they are giving some new power in internal management which they did not have?

Mr. HUMPHRYS: I think there was some question whether directors can inquire in this detail into the affairs of the shareholders; that is the purpose of putting this in.

The last of this series of five subclauses contains a series of saving provisions designed to preserve existing rights. The first subclause contains some definitions and also defines the prescribed day, which is September 23, the day the bill was introduced. Subclause (2) provides a blanket exemption from these clauses for a company where more than 50 per cent of the shares are held by a non-resident on the prescribed day. So, in effect, the company which now is controlled by a non-resident is exempt from these provisions.

The next subclause provides that where a non-resident, together with associates, represents more than 10 per cent of the shares on the prescribed day, he may continue to exercise his voting rights notwithstanding the other prohibitions, so long as he does not increase his holdings.

At this point the second of the amendments referred to by Mr. Moreau will be significant.

If you turn to the top of page 7 in the bill you will see it is stated there that where a non-resident holds more than 10 per cent of the shares on the prescribed day, he may continue to exercise the voting right notwithstanding the prohibition so long as the total number of shares held by or for the non-resident and associates does not exceed either the total number of shares held by or for the non-resident and associates at the commencement of the prescribed day or the lowest number of shares held by or for the non-resident and associates on any subsequent day.

Since the bill was introduced questions have arisen concerning the possibility of splitting the par value of shares and issuing shares of a lower par value in exchange for those now held. This would result in an increase in the number of shares, but without a change in the proportion. The first part of this amendment will change the words "total number of" to "percentage of". So, it preserves the rights so long as the percentage of shares owned does not increase.

The second amendment proposes the insertion of a new subclause that deals with the circumstance under which a Canadian corporation holding shares in a life company changes from resident status to non-resident status. A Canadian corporation might own shares in a company and the control of that Canadian corporation might be sold to non-residents. This would change its status to that of a non-resident.

Some questions have been raised concerning what happens in these circumstances. Well, this new subsection states that where that happens, then the shares purchased by that company while it was a resident will be considered to be shares held by a resident for a non-resident. This will mean that nobody can vote them and it will mean they cannot be transferred to another non-resident if non-residents already own more than 25 per cent. It clarifies the result of such transfer of status and also prevents the possibility of circumventing the 25 per cent rule by forming a Canadian company to buy the shares, selling control of the company involved and having the shares transferred to non-residents. This is a remote possibility but in the absence of this that shares could be passed out to non-residents in small blocks.

The third point also deals with the question of stock splits and makes it clear that shares of a reduced par value issued in exchange for existing shares are not covered by the prohibition otherwise applying against allotment shares.

The fourth point gives the directors the right to rely on declarations submitted to them by shareholders or proposed transferees.

There are two more subclauses. As I noted earlier, shares held by a resident for a non-resident are without voting rights. By subclause (4), where this existed on the prescribed day, the shares may be transferred to the beneficial owner notwithstanding the other prohibition. If he wants to establish the voting right he has on the prescribed day the non-resident can do so by having the shares transferred to his own name.

The fifth subclause is transitional and states that if, between the date the bill was introduced on September 23 and the date the law comes into force, the directors approve any transfer that would have been prohibited had the law been in force, then those shares will be without voting rights.

The CHAIRMAN: As I understand it this completes the part of the bill which deals with non-resident control?

Mr. HUMPHRYS: Yes.

The CHAIRMAN: This may be an appropriate moment to break off.

Mr. MOREAU: I was going to suggest we might finish the section he was dealing with.

Mr. BASFORD: As I understand it, this has to go back to your policy remarks, and this section would exclude your operations for non-residents plans; that is, those companies which are presently owned or controlled by 50 per cent non-residents, and that there is no prohibition against the Canadian minority being sold to non-residents?

Mr. HUMPHRYS: That is correct.

Mr. BASFORD: The unofficial parliamentary secretary to the Minister of Finance has indicated in his remarks that he wishes to give serious thought to introducing an amendment to prevent the transfer of that Canadian minority interest to non-residents.

Mr. HUMPHRYS: I would like to make a further comment. If the majority shares are already owned by one of the non-residents, then that non-resident has effective control of the company. In cases we have seen, where non-residents have purchased the control of Canadian life companies, we thought it was fair that the purchaser should make his offer available to all Canadian share-

holders. In most cases all, or practically all, of the shareholders have accepted the offer. If they do not wish to, then that is their right. But if such a change were made, as you have described, it would mean that in cases where control has been sold, and where for one reason or another some Canadians decided to hold their shares even with a minority interest, they would have effectively lost the chance to sell at any respectable price, because it is unlikely that they would get a price for their shares in a minority situation that would compare with the price that had been offered, and that might in some circumstances continue to be open to them from the principal shareholders. So there is another aspect of the question to be considered.

Mr. MOREAU: Do they usually place a time limit to these offers?

Mr. HUMPHRYS: Usually.

Mr. MOREAU: Even if this proposed amendment by Mr. Basford were to take place, at some future time, then the minority shareholders would have had every opportunity to exercise whatever rights or whatever offers were available to them.

Mr. HUMPHRYS: That is right. It is a question of whether such a prohibition would be advantageous, either in the question of control or in the interest of the shareholders, bearing in mind that the statutes already require that a majority of the directors in any event must be Canadian citizens.

The CHAIRMAN: Before we break off, is it your wish that we continue tomorrow, bearing in mind that the house sits at 11.00 o'clock? It has been suggested by the steering committee that you might want to consider meeting at 9.30 to conclude the explanatory notes by the superintendent. I am in your hands. Do you wish to meet tomorrow, or do you wish to defer it?

Mr. MOREAU: In view of the fact that there has been reference made this morning to possibly some difficulty we might have in getting a quorum, and in view of the fact that the witness is not from out of town, perhaps we might think of some other time than tomorrow morning, because I would doubt whether we could get a quorum.

The CHAIRMAN: Might I suggest that possibly Tuesday would be suitable? I realize that we have a number of other committees sitting at that time and there will be conflicts, but that is the price we would have to pay if we moved to Tuesday.

Mr. MOREAU: I so move.

Motion agreed to.

The CHAIRMAN: We have sent out invitations to the Canadian Life Insurance Officers Association inviting them to make representations. I wish to file a letter dated October 23, 1964, as follows:

The Canadian Life Insurance
Officers Association
302 Bay Street,
Toronto 1, Canada

October 23, 1964.

Miss D. F. Ballantine,
Clerk of the Standing Committee on Banking and Commerce,
House of Commons,
Ottawa, Ontario.

Dear Miss Ballantine:

Thank you for your letter of October 22.

Representatives of the association will appear before the committee on Friday, November 6, at the time and place mentioned in your letter.

At the moment we do not have any changes to suggest in Bill No. C-123 and I do not expect that we will wish to present a brief. However, our representatives will be available in case members of the committee wish to question them.

I believe our representatives will be:

Mr. H. L. Sharpe, president of the association and president and managing director, The Northern Life Assurance Company of Canada, London, Ontario.

Mr. A. F. Williams, second vice president of the association and president, Crown Life Insurance Company, Toronto, Ontario.

Mr. J. T. Bryden, chairman of the association's special committee on federal insurance legislation and president, North American Life Assurance Company, Toronto, Ontario.

Mr. A. M. Campbell, president, Sun Life Assurance Company of Canada, Montreal, Quebec.

Mr. R. H. Reid, president and managing director, London Life Insurance Company, London, Ontario.

Mr. J. A. Tuck, managing director and general counsel, The Canadian Life Insurance Officers Association.

Mr. F. C. Dimock, secretary, The Canadian Life Insurance Officers Association.

If, prior to the hearings, we find there is any change in the personnel of our group, I shall let you know.

Yours very truly,
J. A. Tuck.

I bring this to your attention, as well as one other communication from the All Canada Insurance Federation, dated October 26, 1964. It reads as follows:

All Canada Insurance Federation
Suite 801, 500 St. James St., West
Montreal

October 26, 1964.

Miss D. F. Ballantine,
Clerk, Standing Committee
on Banking and Commerce,
House of Commons,
Ottawa, Canada.

Dear Miss Ballantine:

Thank you for your letter of October 22 in which you gave notice that we had been invited to appear on Thursday, November 5, 1964, at 10.00 a.m.

After having given Bill No. C-123 appropriate study we are of the opinion that we have no representations to make and that it would be satisfactory to our member companies if enacted as drafted.

I have yet to receive word from the chairman of our taxation committee but will let you know before the end of the current week if there is any change in our view.

Yours very truly,

E. H. S. Piper,
Manager and General Counsel

I brought these letters to your attention because when these people were invited, the proposed amendments by Mr. Moreau tabled this morning had not been directed to their attention. Therefore, may I have authority to send to them these proposed amendments, in order to see if it changes their opinions?

It is my understanding that we shall meet on Tuesday to continue the present procedure, and that on Thursday we shall have our first witness from the industry making their views known. Is that agreeable?

Agreed.

Mr. BASFORD: I think we should thank Mr. Humphrys and congratulate him on his first appearance before this committee.

The CHAIRMAN: Oh, yes. I thank you very much for bringing this to my attention. On behalf of the committee I wish to take this opportunity to welcome you, Mr. Humphrys, and to congratulate you on your appointment. We are delighted to see you here today.

Mr. HUMPHRYS: Thank you.

The CHAIRMAN: The committee is now adjourned until Tuesday morning.

Appendix A

Canadian Insurance Companies registered under the Canadian and British Insurance Companies Act to transact the business of Life Insurance.

Mutual Companies

1. Alliance Mutual Life Insurance Company
2. L'Assurance-Vie Desjardins
3. The Canada Life Assurance Company
4. Confederation Life Association
5. Co-operative Life Insurance Company
6. The Equitable Life Insurance Company of Canada
7. The Life Insurance Company of Alberta
8. The Manufacturers Life Insurance Company
9. The Mutual Life Assurance Company of Canada
10. North American Life Assurance Company
11. Sun Life Assurance Company of Canada
12. Toronto Mutual Life Insurance Company
13. The Wawanesa Mutual Life Insurance Company

Stock Companies

(*a*) To which sections 16B to 16E would apply:

1. The Crown Life Insurance Company
2. The Dominion of Canada General Insurance Company
3. The T. Eaton Life Assurance Company
4. The Great-West Life Assurance Company
5. The Imperial Life Assurance Company of Canada
6. London Life Insurance Company
7. The Maritime Life Assurance Company
8. The Monarch Life Assurance Company
9. The Northern Life Assurance Company of Canada
10. La Sauvegarde Life Insurance Company
11. The Sovereign Life Assurance Company of Canada
12. Westmount Life Insurance Company

(*b*) That would be exempt from sections 16B to 16E

1. The Acadia Life Insurance Company
2. Allstate Life Insurance Company of Canada
3. British Pacific Life Insurance Company
4. Canadian Premier Life Insurance Company
5. Canadian Reassurance Company

6. The Commercial Life Assurance Company
7. The Continental Life Insurance Company
8. The Dominion Life Assurance Company
9. The Excelsior Life Insurance Company
10. Fidelity Life Assurance Company
11. Montreal Life Insurance Company
12. The National Life Assurance Company of Canada
13. The Western Life Assurance Company

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

TUESDAY, NOVEMBER 3, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

WITNESS:

Mr. Richard Humphrys, Superintendent of Insurance.

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

21481—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison
Aiken
Armstrong
Asselin (*Notre-Dame-de-Grâce*)
Basford
Bell
Berger
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Hales
Jewett (*Miss*)
Jones (*Mrs.*)
Kindt
Klein
Lambert
Lloyd
Macaluso
Mackasey
McCutcheon
McLean (*Charlotte*)
Monteith
More
Moreau
Munro
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 3, 1964.
(10)

The Standing Committee on Banking and Commerce met at 10:00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Asselin (*Notre-Dame-de-Grâce*), Basford, Cameron (*High Park*), Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gray, Klein, Lambert, Lloyd, Mackasey, More, Moreau, Munro, Nugent, Pascoe, Pennell, Thomas and Wahn. (18)

In attendance: Mr. R. Humphrys, Superintendent of Insurance; Mr. William Fox, Executive Officer, and Mr. H. A. Urquhart, Loan and Trust Companies Branch, Department of Insurance.

The Chairman announced that he had been in touch with Mr. Nelson of the Trust Companies Association and had arranged that that Association present their views on Bill C-123 to the Committee on Thursday, November 5, 1964.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

Mr. Humphrys explained the purpose of Clause 4 and the proposed amendment thereto, and was questioned. The Clause was allowed to stand.

Mr. Humphrys explained the purpose of sub-clauses 1 to 5 inclusive of Clause 5 and the proposed amendment to sub-clause 1, and was questioned.

And the questioning continuing, the Chairman observed that another meeting would be required for clause by clause study of the Bill before witnesses could be heard. He therefore suggested that the World Mortgage Corporation be heard on Tuesday, November 10th, that the Trust Companies Association be heard on Thursday, November 12th (instead of November 5th), and that the Committee resume clause by clause study of the Bill on Thursday, November 5th.

At 12:00 noon the Committee adjourned until 10:00 a.m. on Thursday, November 5, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

21481—1½

EVIDENCE

TUESDAY, November 3, 1964.

The CHAIRMAN: Gentlemen, I see a quorum and I call the committee to order. I recall that at our last meeting the superintendent was giving us a clause by clause explanation of the bill, and I believe we concluded clause 3 on page seven which ended that part of the bill regarding the non-resident control section.

For your information may I say that some time ago the insurance groups had responded to our invitation to make representations if they so desired, and they had written letters saying that they were prepared to come but that they had no representations to make and no objections to the bill. Yesterday I had occasion to talk to them on the telephone again and they said that if the committee might not consider it an affront they would not attend in view of the fact that they had no representations to make. I said I would convey that to the committee. We had previously scheduled them to appear on Thursday. However, Mr. Nelson of the Trust Companies Association has been very co-operative and has advised me that the Trust Companies Association are prepared to appear on Thursday in place of the insurance companies. They have representations to make and they have prepared a small brief which I will be distributing to the members before the meeting is concluded.

I will now invite Mr. Humphrys to take up his explanations to the committee at clause 4 on page seven of the bill.

On clause 4—*Corporate name in French or English form 16D.*

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Mr. Chairman and members of the committee, clause 4 proposes to enact a new section that will grant the governor in council power to provide a company with a French or English version of its corporate name. This power will be subject to the applicant advertising in the Canada *Gazette* and in the newspapers in terms and for a duration similar to the advertising required with respect to a private bill. This proposed section will make it unnecessary for a company to come to parliament to seek an amendment to its act of incorporation to obtain a French or English version of its corporate name.

The CHAIRMAN: Shall this clause stand?

Clause 4 stands.

On clause 5—*Municipal, etc., securities.*

Mr. HUMPHRYS: Clause 5 of the bill deals with investment provisions. It contains a number of subclauses, all relating to the investment powers of Canadian insurance companies. The first amendment is intended to make eligible bonds or debentures issued by fabriques of parishes in Quebec. This is rather a technical point. For a number of years there has been some discussion between lawyers representing insurance companies in Quebec and the Department of Justice on the point of whether or not a fabrique of a parish is a corporation within the meaning of this act.

Mr. MOREAU: Mr. Humphrys, did you forget to cover the proposed amendment under clause 4 concerning the par value of shares?

Mr. HUMPHRYS: Thank you, Mr. Moreau, I overlooked the fact that among the amendments that were tabled for consideration last week there was a

proposed amendment to clause 4. This amendment amends section 45 of the act, and the change would permit insurance companies to subdivide the par value of their shares below the present minimum of $10 down to a minimum of $1. However, this power would be subject, in the case of life insurance companies, to a special provision designed to retain a reasonable balance in voting power between the shareholders and the participating polyicyholders. In a life insurance company having participating polyicyholders, the policyholders are entitled to attend and vote at the annual meeting. If companies were permitted to split the par value of their shares say down to $1, then, in a case where a company now has a par value of $10, a split to $1 would multiply the number of shares to ten, and the voting power of shareholders by ten, because under the existing statutes they have one vote per share. This would multiply their voting power, whereas the voting power of the participating policyholders would not be changed. Therefore, in this proposed amendment enabling companies to split their shares it is provided that if the subdivision goes below $5, then each shareholder will have a vote determined by dividing the par value of his holding by five. Thus, he will have the same voting rights as though they merely split it to $5.

The CHAIRMAN: Are there any questions on this point?

Mr. LAMBERT: In that regard what is the consideration for the seemingly arbitrary figure of $5?

Mr. HUMPHRYS: There is already a provision in the statute that permits new companies to be formed with shares having a par value of $5 or any larger multiple thereof, up to $100. It was thought therefore that if a new company could be formed with $5 shares and one vote per share, then existing companies, in splitting shares, should have the same right.

The CHAIRMAN: Are there any further questions on this proposed amendment? If not, will you carry on, Mr. Humphrys?

Mr. HUMPHRYS: To continue with subclause 1 of clause 5, I said that this amendment is to clear up a technical point that would remove doubt concerning the eligibility of bonds issued by the fabriques of parishes as investments for insurance companies.

Mr. LAMBERT: In that regard, at the second reading stage of this bill I queried the minister on why there was a limitation to fabriques of parishes in Quebec. It is my understanding that the organization of a fabrique is really the corporation of the parish. As I know that in other parts of Canada there are also fabriques, why limit this to the province of Quebec?

Mr. HUMPHRYS: I must confess that the explanatory note may be slightly misleading in that respect because the whole question leading to this amendment has arisen in connection with bonds issued in Quebec, and this led to the explanatory note regarding the eligibility of bonds issued by fabriques in Quebec. As the statute is drawn up, it is not so limited. It is written in general terms regarding fabriques.

Mr. LAMBERT: In other words, they qualify in other parts of Canada?

Mr. HUMPHRYS: That is right. Since the bill was published we have had some questions from lawyers representing companies in Quebec suggesting that the amendment as printed in the bill did not go quite far enough. It was pointed out that bonds are sometimes issued by fabriques secured solely by a mortgage, and not necessarily by levying taxes on the property in the parish. In recognition of that, it was thought that the wording should remove the technical point, and therefore an amendment to the bill has been laid before you which would add additional words and remove all doubt.

Mr. THOMAS: May I ask whether these fabriques are equivalent to a town council?

Mr. HUMPHRYS: Its description I think is best set forth in the parish and fabriques act in Quebec. It may also be set forth in the statutes of other provinces, but I think the best short explanation is that it is the board of administration of the parish. I do not think I can explain it any more concisely than that. It is the body that is charged with the administration of the property and the general business and other matters having to do with the whole organization and operation of the parish. Among its operations it is charged with the administration of the property. It may issue bonds or debentures to raise money for parish buildings or for other needs of the parish.

Mr. LAMBERT: It is not merely what we consider a municipal government operation. It also has a religious side.

Mr. HUMPHRYS: Yes, it has religious duties as well.

Mr. LAMBERT: Because I know that in my province the religious parish is organized on the basis of a fabrique, and quite separately there is the town council or the village council.

Mr. MACKASEY: It is the same in Quebec. A fabrique is something that lies within the municipality. It includes the church, the hospitals and perhaps the private schools, the nun's quarters, and so on, which are usually financed by investments or mortgages.

Mr. THOMAS: Would these fabriques be property owning bodies?

Mr. HUMPHRYS: Yes.

Mr. THOMAS: Would the security behind them be just as great as the security behind a municipal corporation?

Mr. HUMPHRYS: I would say so because they have the power to levy taxes on property within the parish, and in most cases the bonds issued are secured by a mortgage on real estate property. We have no doubt in the department concerning the soundness of the security.

Mr. THOMAS: You speak about the fabrique and parish act. Is it in effect in other provinces as well as the province of Quebec?

Mr. HUMPHRYS: I cannot answer that.

The CHAIRMAN: Maybe some member of the committee may be able to assist on this.

Mr. LAMBERT: I am sorry, I do not know the juridical basis of the fabriques in the province of Alberta except that I know that some do exist.

The CHAIRMAN: Does any other member of the committee know?

Mr. GRAY: The act to which Mr. Thomas referred is an act passed by the legislature of the province of Quebec. It therefore would not have application in any other province unless any other province passed, through its own provincial legislature, similar legislation.

Mr. HUMPHRYS: The eligibility of these bonds is dependant on two things in any event. They either must be secured by a mortgage on real estate property or they must be secured by taxes levied pursuant to the provincial laws, so that if the equivalent of the parish and fabriques act is not in existence in other provinces, then bonds would not be eligible unless they are secured by a mortgage on real estate. The only problem is the difference of opinion amongst lawyers on whether a fabrique is technically a corporation within the meaning of this act. If it were so held, there would be no problem, but apparently there is some difference of opinion.

Mr. PASCOE: I should like to know for my own information whether a fabrique is an elected body or an appointed body.

Mr. HUMPHRYS: I do not know the answer.

Mr. LAMBERT: My understanding is that they are elected by the parishioners, they are trustees elected periodically by the parish.

Mr. LLOYD: There is a point about which I am curious. On page nine under clause 5 it says, "the bonds, debentures or other evidences of indebtedness of or guaranteed by a municipal corporation".

Mr. HUMPHRYS: That is the next subclause. We have not come to it as yet.

Mr. LLOYD: Does it not deal with the same subject?

Mr. HUMPHRYS: I think it is a little different. I will explain that.

Mr. LLOYD: To come back to the clause we were discussing, the basic difference between a municipality and what I gather is this type of organization would be the power to tax so as to meet its obligations. The municipality has the right to tax, whereas a fabrique would not.

Mr. HUMPHRYS: I believe a fabrique in Quebec does have that power.

Mr. LLOYD: What is lacking here is an explanation of the legal construction of a fabrique if we are to judge the adequacy of the law.

Mr. HUMPHRYS: The fabriques in Quebec do have the authority under the Quebec parish and fabriques act to levy taxes on property within the parish. This amendment indicates that these bonds will be eligible if they are secured by taxes levied pursuant to provincial law or if they are secured by a mortgage on real estate.

The CHAIRMAN: Are there no further questions on subclause (1) of clause 5?

Mr. HUMPHRYS: Subclause (2) of clause 5 at the top of page nine proposes an amendment that will make eligible certain additional bonds that are secured by provincial subsidies. This is intended principally to make eligible certain hospital corporation bonds that are secured by subsidies from provincial governments.

Mr. LLOYD: Could I come back to the use of the term "corporation"? What was the objection of the lawyers to the use of the word "corporation", and why were you applying it under 5(b) where you make reference to it?

Mr. HUMPHRYS: If fabriques were admitted to be corporations within the intention of this act, then bonds issued by fabriques would have qualified under the clause dealing with bonds issued by corporations; but when there was a doubt about whether fabriques were corporations, then there was doubt whether they qualify under corporate bond provisions. That is the reason for this amendment.

M. LLOYD: I am sorry, I misunderstood your observation.

Mr. HUMPHRYS: Subclause (2), as I explained, deals only with bonds or debentures that are secured by provincial subsidies so that they are in every respect as good as provincial obligations.

Subclause (3) enacts a small amendment having to do with the mortgage bond clause. At present companies can invest in bonds secured by a mortgage on real estate or on a company's property used in its business on other assets, but there is doubt whether they can invest in bonds secured by leasehold property. In recent years there have been a number of cases where bonds have been issued secured by very large buildings built on leasehold property, and the security is good. The words "or leaseholds" are put in here to enable those bonds to qualify.

The CHAIRMAN: Are there any questions?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Could I go back for a moment to (d) where it says "debentures issued by a charitable, educational or philanthropic corporation". Would that include a hospital such as the ones we have in British Columbia in this category? I have in mind my own area where we have a municipal council financed by a sort of local taxing authority; the rest is provincial and federal. I doubt whether it could be defined under those terms as a public institution is not charitable, educational or philanthropic.

Mr. HUMPHRYS: I raised that question with the Department of Justice, Mr. Cameron, because I had the same question in my mind, but I have been assured by the lawyers in that department that the terms "charitable, educational or philanthropic" are broad enough in their legal interpretation to include a hospital organized on that basis.

Mr. LLOYD: Mr. Chairman, I am still a little puzzled about the wording in clause 5(b) on page eight. It says "the bonds, debentures or other evidences of indebtedness of or guaranteed by a municipal corporation in Canada", and then it goes on "or in any country in which the company is carrying on business". The wording confuses me a little. Would you explain the meaning of this particular phrase?

Mr. HUMPHRYS: I think that we are dealing here only with part of a section, but the introductory words are these: "A company may invest its funds or any portion thereof in—"

Mr. LLOYD: "The company" meaning the insurance company?

Mr. HUMPHRYS: Then it goes on, "the bonds, debentures" and so on.

Mr. LLOYD: In essence they make an investment in bonds or guarantees by a municipal corporation in Canada or any other country where they are doing business. They could be doing business in South America and making an investment in the municipal bonds of that country. I understand that is the intention.

Mr. HUMPHRYS: Subclause (4) deals with bonds or debentures issued by corporations, and this change is principally a drafting change. At present debentures issued by a corporation are eligible investments if the corporation has met a certain dividend record on its preferred shares or common shares. This change establishes that dividend record by cross reference rather than spelling it out in detail, but without any change in the actual dividend requirement. The amendment also, by using the cross reference to the eligibility requirements for the common shares, will enable the company to invest in debentures of a corporation where that corporation has had earnings sufficient to enable it to pay a dividend on its common shares at a 4 per cent rate, whether it has actually paid the dividend or not. This is the new earnings test that is being proposed in this bill for common shares. I can explain it in greater detail when we get to the subsequent paragraph dealing with common shares, but this amendment will enable the company to invest in debentures of a corporation if the common shares or the preferred shares of that corporation are eligible investments.

Mr. LAMBERT: At this point I think I can see what you are doing, but what puzzles me is who is the person who is going to substitute his judgment for the judgment of the board of directors of the company in whose shares investment is desired. In other words, it is the board of directors of the company who decide whether they will issue a dividend or not, having regard to all their cash requirements and other long term programs, but now someone else's judgment is being substituted. Is that to be the superintendent of insurance?

Mr. HUMPHRYS: No.

Mr. LAMBERT: Who is to determine whether this company could have issued dividends at the prescribed rate or at the minimum prescribed rate?

Mr. HUMPHRYS: That is the new eligibility test for common shares, dealing with paragraph (1). There is a cross reference to it here.

The CHAIRMAN: I think now is a good time to cover it.

Mr. HUMPHRYS: It is intended that it be not a matter of opinion, Mr. Lambert. It is intended that it will be a question revealed by the financial statement of the company; so one would examine the financial statement,

determine the earnings of the company, and set aside whatever earnings are needed to meet the obligations that have to be met before it may declare a dividend on its common shares. Then, if what remains is enough to have enabled them to pay a dividend at 4 per cent on the common shares, each year for a period of five years, the common shares would be eligible. So the test will be based upon an examination of the financial statements of the company over a period of five years.

Mr. LAMBERT: Your explanation really confirms my thought that someone is substituting a decision or an appreciation of the financial record of a company for an actual performance which has been decided by the board of directors of that corporation.

Mr. HUMPHRYS: I think that is a fair statement.

Mr. LAMBERT: Whose judgment or discretion is now going to be exercised? Is the reviewing officer in your department?

Mr. HUMPHRYS: Any company wishing to make an investment would look up the financial record of the corporation that had issued the common shares and determine whether in its view and in the view of its legal officers the conditions prescribed in the law are complied with; that is, that the company has had earnings that would have enabled it to pay a dividend of 4 per cent on its common shares each year for five years had the board of directors decided to do so.

If they are satisfied, then the investment can be made. We would review the investment and if we thought it was dubious we would raise the question with the company. We would discuss it with their legal advisers. If we still have a difference of opinion we would refer the matter to our legal advisers, being the Department of Justice, and hope to reach some meeting of minds.

Mr. LAMBERT: Yes, and ultimately somebody has to come to the decision that this company qualified under this amended legislation or this company did not qualify. That, I presume, boils down ultimately to you.

Mr. HUMPHRYS: No. I suppose if you are going to boil it down to the ultimate it would have to be a court, because there is nothing in this law that says the opinion of the superintendent or the minister, or any other designated official, is the binding opinion. It would be a matter of law.

This is not the only place in the statute where earnings tests are prescribed as the test of eligibility for investment in certain types of securities. There is in other cases the problem of assessing the financial statement to see whether the earnings have been adequate or not to meet the prescribed amount.

Mr. LAMBERT: I take your explanation, but I still feel there is an element of uncertainty in this regard. If a dispute comes up when the directors of the insurance company have made the decision that this is a proper type of common stock in which to invest, and your officers—and when I say your officers I mean your officers or you as superintendent of insurance—are not satisfied, where do we go from there?

Mr. HUMPHRYS: The superintendent has the power to disallow an asset in a company's financial statement.

Mr. GELBER: That is true now too, is it not?

Mr. HUMPHRYS: Yes. If the company disagrees with the ruling of the superintendent, it can go to the exchequer court.

Mr. THOMAS: Mr. Chairman, I have the feeling that in some respects I will go part way with Mr. Lambert with regard to this provision.

Suppose the company has had a very good rate of earnings and performance and runs into a bad year and is unable to pay a 4 per cent

dividend, or its earnings fail to amount to 4 per cent. For five years, under this legislation, that company is disqualified as an investment for a life insurance company, because this proposal is that it shall pay in every one of the preceding five years. Yet, because of one poor year, in spite of an excellent performance by the company, it would be disqualified for five years.

Mr. HUMPHRYS: That is correct.

Mr. THOMAS: It seems to me it would be safer to leave this matter of investment with a greater measure of flexibility in this respect for judgment or expression to be used by the board of the insurance company that is investing.

I think we should give this matter further consideration.

Mr. HUMPHRYS: Mr. Thomas, I should point out that among the investment provisions is one that enables the company to invest in any way it chooses apart from the prescribed classes in the act. At the present time it may invest up to 5 per cent of its assets in that fashion without regard to these prescriptions.

Among the amendments proposed in this bill is one that would increase that 5 per cent limit to 7 per cent. Therefore, companies do have a substantial area of freedom to exercise their own discretion in investment matters. If a case were to arise such as the one you have described in which a company had missed a dividend, its shares would not qualify under this prescribed clause but the insurance company could nevertheless purchase those shares if it wished under the clause that permits them this area of freedom to invest in their own discretion.

Mr. MOREAU: Would you not say that these proposed amendments are all designed to allow more freedom of investment to the insurance company rather than in any way to limit the five year period currently in the act? The amendment provides that the determining factor will be whether they are in a position to pay the dividend whether they choose to do so or not. Surely this is a liberalizing measure rather than a restrictive one.

Mr. HUMPHRYS: That is right.

Mr. THOMAS: How is the department or how are you yourself to apply these regulations? What happens if a company has purchased shares which they are not entitled to purchase or are holding shares which have gone bad during the course of several years? How do you protect the public? What is your function in this case?

Mr. HUMPHRYS: There are three questions there, Mr. Thomas. The first is how do we go about it.

We require companies to file with us twice a year a list of all the investments they have made. We examine that list and test it against the requirements of the act to make sure that all the investments made are eligible under the provisions of the act. If we find any on the list which we doubt are eligible, we raise the matter with the company and discuss it with their legal advisers, if necessary referring it to our own legal advisers. If the decision is that the stock was ineligible, the company is required to dispose of it or, if it wishes, regard it as an investment made within this area of freedom to which I have just referred, commonly called the basket.

Mr. THOMAS: That basket can only amount to 5 per cent of the company's assets at any one time.

Mr. HUMPHRYS: Under the present law, yes, but there is among these amendments a proposal to increase the limit from 5 per cent to 7 per cent.

The CHAIRMAN: May I ask you, Mr. Thomas, to withhold your point until we get to the basket area, when I will be pleased to ask you to raise it again, if that course meets with your approval.

Mr. BASFORD: I have some questions in regard to (4), (5) and (6). These have been described as liberalizing measures. I would like some statistics to show how liberalizing they are. What area of investment are we opening up to an insurance company? How large?

Mr. HUMPHRYS: In connection with debentures, guaranteed investment certificates and preferred shares, there is not very much change because the amendment here is principally a technical one to describe the qualifications by cross reference.

There are two changes with respect to common shares; one reduces the seven year dividend requirement to five years, and the other proposes this new earnings test that we have just been discussing.

My information is that this would increase the number of common shares eligible for investment by something of the order of 25 per cent.

Mr. BASFORD: I understand there are now some 100 companies whose shares are eligible for insurance company investment.

Mr. HUMPHRYS: I have some figures on that. My information here, provided by some of the life insurance companies, is that there are 306 Canadian stocks eligible under the existing rules, but a number of those would not be regarded as appropriate investments for insurance companies because they might be very closely held or they might be in very small companies, or perhaps some of the mining stocks that have a very low value. That total would be increased to 389 under these new tests.

Of the 389 eligible stocks, it is considered that about 185 would be appropriate investments for insurance companies.

Mr. BASFORD: I take it that the previous number of truly appropriate stocks was about 160.

Mr. HUMPHRYS: Approximately that, yes. The figure I think is 141.

Mr. BASFORD: And that is now going up to about 185, you estimate?

Mr. HUMPHRYS: Yes.

Mr. BASFORD: Would it be inappropriate or difficult for me to ask that a list of these companies be appended to the proceedings?

Mr. HUMPHRYS: I have not such a list.

Mr. BASFORD: Therefore it would be inappropriate to ask for it?

The CHAIRMAN: That would seem to be the correct assumption, Mr. Basford.

Mr. BASFORD: May I have some indication of the value of these investments?

Mr. HUMPHRYS: The total outstanding shares of all these companies? Is that what you mean?

Mr. BASFORD: Yes.

Mr. HUMPHRYS: It would be very difficult to accumulate that information.

Mr. BASFORD: I am just anxious to see that these liberalizing measures are worth while. We are adding to the list 44 companies, and I am anxious to see what these 44 additions represent and whether this liberalization is worth while or whether it should go further.

Mr. HUMPHRYS: With this change, which in itself could qualify some 40 additional stocks, coupled with the increase in the basket provision from 5 per cent to 7 per cent, I believe companies will be enabled to buy any common shares that they might wish to buy because the experience has been that they have not used so-called basket provision to the full extent available to them even under the present law.

I do not believe any company would find itself in a position where it could not buy a particular issue of common shares if it wished to do so.

Mr. BASFORD: I take it the companies are now limited to investment in these types of portfolio securities to 15 per cent.

Mr. HUMPHRYS: That is the present law, yes. This bill proposes an amendment to that requirement that will increase the 15 per cent limit to 25 per cent.

Mr. BASFORD: Can you give us some indication of how much of that 15 per cent has been used?

Mr. HUMPHRYS: The latest figures we have show that companies have about 4 per cent of their assets invested in common shares.

Mr. BASFORD: What is the explanation of the company for not using the 15 per cent?

Mr. HUMPHRYS: I think any such explanation should probably come from the companies themselves rather than from me.

Mr. BASFORD: By increasing from 15 per cent to 25 per cent you are authorizing a greater investment. How do you intend to deal with it?

Mr. HUMPHRYS: So far as the department is concerned we would not take any steps to attempt to influence companies in their investment decisions other than to see that they make their investments within the requiremens of the law.

These amendments will widen the area of investment so the companies may use it if they wish, but there is nothing in the statutes that will require them to invest in one way or another within that area.

Mr. BASFORD: What are the policy considerations which apply to not only having an authorized maximum but also a required minimum?

Mr. HUMPHRYS: I do not know whether I should answer that.

The CHAIRMAN: You have raised a question of policy, Mr. Basford, and I do not think I should ask this witness to deal with a policy matter.

Mr. HUMPHRYS: I believe the minister dealt with that point to some extent in his remarks on the second reading.

Mr. GELBER: I wonder if we are not on the wrong tack in this type of questioning. It seems to me that the importance of this amendment is that we are opening up a whole new area of investment in companies that may not be public companies today but have a very good earning record, and if they are going to become public they can have the support of the insurance companies.

It seems to me that asking about the existing list of companies is not productive. The truth of the matter is that there are not very many companies in which insurance companies can invest, and if we can open the area to private companies or subsidiaries of foreign companies, enabling them to use the advantages of these amendments, then there is a possibility of increasing the list of blue chip companies.

In point of fact, the existing list is limited and this makes it possible to widen the list extensively. A company no longer has to have a five year public earning record nor even to pay dividends to qualify, and yet it may have an excellent record, It seems to me that the amendment here is very broad and very important.

Mr. MORE: I think part of my question has been answered. A lot of this is window dressing. It seems to me from the statistics I have read that the present opportunities for investment are not being used to their full advantage. They are liberal enough, and there could be a tremendous amount more investment than there is at the present time. I have read figures that intimated that the present requirements have not been used to the extent of something like $1,300 million. There is an opportunity under the present law for further investment to this extent, and it is not being used. Therefore, in my view this seems to be window dressing and nothing else.

Mr. HUMPHRYS: I could comment on that. While the industry average is 4 per cent, as I have indicated, there is considerable variation from company to company within the industry, and properly so because a company should not invest heavily in common shares unless its financial position is such that it can afford to absorb the fluctuations in value of that type of investment.

There is also the consideration that the present investment limits are in terms of book values of the company's securities, and the proportion that they have invested in common shares if computed on a market value basis would be about double the 4 per cent figure. The figure for some companies would be considerably higher.

Mr. MORE: What you are saying is that some companies have used the widest terms possible, and this would enable them to go further?

Mr. HUMPHRYS: Some companies have used substantially more than the average would indicate. I do not think any Canadian life company has yet reached the present limit. However, the industry has requested this additional freedom of movement, so it is not unlikely that some companies at least will take advantage of it. I would not expect the entire industry to move up on an average to anything like the new limit, but some companies I think might well take advantage of the increase.

Mr. WAHN: Mr. Chairman, I think it has been pointed out that common shares of a company may become ineligible if the company, for example, has a loss in one year or in one year earns less than 4 per cent, even though over the five year period the average earnings of the company are entirely satisfactory. Is there any reason why a decision was made to require earnings each year equal to the 4 per cent rather than taking the average earnings over a reasonable period, or perhaps providing average earnings as an alternative base?

Mr. HUMPHRYS: The present dividend requirements and those that have been in the law for a long time require a continuous seven year dividend record. I think the reason for requiring a continuous record rather than an average is a decision based on the strength of the test that it is desired to adopt. A continuous record is, of course, a stronger test than an average. It has certain advantages in connection with eligibility for common shares, because an interruption in the dividend record is likely to indicate some serious change in the pattern of the company's business or in other economic conditions that, in the absence of other evidence at least, might bring into question the ability of the company to continue to pay dividends in the future, and perhaps the value of its shares. So, in using a dividend test, I think the element of continuity is a very important aspect.

As a point of interest in this connection, there is also an earnings test prescribed with respect to investment in debentures, and in that case it is prescribed on an average basis—that is, if the earnings have been sufficient on the average over a period of years.

Mr. WAHN: May I continue on this line for a moment?

I can quite understand why a continuity of dividends is important; a company can pay dividends in a particular year even though it does not earn that amount in that year because it may have reserves of earned surplus out of which dividends can properly be paid. But in preparing this legislation, the decision has been made to get away from the dividend test, or rather to enlarge it to permit eligibility based on earnings, which is a completely different concept.

I wonder whether in drafting the legislation you merely followed the precedent which has been followed by the dividend test of requiring continuous dividends, without realizing that you are really moving over into a different

concept when you go to earnings. If in a single year a company in an industry that may have fluctuating earnings gets below 4 per cent then its shares cease to be eligible.

Mr. HUMPHRYS: Yes.

Mr. WAHN: There is a different concept once you switch to earnings. Dividends can be paid out of accumulated earnings, but when eligibility is based on earnings, then in a single year if a company loses money or if it falls below 4 percent you break the record of eligibility and there is no recourse.

In other words, in respect of dividends you can draw on your surplus and, thereby, maintain it. It occurred to me, in looking at this, that perhaps thought had not been given to the basic difference between the dividend test and the earnings test, and in the case of the earnings test, average earnings rather than continuous earnings each year would be a more appropriate test.

Mr. HUMPHRYS: Mr. Wahn, the point was not overlooked, but in proposing the earnings test in respect of common shares it was considered important to achieve the element of continuity and, consequently, care was taken to prescribe that there must be earnings every year. To that extent the test is somewhat more severe than the dividend test because, as you pointed out, a company can pay dividends out of accumulated earnings. The main purpose of the earnings test was to render eligible shares of Canadian companies that are subsidiaries to foreign companies, where their earnings may have been good but where no dividends were paid. In the normal case it is highly unlikely a company would have enough earnings to pay dividends on its shares and not pay them, unless the company is a subsidiary and the parent decides to retain the earnings within the company; so, the significance of this new earnings test will be principally in the area of Canadian subsidiary companies.

As I mentioned earlier, there is also the existence of the basket provision, which enables companies to invest in these shares if the company has missed a dividend or has had bad earnings in a particular year.

The CHAIRMAN: Have you a question, Mr. Klein.

Mr. KLEIN: Mr. Chairman, I am just wondering if we are not creating a monster. In the case of a company which ordinarily qualifies under the act and then under the provisions of the act it no longer qualifies I am wondering whether we would not be placing that company in a position where its creditors, who normally might go along with this company, might fear the financial position of such a company would be sort of blacklisted by the superintendent of insurance, and whether this might not create a run on that company by the creditors.

Mr. HUMPHRYS: This amendment will not narrow the range of assets that are eligible investments.

Mr. KLEIN: I beg your pardon.

Mr. HUMPHRYS: These investments will not narrow the range of assets that are eligible investments. Nothing proposed in this bill will render ineligible an investment that formerly was eligible.

Mr. KLEIN: I am thinking of a company in which common share investment has been made, and then it fails to pay a dividend and runs into a problem with your department. Would that not invite the creditors of that particular company to make a run on the company?

Mr. HUMPHRYS: That has not been the experience. Of course, there have been cases all through the years where, say, a particular share might be an eligible investment and the company might buy it, and then the issuing corporation runs into difficulty and does not pay a dividend. That means the company could not buy any more of these shares until the dividend record has been restored.

Mr. KLEIN: I thought the object of the amendments was to stimulate Canadian enterprise on the part of a company in which the investment is made rather than to the advantage of the investing company.

Mr. HUMPHRYS: I believe that the amendments are broadening the range of investments eligible for insurance companies. The provisions laying down the eligible requirements are drawn from the point of view of the insurance company essentially, and looking through the insurance company to the safety of the policyholders. Now, so far as the investment provisions can be broadened while still retaining the desired degree of safety, then it is clearly the policy evidenced by these amendments to make such a broadening. But, I think it cannot be regarded solely as a means of creating a market for shares of Canadian companies. It will partly do that. But, the other aspect must be kept in mind, that the main purpose of this whole pattern of investment restrictions is to look to the safety of the company and the protection of its policyholders.

Mr. KLEIN: Yes, but at the same time is it not to stimulate Canadian business?

Mr. HUMPHRYS: In so far as the eligibility requirements can be broadened it will create a broader market for Canadian shares and will have the effect of stimulating the market for them.

Mr. KLEIN: If one of the purposes is to stimulate Canadian business and the investment is still restricted, to use Mr. Gelber's expression, to blue chip investments, then we are really saying to the insurance companies that they can invest in blue chip investments and, therefore, you are investing in companies that do not—

Mr. HUMPHRYS: If I may interrupt, these amendments are broadening the range of common stocks that will be eligible for investment.

Mr. KLEIN: But they still will be restricted to what we ordinarily would define as blue chip investments?

Mr. HUMPHRYS: Well, they are restricted in this provision to shares that have a five year dividend or earnings record, and clearly if there is legislation to prescribe investment restrictions looking to the safety of the policyholders one must have some rules of egibility. But, you must keep in mind too that the basic provision to which I have referred leaves a substantial area of free investment at the companies' discretion.

Mr. KLEIN: I have one more question. Do you think that the ordinary investor—and I am not referring to the investor under the act—will use as a yardstick in respect of whether he, himself would make an investment, the eligibility of that particular company under your act?

Mr. HUMPHRYS: I believe the provisions of this act are used in other respects as a pattern for investment.

Mr. KLEIN: If that is true might it not retard the very stimulation this act wants to bring about?

Mr. HUMPHRYS: I do not think I would use the word "retard"; I would say that if legislation is to be adopted that will lay down a pattern of investment for insurance companies then it inevitably will have to have some rules in it that will render some investments eligible and other investments not eligible. So far as other investors use that as a standard then it will have an effect that is directly related to the severity of the rules, and I think that definitely would be accepted. I believe that this legislation has for its primary purpose the protection of the policyholders; otherwise, there would be no need for any restrictions at all on investments of insurance companies. So, I do not see how it would be possible to accomplish that objective and at the same time set up a pattern that would be very broad or be suitable for other types of investors.

The CHAIRMAN: Mr. Lloyd, I know that you are anxious to attend another committee meeting. Would you proceed now.

Mr. LLOYD: Mr. Chairman, I would like to bring us back to the objectives of this legislation and I would like the witness to indicate whether my assumptions in this case are well founded.

Mr. BASFORD: If I may interrupt, Mr. Chairman, we never have been away from the objectives of this legislation.

The CHAIRMAN: As some of the members have to attend the defence committee meeting perhaps we should proceed and have Mr. Lloyd continue with his question.

Mr. LLOYD: Despite the observation of my friend may I respond to that observation in this way. A minute ago the witness said the primary purpose is the protection of the stockholder. Is it not a fact that Canada has had a number of instances where closely held family corporations have been the subject of takeovers?

Mr. HUMPHRYS: Yes.

Mr. LLOYD: And this meant the formation of considerable quantities of capital to acquire their holdings. In such cases you are most likely to find, for various reasons, tax reasons and others, the nonpayment of a constant dividend record and, on the other hand, a very good record of earnings.

Mr. HUMPHRYS: That is correct.

Mr. LLOYD: Therefore, the provisions of this statute enable insurance company funds, to the extent their directors wish, to be employed in the takeover of a private corporation which did not have a high dividend record but a very excellent earnings record. Am I not correct that in this respect the act is constructive and does it not provide an opportunity for insurance companies to use their massive funds to assist in takeovers of Canadian undertakings and to compete, say, with foreign firms with capital for the same purpose. Does this not add something very tangible in respect of Canadian holdings of Canadian companies?

Mr. HUMPHRYS: I think that is correct.

Mr. LLOYD: Then, in respect of earnings in each such year, under subclause 5 (1) (ii)—

The CHAIRMAN: What page was that?

Mr. LLOYD: That is at page 10, subclause 5 (1) (ii). Mr. Thomas as well as Mr. Wahn are concerned about the averaging of earnings. I am only trying to reconcile what you said with the wording of the bill. It provides that a company must either pay dividends for a five year period in each year upon its common shares at a certain rate or have earnings in each year available for the payment of the dividend upon its common shares. Is the legislation clear in this respect? Does it leave any doubt about what is meant? I am wondering whether or not it does. It says:

> had earnings in each such year available for the payment of a dividend upon its common shares.

Does this mean earnings available from previous years or precisely what you stated, had earnings of that particular year available? I suggest to you the way it reads one might put forward the interpretation that it had earnings available in that year but it did not pay a dividend. If your purpose is to insist the earnings of that particular year must equal 4 per cent of the capital stock of the company then you may have to clarify the wording. It might clarify the intention if the word "available" was changed to "sufficient".

Mr. HUMPHRYS: The intention is that the amount involved shall have been earned in the particular year, not that the earnings are available from a previous year.

Mr. LLOYD: But is your legislation clear on that point?

Mr. HUMPHRYS: I could raise that point with the draftsman. I believe that the interpretation would be that the company has had earnings in the year—which would be the amount earned in the year—and that these earnings are such that they are available for the payment of a dividend, meaning that after having met other requirements that must be met before a dividend is paid, then the remainder would be sufficient to enable the company to pay a 4 per cent dividend.

Mr. LLOYD: I can only suggest you should check your wording in order to carry out the intention.

The CHAIRMAN: We will have that checked with the justice department and the draftsman, Mr. Lloyd.

The next I have on the list is Mr. Munro.

Mr. MUNRO: If I may address through the Chairman a question to Mr. Humphrys, is it your feeling that one of the reasons why this 4 per cent is the outside limit to which on an average these companies have invested in common shares is due to the limited number of companies that come under the requirements of the present legislation.

Mr. HUMPHRYS: As I indicated earlier, I believe that the industry itself should probably respond to this question. I can only give my own impression, that companies may feel that the prices are high in relation to the dividends being paid. They may feel they can get a better return in other types of investments. They may be uneasy about the requirement presently for carrying these shares at market value in their balance sheets. I think perhaps there would be some element also in respect of the volume of shares that are available for investment.

Mr. MUNRO: Well, if those reasons would apply do you feel that raising this outside limit from 15 per cent to 25 per cent is going to change the picture?

Mr. HUMPHRYS: Personally, I would not expect a startling change but I would expect some companies at least would make use of the additional freedom.

Mr. MUNRO: Again, through the Chairman to Mr. Humphreys, in respect of this 4 per cent, is it possible to have any information on what portion of that 4 per cent was invested in common shares and because of its dividend record being poor it had to take advantage of the basket provision? Would it be a very minimal portion of the 4 per cent which fell under that provision?

Mr. HUMPHRYS: None of those would be basket investments.

Mr. MUNRO: Well, then, do I interpret that to mean the basket provision is not really being used at all?

Mr. HUMPHRYS: Well, companies have between one per cent and two per cent of their assets invested under the basket provision. But, those investments under that provision would not be all shares; there would be a variety of investments.

Mr. MUNRO: Could you give us the percentage which would be shares under the basket provision?

Mr. HUMPHRYS: Yes.

Mr. NUGENT: Mr. Chairman, would these questions not be more appropriate when we are taking up the amendments to the basket provision?

Mr. HUMPHRYS: At the end of 1963 the Canadian life insurance companies had a total of $166 million of investments under the basket provision and of that $29 million was in stocks.

Mr. MUNRO: There is one point that Mr. Humphrys mentioned earlier which I did not quite get. You mentioned this 4 per cent was based on book value.

Mr. HUMPHRYS: Yes.

Mr. MUNRO: Then you said it would be almost double that if—and then you went on to say something which I did not hear.

Mr. HUMPHRYS: It would be almost double that if the shares were carried in the company's balance sheet at their current market values.

Mr. MUNRO: That is, double that in respect of the over-all investment.

Mr. HUMPHRYS: Something over 7 per cent.

Mr. MUNRO: In respect of the over-all assets of a particular life insurance company?

Mr. HUMPHRYS: Of the whole group of companies.

Mr. MUNRO: One further question, again through you, Mr. Chairman, to Mr. Humphrys; what percentage of this 4 per cent would be Canadian stocks?

Mr. HUMPHRYS: Slightly less than one half.

Mr. MUNRO: How much would that amount to approximately?

Mr. HUMPHRYS: Total investments of Canadian life insurance companies in common stocks at the end of 1963 amounted to $423 million in book values, so the Canadian stocks would account for around $200 million.

Mr. MUNRO: Some mention was made of the limiting effects of the earnings test; if there was one year where earnings were not made it would break the chain and that company no longer would qualify under this new provision. Would there be any serious objection if there were two years, say, of earnings and one year in which there were no earnings but the company paid dividends in that year—and I am using this as an example—and in the latter two years the earnings were again up to the limit? In that case could dividends not be substituted for earnings, thereby not breaking the chain, and the company still would be eligible?

Mr. HUMPHRYS: I am afraid that to adopt a test like that really would destroy the validity of either test because, as pointed out in some cases, companies will pay dividends out of accumulated earnings and continue the dividen record, but if you try to design a test that allowed a company to swing back and forth from earnings to dividends not only would the test be difficult to apply but it substantially would destroy, in my opinion, the value of both tests. With the existence of the basket provision I believe that one need feel little concern about the possibility of a record being broken because companies have lots of room in the basket provision to make these investments.

Mr. MUNRO: The only disturbing factor is—you can keep going back to the basket test if a company does not qualify under either the dividend or earnings test—that the number of companies that have fallen under the basket provision is almost infinitesimal. I think you mentioned a figure of $29 million.

Mr. HUMPHRYS: This is the investment that companies have made and held at the end of 1963 under the basket provision, but they may buy a share under the authority given by the basket provision and hold it under the heading until it has achieved a dividend record; but once it is achieved the

required record they would transfer it out so, in this way, it is not possible to measure the real effectiveness of this basket provision merely by looking at the balance remaining there at any one time.

Mr. MUNRO: I suppose it would be impossible to assess the amount of incentive this basket provision has given to companies over the past in order to measure its effectiveness.

Mr. HUMPHRYS: It is quite widely used. At the present time, and when I say that I mean the end of 1963, which is the last point of time on which we have statements. At that time companies had about 1½ per cent of their total assets invested under this basket provision. The range was from zero in some cases to a maximum of perhaps 4 per cent. The provision has been used a good deal in the way that I have described; that is, companies may find an investment they want to make. If it does not qualify under the specific provision they can buy it under the basket provision, hold it, and after it achieves the dividend record or otherwise qualifies they can transfer it out and hold it under the other provisions of the statute.

Mr. NUGENT: On a point of order, Mr. Chairman, would it not be more appropriate to go into this when we discuss the amendment to the basket clause, when there will be a general discussion on that clause? There are a good number of us here who would like to enter into that discussion but I think it would be more appropriate if we discussed it at that point in our proceedings.

Mr. MUNRO: I will not pursue it any further. However, there is one other question, which I do not think relates to the basket provision.

Could you give us information in respect of whether the present earnings test has an effect on the takeovers of existing companies, and I am thinking, in particular, of Atlas Steel, Canadian Oils and Labatt's. Would these takeovers have been affected in any way by this particular amendment?

Mr. HUMPHRYS: I believe it is impossible to answer that in any definite way because no one can be sure of the investments insurance companies may have made in those shares had they had more freedom to invest than is presently the case.

Mr. MUNRO: If it was not for this provision would insurance companies be prohibited from participating in that change of ownership in respect of these three companies?

Mr. HUMPHRYS: I am not sure at the moment, but I believe that probably the shares of these companies were eligible in any event.

Mr. MUNRO: Thank you, Mr. Chairman.

The CHAIRMAN: Would you proceed, Mr. Gray.

Mr. GRAY: Mr. Chairman, to carry on the point that Mr. Munro raised, I am puzzled about the explanatory notes in light of an answer given by Mr. Humphrys. I gather from the answer that you gave that you cannot intermingle the two tests, that you either have the dividend or the earnings test.

Mr. HUMPHRYS: Yes.

Mr. GRAY: You cannot have part of one and part of the other to ascertain whether or not your stock is a good investment under this clause. On page 9 of the explanatory notes dealing with the amendment, it says:

> The purpose of this amendment is to authorize as investments debentures issued by a corporation that has had earnings over a period of five years—

And so on; and then in the explanatory notes on page 10, referring to common shares, it refers to this:

> Also, it would authorize as investments common shares of a corporation that has had such earnings in each year of a period of five years—

Now, in reading the wording of the paragraphs which are going to be amended, and so on, I thought that the tests were the same, and that you had to look at the provision on each page. Is there a difference between debentures and common shares?

Mr. HUMPHRYS: There is a difference in the earnings test. In respect of debentures the earnings test is on an average basis: it requires a corporation to have earnings in a period of five years ended less than one year before the date of investment that have been equal in total to ten times the interest requirements and in each of any four of the five years have been equal to at least one and a half times the annual interest requirements. So the earnings test applicable in the case of debentures is quite different.

Mr. GELBER: What is the reason?

Mr. HUMPHRYS: There is a different problem there. The earnings test for debentures is based upon the earnings of the company in relation to the annual interest requirements on its outstanding debt. Therefore, what we are measuring for debentures is the ability of the company to meet the interest requirements on its debentures; whereas for common shares what we are trying to measure is the ability of the company to continue to pay dividends to its shareholders. I think the two problems are substantially different.

Mr. GRAY: I have a further point, one which I think is a point of order. I have been following the discussion here and I have been wondering whether we may not inadvertently be leaving the order of business set down by the steering committee. At this point I understood the time should be devoted to getting explanations of the proposed amendments without particular reference to the suitability or otherwise of these amendments, and that more detailed discussion of policy implications would follow on the debate of the clause. Perhaps my own question raises a matter of interpretation. At the rate we are going, unless there is a lot of repetition in the clauses which will render it unnecessary to discuss them, I think it will be quite a while before we reach the preliminary stage.

The CHAIRMAN: I thought we would make this particular section a little more intelligent if we did relate it to clauses that are to come. It is my understanding that there is considerable repetition in regard to the loans and trust sections, when these things will all fall into place.

It was my hope that by pausing here and clearing up this point we would really gain time later on, Mr. Gray. That is why I had not intervened at all. I was hopeful that this would accomplish something and assist us to deal more expeditiously with the bill.

I now turn to Mr. Moreau.

Mr. MOREAU: I was interested in the answer you gave, Mr. Humphrys, to Mr. Munro pertaining to the percentage of assets of insurance companies in common stocks and the percentage in Canadian stocks. I put a question on the order paper last session, and though I do not have the answer before me now my recollection is that the total investment by Canadian life insurance companies was about 4½ per cent of their assets in common stocks, and about one quarter of that or approximately 1½ per cent was in Canadian stocks. You now say it is almost half, and I wonder if the picture has actually changed that much in this short a time.

Mr. HUMPHRYS: It is less than half. I am asking Mr. Patterson to calculate it.

The CHAIRMAN: While that is being calculated we can go on to another question.

Mr. MOREAU: My other point relates back to a point which Mr. Gelber partially made.

With respect to a subsidiary of a foreign controlled company which had not been paying dividends and which wanted to take advantage, say, of the withholding tax provisions or, for political considerations, wanted to put out stocks in Canada, would you not feel that the amendments to the qualifications of stocks here would allow at least access to the investment pool held by the insurance companies. In other words, their stocks could qualify under the new provisions where they could not before.

Mr. HUMPHRYS: That is correct, if they have an adequate earnings record.

Mr. MOREAU: Would you not feel that this could perhaps be quite an important consideration? We have heard a great number of arguments to the effect that even if the stocks were made available in Canada there would not be sufficient capital available to take them up. We have had a great deal of discussion on the small percentage of investment of perhaps the largest investment pool in the country, and some of the reasons why that investment pool could not be used. I was thinking the argument might be applied to the Union Carbide issue when they brought out their stocks; and it turned out that there was sufficient money available to take all the stock issued. But perhaps if we had a rash of these things it might be very important to have these amendments in the act. I just wonder what your views would be on that.

Mr. HUMPHRYS: I believe that broadening the eligibility in this way and making shares of the type you described eligible investments for insurance companies will considerably increase the market for them in Canada.

The actual volume that will be taken up by the insurance companies will depend, of course, upon the particular company and the price of the shares, and other considerations. I believe broadening the eligibility in this way will definitely stimulate the market for them.

Mr. MOREAU: Can you tell me whether Union Carbide in their subsidiary occupation had a dividend record?

The follow up question is, what percentage of the Carbide issue was taken up by insurance company investment?

Mr. HUMPHRYS: I have no information on the percentage of the issue taken up by insurance companies, but I do believe they have made substantial investments in it.

Mr. MOREAU: In other words, the subsidiary did have a dividend record and therefore qualified? Or would it be done under the basket provisions?

Mr. HUMPHRYS: I could look into that. I do not know offhand. If they have made investments and they did not have the required dividend record, they have clearly been making them under the basket provision. I think the prospect of an amendment of this type may have had some influence also.

Mr. MOREAU: My first question was concerned with a change in the investment pattern since a year ago. I think really there is some significance in that. If the ratio in these was, as I recall from last year, about one third and it has now risen to almost one half, I think it may already indicate a considerable change in the pattern of investment by the insurance companies, and I just wonder if we could not obtain those figures.

Mr. HUMPHRYS: Mr. Patterson has calculated the figures from our report at the end of the year, and his figures show a little higher than one third now, not as much as one half.

The CHAIRMAN: I do not want to cut you off, but we have had quite broad questioning and explanations given by Mr. Humphrys. Perhaps we can now go back to the clauses and to the explanations without necessarily going into all the reasoning.

Mr. HUMPHRYS: We have dealt with subclause (4) which has to do with debentures, and established the eligibility by a cross reference. Subclause (5) paragraph (*ja*) effects an amendment with respect to guaranteed investment certificates for the same purpose as was just described for debentures. Paragraph (*k*) which is an amendment related to preferred shares is also for the same purpose; that is to establish the qualification in part by cross reference to common shares.

Paragraph (*l*) at the top of page 10 is the paragraph dealing with common shares. It effects two changes; the first is to reduce the present seven year dividend record requirement to five years and to enact the proposed earnings test that we have been discussing.

The amendments will also effect a number of less important changes. The first is that at present an insurance company is limited to investing in not more than 30 per cent of the total issues of shares of any corporation. That includes both common shares and preferred shares. This amendment will remove preferred shares from that limitation and retain only the limit of a maximum of 30 per cent of the common shares of any corporation.

Mr. GELBER: Could we have an explanation of that change? Why was it felt necessary?

Mr. HUMPHRYS: It was not considered necessary to impose a limit on the investments in preferred shares of any particular company since they are a different character of investment from common shares. The purpose of the limitation is essentially to prevent an insurance company from buying enough shares in a particular corporation to exercise a controlling interest, and this relates to common shares rather than to preferred shares.

Mr. GELBER: Actually, 30 per cent is a rather high percentage. By removing the restriction of preferred shares I wonder if you are not opening the door for trust company management to take too large an interest in companies in which some of their directors are concerned.

In a lot of the mutual funds the limitation of investment of mutual shares in any one company is very often 5 per cent of the total issue of that company. It seems to me that 30 per cent is a very high percentage. I do not see the reason for the removal of preferred shares from the restriction.

Mr. HUMPHRYS: The 30 per cent has been in the act for a long time and no change in that figure is proposed here. The removal of preferred shares from that limitation would enable the companies to invest in preferred shares on the same terms as they may invest in debentures of the corporation or bonds without any specific limit in the act. Under the present existing legislation, if they wished to do so they could of course buy 30 per cent of the common shares by not buying any of the preferred.

Mr. BASFORD: What is the criterion for common shares in the United States?

Mr. HUMPHRYS: It varies quite widely from one state to another, Mr. Basford. The United States insurance companies have not in practice been very heavy investors in common shares. Some of the principal states have not until recent years permitted the life insurance companies to buy common shares at

all. That is changing somewhat. I have no data with me that would permit me to answer your question directly, but I could get limits for some of these principal states if you wish to have that information.

Mr. BASFORD: Yes, I would appreciate that. I take it you would not be in a position to answer the same question with regard to the United Kingdom.

Mr. HUMPHRYS: There are no such limitations or restrictions in the United Kingdom. In the United Kingdom, companies may invest completely at their own discretion.

Mr. BASFORD: In any common stocks?

Mr. HUMPHRYS: They may invest in any stocks of any type.

Mr. BASFORD: Why is the legislation in the United Kingdom so different from ours? You have said that the purpose of these restrictions is to protect the policyholders. I am sure the people of the United Kingdom have the same desire. How do they express it?

Mr. HUMPHRYS: Your question can only be answered on an historical basis. The insurance companies had a very early start in England and they grew up over 200 or 300 years. They had their share of failures and troubles over the years when the industry was growing and being formed. At the present time they have reached a state of financial strength and stability that enables them to operate apparently in a manner that is satisfactory to the authorities over there.

In this country and in the United States the pattern was different. Almost from the earliest times of insurance there was a much more formal pattern of supervision established in this country and in the United States. I think in part it may have developed in that way because in the early experience of this country most of the insurance was effected by companies from other countries, and there would be a tendency to establish a more elaborate pattern of supervision to protect Canadian policyholders when the business was being done by non-resident companies.

We have been influenced probably to some extent by the pattern of legislative supervision in the United States, I think, and as in so many cases we find the position in Canada to be somewhat between that of the United States and that of the United Kingdom.

Our governing restrictions are not as rigid or elaborate as they are in the United States; on the other hand, they are somewhat more elaborate than in the United Kingdom. I think, among other things, the justification for the pattern of supervision that we have in Canada is that we have not had failures or losses to policyholders from life insurance companies failing. You will note this is not the case, if you look at the history of the development of insurance in the United Kingdom. I admit it has been the case over there in recent years that they have not had troubles of this kind for a great many years. However, in the history of the development of the insurance industry in that country there were a good many difficulties and failures.

Mr. BASFORD: Well, it would appear from the United Kingdom example that it is possible to run an insurance system without these earnings.

Mr. HUMPHRYS: Do you mean without the investment restrictions?

Mr. BASFORD: Yes.

Mr. HUMPHRYS: Yes.

Mr. BASFORD: Then, I take it this matter of the investment restrictions is not the sacred cow which we think it is.

The CHAIRMAN: I do not think I should ask one of the officials to comment upon your question.

Mr. BASFORD: I would like to revert to the 44 companies that are being added to the appropriate list of common stockholdings. Is there any characteristic about these additions? Are we allowing insurance companies to invest in any branch of our economy in which they were not previously investing?

Mr. HUMPHRYS: I have not that information.

Mr. BASFORD: Is it possible to have a list of these companies?

Mr. HUMPHRYS: I can make inquiries. The information that I gave to you this morning was provided to us by the investment departments of some of the life insurance companies. I can go back and ask whether or not they can list the companies for me.

Mr. BASFORD: Thank you very much.

The CHAIRMAN: Mr. Humphrys, would you now carry on with the act.

Mr. HUMPHRYS: Paragraph (l) also makes some cross references to subsequent sections where the limitations on investment in common shares are otherwise modified. We will come to those sections as we go through the bill.

Paragraph (m), starting at line 29 at page 10—

Mr. GELBER: If I may interrupt, I have a question in regard to subsection (v). I am told one of the reasons that some of our smaller companies have been purchased and controlled abroad is that this restriction does not allow insurance companies to buy shares of other insurance companies. They are the most likely purchasers, as you know, and in view of this restriction companies who have experience in this field move in and control foreign companies because our own people are restricted. In point of fact, we are encouraging the export of control of insurance companies by this type of restriction. Am I not correct in this assumption?

Mr. HUMPHRYS: One of the amendments proposed later in the bill, to which a cross reference is made, will enable the Canadian life insurance companies to purchase the shares of another Canadian life insurance company with a view to eventually merging the operations of the two companies. It has long been considered that there is no reasonable justification for permitting a Canadian life insurance company to own and operate a subsidiary life insurance company in the same market. However, they have had for a long time the power to merge or amalgamate with other Canadian companies. This new power that will be proposed in a subsequent amendment will enable them to purchase the shares of an existing company with a view to eventual amalgamation of the two companies.

Mr. GELBER: They would have to purchase control.

Mr. HUMPHRYS: Yes.

Mr. GELBER: And although that control may not be available, yet a substantial block of shares might be available and the interest in the Canadian company might be piecemeal because of this restriction.

Mr. HUMPHRYS: Well, under the provisions that were proposed earlier in this bill there will be limitations on the proportion of shares that can be acquired by non-residents so I think the piecemeal sale to foreign interests will not be possible under this amendment.

Mr. GELBER: But, under other sections of the act.

Mr. HUMPHRYS: Under the provisions we discussed earlier in respect of the proportion of shares that could be owned by non-residents.

Mr. WAHN: I have a question along the same line. What is the reason why a life insurance company is not permitted to buy the shares of another life insurance company in a case where it is not with a view to merger or would not amount to control. I believe the witness said the reason was there was no point in allowing a life insurance company to have a subsidiary life company

in the same market. But, suppose it wants to buy a number of shares of another life company which does not amount to control, so that the other company does not become a subsidiary. In this case the reason given by you does not apply in that event. Why should not one life company buy shares of another life company as an investment?

Mr. HUMPHRYS: Well, the prohibition against one company of this type buying shares in another runs through the Insurance Companies Act, the Loan Companies Act, the Trust Companies Act and so on, and it has been considered inappropriate and undesirable for one company to buy shares in another which, in effect, is its competitor in the same market. It is not necessary as an investment because they are in the life insurance business already and to participate in the life insurance business it is not necessary or really reasonable for them to take a share in another company that is in the same activity; the same reasoning follows in respect of other companies of a corresponding character.

The CHAIRMAN: Are there any further questions.

Mr. WAHN: I do not think the reason given is entirely satisfactory, but if that is the reason I suppose there is nothing one can say. My point is this. Very often acquisition of control takes place over an extended period. You can think of many cases in Canadian history where one company, desirous of acquiring control of another company, has not been able to do it as a result of one transaction but it has picked up a large block of control, which does not amount to complete control, and ten years later they get another block of shares, and eventually it has obtained sufficient shares to acquire control. There is nothing necessarily wrong with this process but, I gather, this is not permitted under the present act, even though in other fields in Canada this is a recognized way of integrating the operations of companies, sometimes with desirable economic results and, no doubt, at other times with undesirable economic results. But, as I understand it, this is prohibited under this legislation, and nothing further can be done about it.

Mr. HUMPHRYS: It is prohibited, and all through the years these companies, each incorporated by special act of parliament for the purpose of doing an insurance business or whatever business they have power to do, have been prohibited from buying shares of other similar companies. In the first place, it would not be necessary for the carrying out of the essential business of the company; it might create conflicts of interest in that the investing company would have an interest in its competitor. It would create complications in attempting to assess the financial position of the companies concerned and, generally, it is not at all necessary to enable the company to carry out its objectives. If it were attempted with a view to eventually gaining control, the process of investment might start but there would be no assurance it would ever reach a position of control or amalgamation, and you would have a complexity of investment patterns and an interlocking of companies which would be inappropriate and unnecessary to the carrying out of the objectives of the particular company concerned.

The CHAIRMAN: Mr. Humphrys, would you now continue clause by clause.

Mr. HUMPHRYS: I am referring now to paragraph (n), starting at line 29 on page 10, which deals with the power of insurance companies to invest in real estate mortgages. There are two changes. The first would increase the limit on a mortgage that may be purchased, from two thirds of the value of the real estate to a mortgage representing three quarters of the value of the real estate. The other change would be to enable the company to invest in mortgages on leaseholds in Canada. Now, that change in respect of leaseholds is merely to bring the investing provision into line with the lending provision. Companies now have the power to lend on the security of mortgages

on leasehold property, so the change merely brings the investment provision into line with the lending provision. The important change here is the increase in the limit from two thirds of the value of the real estate to three quarters.

Mr. MUNRO: In looking at this clause strictly from the aspect of this question of foreign ownership and control, what effect would it have?

Mr. HUMPHRYS: I do not think it would have any effect on that aspect.

Mr. MUNRO: In other words, the previous provisions in no way limited insurance companies in the past from participating in any takeovers with, say, a similar type of investment capital from abroad.

Mr. HUMPHRYS: I am sorry, but I did not understand your question. Does your question relate to paragraph (*l*)?

Mr. MUNRO: No, I am referring to this business of raising the percentage in respect of mortgages, and perhaps it has no relationship to the paragraph we are discussing. I was just wondering about it.

The CHAIRMAN: I do not think you are directly on the clause, Mr. Munro, although I may have misunderstood you.

Mr. HUMPHRYS: This clause will enable companies to buy mortgages that represent a higher limit in respect of the real estate than they could formerly, so it broadens their power to invest in mortgages.

Mr. MUNRO: And it is not anticipated this would have any bearing one way or another so far as foreign ownership and control are concerned?

Mr. HUMPHRYS: I cannot see it.

Mr. MUNRO: That was not one of the motivating designs?

Mr. HUMPHRYS: No.

Mr. BASFORD: Why were leaseholds excluded in the first place?

Mr. HUMPHRYS: I think at one time the mortgage investing powers were limited to freehold real estate as being a more secure type of investment. Then, as leaseholds became more common power was given to lend on the security of mortgages on leaseholds, but I think probably owing to an oversight as much as anything else that leasehold provision was not inserted in this paragraph which deals with investment in mortgages; it is in the provision dealing with lending on the security of mortgages.

Subclause 6 deals with investment in real estate for the production of income. This enables the companies to invest in real estate for the production of income where the real estate has been leased on a long term lease to a corporation that has a dividend record sufficient to enable its common shares to qualify as investment. The change proposed here would enable companies to invest in income real estate where the real estate has been leased to a government or government agency as well as to a corporation with a prescribed dividend record. It also broadens the range of partners with which an assurance company may join in such an investment. Some of these are very large and sometimes companies join together to make a joint investment. It would also enable companies to invest in larger individual parcels of real estate. At present, they may not invest in a parcel in excess of one per cent of their assets. This would enable them to buy any other parcel up to 2 per cent of their assets. I may say that this is one of the places where an amendment has been proposed. As the bill is drawn, it would enable a company to invest in real estate leased to a government or government agency, limited to a national, provincial or state government. The proposed amendment would include a municipal government.

Mr. MACKASEY: Mr. Chairman, we have a labour meeting which is rather urgent.

The CHAIRMAN: It is obvious to me there is pressing business elsewhere for many of our members. I had anticipated that on Thursday we might hear the views of the trust companies, and Mr. Nelson is with us today. It is obvious we will not be able to reach you, Mr. Nelson.

We will return on Thursday at which time I hope we can continue on until 12.30 p.m. and complete the explanation of the act by Mr. Humphrys. Mr. Robinette will be appearing on Tuesday of next week to make representations on behalf of the World Mortgage Corporation, and Mr. Nelson will be here on Thursday of next week at 10 o'clock.

The meeting is adjourned until Thursday at 10 o'clock in this room.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

THURSDAY, NOVEMBER 5, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

WITNESS:

Mr. Richard Humphrys, Superintendent of Insurance.

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

21483—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison
Aiken
Armstrong
Asselin (*Notre-Dame-de-Grâce*)
Basford
Bell
Berger
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Hales
Jewett (*Miss*)
Jones (*Mrs.*)
Kindt
Klein
Lambert
*Leblanc
Lloyd
Macaluso
Mackasey
McCutcheon
McLean (*Charlotte*)
Monteith
More
Moreau
Munro
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

*Replaced Mr. Addison on November 3.

ORDER OF REFERENCE

TUESDAY, November 3, 1964.

Ordered,—That the name of Mr. Leblanc be substituted for that of Mr. Addison on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

21483—1½

MINUTES OF PROCEEDINGS

THURSDAY, November 5, 1964.
(11)

The Standing Committee on Banking and Commerce met at 10.20 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Asselin (*Notre-Dame-de-Grâce*), Gelber Gendron, Kindt, Klein, Lambert, McCutcheon, Moreau, Munro, Pascoe, Pennell, Rynard, Thomas, Wahn and Whelan—(16).

In attendance: Mr. Richard Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill S-123, An Act to amend certain Acts administered in the Department of Insurance.

Mr. Humphrys explained the purpose of subclauses 6 to 9 inclusive of Clause 5 and was questioned. The clause was permitted to stand.

The witness explained Clause 6, was questioned and the clause was permitted to stand.

Mr. Humphrys explained the purposes of Clauses 7 to 12 inclusive, and the clauses were allowed to stand.

On motion of Mr. Moreau, seconded by Mr. Lambert,

Resolved,—That the Committee cause to be printed 750 copies in English and 300 copies in French of the Minutes of Proceedings and Evidence relating to Bill C-123.

At 12.15 p.m. the Committee adjourned until 10.00 a.m. on Tuesday, November 10, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

THURSDAY, November 5, 1964.

The CHAIRMAN: Gentlemen, we now have a quorum. I call the committee to order.

Yesterday, Mr. Humphrys was giving us an explanation of the proposed amendments and, if my memory serves me correctly, I believe we were on paragraph (o) of subclause 6 at the bottom of page 10.

You might proceed, Mr. Humphrys, with paragraph (o) at the top of page 11.

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Paragraph (o) deals with the power to invest in real estate or leaseholds for the production of income. At present companies can make investments of this type where the real estate is leased to a corporation on a long term lease and the corporation has the financial standing such that its preferred or common shares are authorized investments.

This amendment would make it possible for companies to invest in this type of real estate where the lease is to a government or government agency. In the amendment as placed before you, the governments referred to are national, state or provincial governments. Since this bill was introduced, the industry has asked whether an amendment could be made to include municipal governments also in that section. That is one of the proposed amendments to the bill that has been tabled.

The other changes in this paragraph would expand slightly the range of partners with which a company may join in making these investments. Some of these investments are very large, and in some cases several companies join together to make investments. Hitherto they have been able to join only with other Canadian insurance companies registered under this act, and loan companies and trust companies incorporated in Canada. This will enable them to join with any other insurance companies doing business in Canada.

The amendment also increases the size of the individual parcel of real estate which may be purchased from one per cent of the company's assets to 2 per cent.

Mr. RYNARD: This is not quite clear in my mind:

> The amendment would also prevent a company registered to transact life insurance from investing any of its funds in the shares of life insurance companies except as provided in the new section 64A and in section 90—

No insurance company could do business without having a licence to do it, so I do not see the point in this. Any company which would be doing business in the life insurance world would have to obtain a licence to do it and would have to be incorporated.

Mr. HUMPHRYS: The company must have a certificate of registration to carry on business; that is correct.

Mr. RYNARD: Then why is this applicable to it?

Mr. LAMBERT: Dr. Rynard is referring back to paragraph (l).

Mr. HUMPHRYS: Is that the subparagraph on the middle of page 10?

Mr. RYNARD: Yes.

Mr. HUMPHRYS: "—a company transacting the business of life insurance." That is to prevent one life insurance company buying shares of another.

Mr. RYNARD: But it also goes on to state:

> The amendment would also prevent a company registered to transact life insurance from investing any of its funds in the shares of life insurance companies—

Mr. HUMPHRYS: Yes. That is to prevent one life insurance company buying shares of common stock in another.

Mr. RYNARD: In other words, to prevent one company buying up another?

Mr. HUMPHRYS: Except in the circumstances described in the two sections to which a cross reference is made.

Mr. RYNARD: But no life insurance company could buy up another?

Mr. HUMPHRYS: That is right, except in the circumstances set forth in these two sections.

Mr. RYNARD: Might we have those two sections in order to clear it up?

The CHAIRMAN: You might give a brief explanation.

Mr. HUMPHRYS: Section 64A will enable a Canadian life insurance company to buy shares of another life insurance company transacting business outside of Canada. They could, therefore, under that provision own subsidiaries in foreign fields. The provision in section 90 will enable a life insurance company to purchase a controlling interest in the shares of another life insurance company leading to a merger or amalgamation of the two companies.

The CHAIRMAN: Does that temporarily satisfy you?

Mr. RYNARD: Yes.

Mr. LAMBERT: What about a life insurance company which gets into a real estate promotional proposition with a realty firm which it controls and thereby circumvents some of the provisions. Suppose it is dealing with a captive real estate firm in investment in a real property, as is now being envisaged by the amendments, and I am putting aside the participation with other life insurance companies. Two of them might get in with captive real estate firms. Is this not endangering the structure of our life insurance companies and the, shall we say, requirements for solid reserves?

Mr. HUMPHRYS: I will answer the question in two parts. First, this paragraph deals only with investment in real estate for the production of income and the real estate must be leased to a government or to a corporation with a good financial record. The leasing must be in terms that will provide for the repayment of at least 85 per cent of the purchase price over the term of the lease, not exceeding 30 years, and also must provide for a reasonable rate of return to the company. Therefore, under this provision it would not be possible for them to make the type of investment you have visualized.

However, when we get to section 64A, there is a proposal there that life insurance companies be empowered to invest in real estate subsidiaries, notwithstanding certain other investment provisions, by buying common shares. So, the question you raise is quite relevant. This proposed amendment would enable them to obtain an equity interest in a real estate subsidiary.

Mr. LAMBERT: I think it is tied in, but I am thinking of some developments taking place in Ottawa at the present time where there are major buildings being put up on the basis of a long term lease to the federal government. I do not know where the financing is coming from. I rather suspect the insurance companies may be in on this, because after all they are rather lucrative lease agreements. Since these proposals will be a parallel in respect of trust com-

panies and other life insurance companies, what I am concerned with is that they will be able to invest money in real estate firms which firms would be the nominal developers, and where in actual fact they will be able to circumvent the 2 per cent limit by reason of the fact that, having an investment in a realty firm, they could put it under that head and yet come in under the head of investment in real property.

Mr. HUMPHRYS: The investments under this paragraph would have to be by way of direct ownership of the real estate. The proposal in section 64A is to enable them to own a real estate subsidiary; they cannot do it now, because they are limited to a maximum of 30 per cent of shares of any one corporation. So, they could not obtain a controlling interest; but under the proposal they would be enabled to obtain a controlling interest in a subsidiary. The proposal is that power to obtain a controlling interest in a real estate subsidiary would be subject to such terms and conditions as prescribed by the treasury board on the recommendation of the superintendent of insurance.

The intention is that the treasury board would lay down provisions that would establish some degree of supervision over the extent to which they could invest their funds in this way. Further, any such investment would have to be by way of purchase of the shares—ownership of the shares of the subsidiary—and they would come within the limitation on the ownership of shares.

Mr. LAMBERT: As superintendent of insurance you are satisfied this will not weaken, shall we say, the stability of our life insurance company structure?

Mr. HUMPHRYS: It represents a considerable broadening in their power. There is no question but that investment on an equity basis in real estate carries with it a greater degree of risk than some other types of investments. However, I, as superintendent, believe that we will be able to lay down terms and conditions and establish a degree of supervision over it such that the safety of policyholders will not be endangered thereby.

Mr. THOMAS: Do we understand that the previous provision in the act permitted life insurance companies to invest in mortgages to the extent of two thirds of the value of real estate?

Mr. HUMPHRYS: Yes.

Mr. THOMAS: No, this amendment provides they can invest up to three quarters or 75 per cent of the value of the real estate?

Mr. HUMPHRYS: There is an amendment to that effect.

Mr. THOMAS: Is it limited to that; is the amendment limited to that concept of just increasing the ability to invest from two thirds of the value in real estate to three quarters, or are there other broadening powers incorporated in this amendment?

Mr. HUMPHRYS: The specific amendment dealing with the power of the companies to invest in mortgages and real estate does two things; it enables them to invest in mortgages up to a limit of 75 per cent of the value of the real estate instead of two thirds, and it would also enable them to invest in a mortgage on leasehold property as well as on freeholding property; that refers to the specific amendment dealing with the power to invest in real estate mortgages. In this clause there are a number of other amendments to the investment powers, all of which are in the direction of broadening those powers.

Mr. THOMAS: Are there any restrictions on the amount of the total invested funds of a company which may be invested in real estate mortgages?

Mr. HUMPHRYS: No.

Mr. THOMAS: In other words, if they have X dollars to invest they can invest 100 per cent of it in real estate mortgages?

Mr. HUMPHRYS: So far as the legislative provisions are concerned, yes.

Mr. MCCUTCHEON: I am not legally trained and things have to be practical in order to get through to my understanding of this, Mr. Humphrys. May I pose a question in this manner? Land assembly in a large metropolitan area has been undertaken in the past by speculators and real estate promoters, and the only thing that life companies have been able to do, after the profit has been made by the investors or speculators, has been to lend out the policyholders' funds at a nominal interest rate as mortgages on the development of this. Do I take it that now the life companies would be able to go into the land assembly business and get in on the so-called gravy train that there has been in that field over the past many years?

Mr. HUMPHRYS: The amendment that would enable life insurance companies to own real estate subsidiaries has been requested by the industry as a result of their desire to participate on an equity basis in some of these real estate developments. As the matter has been placed before us, the circumstances are much as you have described them. They have been able to participate by way of a mortgage loan, but not by way of equity. The amendment enabling them to own real estate subsidiaries would enable them to participate on an equity basis with the profits if the result is successful and the losses if it is not.

Mr. MCCUTCHEON: Thank you.

Mr. AIKEN: Mr. Humphrys, I would like to come back to a question raised by Dr. Rynard concerning the power of Canadian life companies to hold stock in life companies outside Canada. I would like to ask whether there is a double standard situation in this bill in that a Canadian life company is not restricted in holding stock in a foreign life company but a foreign company is restricted in its holdings in Canadian life companies. Is this a fair statement? I am not arguing the merits or demerits at the moment, because that will be my next question.

Mr. HUMPHRYS: I think the question refers in part back to the proposed amendment dealing with limitations on non-resident ownership of shares of Canadian life insurance companies.

Mr. AIKEN: Yes.

Mr. HUMPHRYS: Well—

Mr. AIKEN: I am referring particularly to the subsection we are on now, 64A.

Mr. HUMPHRYS: The limits on non-resident ownership of shares of Canadian life insurance companies would apply to existing companies that are now under Canadian control, but those provisions would not prevent foreign interests coming into Canada and incorporating a Canadian company, capitalized by non-residents from the outset, if parliament or the provincial legislatures saw fit to grant the incorporation. So, the way still is open for non-residents to form a Canadian company so far as these provisions are concerned. It is proposed that Canadian life insurance companies be empowered to own subsidiaries outside Canada; this would be a parallel power. They could incorporate a subsidiary in foreign fields if the foreign jurisdiction would let them. Whether or not they could buy an existing company in a foreign jurisdiction would depend upon the laws in that jurisdiction.

The reason the industry has requested this amendment is that Canadian life insurance companies have long done a large volume of business outside Canada. The industry has felt for some time there would be certain advantages if they could do that through a subsidiary company rather than through a branch of the existing company. There is a fairly strong trend throughout the world, particularly in the international operation of insurance, in the direction

of operating through locally incorporated companies, rather than through branches of the parent company as traditionally has been the case.

I believe this power to own foreign subsidiaries will be used to form foreign subsidiaries rather than to buy existing ones, although I must admit it is not restricted.

Mr. AIKEN: Therefore, a Canadian life company could acquire stock in an existing foreign company?

Mr. HUMPHRYS: So far as this legislation is concerned, yes.

Mr. AIKEN: There is another thing I was not aware of until you stated it. This legislation only prevents the sale of existing Canadian life companies and does not prevent the incorporation of foreign-owned Canadian life companies?

Mr. HUMPHRYS: That is correct.

Mr. LAMBERT: I have a supplementary question. You have control over these operations of the Canadian companies, but now, with the amendments proposed whereby they may be able to operate a subsidiary in the foreign field, what control will you have over the subsidiary in its real estate operations; in other words, you control the main body, but it is connected to a subsidiary body over which you have no control. If that is in a bag of rice with with a hole in it, then I am afraid the control would be lost. Do you propose to control life insurance companies in their real estate operations on a consolidated basis, or to merely compartmentize it in so far as the Canadian company and its operations in Canada are concerned?

Mr. HUMPHRYS: Regarding the ownership of a subsidiary life insurance company in a foreign field, we propose to work out provisions and have the treasury board lay down terms and conditions that will be designed to protect the Canadian policyholders in the sense of putting some limit on the extent to which the company can put money into the foreign subsidiary. The conditions would be designed to lay down rules and regulations in respect of the valuation of the shares of the subsidiary as they might appear as an asset in the statement of the Canadian company. Also, we would want to have access to the financial statements of the subsidiary and to exercise a degree of control at least sufficient to protect the reputation of Canada and Canadian insurance. But, beyond that, the responsibility for regulating the operations of the subsidiary would be very largely in the hands of the local jurisdiction because the subsidiary would be selling insurance policies to residents of that jurisdiction. It would be up to the local authorities to determine the extent of the regulation they wanted to impose on a company operating within their jurisdiction. The fact is that most of the business done now by Canadian life insurance companies outside of Canada is in the United States or in the United Kingdom. In the United States there are quite rigid restrictions in each state on the operations of insurance companies, and I think subsidiaries formed in the United States probably would be under tighter restrictions legislatively than the companies are in Canada.

Mr. AIKEN: Mr. Chairman, that answers the question I was raising.

Mr. HUMPHRYS: Formerly, Canadian companies did a very large business throughout the world but the trend since the war has been very much in the direction of withdrawing from countries in the far east, middle east and central America, and really their foreign business has been very largely restricted now to the United Kingdom, the United States and the West Indies.

The CHAIRMAN: Would you proceed Mr Kindt.

Mr. KINDT: I note the new provisions increase from 62⅔ per cent of the present value of the real estate up to 75 per cent of the value of the real estate, as you have said. But, I am troubled a little bit in respect of the word "value"

because it has, as you know, several meanings. I am wondering if the meaning has been nailed down here. It could mean, as you know, the appraised value, the purchase value, the resale value, or value for use. In my opinion, the word 'value' has to be nailed down. Could you tell me where it is nailed down?

Mr. HUMPHRYS: Well, it is not defined specifically. It is taken to be the market value of the real estate. The practice is for companies to determine their own appraised value and make their loans accordingly. The department inspects their mortgage loans; it looks at the value, and it is able to check it from a record of properties that may have been sold, or like properties. In this manner it is possible to exercise some degree of supervision in order to see to it that the value being used for purposes of this provision is a reasonable estimate of the market value at the time the loan is made.

Mr. KINDT: There is certainly a wide variation in market values, as you know, and any one company may appraise the real estate at a certain market value. In that event, how could the government come along and make sure that they are conforming to the provision of the act if in making the appraisal of the value the government comes out at a different point from the company. Who is right?

Mr. HUMPHRYS: Admittedly, there is an area of opinion in determining the market value of a piece of real estate. We can exercise some supervision by comparing the appraised values with sale prices where the property has been sold, perhaps after the mortgage has been made or where similar properties have been sold. But, where a dispute arises and a real difference of opinion occurs as to the value of the property we would call for an appraisal by an independent appraiser, and be guided by the results of that. I think that is as objective an approach to the value of real estate as can be taken. Of course, the real measure of the value is the sale price of a similar property that has been sold.

Mr. KINDT: But I still cannot see how your authority can be exercised against these companies.

Mr. HUMPHRYS: We could call for an independent appraisal.

Mr. KINDT: Yes, but at the time you made your appraisal changes could have taken place and the person who made the appraisal would not come out at the same point as he would if he made the appraisal at the time the companies made it.

Mr. HUMPHRYS: Well, it is true that the values differ, but the extent of a difference of an opinion that might be based on a short time period would not be such as to constitute a serious difference in the value. If it were a very large difference then the company would be required to dispose of the loan—that is, sell it, or it would be disallowed as an asset in their statement.

Mr. KINDT: But serious complications might result by requiring an insurance company to dispose of it right at the time when things were not favourable for a disposition. I am thinking of your authority over companies in respect of the meaning of the word "value". Now, I suspect because of the way insurance companies operate in respect of investments they would stay under the figure of 75 per cent instead of going right up to the 75 per cent. In other words, they would keep it down to around, say, 50 per cent or perhaps 60 per cent as a maximum of real estate values. And, it may not even be that high. Perhaps that would take care of itself. But, if it came to a showdown between you and the company I do not think you would have a leg to stand on under the present provisions in respect of the meaning of the word "value".

Mr. HUMPHRYS: We could call for an independent appraisal. The problem has not been a serious one in actual practice.

Mr. KINDT: But the reason it has not been a serious one in actual practice is that you are now getting into the question of life insurance companies going into the real estate field which, to a large extent, was not the case before. But it is being opened up. Therefore, the problem certainly will become more acute now than it has been in the past.

Mr. HUMPHRYS: I would have thought, sir, that the problem probably would be less acute if the limit is raised from two thirds to 75 per cent. At the present time, when the limit is two thirds and other companies are lending at a higher ratio, and perhaps picking off the more desirable mortgages because they can lend at a higher ratio, there is, I think, quite a strong pressure perhaps to increase appraisal values in order to be able to lend a competitive amount. In raising the mortgages from two thirds to 75 per cent I think you are more likely to get a realistic figure because they then can compete on more even terms with other companies. Some of the United States and British companies operating in Canada can lend at a higher ratio than the two thirds.

The CHAIRMAN: Would you proceed now, Mr. Rynard.

Mr. RYNARD: Mr. Chairman, some of my questions have been answered. However, I would like to ask what percentage of insurance funds will be allowed to go into the mortgage business and into the building business in respect of real estate.

Mr. HUMPHRYS: There is no limit on the portion of a company's fund that may be invested in mortgages. So far as real estate is concerned, under the present law companies are limited to investing a maximum of 10 per cent of their assets in real estate for the production of income. That is the type of real estate that is described in paragraph (o), the so-called "leaseback" real estate, where the property is leased on a long term basis.

Mr. RYNARD: That is, the insurance companies erect the buildings?

Mr. HUMPHRYS: They own the buildings. The proposed amendment would remove the limitation on leaseback real estate because that has proved to be an excellent investment. This has had a very good record, and the requirement that it must be leased on a long term basis to a corporation whose shares are eligible investments means that it is almost as secure as a debenture of the corporation. So, it is proposed in these amendments to remove this type of real estate from the 10 per cent limit.

But in paragraph (p) on this same page it is proposed to enable companies to invest in another type of real estate and that type together with investments in real estate made under the basket provision would be limited to a maximum of 10 per cent of the company's assets.

Mr. RYNARD: I am wondering about this. If they are getting into this and increasing their real estate holdings I suppose you could get a downward trend in this respect. If that is the case, are you going to get into trouble or are you going to stop them before it goes that far? Are you actually going to hold this down and not let them get into the problem where you could get a little downward trend in real estate holdings. We have seen this happen, and the past history of life insurance companies demonstrates that such has been the case. I am just wondering whether you are going to keep a control on this in order not to allow this situation to develop.

Mr. HUMPHRYS: Well, the control in law is limiting companies to investing not more than 10 per cent of their assets in real estate for the production of income, other than this leaseback type which is, as I have said, a very secure investment and partakes more of a debenture type than a real estate type. So, there will be a limit of 10 per cent so far as investment in real estate for the production of income is concerned. With regard to real estate companies, this will be an investment in common shares and will come under the limit of

25 per cent on investment in common shares. Those two are the extent of the legislative limits. Now, I do not think it is possible to legislate investment wisdom into the minds of the investment managers in the company nor is it possible for the insurance department to be all-wise in this area. So, I think all I can say, in answer to your question, is that in accordance with our normal practice we would keep very closely in touch with the investments that are being made by companies. If we felt that a danger area was being reached we certainly would enter into discussions with the companies to try to air the matter and to see where the best course lies. But, we are not in a position to substitute our investment judgment as an insurance department or as government officials for the investment judgment of the company officials. Within the limitations of the law they may exercise their discretion and our power would be limited to persuading.

Mr. RYNARD: Of course, you would be controlling their licence.

Mr. HUMPHRYS: Yes, their certificate of registry comes up for renewal every year and the minister may impose such conditions as he wishes in the certificate.

Mr. RYNARD: So this really is your safeguard.

Mr. HUMPHRYS: In a serious situation this would be the ultimate safeguard, yes.

Mr. RYNARD: When they are making investments and arriving at the point which you regard as critical is there anything in the regulations in respect of these companies going further with these investments? You do keep this check on them?

Mr. HUMPHRYS: Well, they file statements with us twice a year indicating the new investments they have made in the half year, and every year they file an elaborate statement with us showing complete details of their financial conditions and affairs together with a complete list of all their investments. So, we do keep in touch with them very closely throughout the year.

Mr. AIKEN: I would like to ask Mr. Humphrys a question relating to subsection 7 concerning mortgages in real estate.

The CHAIRMAN: What page is that?

Mr. AIKEN: Page 12.

The CHAIRMAN: I do not think I have asked Mr. Humphrys to explain clause (p) on page 11. He made reference to it but has not discussed it. Mr. Aiken, I am not trying to rule you out of order, but I think you are a little ahead of our discussion.

Mr. AIKEN: I would leave it, if you wish, but it was related to the general question of investments in real estate and real estate mortgages.

The CHAIRMAN: Carry on, Mr. Aiken.

Mr. AIKEN: Previous questions related to the total holdings of a company in real estate or in mortgages on real estate. My question relates to the percentage of value that the companies will be permitted to acquire. This bill raises from two thirds to three quarters the amount of appraised value they can use. This has particularly worried me and I would like to ask a couple of questions about it.

Could Mr. Humphrys tell me whether this provision is put in there for the benefit of insurance companies or of the building business? I am referring to an incentive to increase construction and, if I might explain it, I think that increasing the percentage by which a mortgage can be held reduces the value of a trust investment, so you cannot justify it from that angle—that is, from the angle of improving the trust holdings of an insurance company. So, the only other reason must be that it will be an incentive to the construction of

Canadian housing and commercial construction. Could you tell me which of these proposals is the correct one?

Mr. HUMPHRYS: The increase in the maximum limit on mortgages has been requested by the industry and it is an increase that it seems can be made without undue risk, principally because the great majority of mortgages now are paid off on an amortized basis with monthly or periodic payments. In years gone by this was not the case, and for many years the maximum that could be lent on the security of a real estate mortgage was 60 per cent of the value of the real estate. That was raised to 66⅔ per cent a few years ago. Having in mind the good record of mortgages and even, more important, the practice of amortizing mortgages so that the principal is brought down quite rapidly, other jurisdictions have made changes of this type, particularly in the United States. A good many states down there have raised their mortgage limits to 75 per cent and some other companies operating in Canada are making higher ratio mortgage loans. There are desirable investments in this area. The industry feels, if they can make these higher ratio loans, they can get good investments and can compete with other companies that are in the mortgage field. It is not expected, and I do not believe the industry implies, that every mortgage loan will now be for 75 per cent of the real estate value. They obviously will exercise discretion on the point of whether or not they will lend up to 75 per cent on a particular proposal. But, this will enable them to do so where they think it to be otherwise desirable.

Mr. AIKEN: May I ask about the requests that the life companies have made. Have these been requests through the association of life companies?

Mr. HUMPHRYS: Yes.

Mr. AIKEN: Or, by various individual companies.

Mr. HUMPHRYS: By the life company association.

Mr. AIKEN: Do you have any figures or ideas at the present time to indicate what the present practice is on loans? Do they now lend up to two thirds, or is this an individual company policy?

Mr. HUMPHRYS: I do not think it would be possible to say that any company follows an absolutely uniform practice. But I think it is fair to say that under present conditions a substantial proportion of their loans are up to maximum.

Mr. AIKEN: Do you know why the life companies want to have this? Do they explain it, or just ask for it?

Mr. HUMPHRYS: They feel that they can obtain good mortgages at a higher ratio, and good investments in this way. In the case of many desirable mortgage loans where the owner wants to borrow, he will go where he can get the ratio that he wants, perhaps what other companies in the market area will offer to him. The result is that these other companies will get the cream of these loans. So the industry in putting forward the request is doing so because it believes there are opportunities there for investment on the basis of a higher ratio. The amendment would also have the advantage that it would enable the borrower to obtain a higher proportion of the money he needs on a first mortgage loan, without having to go into the second mortgage market. This would be a secondary advantage to the public.

Mr. AIKEN: But in practice, will they do so? As it is, when anybody needs a second mortgage, is he going to stop here? Because I think most of them now can, by first or second mortgage go to 80 per cent. With this 75 per cent alternative situation, frankly I do not think that they will. It will merely result in putting up second mortgages to something like 90 per cent, which would bring about inflation. I am very concerned about this particular clause. Are we going to have these life companies here? Have they asked to appear?

The CHAIRMAN: No, they have not. They said that they have no objection to the bill, and have no representations to make.

Mr. AIKEN: Does that apply to the life companies as well as the trust companies?

The CHAIRMAN: The trust companies are coming; they also have circulated a brief. You may have missed it, but there are some copies here and we shall see that you get one. The trust companies are making representations and will be here. The World Mortgage Corporation has asked to come independently, and it will be making representations.

Mr. AIKEN: May I ask what name you call them? Is it the association of life companies?

Mr. HUMPHRYS: It is the Canadian Life Insurance Officers Association.

Mr. AIKEN: This association has requested this increase. Has a similar request come from other organizations affected by this bill?

Mr. HUMPHRYS: The trust and loan companies?

Mr. AIKEN: Yes.

Mr. HUMPHRYS: Yes.

Mr. AIKEN: They also wish an increase to 75 per cent?

Mr. HUMPHRYS: Yes.

Mr. AIKEN: Who is going to protect the public?

Mr. MOREAU: From what?

The CHAIRMAN: Well!

Mr. AIKEN: I am asking this question: must I take it for granted that there may be some slight justification for my concern about increasing the amount of mortgages? Who is going to put the other side of the case to us, if the life and the trust companies are all agreeable to it? Who are we going to hear? I would like to hear somebody on the other side; and if nobody comes, I shall not be satisfied.

Mr. HUMPHRYS: I suggest that although the request has come to the government from the industry, the proposal to increase it is in the bill proposed by the government, so that the government and the department are satisfied that in putting forward his change there will not be a degree of increased risk or danger to the public of such proportions that it would justify refusing it.

Mr. AIKEN: Is this because the total limit of real estate holdings is also already fixed in the bill?

Mr. HUMPHRYS: The question of investment in mortgages is not under any over-all limit. The limit I referred to earlier is on the ownership of real estate. But there is no limit on the total proportion of funds which they may invest in mortgages.

Mr. AIKEN: So a life company or trust company has no ceiling on the amount of real estate mortgages which they can hold?

Mr. HUMPHRYS: That is correct.

Mr. AIKEN: I have done a lot of mortgage business over the years, and this really concerns me.

Mr. HUMPHRYS: At the present time Canadian life insurance companies have 39 per cent of their assets in mortgages—as of the end of 1963.

Mr. MOREAU: By way of clarification, these are merely permissive figures, as I understand it.

The CHAIRMAN: I am sorry, Mr. Moreau, but Mr. Asselin has been trying to ask a question for a long time. I have to keep some order. I wonder if Mr. Aiken has finished?

Mr. AIKEN: I have asked the question and I do not want to come back to it.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I have no objection to yielding to Mr. Moreau.

The CHAIRMAN: No, you go ahead, Mr. Asselin.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I was going to point out that there was a maximum in the present figures, and that unlike one or two of the previous questions, I was wondering why, for instance, a maximum permissive figure could not be 90 per cent instead of 75 per cent, in the same way as it is with the National Housing Act. After all, what you are dealing with here is the money of the stockholders. I consider the taxpayers to be the stockholders, and should it go up to 90 per cent, and quite often this maximum figure is used, I wonder about the question of inflation.

The CHAIRMAN: Do you have a question to direct to the witness?

Mr. AIKEN: That was exactly my first question.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I would like to complete my question. I am going to ask Mr. Humphrys if he thinks that 90 per cent might be a bad thing, or would he consider it reasonable? I also want to ask him in connection with inflation and the questions raised by one of the members, whether this was a valid argument, since the borrower on a mortgage—if he cannot get a sufficient amount, let us say, the maximum permissive figure of 75 per cent—will go to a second mortgage dealer and will pay a higher percentage, and thus be able to get it. Here we have the same problem of inflation. And third, in respect of my point of view, the higher maximum figure or percentage for borrowing would I think be a greater attraction to the public because it would not require so many people to go into the second mortgage field. I would like to hear Mr. Humphrys views on this.

Mr. HUMPHRYS: I would think that to raise the limit—

Mr. ASSELIN (*Notre-Dame-de-Grâce*): Let me state my question more simply: Has he considered the possibility of having a higher maximum figure? What are his views on, let us say, bringing it up to a figure of around 90 per cent?

Mr. HUMPHRYS: I would not personally recommend increasing the limit beyond 75 per cent. I believe the analogy of the mortgages made under the National Housing Act does not quite extend to here because those loans made in years gone by were subject to government guarantee, and at the present time they carry insurance operated by Central Mortgage and Housing Corporation, so that they have an additional security which provides the element of safety needed with high ratio loans.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): May I interrupt to ask you this. You mentioned a government guarantee. Does the government not guarantee with the taxpayer's money? The analogy I made works a great deal differently if it be the taxpayer's money in one case, or money lent out on a mortgage in the other.

Mr. HUMPHRYS: I would say it was the policyholders' money.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): You say the money of the policyholders. Is that not public money?

Mr. HUMPHRYS: I would not think that the purpose of this legislation, which is to put certain restrictions on the way in which insurance companies may

invest the money which has been, in a sense, entrusted to them by their policyholders, should be regarded in the same sense as the way in which the government might use money which it has collected through taxes.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I am sure you are not suggesting that the money which is collected from the taxpayers should be treated any more lightly than the money that the company receives from its policyholders.

Mr. HUMPHRYS: I did not suggest that.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I have a question to ask Mr. Humphrys concerning page 9, and I would like permission to go back to it, because I missed the opportunity to do so the other day when I had to leave to go to the defence committee.

The CHAIRMAN: Mr. Moreau.

Mr. MOREAU: I want to bring out essentially the fact that I think insurance companies wanted this change in a sense in order to place themselves in a more competitive position in this field. I think for the benefit of the companies therefore the policyholders using the company of course, on any loans, are now up to 90 per cent. In many other areas they were able to lend on higher grade property up to the same maximum levels, and therefore I would think that this move would be a step proposed by the insurance companies to put them in a more competitive position in this particular area of investment. I wonder what your views would be? Is this right or not?

Mr. HUMPHRYS: I would agree with you, yes.

Mr. MOREAU: My second point is this. Is it essentially on the valuation provisions? This amending bill makes no provision for valuation, but neither did the previous act. In other words, my point is essentially that when it comes to evaluation, these loans of 60 per cent of the assessed value, or 75 per cent —do not change the basic valuation in the first place.

Mr. HUMPHRYS: That is correct.

Mr. MOREAU: In other words, it is an unchanged condition. And I would ask also if it would not be your impression that the insurance companies now, having had quite a long history of experience in the mortgage lending field, and having developed a rather sophisticated mortgage department, would be better able to cope. In other words, this 66 per cent provision, now raised to 75 per cent, would be probably quite justified.

Mr. HUMPHRYS: Yes, I believe that is a fair statement of the situation.

Mr. GELBER: In regard to the point raised by Mr. Aiken and Mr. Asselin, I am sorry that I was not here at the beginning of the meeting when you dealt with this matter. We were told the other day that British insurance companies are restricted to the terms of their portfolio. But are they restricted to what they may lend out in terms of percentage?

Mr. HUMPHRYS: British insurance companies doing business in Canada are required under this legislation to lodge assets in Canada with the Minister of Finance, or with trust companies in Canada to cover their Canadian liabilities. They must maintain assets in Canada covering their liabilities in Canada The types of assets that they may use for this purpose are similar to those that Canadian companies may invest in. If they want to deposit mortgage loans they must be mortgages within the limits applicable to Canadian companies. At home, they are not subject to such limits.

Mr. GELBER: What about the law in Britain for insurance companies dealing in Britain? Are they restricted in the percentage of capital value that they can advance in mortgages?

Mr. HUMPHRYS: No, they are not.

Mr. GELBER: What about American companies?

Mr. HUMPHRYS: They are usually so restricted.

Mr. GELBER: Do you know the amount?

Mr. HUMPHRYS: It has been in the order of 60 per cent or two thirds, and in more recent years a number of the leading states have raised their limit to 75 per cent, most prominently New York, which has been regarded in the United States as being a leader in insurance legislation. They have just this year increased their limit to 75 per cent.

Mr. GELBER: If the rate is increased and the amount of percentage increased that the insurance companies can advance to, will this not tend towards the insurance companies having less funds on loan available to other borrowers?

Mr. HUMPHRYS: It could happen. If they make larger loans, they might make fewer loans.

Mr. GELBER: But with the 90 per cent, it would tend to be more pronounced.

Mr. HUMPHRYS: That is quite right. If the companies do not want to put out any more of their assets, in total, in mortgage loans, they might find themselves handling fewer loans but for higher amounts.

Mr. GELBER: I presume the fact that lenders like insurance companies have mortgages of a higher percentage of capital value would increase the capital value of any property, would it not?

Mr. HUMPHRYS: I would not think so.

Mr. GELBER: Do you not think that the capital value is estimated on the going rate of borrowing?

Mr. HUMPHRYS: The rule is stated the other way, that they cannot lend more than a proportion of the value of the property.

Mr. GELBER: Yes. But I am thinking of the policy of the insurance companies. I am thinking of a capital asset in the market, to be financed at a lower rate of interest. It would have a higher capital value, would it not?

The CHAIRMAN: Let us have the question.

Mr. GELBER: That is the question, and it is whether by increasing the percentage to be advanced it enhances the capital value. I suggest that it does.

Mr. HUMPHRYS: I would doubt that it would change the market value of the property.

Mr. GELBER: All right, we disagree.

The CHAIRMAN: Now, Mr. Pascoe.

Mr. PASCOE: My question may be pretty obvious to answer, but it is along the lines we have been talking about, of insurance companies lending on the security of real estate up to the maximum of its value. Most of the discussion so far has been with regard to real estate in cities, speaking as a western man; would it also apply to mortgages on farm property?

Mr. HUMPHRYS: The legislation does not contain any restriction to any particular type of property.

Mr. PASCOE: So they could lend up to 75 per cent of the value?

Mr. HUMPHRYS: So far as the legal provisions are concerned, yes.

The CHAIRMAN: Let us get back now.

Mr. AIKEN: Right at this point I would like to clear up something with a statement of my position. We have been talking about two fundamentally different proposals. This was the nature of my first question to Mr. Humphrys on the subject. Then there is the question of the incentive to the construction business which the government is concerned with logically, and for other reasons, that is, the investment of money. This is where Central Mortgage and

Housing Corporation and other people come into the field and lend more than what is a safe investment in the normal sense of handling trust funds.

The other position I am referring to, and the story we are dealing with here, is the necessity of handling trust funds which are given over to life insurance companies and trust and loan companies to administer. My point is that Canada so far has had a very good reputation in safe investment of money in their insurance and trust companies. But here we are now getting into some thing different. We are getting into the handling of trust funds which have always been kept within—not ordinary limits, but within safe limits, to cover any situation of a general downward trend in valuation, and it would not take very much reduction in real estate to go down to 75 per cent of the present inflated value in a lot of cases.

Mr. MOREAU: I do not like to interrupt.

Mr. AIKEN: Well then, do not do so. I would like to furnish my statement. If you do not want to interrupt, do not do it.

Mr. MOREAU: I have a point of order.

Mr. AIKEN: All right, you may raise your point of order.

Mr. MOREAU: I thought we were engaged in an explanation of the bill initially. But we now seem to have strayed away from it. I cannot see how our procedure is going to be enhanced by receiving a statement of opinion from one of our members concerning the bill. He is, of course, entitled to have his opinion. I am not questioning his right to have it in any way, but it does seem to me that we have strayed quite some distance away from the procedure we were undertaking to follow with respect to this bill.

The CHAIRMAN: It seems to me—and I shall rule on this if I may—that one of the important provisions of the bill is to increase the amount of money that may be lent on a mortgage, which could be 75 per cent. That is the nub of the point, and one of the reasons we are here, and why Mr. Aiken raised a number of questions. But I think it would help us if we could have his position clearly stated before us in view of the fact that we shall have representatives of various industries coming here.

Mr. MOREAU: May I have the same privilege to put my opinion on record as well.

The CHAIRMAN: If you have not made your point quite clearly.

Mr. AIKEN: I am not going to conclude my statement. I appreciate your suggestion, and I presume that I am being permitted to state my views. But it has never to my knowledge been our procedure that we must limit ourselves to questions as on the orders of the day when we have a witness before us. I shall not proceed on the basis that I am being permitted to do it. Surely I have the right, just as any other member, during the discussion to state an opinion. I have been present at committee meetings where people have taken as much as half an hour to state their opinions while the witness sat helplessly by. That is the position I take now. I think Mr. Moreau has the right to express his opinions as well, and while it may not shorten proceedings, nevertheless I think that the members have this right and that we should not restrict ourselves to questions to the witness.

The reason I am making this statement is that it appears that nobody is going to put to us the other side of the case. That is the point of my question. I am trying to get across the point that there may be some objection from the standpoint of public policy in permitting trust companies to lend up to 75 per cent of the appraised value of real estate, with moneys which are trust funds, which are held by them in trust. This is rather different from the Central Mortgage and Housing Corporation. The point of my discussion is this: Are we going to hear anybody who will say, "No, we should not do

it. Do not have any hesitation about it." The life companies obviously want it, and the government will obviously give it to them. But I want to know whether this is proper, and I want to know whom we might call to give some opinion of it. I may say that I have some doubts about it, and I am not the only one.

The CHAIRMAN: I do not think the Chairman should become involved. The question raised at the steering committee was who should be called. No limits were placed on the committee. I might say that everyone whose name has been advanced so far has been notified. Every name put forth to the steering committee and every group were notified. I do not know what the trust companies will say when they arrive next week, but I believe that on this particular point they have no objection.

Mr. MOREAU: I would not want to restrict Mr. Aiken from an expression of his views in any way, but I thought we had agreed to hear an explanation of the bill first, and then go into the argument as to the particulars and the kind of bill. I take exception to the statement that any National Housing Act loan was made over the limit. As I understand it the National Housing Act statistics of recovery of loans experience has been very good. It seems to me that this was a matter of opinion rather than of fact. However, I apologize for the intervention I made. I think our arguments might come later on in the discussion.

The CHAIRMAN: I think we have cleared the air now.

Mr. MUNRO: I take it to be the procedure that we ask our questions now, and follow with the argument later.

The CHAIRMAN: We do have a witness who has experience and knowledge, and I think it is quite appropriate to put questions to him, if they are proper questions. That is why he is here, to explain and answer questions.

Mr. AIKEN: I have concluded what I wanted to say, because that is the reason I raised this, since it appears that the life companies are not coming at all, and the trust companies are going to agree to this provision. But perhaps this is something we should take up in the steering committee.

The CHAIRMAN: Are there any further questions? I believe we are now at page 11 on subclause (*p*), am I correct?

Mr. HUMPHRYS: Paragraph (p).

Mr. ASSELIN (*Notre-Dame-de-Grâce*): May I have permission to ask a question. I want to know your views on the provision to allow insurance companies to invest in companies with earning records as opposed to dividends, having regard to five years, or the making of an attempt to open up the field a little in order to provide a greater field for investment? I was wondering whether in that provision the question of earnings was considered, and also the statement which was made that the earnings have to be made in each year? My question may be somewhat academic.

The CHAIRMAN: I do not want to appear to be facetious or rough, but we did spend almost a whole morning on this subject. May I suggest that Mr. Humphrys speak to you about it in the break, and if you are not satisfied at that time, then we will give you the floor at the next meeting. We spent almost all of the last meeting on the subject of dividends and earnings.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I was present for most of that meeting.

The CHAIRMAN: I realize that you had to leave to attend another committee meeting, and I thank you for your co-operation. Let us go on with paragraph (p).

Mr. HUMPHRYS: Paragraph (p) is a provision to enable companies to make further investments in real estate for the production of income. This type of

property would not be of a leaseback type, such as we have discussed. This property would be eligible if it had an earnings record of over a three year period such as to give a reasonable probability that the company would be able to recover at least 85 per cent of its investment during the remaining lifetime of the property, and would receive a reasonable rate of return. The maximum limit on the investment on any one parcel of such real estate is 2 per cent of the company's assets, and the company would not be able to invest more than 10 per cent of its assets in this type of real estate together with the type of real estate they might buy under the basket.

The CHAIRMAN: I would suggest you carry on.

Mr. HUMPHRYS: Subclause (7) deals with the power of companies to lend on real estate mortgages. Earlier we discussed their power to invest in real estate mortgages. This would enable them to lend on a real estate mortgage where the mortgage is up to a maximum of three quarters of the value of the real estate, instead of two thirds, as at present.

Subclause (8) deals with a minor technical point in respect of securities received by a company on reorganization, liquidation or amalgamation of a corporation whose securities it owns at that time. It has no choice about receiving the securities issued on the reorganization, but the legislation formerly prohibited it holding those securities for more than five years, except with the concurrence of treasury board. This change will enable them to hold them so long as they wish. It is a minor point. They do not receive many of these, and they have no choice in any event whether they take them or not.

Mr. GELBER: Is a life company allowed to lend on a back-to-back basis; is it allowed to advance money against an existing mortgage?

Mr. HUMPHRYS: To lend on the security of a mortgage?

Mr. GELBER: An existing mortgage.

Mr. HUMPHRYS: Yes, I think it is, under the legislation. It is very rarely done.

Mr. GELBER: It does not have to be the original lender?

Mr. HUMPHRYS: No.

The CHAIRMAN: Carry on, Mr. Humphrys.

Mr. HUMPHRYS: Subclause (4) on page 13 deals with the basket provision. It increases the maximum proportion of a company's assets which may be invested at its own discretion from 5 per cent of the assets to 7 per cent. It also increases the maximum size of particular parcels of real estate that may be purchased pursuant to this provision from half of one per cent of the company's assets to one per cent, and broadens the range of partners with which the company may join in making real estate investments under this provision.

Mr. LAMBERT: This would also include captive real estate companies.

Mr. HUMPHRYS: This would enable them to own the real estate directly, but not a subsidiary corporation. We will get to the subsidiary corporations later.

Mr. LAMBERT: But among the partners.

Mr. HUMPHRYS: No. The partners are other insurance companies transacting the business of insurance in Canada.

Mr. MCCUTCHEON: Under subsection (a), "a company transacting business", and so on, they now are allowed one per cent of assets. I am not just too clear on this. Would this mean that if two companies work together on this, a 50 per cent share could be one per cent of the assets?

Mr. HUMPHRYS: Yes. Paragraph (a) deals with investments in real estate and governs the maximum that any one company can invest in a particular parcel.

Mr. McCUTCHEON: In a very large property, conceivably they could own 50 per cent of it and one per cent of their assets would be that amount?

Mr. HUMPHRYS: Yes.

Mr. MUNRO: On Mr. Gelber's point, I understand that insurance companies can take a mortgage on a mortgage.

Mr. HUMPHRYS: Yes. It is very rarely done. I cannot recall any instance. However, the legislation is such that it would permit them to do that. The provision is incidental, because it says they can lend on the security of any asset in which they can invest.

Subclause (9) amends two subsections. The first is subsection (7) which deals with the limit on the maximum investment in common shares. This raises the limit from 15 per cent of the company's assets to 25 per cent.

Mr. LAMBERT: This is another one of the major objectives of this legislation?

Mr. HUMPHRYS: Yes. Subsection (8) places a maximum limit on investments in real estate for the production of income. The change is the removing from the limit the leaseback type of real estate. The 10 per cent limit still applies to real estate purchased pursuant to the basket provision, and real estate purchased pursuant to paragraph (p) which I have just described.

The CHAIRMAN: As I understand it, that ends the investment provision of this part of the bill.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I did not quite understand what you meant about the leaseback provision.

Mr. HUMPHRYS: Under the existing legislation there is a limit of 10 per cent on the amount a company may invest in real estate for the production of income. That real estate now is of two types; the first is real estate which has been leased on a long term basis to a corporation with a sound financial record. The other is real estate purchased pursuant to the basket provision. It is now proposed to give companies additional power to invest in real estate on the basis of the earnings record of the real estate. The 10 per cent limit will apply to the basket real estate, and to new real estate qualified on as earnings test, but it will not apply to the leaseback type.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I see.

Clause stands.

On clause 6—*Power of life insurance company to invest in shares of insurance and real estate companies.*

Mr. HUMPHRYS: Clause 6 enacts a new section 64A that will enable a life insurance company to own subsidiaries in three circumstances. The first is a corporation incorporated outside of Canada to undertake life insurance, and the second is a corporation incorporated under the laws of Canada to undertake insurance other than life insurance. The third is a corporation incorporated to acquire, hold, maintain, improve, lease, or manage real estate or leaseholds. These powers will be subject to terms and conditions prescribed by the treasury board on the recommendation of the superintendent.

This section is a new departure in that it enables life insurance companies to own subsidiaries, in the provided circumstances, which they have not been able to do hitherto.

Mr. LAMBERT: Is it intended that Canadian life insurance companies will be on a competitive basis with some of the foreign companies which have come into Canada on a life insurance basis, and which have control of fire and casualty insurance companies? For instance, the Dutch interest moved into Canada a few years ago, and bought the Commercial Life and a group of Halifax fire and casualty companies.

Mr. HUMPHRYS: It would enable them to own fire and casualty subsidiaries in Canada, and to that extent operate in the same fashion as some British and European companies.

Mr. LAMBERT: You do not see any conflict of interest, do you, in the life insurance companies being involved in a mortgage, and the fire insurance covering the property being put on by a subsidiary of the mortgagee?

Mr. HUMPHRYS: No; I do not see any serious degree of conflict of interest. I think it would be a community of interest in seeing that the property is protected, and if they can get the insurance as well it probably flows with the same interest in the investment.

Mr. LAMBERT: Is there not a provision in your legislation to the effect that it cannot be made a condition of the granting of the mortgage that insurance be taken out in a specified company?

Mr. HUMPHRYS: No; there is nothing in our legislation dealing with this point.

Mr. LAMBERT: I know there is in some provincial legislation; that is, in order to obtain a loan it not be a condition of the granting of the loan that insurance shall be placed with a specified insurance company, or if there is existing insurance that it be transferred to that particular company. I do not know whether or not there is jurisdiction in the federal field, but I do know in my own home province of Alberta this exists. It is an offence. I think it is a very salutary provision.

Mr. HUMPHRYS: We have had many complaints on this point, but I felt there is nothing in our law which enables us to do anything about it, and personally I would doubt the jurisdiction.

Mr. LAMBERT: I wonder whether your officers would look into the matter of whether or not you have the jurisdiction, and the matter of whether it might be a point to consider?

Mr. HUMPHRYS: We have looked into it when we have received complaints.

Mr. LAMBERT: Now that you are allowing life insurance companies to move much further into the direct interest field of property through the leaseback and these other provisions, it might be a serious temptation. However, to the present they have not had a direct interest in a fire insurance company?

Mr. HUMPHRYS: Very rarely.

Mr. LAMBERT: Well, they really could not have; but now they will be entitled to have a subsidiary fire insurance company and therefore I think the temptation would be rather great.

Mr. HUMHPRYS: I will undertake to raise this matter with our legal advisers.

Mr. GELBER: Mr. Chairman, the other day I raised this point on the question of Canadian life companies buying an interest in other Canadian life companies. We discussed that under certain conditions and said that investment could be made. I do not know why there is the discrimination as set out in (*b*). What is the reason for it?

Mr. HUMPHRYS: In (*b*)?

Mr. GELBER: Yes.

Mr. HUMPHRYS: Could you clarify the particular discrimination you have in mind?

Mr. GELBER: Companies can buy any corporation incorporated under the laws of Canada to undertake contracts of insurance, other than contracts of life insurance. Why is this restriction put in?

Mr. HUMPHRYS: It is not intended, under these provisions, to enable life insurance companies to own subsidiary life insurance companies in the same field to compete with themselves. There is a subsequent amendment proposed to enable life insurance companies to buy the shares of other life insurance companies leading to merger or amalgamation, but there seems to be no need to enable a life insurance company to operate a subsidiary in competition with itself; there is no public interest to be served by it. It only confuses the problem of determining the financial state of the companies taken together.

Mr. GELBER: I am very much concerned about whether there is a real problem. I realize that you are not concerned with the matter of policy. We are very much concerned in another area with the question of foreign ownership and the fact that many life insurance companies have been purchased by companies in the United States which are not subject to the same restrictions our companies are. We have been inviting foreign companies to buy control of our smaller companies, while our life insurance companies have been restricted. There is a certain scope which has been extended here and there is an opportunity for a life insurance company, under certain conditions, to buy a subsidiary. I realize you are not concerned with the matter of policy. However, is the real problem for us that we do not want life insurance companies to be competing with themselves? I wonder whether there is a more compelling reason here, and whether it stems from a fear of monopoly that is many years old. I am wondering whether this is just the past reflected here in this restriction, and I wonder whether there is a more compelling reason for this restriction. I do not want to discuss the matter of policy, but I would like to know whether or not there is any reason within your department?

Mr. HUMPHRYS: I could make comments which I think are relevant to the general questions you have raised. In this act there are proposals that will prevent non-residents gaining control of Canadian life insurance companies in the future. So, the problem we have faced of companies being sold to foreign interests will be controlled by this legislation.

Secondly, where foreign companies have bought existing Canadian life insurance companies, they have discontinued operating in Canada in their own name except on a re-insurance basis, so they do not operate in their own name in competition with their subsidiary in the Canadian field.

Thirdly, there are not a great many Canadian life insurance companies. It is a long and difficult process to build up a new company. If the way was open for Canadian companies, one to buy the other, the large companies no doubt long since would have bought up the small ones and we would have fewer and fewer and larger and larger companies. I think, perhaps this would lead to the formation of more new companies. Because it is such a long and difficult process to form and establish a life insurance company, I do not think it would be in the best interests of policyholders to have a large number of new small companies in place of the companies we have now.

These amendments, nevertheless, will open the way to a broadening of the power now existing in the act to merge and amalgamate. For many years companies have had the power to merge and amalgamate one with the other within the existing legislation, but have not had the power to purchase shares for that purpose. The amendment that will be described later enables them to purchase shares; it rounds out the power to amalgamate one with the other. To the extent that what you might call a rationalization of the industry is in the public interest, it can be accomplished in existing legislation together with the amendments.

Mr. GELBER: Are you saying that this restriction is no longer important because of other aspects of this bill?

Mr. HUMPHRYS: I would not wish to imply that. I meant to point out that the general policy of not having a Canadian life insurance company own a subsidiary and competing with itself in the same field is consistent with the pattern that has been evidenced in cases where a non-resident company has bought a Canadian subsidiary. They do not continue to operate in the same field. Further, it has the effect that the Canadian company still is in existence rather than having disappeared by amalgamation.

Mr. GELBER: Your chief concern now is that the same company should not be operating under two different names, but if they are prepared to amalgamate that is satisfactory?

Mr. HUMPHRYS: I can see no purpose to be served by merely enabling one life insurance company to buy another and operate it as a subsidiary. I can see that there may be cases where the two companies would wish to amalgamate and, in the past, that has been used only where one company is in the financial position such that it should be taken over by another; but it has not been used merely to let big companies grow bigger. This power to amalgamate always has been subject to government approval.

Mr. KINDT: But you remove the obstacle to their growing bigger.

Mr. HUMPHRYS: The amendments here will round out the power they now have to merge and amalgamate, but it still is subject to government approval. So, if the government approves a proposal it would enable the companies to grow bigger by absorbing smaller companies.

Mr. KINDT: Will this in any way permit the big fish to eat up the small ones?

Mr. HUMPHRYS: Yes, if the governments permit it; but the power to buy shares in a life insurance company, except where it is a foreign company, is subject to government approval.

Mr. LAMBERT: And always has been so.

Mr. KLEIN: You stated that you were going to deal later on with the question of foreign purchases of local life insurance companies.

Mr. HUMPHRYS: No. I said this already had been dealt with in the provisions that were discussed last week, being limitations on non-resident ownership of shares of Canadian life insurance companies.

Mr. KLEIN: Could someone indirectly do what the act is trying to prevent them doing directly; that is, could the local life insurance company purchase as a subsidiary a life insurance company existing outside Canada, which subsidiary life insurance company in turn could purchase another life insurance company in Canada?

Mr. HUMPHRYS: No. A life insurance company incorporated outside Canada is treated as a non-resident for the purpose of these restrictions regardless of who owns it.

Mr. KLEIN: I am not asking that.

Mr. HUMPHRYS: Therefore, in answer to your question, the foreign incorporated subsidiary could not buy control of a Canadian life insurance company because these provisions that we discussed earlier limit the proportion of shares of a life insurance company that can be purchased by a non-resident.

Mr. KLEIN: But the owners of the subsidiary company then would be Canadian?

Mr. HUMPHRYS: Yes, but under the definitions, if a company is incorporated outside Canada it is defined as a non-resident and the restrictions applied to it.

Clause stands.

On clause 7:

Mr. HUMPHRYS: Clause 7 deals with a minor point.

Mr. MCCUTCHEON: May I interrupt? Who requested the provision to take over fire and casualty companies; was it the life officers?

Mr. HUMPHRYS: They asked that they be empowered to own subsidiaries in this field.

Mr. MCCUTCHEON: The life officers?

Mr. HUMPHRYS: Yes. Under the existing legislation a life insurance company has the power to go into other classes of insurance subject to treasury board approval. They never have used that power to get into the general insurance business, except in one case. If they were to get into the general insurance business, it would be better that they do so by way of a subsidiary company than by way of a separate fund within the company, because the interest of the life insurance policyholders would be better protected if the general insurance business were done in a separate company.

Mr. MCCUTCHEON: But this did originate with the life officers?

Mr. HUMPHRYS: Yes. Clause 7 proposes a new paragraph to deal with a minor technical point. In moving their employees from one part of the country to another, companies often have wished to be able to purchase the residence of the employee who is being moved, or buy a home for him temporarily in his new location. Because of the rather strict provisions dealing with the power of a company to own real estate, this has not been within their power. This provision will enable them to buy the real estate property and carry it as an asset for a temporary period. It is a small point, but a troublesome one technically.

Clause stands.

On clause 8:

Mr. HUMPHRYS: Clause 8 amends the provisions dealing with the valuation of assets for purposes of financial statements of companies. At present companies are required to carry assets in their financial statement on two bases. If assets are bonds of the government of Canada or of a province of Canada, of the government of the United States or the United Kingdom, they must carry the securities at values that do not exceed in total the amortized values. These are values computed on a formula basis running from the purchase price to the maturity value. All other assets must be shown at values that in total do not exceed the market values.

This proposal would enable the companies to carry these latter assets at book values, less a deduction, the deduction being a proportion of the difference between the book value and the market value. The proportion is so determined that in the case of a drop in market values they would have a period of three years in which they could bring their asset values down to the market. This will enable companies to absorb the impact of a decline in market values over a period of three years rather than absorb it all at once.

Mr. LAMBERT: This would be a sort of cushioning of a 1929 situation?

Mr. HUMPHRYS: That is correct. It has been suggested that one of the impediments to larger investment in common shares has been the fear of temporary fluctuations in the market value leading to a severe impact on the company's financial statement. The financial statements are published every year in the report of the department of insurance.

This provision would enable them to smooth over fluctuations in the market values, but still would require them to come down to market over a period of three years if the decline is more than a temporary decline.

Mr. LAMBERT: In other words, this allows you to hide a temporary recession?

Mr. HUMPHRYS: Yes. Perhaps I should not use the word "hide", but it enables companies to present their balance sheets without having to reflect the full impact of a temporary recession. The published statements, however, in the reports of the department always reveal the actual market values as well as the values at which the securities are being carried in the balance sheet, so the information is public.

Mr. LAMBERT: The information actually would be available?

Mr. HUMPHRYS: Yes, in the published report of the department.

Clause stands.

Mr. KINDT: Mr. Chairman, since the time now is 12 o'clock and since we have been in session for approximately two hours I wonder if we could adjourn. Also, it is questionable whether or not we have a quorum.

The CHAIRMAN: We do have a quorum.

Mr. KINDT: Well, if some of the rest of us leave we may not. I was just wondering if we should not adjourn at this time.

The CHAIRMAN: Could I appeal to you to sit until 12.15? I had hoped to sit until 12.30.

Mr. LAMBERT: Mr. Chairman, I am now a half hour late for another meeting.

The CHAIRMAN: Well, if you have to go that will be all right.

Mr. HUMPHRYS: Page 17 would complete the Canadian companies. Then we would have the British and foreign companies left.

The CHAIRMAN: I realize that. Mr. Humphrys has made a suggestion that he explain until the end of page 17 because that completes the Canadian companies. At that stage you could withhold any questions until our next meeting. However, I am in your hands.

Mr. KLEIN: When do we meet again?

The CHAIRMAN: On Tuesday, unless the committee wants to meet tomorrow morning.

Mr. KLEIN: What about this afternoon?

Mr. RYNARD: We have other committee meetings.

The CHAIRMAN: I appreciate that that is one of the problems with which we are faced.

Mr. KLEIN: Then, what about this evening?

The CHAIRMAN: We decided we would not sit while the house was sitting unless it was the wish of the members of this committee. However, it is up to the members to decide whether or not they wish to sit while the house is sitting either this afternoon or this evening.

Mr. LAMBERT: Mr. Chairman, I am willing to stay for another 15 minutes.

The CHAIRMAN: Then we will finish up to page 17.

On clause 9—*Segregation of assets.*

Mr. HUMPHRYS: Clause 9 covers a technical point. Companies now may set up a separate fund and segregate assets in those funds as security for so-called variable contracts. These are contracts where the liabilities of the company are limited to the market value of the assets in the fund. Some companies start these funds by transferring a nest egg from other funds. As the law stands now they may not withdraw that nest egg until the fund is wound up. This allows them to withdraw it subject to the concurrence of the superintendent.

Clause stands.

On clause 10—*Rate of interest.*

Mr. HUMPHRYS: Clause 10 enables the superintendent to authorize the use of a rate of interest higher than the maximum now specified in the act for the calculation of the actuarial reserves of certain classes of policies, where a company applies for that approval and it justifies the appropriateness of a higher rate. Companies must now calculate their actuarial liabilities using an interest rate of 3½ per cent for insurance and 4 per cent for annuities. This enables the superintendent to authorize use of a higher rate in certain specific cases.

Mr. LAMBERT: Under what circumstances?

Mr. HUMPHRYS: One illustration would be that of group annuities. I think that would be the main place where it would be used. That is, in respect of group annuities where companies are offering interest guarantees in excess of 4 per cent; they may be 4½ per cent or higher. But, if they issue a policy with these guarantees the law requires them to set up reserves on a 4 per cent basis, which means they have to find some money from their surplus or elsewhere in order to set up that reserve. That puts them under considerable financial strain, whereas in the light of their interest earnings at the time these contracts are made it may be quite appropriate to authorize the use of a higher rate of interest.

Mr. KLEIN: The annuity may not be payable for years to come and permission would be granted on the basis of the earning current rather than when the annuity would come into force.

Mr. HUMPHRYS: That is correct.

Mr. KLEIN: I do not see any issue in that method.

Mr. HUMPHRYS: Under this the superintendent would have the power to withdraw the approval; if interest rates fell it might be necessary to revise the valuation basis. But, generally, companies continue to use the same valuation basis that they used to start with. However, if there is a substantial decline in interest rates, as was the case throughout the war years, they may reduce their whole interest basis.

Clause stands.

On clause 11—*No power to form other companies.*

Mr. HUMPHRYS: This is a consequential change. At present companies are prevented from engaging in the promotion of a new company; because of the granting of power to form subsidiaries in certain circumstances there is an exception proposed here.

Clause stands.

On clause 12—*Acquisition of business of other companies by purchase of shares.*

Mr. HUMPHRYS: Clause 12 deals with the power of a life insurance company to purchase the shares of another company for the purpose of amalgamating the one company with the other. While this provision is very long it is practically identical with corresponding provisions which are now in the Loan Companies Act and the Trust Companies Act. It requires treasury board approval and requires the purchasing company to buy at least 67 per cent of the shares; it requires the two companies to merge or amalgamate within a period of two years after the purchase, or such further period as the treasury board may prescribe.

Mr. MOREAU: This can only be done with the consent of the treasury board?

Mr. HUMPHRYS: Yes.

Clause stands.

The CHAIRMAN: Now, this concludes the part applying to Canadian companies and we are ready to start clause 13, which applies to British companies.

Mr. HUMPHRYS: Yes, clauses 13 through to 17 enacts amendments applicable to British companies that are, with one small exception, parallel to those we have discussed.

The CHAIRMAN: If I could go to another piece of business at this time I would like a motion for printing. The reason we did not put a blank motion is that we felt that with the Bank Act provisions coming up we may want to print more copies of our proceedings. So, we have been asking for permission in respect of each separate bill, and we overlooked this one. In the past the number of copies has been 750 in English and 300 in French. Could I have a motion to this effect?

Mr. MOREAU: I so move.

Mr. LAMBERT: I second the motion.

Motion agreed to.

The CHAIRMAN: When the steering committee met we were authorized to send out invitations to certain groups. We have Mr. Robinette coming next Tuesday. Although he has made his plans accordingly, we have not gone through this bill. But, with your concurrence I will let the invitation stand. Mr. Robinette said his presentation would not take more than half an hour and that, of course, would be in addition to questions put by members of the committee. But, you know what lawyers are. As I said, Mr. Robinette will be here at 10 o'clock next Tuesday morning.

Mr. LAMBERT: On behalf of whom is he appearing?

The CHAIRMAN: The World Mortgage Corporation. Is it agreed that we allow the invitation to stand as set out?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: This is the only corporation which is making an independent presentation.

The committee will adjourn until 10 o'clock next Tuesday morning. So far as I know, the committee will meet in this room.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

TUESDAY, NOVEMBER 10, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

WITNESS:

Mr. Richard Humphrys, Superintendent of Insurance.

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

21530—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken
Armstrong
Asselin (*Notre-Dame-de-Grâce*)
Basford
Bell
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
*Habel
Hales
Jewett (*Miss*)
Jones (*Mrs.*)
Kindt
Klein
Lambert
Leblanc
Lloyd
Macaluso
Mackasey
McCutcheon
McLean (*Charlotte*)
Monteith
More
Moreau
Munro
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

*Replaced Mr. Addison on November 9.

ORDERS OF REFERENCE

THURSDAY, November 5, 1964.

Ordered,—That the name of Mr. Addison be substituted for that of Mr. Berger on the Standing Committee on Banking and Commerce.

MONDAY, November 9, 1964.

Ordered,—That the name of Mr. Habel be substituted for that of Mr. Addison on the Standing Committee on Banking and Commerce.

LÉON-J. RAYMOND,
The Clerk of the House.

21530—1½

MINUTES OF PROCEEDINGS

TUESDAY, November 10, 1964.
(12)

The Standing Committee on Banking and Commerce met at 10.00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Armstrong, Chrétien, Gelber, Gray, Habel, Klein, Lambert, Lloyd, Moreau, Pascoe, Pennell, Rynard, Tardif and Thomas. (15)

In attendance: Mr. Richard Humphrys Superintendent of Insurance; Mr. William Fox, Executive Officer, and Mr. H. A. Urquhart, Loan and Trust Companies Branch, Department of Insurance.

The Chairman stated that he had been advised late yesterday afternoon by Mr. John Robinette, who was to have made representations today on behalf of World Mortgage Corporation, that he was unable to appear today. Mr. Robinette had asked the Chairman to extend his apologies to the Committee. It was agreed to proceed with clause by clause consideration of the Bill.

The Chairman reminded the Committee that the Trust Companies Association of Canada is scheduled to present a brief at 10.00 a.m. on Thursday, November 12; however, because the House will not sit on Wednesday, November 11, party caucuses will be held on Thursday, November 12. The Committee agreed to sit from 10.00 to 11.00 a.m. on Thursday and re-convene in the afternoon, if necessary.

The Committee resumed consideration of Bill C-123, an Act to amend certain Acts administered in the Department of Insurance.

Mr. Humphrys explained the purpose of Clause 13 and the proposed amendments thereto, and the Clause was permitted to stand.

Mr. Humphrys explained the purpose of Clauses 14 to 18, inclusive, was questioned, and the Clauses were allowed to stand.

The Committee then proceeded to consideration of Part II of the Bill, being amendments to the *Foreign Insurance Companies Act.* The witness explained that the amendments in Part II are parallel to those in Part I which deals with the *Canadian and British Insurance Companies Act.* After questioning, Part II (Clauses 19 to 25, inclusive) was allowed to stand.

The Chairman called Part III of the Bill, dealing with amendments to the *Trust Companies Act.* Mr. Humphrys explained the purpose of Clauses 26 to 33, inclusive, and the proposed amendment to Clause 29. After questioning, the Clauses were allowed to stand.

The Committee proceeded to consideration of Part IV of the Bill, dealing with amendments to the *Loan Companies Act.* The witness explained the purpose of Clauses 34 to 41 inclusive as well as the proposed amendment to Clause 37 and new Clause 41. The Clauses were allowed to stand.

At 12.05 p.m. the Committee adjourned until 10.00 a.m. on Thursday, November 12, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

TUESDAY, November 10, 1964.

The CHAIRMAN: I see a quorum, gentlemen. The committee will come to order.

Earlier we received a wire from Mr. Robinette to the effect that he would be in attendance today to make a submission on behalf of the World Mortgage Corporation regarding the loan companies' section of the bill. However, a telephone call was received late yesterday afternoon advising me that he was unable to be present today because he is engaged in a case before the Supreme Court of Canada which has not concluded. Apparently the court had a recess which put him in a difficult position. Mr. Robinette tenders his apology to the committee and has asked that we carry on without him.

As a consequence I propose to ask Mr. Humphrys to continue explaining the bill to the committee and then I would hope we would go ahead to the section on the trust companies because the trust companies group will be in attendance here on Thursday. This raises a problem I had overlooked. I understand the government will be holding a caucus at 11 o'clock on Thursday morning. I do not know about the other parties. I would hope we would meet at 10 o'clock and carry on in the regular way. If some members of the committee have to leave, they will have to leave, and if the submissions are not completed in the morning, I would hope we might sit in the afternoon after orders of the day in order to permit the witnesses who are coming from Toronto to continue their submissions. Is this agreeable?

Agreed.

Mr. MOREAU: Perhaps we might meet at 10 o'clock and adjourn at 11 o'clock in view of the fact that we will be coming back later in the day.

The CHAIRMAN: We will deal with that on Thursday morning.

Gentlemen, I think we were on page 17 and had just completed that. We will go to the top of page 18.

On Clause 13—*Municipal, etc., securities.*

On Clause 14—*Real estate mortgages.*

On Clause 15—*Securities received on reorganization, liquidation or amalgamation.*

On Clause 16—*Other assets.*

On Clause 17—*Limitation on common shares.*

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Mr. Chairman and members of the committee, clauses 13 through to 17 apply to British companies. They specify the classes of assets British companies may deposit with trustees in Canada. The act requires these companies to keep assets in Canada, either on deposit with the minister or in the hands of corporate trustees, at all times at least equal to their liabilities in Canada. In the past the principle has been to specify those classes of assets in the same terms, so far as possible, as are used to define the classes of assets in which Canadian companies may invest. So, the amendments in these clauses are parallel to the amendments we have discussed in earlier meetings relating to Canadian companies.

Subclause (1) deals with securities issued by Fabriques; the next deals with bonds secured by provincial subsidy—that is, hospital bonds; the next relates to corporate bonds secured by real estate or leaseholds. Then there is an amendment dealing with debentures and preferred shares. This amendment will qualify debentures if the common shares or preferred shares are eligible investments.

On page 19, subclause (6), there is one provision which is slightly different from that in the Canadian section. British companies may deposit only Canadian securities to cover their Canadian liabilities. They are authorized to deposit debentures guaranteed by a Canadian corporation that meets certain dividend or earnings tests. This amendment, subclause (6), would enable them to deposit debentures of a Canadian corporation that are guaranteed by a foreign corporation if the foreign corporation meets these dividend or earnings tests.

Subclause (7) deals with guaranteed investment certificates, preferred shares and common shares. The changes are parallel to those discussed for Canadian companies.

At the foot of page 20 there is a provision dealing with mortgages. It increases the mortgage limit from two thirds to three quarters of the value of the real estate.

On page 21, subclause (8) deals with investments in real estate and the changes are the same as for Canadian companies.

Clause 14 on page 22 deals with lending on real estate mortgages and increases the limit from two thirds to three quarters of the value of the real estate. Again this is the same as with Canadian companies.

Clause 15 deals with securities received on reorganization, liquidation or amalgamation of a company; that is, the company that issued the securities. This permits a British company to hold these securities on deposit without time limit. It is the same change as for Canadian companies.

Clause 16 deals with the basket provision.

Clause 17 deals with the limitation on common shares, increasing it from 15 per cent to 25 per cent. It also modifies the limit on real estate in the manner I discussed earlier; that is, it pulls out from under that 10 per cent limit the leaseback real estate.

Mr. LAMBERT: As a general word of explanation, I take it that British companies in essence are treated as though they were Canadian companies; they have no greater latitude than Canadian companies in respect of reserves in Canada. The reserves they carry must be in Canada and not abroad.

Mr. HUMPHRYS: That is correct. They are now required by statute to maintain assets in Canada, either under the control of the Minister of Finance, or vested in trust with corporate trustees in an amount at all times at least equal to their liabilities in Canada.

As I have said, the statutes are designed in so far as possible to apply the same requirements in respect of reserves and other liabilities as are applied to Canadian companies.

Clauses 13 to 17 inclusive, stand.

On Clause 18—*Securities of Jamaica, and Trinidad and Tobago.*

Mr. HUMPHRYS: Clause 18, subclause (1) applies to Canadian companies and enables them to invest in bonds and debentures issued by the governments of Jamaica or Trinidad and Tobago. Subclause (2) of that clause gives the same authority to British companies to invest in bonds issued by those governments.

Mr. LAMBERT: This is an extension of the class of government securities in which Canadian and British insurance companies may invest in order to qualify under the act.

Mr. HUMPHRYS: That is correct.

Mr. AIKEN: Does this provision apply already to most other commonwealth countries, or is it a special provision?

Mr. HUMPHRYS: The act now lists a number of commonwealth countries by name. This provision would add Jamaica, Trinidad and Tobago to those countriees. Formerly, before these countries became independent, they did qualify under the general provision which enabled investment to be made in the bonds of a government of a colony of the United Kingdom, but when they became independent they slipped out from this.

Mr. LAMBERT: Was there an appreciable volume of investment in these securities?

Mr. HUMPHRYS: I would not say there is a large volume. Companies have been able to buy them through the basket provision if they so desired.

Clause stands.

Mr. HUMPHRYS: Part II, starting on page 24, applies to foreign companies and the amendments in that part in every way are parallel to those I have just discussed for British companies.

The CHAIRMAN: This takes us over to page 31 at the end of Part II.

On Clause 19.

On Clause 20—*Real estate mortgages.*

On Clause 21—*Securities received on reorganization, liquidation or amalgamation.*

On Clause 22—*Other assets.*

On Clause 23—*Limitation on common shares.*

On Clause 24—*Rate of interest.*

On Clause 25—*Securities of Jamaica, and Trinidad and Tobago.*

Mr. HUMPHRYS: I wish to make the comment that one of the amendments tabled at the beginning of the proceedings would apply to the beginning of Part II. This was omitted by oversight of the department. The amendment asked for is the insertion of a clause there which would be exactly parallel to the clause 9 appearing on page 15. It deals with the power of a company to set up a separate fund with separate assets to stand behind the so-called variable contracts where the liabilities vary with the market value of the assets in the fund. The amendment in the Canadian part would enable a company to withdraw a nest egg it had put in the fund to start the fund. It applies by cross reference to British companies. In other respects the amendments in Part II are the same as for British companies.

Mr. LAMBERT: Could you tell us what percentage of Canadian insurance business this category of foreign insurance companies writes, or what portion of the market do these companies share? We have the three categories, the Canadian companies, the British companies, and the foreign companies.

Mr. HUMPHRYS: I have that information, Mr. Lambert.

Mr. LAMBERT: As a second question, has their business been increasing; is it increasing and is it likely to increase?

Mr. HUMPHRYS: The amount of insurance in force at the end of 1963 for all companies registered with the department was $57 billion in life insurance. Of that, $39 billion was in the hands of Canadian companies, $2 billion in the hands of British companies and $15 billion in foreign companies. The foreign companies mostly are United States companies.

Mr. LAMBERT: Has the proportion of the business which they do been increasing on a steady pattern?

Mr. HUMPHRYS: No; there has not been any great change in the distribution of the business in those three categories.

Mr. GELBER: Is any proportion of that $39 billion in the Canadian companiese controlled abroad?

Mr. HUMPHRYS: Yes. About $2 billion or around 5 per cent of the total is in the hands of Canadian companies that are not under Canadian control.

Mr. LAMBERT: Does that fall in the $39 billion?

Mr. HUMPHRYS: Yes. If you want to determine the amount in companies under Canadian control, you would have to deduct that from the $39 billion. It would be something in the order of two thirds of the total business.

Mr. THOMAS: Are these foreign companies compelled to keep assets in Canada in the same ratio as the British companies?

Mr. HUMPHRYS: Yes. The requirements applying to them are exactly the same as those which apply to British companies.

Mr. AIKEN: Mr. Thomas asked the very question I wanted to ask you, but perhaps I might be a little more specific. The provisions for investment by a Canadian company, a British company or a foreign company roughly are the same; that is, the proportion of the assets.

Mr. HUMPHRYS: Yes. The main distinction is that in respect of British and foreign companies they must deposit Canadian securities to cover their Canadian liabilities, whereas Canadian companies are not limited to investment in Canadian securities since they do have a considerable business abroad; but they also are required to keep assets in Canada sufficient to cover the Canadian liabilities.

Mr. GELBER: Could Mr. Humphrys give us the information concerning the amount of insurance in force abroad which has been written by Canadian companies?

Mr. HUMPHRYS: I think I have that information, but I will have to look it up.

Mr. MOREAU: Could you also break down the investment by Canadian companies in foreign countries into, shall we say, United States and other investment in insurance in force? I think it would be largely United States, but I am wondering how large it would be.

Mr. HUMPHRYS: We could analyse it by currency. The returns filed with us show the business in Canada and the business outside of Canada, but it is not classified by country; it is classified by currency. We could prepare a summary showing the total business in United States dollars, for example, which principally would be business in the United States, but it could be business in other countries in terms of United States dollars. We could prepare that tabulation for you.

Mr. MOREAU: Provided it is not too much work, I would appreciate having it.

Mr. HUMPHRYS: It would not be a difficult figure to obtain.

Mr. LLOYD: Might I ask for a very brief explanation why we must continue to distinguish between British companies and foreign companies?

Mr. HUMPHRYS: It arose from constitutional arguments in the past. This particular division between British companies and foreign companies was adopted when the insurance acts were amended or re-enacted in 1932 after the privy council decision in 1931 which held that certain provisions of the previous acts were ultra vires.

The new insurance acts were adopted in 1932 and a separate act was enacted for foreign companies in order to have it apply to aliens, whereas

the British companies were not considered by the law officers at that time to be in that class.

Mr. LLOYD: For all practical purposes, in respect of British companies and foreign companies controlled under this act, the control is the same?

Mr. HUMPHRYS: Exactly.

The CHAIRMAN: Are there any further questions on Part II of the Foreign Insurance Companies Act?

Mr. HUMPHRYS: To round out the information I gave about the distribution of business, I have some percentage figures here. Of the total insurance in force in Canada at the end of 1963, 65 per cent was transacted by Canadian companies, 5 per cent of which are under foreign control. So, there is 60 per cent for Canadian companies under Canadian control and 5 per cent for Canadian companies under foreign control; 29 per cent in respect of non-resident companies, which includes British and foreign, and a little over 4 per cent by provincial companies.

Mr. THOMAS: Does this act have any control over so-called provincial companies which Mr. Humphrys mentioned?

Mr. HUMPHRYS: There are a few provincial companies registered under this act. They were registered under the act many years ago, and registration has been continued. There is a provision in the statute enabling provincial companies to be registered under it, but no company has become registered under that provision for a great many years. I think there are four provincial companies now registered under the act, but they do so voluntarily. Therefore, amendments to this act having to do with corporate powers, for example, would not affect provincial companies, but amendments relating to investments would affect provincial companies so long as they continued to be registered under the act. Registration is voluntary.

Mr. LLOYD: Have you a record of insurance companies in Canada incorporated and operating under provincial statutes?

Mr. HUMPHRYS: I have a list of provincial companies.

Mr. LLOYD: I would appreciate having the statistics, but I do not need the names.

Mr. HUMPHRYS: They do a little over 5 per cent of the business in force in Canada. Among my papers I think I have a list of the companies. Perhaps it would be best that I look it up and give you the information at the next meeting.

Mr. LLOYD: I am advised that this information is in a report and I do not need to take your time. I will go to the library. I am told I have it in my own library, so I am humble and will direct my research in another direction.

The CHAIRMAN: Mr. Humphrys is going to give the four companies which are under provincial charter.

Mr. HUMPHRYS: There is the Continental Life, the Excelsior Life, the Maritime Life, and the Life Insurance Company of Alberta.

Mr. THOMAS: Is it possible for a foreign controlled company or a foreign company to come into Canada, register under a provincial jurisdiction and carry on business.

Mr. HUMPHRYS: The Foreign Insurance Companies Act prohibits it.

Mr. MOREAU: They could come in and incorporate a Canadian company under a provincial charter?

Mr. HUMPHRYS: Yes, they could do that. If the provincial authorities accept them, there is nothing in this which will prevent it.

The CHAIRMAN: Shall we move on to Part III on page 31?

Agreed.

The CHAIRMAN: While it is in my mind I would like to remind you that the Trust Companies Association of Canada will be here next Thursday and has a brief which has been distributed. If any member did not receive a copy, I will be glad to see that he gets one at the close of this meeting, or you might like to have it now.

Mr. HUMPHRYS: Mr. Chairman, Mr. Lloyd asked for information about provincial companies and I now have the information. At the end of 1963, our records show 18 provincially incorporated companies.

Mr. LLOYD: Does it show in what provinces their head offices are located?

Mr. HUMPHRYS: I am sorry—29 provincial companies of which four are registered with the department. It shows one in New Brunswick, 16 in Quebec, four in Ontario, one in Saskatchewan, one in Alberta and two in British Columbia, making a total of 25 which are not registered with the department and four more which are registered with our department. One is incorporated in Nova Scotia, two in Ontario and one in Alberta. Those are the figures as of the end of 1963. There may have been some changes since as some new insurance companies, I think, have been incorporated. At least one of the companies subsequently has reincorporated as a federal company.

Mr. THOMAS: In that connection has any action been taken to bring the provisions of this act into line with the provisions of the various provincial acts covering insurance corporations?

Mr. HUMPHRYS: I would not say that any special study had been given to that particular problem. In actual practice the statutes are not far apart. The provincial superintendents meet regularly in an attempt to achieve a uniformity in the insurance statutes of the several provinces. Representatives of the federal department usually attend those conferences so that we are aware of what the provinces are doing and the provincial superintendents are aware of what we are doing. The requirements are not far apart in actual practice.

Mr. MOREAU: What you are saying is that the federal statute more or less is a pace setter and the provincial authorities try to emulate the direction—at least in the past—that the federal department of insurance has taken?

Mr. HUMPHRYS: I think that has been part of the pattern, principally because a preponderance of the insurance business done in Canada has been done by companies registered with the federal insurance department, and thus subject to federal law.

Mr. LAMBERT: The other day I inquired whether there was any provision in the Insurance Act or in any of the acts under your jurisdiction which prohibited it being made a condition of investment in a mortgage that insurance be cancelled or that it be placed with a particular company. At that time I seemed to have taken you a little by surprise. Do you have the information at this time?

Mr. HUMPHRYS: We have raised the question with the Department of Justice, but as yet do not have a reply.

Mr. LAMBERT: I should point out that I think this is a salutary provision which exists in the province of Alberta, because I know I have been involved in cases in which there were prosecutions. I think it is a very salutary provision. This might be a point in which the Alberta act leads the federal act.

Mr. HUMPHRYS: In my reply to the query, I did not wish to cast any doubt on the appropriateness of the provincial acts in their own circumstances.

The CHAIRMAN: I will have another go at Part III. I am not being impatient, believe me, because the questions have been very pertinent. However, if there are no further questions on Part II, we will go on to Part III.

Part II clauses stand.

On Clause 26—*Corporate name in French or English form.*

Mr. HUMPHRYS: Part III proposes to enact amendments to the Trust Companies Act. The first clause would grant the governor in council a power to provide a company with a French or English version of its corporate name. This is the same provision as is included for insurance companies.

Mr. AIKEN: I suppose the actual supervision of this section will be carried out by the superintendent of insurance?

Mr. HUMPHRYS: We would administer it or take the same part in it as we do now where a company comes to parliament to seek an amendment to its act of incorporation to get a French or English version of its name. The practice is to come to the department with the suggested name. Then we usually have a search made by the office of the Secretary of State to see whether the name would conflict with the name of any other company. If the name is similar to that of another company, we suggest that the proposers contact that company to see whether there is any objection, so that by the time the matter comes to parliament for consideration any objections have been raised. We propose to follow the same pattern in this context. The notice required is similar to the notice required for a private bill.

Mr. AIKEN: I also would like to have information in this regard concerning a change of name; that is, the change of a French or English name beyond what currently is used. Is there any authority in this section to permit this?

Mr. HUMPHRYS: No; there is not any authority to change the basic corporate name of the company. The governor in council here is limited to granting a French version of an English name or an English version of a French name. If the company wish to have a change in its name, it would have to have its act amended.

Mr. AIKEN: This would not apply to any company which already has applied, I presume, to get both an English and a French name by special statute?

Mr. HUMPHRYS: No.

Mr. AIKEN: On several occasions in the past we have had changes in the French version where someone felt it was not a proper translation of the name. After an order in council has been made would there be authority to make a further change under this section?

Mr. HUMPHRYS: I think that if the governor in council had power to grant, say, a French version of an English name, it would have the power to change that version by changing its own order in council. I do not think it would have power to change a name that was granted by parliament.

The CHAIRMAN: Carry on.

Clause stands.

On Clause 27—*Qualification of directors.*

Mr. HUMPHRYS: The next clause deals with the qualification of directors of a trust company. At present, in order to qualify as a director, a shareholder must hold shares of a par value of at least $2,500. The change would require the holding of shares of which at least $500 has been paid as capital or credited as capital. The present requirement of shares having a par value of $2,500 is quite a severe requirement and may sometimes require the investor of $18,000 or $20,000 to get enough shares to qualify.

The reduced requirement substantially would reduce the investment necessary, but still would require some considerable degree of share ownership to qualify. The $500 requirement is the same as the requirement that is now in the Ontario act for trust companies.

Clause stands.

On Clause 28—*Shares.*

Mr. HUMPHRYS: The next clause would enable trust companies to subdivide the par value of their shares below the present minimum of $10 down to a minimum of $1.

Clause stands.

On Clause 29—*Definitions.*

Mr. HUMPHRYS: This clause in every respect is parallel to the clause which we discussed applying to insurance companies. This limits the non-resident ownership of shares of trust companies.

Mr. LAMBERT: What is the proportion of business done by trust companies in Canada as between companies registered under the Trust Companies Act with the government of Canada and those which are registered by provincial charter, and so on?

Mr. HUMPHRYS: The total assets of dominion trust companies at the end of 1963 amounted to $427 million exclusive of estates, trusts and agency funds. For provincial companies, the corresponding figure was $851 million. So in the trust field, provincial companies have about twice as much business as the federally incorporated companies.

Mr. LLOYD: Is this breakdown shown in the reports which we have available to us?

Mr. HUMPHRYS: In the reports published by the department of insurance, there is shown the business of provincial companies as compared with the business of federal companies.

The CHAIRMAN: Are there any further questions on clause 29?

Mr. HUMPHRYS: There are no federal trust companies now owned outside of Canada.

Clause stands.

On Clause 30—*Contents of report.*

Mr. HUMPHRYS: The next clause on page 38, No. 30, effects some changes in the terms of auditors reports in connection with statements of companies. At present auditors are required to state in their report whether in their opinion the statements are properly drawn up so as to establish a true and correct view of the state of the company's affairs. The change would require them to form an opinion of whether the statement exhibits a true and correct view of the state of the company's affairs, and of the result of the operations during the year, and not merely whether it is properly drawn up to do so. It expands the requirements slightly and requires the auditors to some extent to look at the operations of the year as well as the balance sheet.

The CHAIRMAN: I notice in the brief submitted by the Trust Companies Association there is a reference to clause 30. I do not know whether the committee, while Mr. Humphys is now before us, wishes to ask any questions in respect of the comment made by the Trust Companies Association.

Mr. LAMBERT: This is policy.

Mr. HUMPHRYS: I would be glad to comment on this.

The CHAIRMAN: I am not suggesting you should, but I draw this to the attention of the committee.

Mr. MOREAU: They appear to be asking for a year's grace. What is your feeling on that?

Mr. HUMPHRYS: We have had letters from the accountants asking that this be deferred. In putting forth this wording, we took it from the author's certificates that are now being submitted in respect of a substantial proportion of the companies. Therefore, it is not a wording that the department has de-

signed, apart from actual practice in the accounting field. We did not take the view that this is imposing any new pattern or requirement. We did not see that anything was going to change in the next year that would justify postponing the operations of the provision.

So far as the reports to the superintendent are concerned, the amendment here would reduce the requirement somewhat, because the auditor only would have to certify in respect of the assets, liabilities, income and disbursements, but would not have to certify to the detailed schedules, exhibits, and so on.

We in the department did not think the enactment of this at this time would impose a very heavy burden on the auditors.

Mr. LLOYD: In the representations which you have received from accountants on this matter, did they in any way detail the difficulties with which they would be faced?

Mr. HUMPHRYS: I would say that in general the representations were against any change until more time had been given for the accountants and others to discuss the exact wording of the amendments. They seemed to have some concern about the introduction of the phrase "the results of the operations of the company during the year." It came as a surprise to the department that anyone would have any objection to that, because before proposing those words we examined the auditor's certificates that are in fact being used, and this is a common phrase that has run through them. So, we did not think that in suggesting this it would pose any particular problem. We thought that the change was desirable in the interest of broader information in respect of the financial position of the company. That is not confining the certificate solely to the balance sheet.

Mr. LLOYD: I might suggest, Mr. Chairman, that this derives from two schools of thought. The matter of the results of operations being reported really developed in the practices in the United States, whereas the British practice was to confine the certificate to the statements, the end result. It is a controversial subject in respect of whether it should or should not be included. It would depend on the opinion of the solicitors who advise the accountants. I think I may suggest that when you have the witnesses before you from the trust companies, that perhaps they should be asked to explain this.

The CHAIRMAN: You will have this opportunity.

Mr. LLOYD: Do you expect any representations from the chartered accountancy organizations on this?

The CHAIRMAN: The Trust Companies Association will be here on Thursday.

Mr. LLOYD: But they will not be making representations themselves on behalf of the chartered accountancy organization?

The CHAIRMAN: I do not wish to make any presumptions, but we should wait until they are here.

Clause stands.

On Clause 31.

Mr. HUMPHRYS: Clause 31 deals with investment powers of trust companies. I may say that in respect of the trust companies, their investment powers are dealt with in three categories. The first relates to unguaranteed trust funds; these are funds received in trust, often referred to as estate, trust and agency funds. The second category is the guaranteed funds where the companies receive money in trust subject to a guarantee of repayment of the principal. The most common example is the deposit accounts that trust companies accept and the money received from the sale of guaranteed investment certificates.

Mr. MOREAU: Do you mean the trust companies presently do not have the authority to invest on deposit accounts? Is this change from the current practice to sort of authorize them to do what they are already doing?

Mr. HUMPHRYS: My remarks were by way of introduction to explain why there appears to be so much repetition in the investment provisions. The three categories are dealt with separately. Subclause (1) deals with the power to invest guaranteed trust funds and unguaranteed trust funds in mortgages and increases the mortgage limit from two thirds of the value of the real estate to three quarters.

Mr. GRAY: Mr. Humphrys, would you comment on this matter of the ability to lend on leasehold real estate, which has been requested by the trust companies in their brief and which was requested prior to the amendment.

Mr. HUMPHRYS: The trust companies under this act, in 1914, had the power to invest their own funds in mortgages on leasehold property, but they did not have the power at that time to invest trust funds in leasehold mortgages. In 1924 they were given the power to invest guaranteed trust funds in the same manner that they could invest their own funds if the deed of the trust so permitted. In their actual operation the terms on which they accepted deposit accounts included authority to invest in that way. So, from the amendments of 1924 they could invest guaranteed trust money in leasehold mortgages if the deeded trust so permitted, but they could not invest their unguaranteed trust funds in that way, unless the trustee gave them specific authority.

Then in 1947 there were extensive amendments to the Trust Companies Act and the power to invest in or lend on the security of mortgages on a leasehold property was removed. That is the state of affairs now.

Earlier this year, when consideration was being given to amending the Insurance Act, following the announcement of that intention in the budget speech, the insurance companies submitted a brief as soon as they learned that the act was going to be amended. One of the changes requested in the brief was this increase in the limit on mortgage loans to permit them to lend up to 75 per cent of the value of the real estate instead of only up to two thirds.

At that time there were no amendments to the Trust Companies Act and the Loan Companies Act intended, but the organizations representing these companies immediately made representations on this point saying that their principle business was investing in mortgages and if insurance companies received power to invest in mortgages up to the 75 per cent limit they felt it was absolutely essential they have it too, or they would be in a very weak competitive position.

On that basis the government agreed to bring in further amendments, but at that time there was not much time available; it was not considered that the legislative calendar was such that it could absorb extensive amendments to the Trust Companies Act and as a consequence the amendments proposed in this bill have been kept to the minimum requested by the companies at that time. Their requests at that time covered splitting shares, qualification of directors and a change in the limit on mortgages. That is as far as the amendments proposed went, but when they were being put forward, these other provisions were put in as part of a general pattern dealing with these companies.

That explains not only the point that you raise, but also the fact that the amendments in respect of investment powers here do not go quite as far as the amendments proposed for the insurance companies. As a consequence, in the department we did not make any particular study of the question of broadening the power to invest or lend on mortgages on leaseholds. The request that this change be made has been received only in the last ten days, or so, since the bill was introduced.

Mr. GRAY: So that the reason for not including it has been owing more to lack of opportunity—

The CHAIRMAN: I do not wish to appear to be interrupting, but I think we do not want to get the witness into a difficult position.

Mr. GRAY: I am trying to find out whether he has information, for example, whether provincially incorporated loan and trust companies have had a high loss record on this type of investment.

Mr. HUMPHRYS: I do not have information on that. I know provincial trust companies have the power to lend on the security of mortgages on leasehold property.

Mr. GELBER: In what percentage?

Mr. HUMPHRYS: Two thirds of the value of the real estate, I believe.

Mr. MOREAU: You do not have any immediate objection to the inclusion of leaseholds—perhaps that is not a fair question?

Mr. HUMPHRYS: I would hesitate to make a recommendation at this time in the light of the fact that this distinction has a long history in one way or another. There has been an absolute distinction at least since 1947, so I would feel that before the department could or should make a recommendation of that type to the minister or to this committee, we should go into the matter thoroughly in order to answer questions such as those which have been raised this morning. So far as the department is concerned, I do not feel this is the type of a change which should be made at the last moment in view of the fact that there has been a deliberate distinction in the statute for some years.

Mr. GRAY: Here is a body which is coming forward with a request for additional amendments. Whether we are in favour of them or not will depend on the information brought forward before the committee and the consideration we give to them. It occurs to me that this is a very serious matter which deserves our deep study.

The CHAIRMAN: They are coming before us and we will give them a very impartial hearing and will make our recommendation upon reflection. With great respect, may I suggest we should not be arguing this particular point at this time. We will hear them and they will be given every consideration, and we will make our independent judgment after we have heard all the witnesses.

Mr. HUMPHRYS: Of course, there is nothing in this bill that is changing that situation. The references to leaseholds here are incidental only. Insurance companies already have the power to lend on the security of leasehold real estate. This change gives them the power to invest in mortgages on leasehold real estate. So, it is only an incidental change. As a result, the distinction is not being aggravated or altered by these amendments.

Mr. LLOYD: But it perpetuates the distinction.

The CHAIRMAN: We should not get into the question of whether they should or should not. I think we should leave that until we have heard from our witnesses and perhaps after that you would have questions you would like to put to Mr. Humphrys.

Mr. LLOYD: I am anticipating then, if I may, the witnesses from the trust companies making representations to us in this respect, and I trust we will keep in mind the fact that C.M.H.C., in its recommendations to municipalities, in the field of urban renewal and redevelopment have been recommending leasing of the clear lands on a long term basis. Of course, this is increasing, you might say, the seeking of mortgage funds on leasehold properties. It may well be we are opening up a greater advantage for investment of this kind bearing in mind that C.M.H.C., a crown corporation, definitely has been recommending the use of leaseholds of jointly owned property, which is the residue

of an urban renewal program, and I would ask the members of the committee to keep this in mind when the trust company witnesses are before the committee.

The CHAIRMAN: Would you proceed, Mr. Thomas.

Mr. THOMAS: Mr. Humphrys, could you put on the record for us one or two examples in respect of what constitutes trust funds and what constitutes guaranteed trust funds.

The CHAIRMAN: Do you want him to enlarge on what he said in respect of the three types: the guaranteed, the unguaranteed and the company's own funds?

Mr. THOMAS: Yes, if he could give us one or two examples.

Mr. HUMPHRYS: Well, unguaranteed trust funds would be represented, for example, by an estate placed in trust for administration by a trust company, where the obligation of the trust company is to manage the affairs, make the investments and act with due diligence, but it does not guarantee the fund against investment losses nor does it guarantee any particular rate of investment return.

An example of guaranteed trust funds would be the savings deposits accepted by a trust company where the company guarantees repayment of the principal amount deposited and they also guarantee a specific rate of interest.

The company's own funds would be represented by the capital funds put up by the shareholders and also the profits earned by the company and still retained in the company—the shareholder's equity.

Mr. THOMAS: Thank you.

Mr. GELBER: I have gathered that actually there are three kinds of funds generally with which trust companies deal, their own funds, depositors' funds, and funds of estates they are managing. I presume that none of these restrictions refer to the third class.

Mr. HUMPHRYS: Estates that they are managing?

Mr. GELBER: Yes.

Mr. HUMPHRYS: They do. They are limited under the provision of the act dealing with the investment of unguaranteed trust funds. Bnt, the act specifically authorizes them to invest those funds in any way in which the deed of trust authorizes. So, the person establishing the trust can authorize the trust company to go beyond the provision of this statute dealing with the investing of unguaranteed trust funds; but if the trust deed is silent, then they are limited to investing them in accordance with the provisions of this act dealing with the investment of unguaranteed trust funds.

Mr. GELBER: There is nothing in the act to control the proportions of various types of assets. Am I correct in this assumption?

Mr. HUMPHRYS: Yes, there are provisions.

Mr. GELBER: Where would they be?

Mr. HUMPHRYS: It runs through the investment provisions in the statute, and in the amendments before us we will touch upon the limitation on common shares; the only amendment relates to the limitation on common shares. But, in the act there is also a limitation on investment in real estate for the production of income.

Mr. GELBER: Now, in respect of the second group, depositors' funds, I am very much concerned with the parallel drawn between trust companies and insurance companies and the fact that trust companies have depositors' funds subject to withdrawal. Would that not require certain guarantees of liquidity?

Mr. HUMPHRYS: Yes.

Mr. GELBER: And that would not be present when dealing with insurance company funds?

Mr. HUMPHRYS: Yes.

Mr. GELBER: What are these distinctions?

Mr. HUMPHRYS: There are no special liquidity requirements so far as insurance companies are concerned because their liabilities are not such as to require liquidity of assets. I am informed by Mr. Urquhart that there is nothing in the statute imposing liquidity requirements on trust companies. There is in the Loan Companies Act; they apply to deposits accepted by loan companies.

Mr. GELBER: But when we talk about advancing a certain percentage against real estate we certainly are tampering with the liquidity of trust companies' deposit accounts.

Mr. HUMPHRYS: I believe that there are in many respects different considerations applying to the investment of assets standing behind deposit accounts than might apply in the case of funds held by an insurance company. I believe, in practice, the assets standing behind deposit accounts, which are virtually demand liabilities, would have to be kept much more liquidated.

Mr. GELBER: How is that spelled out in the act?

Mr. HUMPHRYS: There are no special requirements in the Trust Companies Act on that point. In actual practice I am informed by Mr. Urquhart that companies maintain liquid assets behind their deposits of something of the order of 35 per cent or 40 per cent. We watch the figure. It is reported to us. If the situation developed to the point where the liquidity ran away down we would be concerned about it. But, it has not represented any problem.

Mr. GELBER: As you know, we are in a period of vaulting real estate values and we are increasing the percentages that can be advanced. I am wondering whether we should not go a little easy in terms of directing so much of the funds of these important institutions into real estate. Also, I am wondering, in view of problems that trust companies and banks have of immediate demand whether this should not be very carefully looked at. Someone the other day talked about 90 per cent of C.M.H.C. loans, which is hardly a rule for this type of company. But, as I understand it, your interest in this is purely administrative.

Mr. HUMPHRYS: Well, you cannot occupy a responsible job in the insurance department, charged with the responsibility of administering these acts and supervising the companies, without feeling very much concerned about the strength and financial solvency of the company. One cannot do the job merely by looking at the letter of the law. You must be concerned with the whole broad picture of the financial strength and stability of the companies because the whole purpose of the pattern of supervision is to protect the public so far as that can be done. So, in a sense, our interest is administrative but our broad responsibilities are to do everything we reasonably can do to make sure that all these companies are in a position to meet their obligations to the public.

Mr. GELBER: Would it assist you in this task to have some provision in this act restricting the discretion of companies holding deposit accounts in terms of investment against real estate?

Mr. HUMPHRYS: Well, I suppose I can answer that question by saying that from the point of view of the supervisor the tighter the investment rules the more comfortable he is; but the purpose of the legislation is not solely to make the supervisor comfortable. I think that in so far as investment provisions can be expanded without raising undue risk it is probably good policy to do so. Where the point comes at which the risk becomes undue is a question of opinion, and I do not know any way of determining it in any absolute degree. These amendments will expand the investment powers of trust companies by raising the limit on mortgages and the limit on investment of common shares, and by reducing the qualifications. I believe that in the light of current investment

practice and in the practice of amortizing mortgage loans that it is possible to make this increase without undue risk. But, it certainly does increase the risk, as I think inevitably happens, the more you broaden the investment rules. The broader the investment rules are the more one has to rely on the good management and the responsibility of those operating the companies.

Mr. GELBER: And, I presume, the more these institutions can invest in real estate and real estate securities the less they will have for equity stocks?

Mr. HUMPHRYS: Yes. Trust companies have not been heavy investors in equities in any event, except possibly in respect of their own funds. The proportion of guaranteed trust fund investment in common stocks has been quite small. They have made no investment of guaranteed funds in real estate properties at all although they do invest a fair proportion in mortgage loans. They had about 60 per cent of their guaranteed funds in mortgage loans at the end of 1962.

Mr. LLOYD: I would like you to reconfirm what I think you said in respect of deposits—that is, demand deposits, presumably, of trust companies which are now quite extensively getting into the business of using checking accounts. This is a subject that has occupied the attention of the royal commission on banking. Did I hear you say that they maintain a proportion of liquidity to support their deposits of demand liabilities?

Mr. HUMPHRYS: They do as a matter of practice, yes.

Mr. LLOYD: Is there any requirement that they maintain this?

Mr. HUMPHRYS: No.

Mr. LLOYD: This is purely a matter of self discipline in respect of the institutions themselves?

Mr. HUMPHRYS: That is correct.

Mr. LLOYD: The trust companies?

Mr. HUMPHRYS: Yes.

Mr. LLOYD: Mr. Chairman, I can see that much of this discussion will relate to our study of the Porter commission on banking, and I presume what we are doing at the moment is really a minor adjustment compared to the larger question being raised, that of policy, in respect of permitting investment of demand deposit funds by any lending institution in respect of mortgages and real estate.

Mr. HUMPHRYS: I believe that is a fair assessment of the situation.

Mr. LLOYD: We will have to have this before us when we are appraising the recommendations of the Porter commission.

The CHAIRMAN: I am unable to make any comment in that respect.

Mr. LLOYD: I think this will be a very challenging subject for this committee to study. But, I think more properly the questions raised, which are certainly very practical ones, by Mr. Gelber should be dealt with when we are examining the Porter commission recommendations, or whatever recommendations are forthcoming by the government in respect of this commission.

The CHAIRMAN: The members of the committee will have a further opportunity to put questions in this respect when the Bank Act is up. I do not believe the study of this bill will be long delayed, but we can deal with these points at that time.

Mr. LLOYD: Yes, we will be able to deal with whatever measures may arise from government action in respect of the Porter commission.

The CHAIRMAN: May I ask the witness to continue.

On Clause 31.

Mr. HUMPHRYS: We now come to subclause (1) of clause 31 on page 39, which enables the company to invest guaranteed and unguaranteed trust funds in mortgages up to a limit of three quarters of the value of the real estate instead of two thirds, as at present.

Subclause (2) raises the limit on investment of guaranteed trust moneys in common shares from 15 per cent of the fund to 25 per cent.

Subclause (3) on page 40, enables companies to lend unguaranteed trust moneys on mortgages, raising the limit from two thirds to three quarters of the value of the real estate.

Subclause (4) deals with the lending of guaranteed trust money and also increases the limit from two thirds to three quarters of the value of the real estate.

Clause stands.

On clause 32.

Mr. HUMPHRYS: Clause 32 deals with the investment of the companies' own funds in common shares.

Mr. MOREAU: In respect of clause 31 is there a proposed amendment by the trust companies? I do not know the section of the act to which they have reference but I think it is section 31.

The CHAIRMAN: Are you referring to the trust companies brief?

Mr. MOREAU: Yes. On the second page they have a clause 6.

Mr. HUMPHRYS: No. That relates to the ownership of subsidiary companies. It would, in part, be relevant in the discussion on the power to invest in common shares.

Clause 32, subclause (1) makes the same changes in regard to common shares as have been discussed for insurance companies; that is, the qualification is reduced from a seven year dividend record to a five year dividend record, and the earnings test is introduced. But, there is a limit of 30 per cent on the investment in the shares of any one company. So, this means that a trust company cannot, through this provision, own a subsidiary. Now, what the trust companies are asking for on page 2 of their brief is the power to own a subsidiary trust company outside of Canada, which is parallel to the amendment proposed for life insurance companies, which would enable them to own a life insurance company outside of Canada. They are also asking for the power to own subsidiary real estate companies, which also would be parallel to the power proposed for life insurance companies. In order to give them this power there would have to be an exception from this 30 per cent limitation.

Mr. MOREAU: Do I take it that the 30 per cent limitation on the shares of any one company is a protective device; in other words, the purpose is to try to force them not to spread their risk?

Mr. HUMPHRYS: It is intended to prevent the company from buying control of another company through purchasing its common shares.

Mr. MOREAU: Is it aimed specifically at trust companies or for any sort of operation?

Mr. HUMPHRYS: It was aimed at any sort of operation because there is a specific provision in the statute which says they may not invest in shares of other trust companies to any extent at all. The amendment broadens their powers slightly because the limitation now prevents them from investing in more than 30 per cent of the total issue of any stocks. So, the present limitation would apply to both preferred and common. The change would make it apply only to common shares.

The CHAIRMAN: Would you carry on, Mr. Humphrys.

Now, at the top of page 41, the change in paragraph (*k*) enables a trust company to invest its own funds in mortgage loans up to a maximum of three quarters of the value of real estate instead of two thirds.

Subclause (2) deals with the lending of the companies' own funds on real estate mortgages and again raises the limit from two thirds to three quarters.

Subclause (3) on page 41 repeals subsection (8) of the present section 68. That is a subsection that puts a limit on the total investment in common shares of guaranteed funds and company funds combined. There is a limit of 15 per cent. That is being repealed and the proposed limits are 25 per cent on guaranteed funds and 25 per cent on the companies' own funds. The limits apply separately.

Subclause (4) deals with the limit on the companies' investment of its own funds in common shares. At present it is limited to 25 per cent of its funds invested in common and preferred shares or lent on the security of shares. The change would replace these limits by one limit of 25 per cent on the investments in common shares. It is considered not necessary to put a limit on the lending on the security of common shares because another provision of the act requires a very broad margin of safety on the collateral.

Clause stands.

On clause 33—*Limitation of amount.*

Mr. HUMPHRYS: Clause 33, at the top of page 42, deals with a limit on the borrowing powers of a trust company. And, in speaking of borrowing powers I include within that power to accept money on deposit from the public and accept money by the sale of guaranteed investment certificates. At the present time, companies are limited to borrowing a maximum of 12½ times the capital and reserve of the company. The capital and reserve is practically the same as the excess of the assets of the company over its liabilities. This amendment proposes to enable the companies to borrow up to 15 times the excess of assets over liabilities subject to the enactment of an appropriate bylaw and approval by the treasury board on the recommendation of the superintendent.

The purpose of a borrowing limit is to ensure that the company retains some excess of assets over liabilities. If a company were permitted to borrow, say, 100 times its capital and reserve then a one per cent drop in asset values would mean these assets were not sufficient to cover its liabilities. So, the problem is to determine a suitable limit. In respect of the history of this, going back to 1914 the borrowing power was five times the capital reserve, it was increased to 7 times in 1931, 10 times in the late 1940's and 12½ times in the late 1950's. This proposal would increase it to 15 times. Now, if a company has the power to borrow 15 times its capital reserve it means that it would have a safety margin of 6¼ per cent of its assets. I think this can be illustrated by an example. If a trust company has, say, $1 million of capital and surplus then under a 15 times rule it can borrow $15 million. Its assets then would be $16 million, $1 million from the capital and surplus and $15 million from the borrowed money. Its liabilities would be $15 million owed to the public and it would have capital and surplus of $1 million. So, if the asset value shrank by $1 million, or one sixteenth, that would wipe out the capital and surplus. One sixteenth is 6¼ per cent. So, you can see that the 15 times rule ensures a margin of assets over liabilities of 6¼ per cent.

Mr. GELBER: It is not the ratio you can borrow which concerns me but what it is allowed to do with these funds.

Mr. HUMPHRYS: That is correct. The chance of investment losses, of course, depends upon the nature of the investments and it also depends upon the economic times, and perhaps upon the pressure on the company for withdrawal of deposit funds and matters such as these. So, it is not possible to rely solely on a maximum limit. Yet, the existence of a maximum limit is of some value.

As respects the changes in the borrowing limits of trust companies that have been made in the past, the new limit has been written in without any requirement of treasury board approval. Under this proposal any increase above 12½ times would be subject to approval by treasury board on the recommendation of the superintendent, so that opportunity would be given to examining the assets portfolio of the company and its management and investment record before authorizing the increased borrowing power.

Mr. LAMBERT: But there is no provision for a limitation or a restriction from 15 back to 12½? Is this approval, once granted, irrevocable, or is there a periodic review of the certificate in the same way as under the Insurance Act?

Mr. HUMPHRYS: There is an annual licence or certificate issued and the position of the company is reviewed annually. It is within the power of the minister to insert any necessary conditions.

Mr. LAMBERT: For instance, the minister can say: "you are up to 15 and we think it is unsafe." Or, he could say: "Due to certain economic conditions we had better go back to 12½."

Mr. HUMPHRYS: I believe such would be within the power of the minister.

Mr. THOMAS: I would like to ask Mr. Humphrys the same question I put in regard to the insurance companies. Do the federal and provincial authorities work together with a view to seeking uniformity of the regulations controlling trust companies?

Mr. HUMPHRYS: There is no formal pattern of communication or co-operation between the federal department and the provincial departments but there are many informal exchanges, and the general pattern of the requirements are kept substantially in line, although I would say that generally the requirements applicable to the federal companies are more severe than those applicable to the provincial companies.

Mr. THOMAS: Can you tell us then, Mr. Humphrys of any provinces that permit a greater ratio than 12½ times?

Mr. HUMPHRYS: Until recently the provincial statutes did not have a specific limit, but Ontario, in authorizing trust companies to operate in the province, generally followed the provisions in the federal act. More recently, Ontario has inserted a 12½ times limit in its own statute.

Subclause (5) enacts a further limitation on the borrowing power of a trust company. It applies where a trust company owns more than 10 per cent of the shares of a loan company within the meaning of the Loan Companies Act or where more than 10 per cent of the shares of the trust company are owned by a loan company subject to the Loan Companies Act. This provision is proposed principally to deal with the parent-subsidiary relationship. In the absence of this provision, which I will refer to as the consolidation rule, two companies in a parent-subsidiary relationship could borrow substantially more on a given capital base than is intended by the operation of the normal borrowing limit. This could occur by the parent company issuing or selling shares to the public and using the proceeds of that sale to buy more shares in its subsidiary. Then the capital of both companies would increase. Their borrowing limit would rise. At least, the total amount they could borrow would rise by a multiple of the increase in the capital, so that each of them would be able to borrow up to the limits specified on the basis of the one amount of capital paid into the companies. So, this consolidation rule would require the company—and I am taking it in terms of a trust company—to discontinue borrowing if the total amount borrowed by the trust company and its parent loan company exceeded or if the borrowing would cause that total to exceed the amount that the trust company could borrow if its assets were the consolidated assets of the two companies and its liabilities were the consolidated liabilities.

Mr. MOREAU: Am I correct in stating that this is to prevent the dangerous pyramiding of capital.

Mr. HUMPHRYS: Yes. Another illustration would be where a loan and trust company are under common ownership. One company could increase its capital and the proceeds could be paid into the other company. So, without this consolidation rule it would be possible to double the borrowing on any given amount of capital paid into the enterprise.

Mr. GELBER: This would be taken into consideration when the Bank Act revision comes up, or an application for a new charter is considered?

The CHAIRMAN: I wish you would not put questions in that connection because I cannot say anything at all in that respect. We are on subsection (5).

Mr. THOMAS: All we can say is that these matters have been raised by Mr. Gelber and they could be brought up in connection with the report of the committee.

The CHAIRMAN: Yes, that would be all right.

Mr. THOMAS: That is, if it is felt that any warning is justified.

Mr. LLOYD: Supplementary to that, Mr. Chairman, the role of this committee is to examine the policies inherent in these things and the explanation so far really is a modification of a basic policy which is now in existence. I do not think these things really can be challenged until we take an over-all look at the relationship of the central bank of Canada with the chartered banks and so-called near banks. That is where the full meaning of these various operations would be borne upon us. I think this is what Mr. Thomas has said.

The CHAIRMAN: Clause 33 is an important section, and I only say that because of what went on before the Senate banking and commerce committee. I was in attendance there when the World Mortgage Corporation was being reviewed, and I think this section was aired very thoroughly and discussed at that time.

Mr. HUMPHRYS: I would like to add it may seem unnecessary to deal with the parent-subsidiary relationship when companies are limited to investing not more than 30 per cent in the shares of any other company. But, there are now in existence two cases where loan companies own subsidiary trust companies; these cases were in existence at the time the 30 per cent rule was adopted in 1922. There is also a bill now before the House of Commons which seeks to incorporate the World Mortgage Company and the bill as passed by the Senate gives that company power to own shares in the Eastern and Chartered Trust Company and sets aside the 30 per cent limit and other limitations in the Act. There is also an amendment that is before this committee having to do with this bill, which was tabled at the beginning of the proceedings, that would give general power to loan companies to own subsidiary trust companies. That amendment will be dealt with in part IV, having to do with the Loan Companies Act. This consolidation rule is a matter that requires the consideration in this connection.

Clause stands.

On Clause 34.

Mr. HUMPHRYS: Clause 34 deals with the Loan Companies Act. Clause 34 grants to the governor in council the power to provide a company with a French or English form of its corporate name so that a loan company would not have to seek an amendment to its act of incorporation for such purpose.

Clause stands.

On Clause 35—*Qualification of directors.*

Mr. HUMPHRYS: Clause 35 deals with the qualifications of directors, and effects the same change as effected for trust companies.

Clause stands.

Clause 36 stands.

On Clause 37—*Definitions. "Corporation"*

Mr. HUMPHRYS: Clause 37 deals with the non-resident ownership of shares and again is parallel to the clause proposed for the trust companies and life insurance companies.

Clause stands.

On Clause 38—*Contents of report.*

Mr. HUMPHRYS: That brings us over to page 50, to clause 38, which is an amendment to the requirements for an auditor's certificate in the same terms as the amendment for the trust companies.

Mr. MOREAU: We have not heard any similar requests coming from loan companies to defer this for a year?

Mr. HUMPHRYS: No. But I should say that the loan companies association has indicated to the department their desire also to have the benefit of any amendments that may be granted to the trust companies—in so far as they may be applicable to loan companies.

Clause stands.

On Clause 39—*Common shares.*

Mr. HUMPHRYS: Clause 39 on page 51 effects the same amendment relating to common shares, that has been discussed. It reduces the seven year dividend requirement to five. It also changes the 30 per cent limit, so that it applies to common shares only rather than to all shares.

Paragraph (*f*) on page 51 broadens the power of a loan company to invest in real estate mortgages by raising the limit from two thirds of the value of the real estate up to three fourths.

Subclause (2) deals with the power to lend on the security of real estate mortgages, and also raises the limit from two thirds up to three quarters.

Subclause (3) on page 52 raises the limit on investment in common shares from 15 to 25 per cent of the company's funds. That limit applies only if the loan company is accepting money on deposit from the public. If they are not accepting money on deposit, then there is no limit on the investment in common shares.

At this point there will be inserted the amendment I referred to, which would give the loan companies the power to own subsidiary trust companies, subject to certain limitations; that is to say, they could not invest in a trust company more than an amount equal to the capital and reserve of the loan company; so that they would not be, by this amendment, able to borrow money to capitalize a subsidiary.

Mr. GELBER: But they could invest their own funds?

Mr. HUMPHRYS: Yes. But it is important, if this general power is granted, to adopt the consolidation rule limiting the total borrowing; otherwise it would be possible to extend the volume of borrowing beyond the limits intended by the normal borrowing limit.

Clause stands.

On Clause 40—*Limitation of borrowing powers.*

Mr. HUMPHRYS: The present clause 40 extends the borrowing powers of a loan company up to a maximum of 15 times the excess of its assets over its liabilities. At present the companies have the power to lend four times; and then they can go up to 12½ times with the enactment of an appropriate by-law, subject to the approval of the governor in council on the recommendation of the treasury board. This amendment would enable them to go up to 15 times,

but the approval is placed in the hands of the treasury board on the recommendation of the superintendent, rather than in the hands of the governor in council on the recommendation of the treasury board.

Mr. THOMAS: In respect of this clause, why do they use the language of four times the excess of the assets of the company over its liabilities, while in the past the companies have used the words 12½ times?

Mr. HUMPHRYS: This distinction has been in the act since 1927. At that time the trust companies were limited to five times their capital surplus, and loan companies to four times. Loan companies asked for an increase, and the amendment of 1927 granted them an increase to six times, but it imposed the requirement that the increase would be subject to approval by the governor in council. I believe that the reason for that requirement was that there had been some failure of loan companies in 1917. I believe in 1919 there was another company in serious financial condition, and a great deal of controversy was taking place in connection with it. I refer to the Great West Permanent Loan Company, which was discussed before parliamentary committees at some length. I can only think that in the circumstances it was felt that any increase in the borrowing power of loan companies should be subject to extra safeguard. There was also the question of protecting the rights of debenture holders. At that time some loan companies had debenture holders outside Canada, particularly in England and Scotland. The amendment included a requirement for notice to debenture holders before an increase in borrowing was granted. That was the origin of this requirement in the Loan Companies Act. Since that time any increase in the borrowing limit above four times, has followed the same pattern and is subject to the approval of the governor in council.

In the case of trust companies, the increase from five to seven times in 1931 was not accompanied by any of these safeguards. The same applies to the increases in the late forties and late fifties. However this amendment enabling trust companies to go above 12½ times will impose this same requirement for the approval of government authority. I believe the difference was historic. I believe that at the time the trust companies were more secure, so the safeguard was not apparently considered necessary then.

Mr. THOMAS: We understand that if a trust company wishes to extend the limit of 12½ times the excess of its assets over its liabilities, they can be controlled by the superintendent of insurance.

Mr. HUMPHRYS: Yes.

Mr. THOMAS: And if a loan company wishes to borrow beyond four times the excess of their assets over their liabilities, they can be controlled anywhere above four times?

Mr. HUMPHRYS: That is right.

Subclause (3) on page 53 applies the consolidation rule to loan companies in the same terms as in the previous part.

Clause stands.

On Clause 41—*Limitation on holding of land.*

Mr. HUMPHRYS: Clause 41 at the foot of page 53 effects a technical change only, clarifying the power of a loan company to hold real estate that it has purchased as an investment pursuant to the power to invest in real estate for the production of income.

Mr. Urquhart has called my attention to the fact that I made a statement earlier that trust companies were prohibited from investing in the shares of other trust companies. He informs me that is not correct. There is such a provision respecting loan companies but not trust companies.

The CHAIRMAN: There is no limit on the amount?

Mr. HUMPHRYS: There is a 30 per cent limit.

Mr. LAMBERT: But a loan company cannot own up to 30 per cent of another loan company?

Mr. HUMPHRYS: No; it cannot own any shares of another loan company.

The CHAIRMAN: Gentlemen, that concludes the explanation of the bill.

Clause stands.

If it is in order, I will accept a motion to adjourn.

Mr. MOREAU: On the assumption that we may be able to have Mr. Humphrys back after we have heard other witnesses, I would move that we adjourn.

The CHAIRMAN: We will meet on Thursday at 10 o'clock at which time we will hear the Trust Companies Association of Canada.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

THURSDAY, NOVEMBER 12, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

WITNESSES:

Mr. E. F. K. Nelson, Executive Director, The Trust Companies Association of Canada; Mr. E. B. L. Miller, Huron and Erie Mortgage Corporation; Mr. J. W. Rose, Canada Permanent Mortgage Corporation; Mr. Richard Humphrys, Superintendent of Insurance.

ROGER DUHAMEL, F.R.S.C.
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21532—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

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Vice-Chairman: R. Gendron, Esq.

and Messrs.

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More
Moreau
Munro
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 12, 1964.
(13)

The Standing Committee on Banking and Commerce met at 10.35 a.m. this day.

Members present: Messrs. Aiken, Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Habel, Lambert, Lloyd, Mackasey, Moreau, Munro, Otto, Pascoe, Pennell, Thomas—(13).

In attendance: Mr. E. F. K. Nelson, Executive Director, The Trust Companies Association of Canada; Mr. E. B. L. Miller, Huron and Erie Mortgage Corporation; Mr. J. W. Rose, Canada Permanent Mortgage Corporation; Mr. Richard Humphrys, Superintendent of Insurance.

In view of the unavoidable absence of the Chairman and the Vice-Chairman, the Clerk called for nominations for an Acting Chairman. On motion of Mr. Lambert, seconded by Mr. Gelber, it was

Resolved,—That Mr. Moreau take the Chair as Acting Chairman.

The Acting Chairman thereupon took the Chair and the Committee resumed consideration of Bill C-123, *An Act to amend certain Acts administered in the Department of Insurance.*

The Acting Chairman introduced Mr. Nelson, who, in turn, introduced Mr. Rose and Mr. Miller.

Mr. Nelson then summarized his brief, which dealt chiefly with Clauses 6, 30, 31 and 32 of the Bill. Copies of the brief had previously been distributed to members of the Committee.

During the meeting, the Chairman, Mr. Pennell, took the Chair.

Messrs. Nelson, Miller and Rose were questioned.

And the questioning continuing, at 11:15 a.m. the Committee adjourned until 3.30 p.m. this day.

AFTERNOON SITTING

(14)

The Committee reconvened at 3.30 p.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gendron, Gray, Greene, Klein, Lambert, Lloyd, More, Moreau, Munro, Nugent, Pennell, Tardif, Thomas, Wahn, Whelan (17).

In attendance: The same as at the morning sitting.

The Committee resumed questioning of Messrs. Nelson, Rose and Miller. Mr. Humphrys was also questioned.

At 4.15 p.m., the questioning having been concluded, the witnesses were permitted to retire, and the Committee adjourned until Tuesday, November 17, 1964, at 10.00 a.m.

Dorothy F. Ballantine,
Clerk of the Committee.

21532—1½

EVIDENCE

THURSDAY, November 12, 1964.

The CLERK OF THE COMMITTEE: Gentlemen, you have a quorum, but no Chairman. May I receive nominations for an Acting Chairman?

Mr. LAMBERT: I move that Mr. Moreau be invited to act as Chairman.

Mr. GELBER: I second the motion.

Motion agreed to.

Mr. MOREAU (*Acting Chairman*): My intelligence tells me that I will be the shortest lived chairman on record. However I hope we will not waste any more time. Now, gentlemen, we have a quorum, and again we are dealing with Bill No. C-123. We have members present from the Trust Companies Association of Canada. I might say first of all that I do not know any of these gentlemen except Mr. Nelson, so I shall now ask him to introduce the other representatives of his association.

Mr. E. F. K. NELSON (*Executive Director, The Trust Companies Association of Canada*): Thank you, Mr. Chairman. These gentlemen are not members of any deputation. I am the deputation, but Mr. Rose is here from the Canada Permanent Mortgage Corporation, and Mr. Miller is here from the Huron and Erie Mortgage Corporation. They are making themselves available to the committee should you wish to ask any questions concerning loan companies.

The ACTING CHAIRMAN: Mr. Nelson, would you care to proceed with your remarks, perhaps, in an introductory way, to your brief, and then we might open the meeting to questions?

Mr. NELSON: Thank you, Mr. Chairman. If I may I would first like to express the appreciation of the Trust Companies Association of Canada to the committee for your hearing our representations on the bill this morning. As a matter of fact, I should be able to complete our comments very quickly and not take up too much of your time. May I proceed with my summary?

The ACTING CHAIRMAN: Yes, I think that would be the best way for you to outline generally what it is you are trying to accomplish or that you wish us to do.

Mr. NELSON: First of all the association has carefully studied Bill No. C-123, and finds no objection to the principles contained in it. In fact, the association welcomes many of the amendments which the bill proposes to the Trust Companies Act. On behalf of our federally incorporated member companies, the association itself wishes to place a number of points before the committee and to solicit your consideration of them. There are actually, I think, five points.

Mr. OTTO: Mr. Chairman, I notice that our Chairman has now arrived. Is there a motion to change chairmen?

(The Chairman of the committee, Mr. Pennell, assumed the Chair at this point.)

The CHAIRMAN: Gentlemen, I apologize to you and to the witnesses for being late. I have been travelling since ten minutes to one this morning in order to be on time. I do not suppose anybody here left home earlier than I did. However my flight was delayed, so I had to complete my journey by train, and I apologize for being late. Please continue, Mr. Nelson.

Mr. NELSON: The first point concerns trust company investment in mortgages on leaseholds. I would simply point out that federally incorporated trust companies are one of the few kinds of financial institutions which cannot do this. The power I believe is available to life insurance companies, to federally incorporated loan companies, and to provincially incorporated loan companies. It is perhaps of considerable importance to federally incorporated trust companies because the fact is that of some 50 trust companies in Canada while only seven are federally incorporated these seven find themselves alone in lacking these particular powers.

There are areas in Canada, notably in my own native city of Saint John, New Brunswick, where leaseholds are quite common, going back to royalist days, and where in the business district of the city much of the real estate used by commercial business is leasehold. It is awkward and sometimes embarrassing for the federal companies to have to decline mortgages which their competitors may accept, and do so commonly. I think that is about the only point I want to make about it. Do you wish me to continue with the other four points?

The CHAIRMAN: If the committee wish you to complete your presentation before questioning, then all right.

Mr. NELSON: I presume our small memorandum has been distributed.

The CHAIRMAN: Yes, it has. That is right.

Mr. NELSON: The second point finds its origin in clause 6 of the bill where certain powers are given to life companies. On behalf of our federally incorporated member trust companies we are asking for consideration of similar powers for them. One is the right to invest in fully paid common shares of a trust company incorporated outside of Canada; and the other is to invest their own funds in both cases, of course, for fully paid common shares of the corporation. As we have described it, it is: "Any corporation incorporated to acquire, hold, maintain, improve, lease, manage or act as agent for the purchase, sale or lease of real estate as leaseholds." This, of course, would be subject to such terms and conditions as may be prescribed by the treasury board upon the report of the superintendent.

I may say here that it is not the desire of the companies to seek any new powers. I believe I am correct in saying that under their agency powers or agency capacity they may do all these things. It would be more convenient and it would be helpful to them if they could use this method in dealing with many of their real estate transactions on an agency basis. I should say we are not asking for a way to acquire powers which are not given in the act; that was not the purpose of the representation. Again, the federally incorporated companies face the situation that many of their trust company competitors incorporated under provincial authority have these powers.

The third point, or really the fourth point, concerns the eligibility requirements of certain corporate investments. Here, on behalf of our federally incorporated members, we are asking that consideration be given to amendment of the eligibility requirement for preferred shares, debentures, or other evidence of corporate indebtedness to parallel what is proposed in respect of the powers of the life companies in Part I of the bill. I might simply suggest here that if the trust companies are permitted to buy the common shares of a corporation under the rules proposed in the bill, it seems reasonable that they should be able to buy the preferred and debt securities of the same company. I might give one example which is a fairly recent thing. The Union Carbide shares, I believe, now would be under the proposal eligible for federally incorporated trust company investment. If that company were to issue preferred shares, we would not be able to buy them except under the basket clause, as I understand it.

The final point is one relating to clause 30 of the bill. It concerns the items affecting the auditors' certificates. We have no objection to this. The concern of the companies involved simply is that it is very late in the year and should this bill be passed before the end of the year and become law, I am told it would be quite awkward both for the companies and their auditors. Much of the basic groundwork, preparation of working papers, and so on, often has been done by the auditors. I think there probably has to be some consideration of the difficulties that are contained in this.

We simply have asked that this might be made effective the first of January, 1966. This would mean that the companies and their auditors would have that much of a breathing space to determine their lines of approach to it. However, there is no objection to the proposals.

That, Mr. Chairman, completes my small presentation this morning.

The CHAIRMAN: Thank you, Mr. Nelson. Before the questioning starts, may I say that if you feel any of your associates might answer any questions, they are at liberty to do so. I have recognized Mr. Aiken as being first on my list.

Mr. AIKEN: Thank you, Mr. Chairman. Just to round out the presentation, there was one point which was not commented on which has been raised in the committee namely, the proposal to raise the percentage on mortgages on real estate from two thirds to three quarters. I have expressed some concern about it. It is not in your brief, but I would very much like to have your opinion.

Firstly, are provincial trust companies now permitted to lend up to two thirds in most provinces as far as you are aware?

Mr. NELSON: Yes, they are.

Mr. AIKEN: Are there any jurisdictions that have raised it beyond that?

Mr. NELSON: I do not think there is any restriction in the Quebec act as to the ratio of loan to value. I believe in the Ontario act the amendment is relatively recent. Before that there was no limitation, but I think that in the early sixties it was moved to 66⅔, and I think that is general where there is such a provision.

Mr. AIKEN: I understand that your association has no objection to raising it to three quarters?

Mr. NELSON: No.

Mr. AIKEN: Do you want it raised?

Mr. NELSON: Yes, we do want it raised. I think our reasons are principally competitive. As you understand, in the mortgage market if you cannot lend as much as other responsible institutions may lend, you are in a competitive difficulty. This is our principal reason for seeking it.

Mr. AIKEN: My concern is entirely different, that perhaps it is not good trust practice. Are you not getting beyond the safe measure for trust securities?

Mr. NELSON: I would think that trust companies are pretty conservative in their approach to these things. They would examine with considerable care requests for 75 per cent mortgages and would not be inclined to take undue risks with them.

Mr. AIKEN: Do you expect that this may be an outside limit which the trust companies will only use in very rare circumstances?

Mr. NELSON: Perhaps I might answer that question in this way. We asked for 75 per cent only after it had been announced that it was the intention of the government to make this provision for life companies who are, I believe, considerably larger in terms of mortgages than the trust companies, and it was then that we asked that we might have the same power.

Mr. AIKEN: You have more or less been driven to it by force of circumstances rather than by judgment.

Mr. NELSON: I do not know whether I can put that interpretation on it, but certainly we did not ask for any increase prior to that occasion.

Mr. AIKEN: I have just one more question. Do you feel that if the power were not granted to life companies you would be satisfied to have the ratio left at two thirds?

Mr. NELSON: I think it goes beyond the life companies, but I rather suspect they were in somewhat the same position because there are, I believe, other agencies which do not have these restrictions put on them and which had been making use of their right to lend at higher ratios. I would therefore assume that that was one of the factors that motivated the life officers' association in their interest in this subject.

Mr. AIKEN: So it is more a case of competition than good trust practice?

Mr. NELSON: I do not think that is the sole factor. I certainly would not expect that a trust company would lend 75 per cent on every mortgage application. It would certainly scrutinize it very carefully. That would be the normal custom, regardless of the percentage, but I do not think that the trust companies themselves would consider the right to lend up to 75 per cent would necessarily lead to any imprudent action on their part, and they would guard against that and would do so effectively.

Mr. LAMBERT: Do the trust companies engage in this first and second mortgage lending that is now becoming a practice with certain lending agencies?

Mr. NELSON: A number of trust companies have.

Mr. LAMBERT: With this force of competition do you not think, Mr. Nelson, notwithstanding all the good will you may exhibit at this time, that if you are granted a ceiling of 75 per cent you will soon be pushed to the ceiling.

Mr. NELSON: I wonder whether I might call upon one of the representatives from the mortgage corporations who might perhaps better answer that.

Mr. E. B. MILLER (*Huron & Erie Mortgage Corporation*): As I understand it, the basic concern is whether or not loans become more vulnerable and, accordingly, whether the depositors' money in loan companies or trust companies might acquire a degree of risk because of raising the loan to value ratio to 75 per cent.

In this sense I do not think anyone can give you a complete answer, but I think there are two considerations that are important. One is that in the past 30 years the repayment schedule on mortgages has changed completely. Mortgages are now repaid almost entirely on a monthly basis. This monthly repayment plan probably is one of the most important developments that has taken place in the mortgage business in two senses; in the first sense because the mortgage company is able to watch the capacity of the borrower to meet the payments much more regularly; and in the second sense because where the borrower is having to make his repayment on a monthly basis he is able to budget much better than when the more common practice was to repay mortgages on a semi-annual or annual basis. This is one of the developments.

The other development I think relates to the C.M.H.C.—the National Housing Act loans. In this case, of course, the loan to value ratio is even considerably higher than this, and I have no doubt that the government of the day very seriously considered this problem of loan to value ratios at that time and determined that it was not unreasonable to lend greater amounts on value.

Does that answer your question?

Mr. LAMBERT: No, it does not really answer it really, Mr. Chairman.

What I am concerned about is that with this now going practice of one plus two or first and second mortgages, with the lower rate, the two thirds rate, the trust companies and the other lending agencies such as life insurance companies could quite legitimately refuse a borderline case by merely pointing out the legal limitation at the present time. If it goes up to 75 per cent they will be pushed to 75 per cent and then they will have nothing but their own judgment decision to back them up.

Mr. MILLER: But that judgment decision is taken regularly. Even when we were at 66⅔ per cent loan to value ratio it did not mean that all our loans were made at the 66⅔ per cent.

It is obvious that the management of the companies do not wish to take on loans which may go sour, and accordingly they screen the credit behind the loan, not only the security but the credit worthiness of the borrower.

The other point is that in many cases with the 66⅔ per cent loan we were quite aware that the borrower was going out and getting a second mortgage and a third mortgage, and possibly even borrowing from a bank to raise sufficient funds to buy the property.

Accordingly, his repayment program on that basis could be quite onerous, and if through the first mortgage loan to value ratio being increased you were able to improve the capacity of the borrower to meet his repayment schedule then this could be a good thing.

Mr. LAMBERT: That is all I have on this particular subject, Mr. Chairman.

The CHAIRMAN: I have Mr. Otto next on the list.

Mr. OTTO: I know some of the members of the committee are concerned about the risk element in lending up to 75 per cent of the ratio. In your experience, has it not been true that in almost all cases the value of the land and the buildings has grown much more quickly than, say, the defaulting interest, even in cases of default? In other words, is it not true to say that in respect of investment in land today, regardless of the risk, in 10 or 15 years time it always will prove to be profitable.

Mr. MILLER: I wish I could answer that by a firm yes, but no one knows. I think it is true to say that there is a long term inflationary trend, but if you tried to pinpoint it to 10 or 15 years no one could guarantee that the land or real estate values 10 years from now would be higher than they are today. Looking forward into the future, certainly, they will be.

Mr. OTTO: I am thinking of the experience of the last 50 years, let us say. I recall the Great West Life was stuck with a considerable number of homes in 1946 and 1947 in Winnipeg. These homes, I believe, were seized or foreclosure proceedings were taken, with a realization of $6,000, and now they have been disposed of at a value of around $23,000 or $24,000. So, to me, that would indicate regardless of the ratio that it is as good an investment as any other commodity today.

Mr. MILLER: Oh, yes, I would think so.

Mr. OTTO: I would ask Mr. Nelson to answer my last question.

In respect of leaseholds, you say that provincial trust companies and life insurance companies have the power at the present time to invest.

Mr. NELSON: Yes.

Mr. OTTO: Is there much of this type of investment or mortgaging?

Mr. NELSON: I would have little idea as to the proportion. I think it would be much smaller than freehold, although it does exist quite heavily in certain parts of the country.

Mr. OTTO: It does exist.

Mr. NELSON: Yes, it does. I mentioned my native city of Saint John. It is quite an important factor in the King street area where the main business is carried on.

Mr. OTTO: In that connection I am wondering whether it would be possible in respect of a company that has the power to lend on leaseholds as well as on land for the figure actually to go over the 75 per cent. For instance, if the land is leased for 50 years it shows a definite value for a period of 50 years; consequently, the value of the land itself increases quite sharply, and if you have another mortgage on the building, then it is conceivable that in staying within the 75 per cent limit on both you might get to 90 per cent or 100 per cent of the actual value?

Mr. NELSON: I will refer that to my colleague. Did you hear the question, Mr. Miller?

Mr. MILLER: I am sorry but I did not.

Mr. NELSON: The question related to mortgages on leaseholds. Perhaps I should not attempt to repeat the question.

Mr. OTTO: I will put it to you specifically. In the event and, of course, in the cases where companies do have the right to lend money on leasehold as well as on freehold would it be possible, or has it happened, that the 75 per cent limit has been stretched by evaluating the land which is leased at a much higher value because of an established lease, as a result of which 75 per cent of the land and 75 per cent of the building, in actual fact, would be more than 75 per cent of the value of the property today.

Mr. MILLER: I would not think so. But, I must qualify that by saying that we have done very little in the way of leasehold lending. It is becoming a more prominent practice, but my experience just is not sufficient to be able to answer you properly in that connection.

Mr. OTTO: Those are all the questions I have.

The CHAIRMAN: Gentlemen, I propose to go until 11.15. I realize there is a caucus meeting this morning. Mr. Nelson and Mr. Miller were made aware of that fact, and it was thought that we could meet this afternoon. At the last meeting it was my understanding that all parties would be having caucus meetings today, but I do not know whether or not that is true.

The government caucus is continuing. I trust we may go until 11.15 a.m. and then return after orders of the day, or 3 o'clock, whichever is first.

Mr. AIKEN: If necessary?

The CHAIRMAN: Yes, if necessary. But now let us carry on. I have Mr. Lloyd.

Mr. LLOYD: Mr. Miller, questions are directed to you on the subject of leasing and mortgages to the extent of 75 per cent. Would this not give you an opportunity on a selected basis to extend your mortgage lending to good risks which might otherwise, as you have suggested, go to a bank, or perhaps worse, from a social point of view, to a second mortgage lender at a higher rate of interest?

Mr. MILLER: That is true. Of course the banks have not gone into mortgage lending as yet.

Mr. LLOYD: Yes. Perhaps I might clear up the phrase "to a bank or perhaps worse"; it might be worse. Perhaps I should illuminate the remark for those who might see some humour in it. Suppose someone goes to a bank where he might be forced to take very much shorter terms because of the liquidity requirements of the banking system. He might be forced to make a much greater rate of repayment on the bank loan portion of his loan, and thereby put a greater strain on the income available to him.

Mr. MILLER: Yes, I tried to introduce that point, but I imagine I was not too clear.

Mr. LLOYD: Is it not correct to say that generally speaking, apart from your desire to be competitive with insurance companies who will be increasing to this ratio, you really feel that there are, on a selected basis, many instances where it would be a good thing to provide a 75 per cent mortgage on selected risks?

Mr. MILLER: That is my opinion.

Mr. LLOYD: Central Mortgage and Housing Corporation lending policy is restricted to certain fields, and the question always comes up concerning the percentage of market value. How significant is the 75 per cent figure when you realize that it is a percentage applied to the market value? Do you have any leeway in this direction?

Mr. MILLER: We make our loans, as I would think that pretty well all the other companies in the association do, on the basis of a percentage.

Mr. GELBER: Which is your company, Mr. Miller?

Mr. MILLER: The Huron & Erie Mortgage Corporation. We may lend on a basis which is not necessarily the same as the market value. In other words, our inspector will go out and put a value on a property. This could easily be something less than the value of the property which is changing hands.

Mr. LLOYD: So to a considerable extent management of trust companies exercise a judgment as to the risk factor and the degree of value that they put on a property?

Mr. MILLER: Very definitely.

Mr. LLOYD: And it is of just as much significance as the percentage?

Mr. MILLER: That is right.

Mr. LLOYD: So there are two aspects really to increasing the rate; one is to give the lending institutions an opportunity to be competitive, and the other is to afford them an opportunity to take selected good risks.

Mr. MILLER: That is correct.

Mr. LLOYD: I now have some questions for Mr. Nelson on the matter of leaseholds. Mr. Nelson mentioned that there are few companies which are incorporated under the provisions of the federal statute.

Mr. NELSON: Yes, sir.

Mr. LLOYD: How do they compare in terms of volume of business with the provincially incorporated companies?

Mr. NELSON: I could not give a percentage of total to you, but I am told that the superintendent of insurance indicated the other day that the assets of provincial companies in total were something like twice those of the federal companies.

Mr. LLOYD: I wanted to get the significance of it, because it leads into my question respecting the utilization of the source of funds for lending on leasehold operations. It seems to me that there is an interest these days in urban renewal, and that Central Mortgage and Housing Corporation attempts to favour municipalities. Central Mortgage and Housing Corporation hold the cleared sites for development proposals on a leasehold basis. Have you seen evidence of this at all in your operations?

Mr. NELSON: I am afraid that is outside my scope.

Mr. ROSE: I would hesitate to express an opinion on it.

Mr. LLOYD: You are not aware of this development, then?

Mr. M. J. W. ROSE (*Canada Permanent Mortgage Corporation*): No. We are very modest lenders under Central Mortgage and Housing Corporation.

Mr. LLOYD: There are evidences, I suggest to you, of municipalities taking advantage of the federal provisions, and there are opportunities for trust companies to be part of urban renewal developments; they are tending to practice leasing and lending for a long time rather than to dispose of land at what might be an encouraging market price. In this way the municipalities can maintain a control and interest in the development value of the land. There is quite a write-off. For example, if you clear a site at a cost of, let us say, $2 million or $3 million and you put this land up for development proposals, the property value to the municipality is very low. It may drop from $2 million down to, let us say, $500,000; whereas, if this leased property were spread over a longer term, then there would be a greater recovery to the municipality and to the federal government, so much so that by leasing the property it would be possible for the two partners, the federal government and the local municipality, to foresee the recovery of their initial investment. There is a very small offsetting grant for ground rent to accomplish it in the long term. I would think this would have been of some significance to the trust companies. Would you say that this was not one of your reasons for seeking the power to lend on leasehold property?

Mr. MILLER: Perhaps I ought to say that Mr. Rose and I represent loan companies here today. Mr. Nelson represents the Trust Companies Association. But I think your approach to this is completely reasonable. It has just not been our experience yet that we have got into this form.

Mr. NELSON: Might I say that trust companies have been moving into N.H.A. mortgages much more heavily than others. This may represent some trend in the industry, but I do not think it has swept through the entire industry yet.

Mr. LLOYD: I was thinking of the N.H.A. loans and this development in the field of urban renewal.

I have one final observation with respect to the auditors' certificate. You are speaking here on behalf of auditors who made representations to you. Is that right?

Mr. NELSON: No, on behalf of our own companies, companies which tell me that their auditors have taken this position.

Mr. LLOYD: And you feel possibly that the proposed wording of the certificate would demand of the auditors certain routine inspections and checks which they do not make?

Mr. NELSON: It would have to be our understanding that the auditors would want to reassess the wording.

Mr. LLOYD: It was not just a deferment until next year so as to give you an opportunity to make representations?

Mr. NELSON: No, we had no intention of making further representations on the subject.

Mr. LLOYD: I presume what you mean is that the auditors want to examine the wording to see if it will require of them additional audit programs in order for them to be able to comply with the new wording in that sense.

Mr. NELSON: If it were very much earlier in this year I doubt if we would be making this request.

Mr. GELBER: Mr. Chairman, I call it 11.16.

The CHAIRMAN: We got a late start and I would hope we could carry on for a little while longer.

Mr. GELBER: I am sorry, I cannot agree with that. I would prefer not to ask my questions if your wish is to let the witnesses retire now, but if the

witnesses are going to be here this afternoon I will ask my questions then. There is nothing urgent in what I have to ask, but I would like to go to my caucus meeting.

The CHAIRMAN: If so, we will be without a quorum.

Mr. LLOYD: Unfortunately, I am in the same position.

Mr. GELBER: You do not have to come back for me.

The CHAIRMAN: I will ask the indulgence of our witnesses and ask the committee to reconvene at 3 o'clock or immediately after orders of the day in this same room.

AFTERNOON SITTING

THURSDAY, November 12, 1964.

The CHAIRMAN: Gentlemen, we have a quorum. Would you proceed, Mr. Gelber.

Mr. GELBER: Mr. Chairman, I would like to ask the witness whether it is not true that trust companies get a higher rate of interest on mortgages than life insurance companies?

Mr. NELSON: Not to my knowledge, Mr. Chairman.

Mr. GELBER: Could either of the other two witnesses answer that question.

Mr. ROSE: I think trust and loan companies have to receive as high a rate as possible because they borrow their funds and the life companies do not. There has to be a spread between borrowing and lending rates. Therefore, trust and loan companies accept more mortgages at higher rates than do insurance companies.

Mr. GELBER: They do charge a higher rate.

Mr. ROSE: Well, I do not know whether or not that is the proper word to use.

Mr. NELSON: I was not aware of that.

Mr. GELBER: Are either one of the two witnesses here involved in companies that guarantee mortgages. As you know, we incorporated a company several months ago and the Hon. Donald Fleming appeared on that occasion. Do either of these gentlemen represent one of those companies which is involved in the complex of insuring mortgages?

Mr. MILLER: We are not in the insurance company but we are in Central Covenants.

Mr. GELBER: You are in the lending company.

Mr. MILLER: Yes.

Mr. GELBER: You have money in it?

Mr. MILLER: Yes.

Mr. GELBER: What average rate of interest would the lending company get?

Mr. MILLER: At the present time the combined rate is 7¼ per cent. We get 7 per cent and the Central Covenants receive a rate, which I believe, works out something like 8 per cent, but I am not too sure.

Mr. GELBER: But, you have no financial interest in the company that gets 2 per cent for guaranteeing the whole mortgage?

Mr. MILLER: We have no financial interest in the insurance company.

Mr. GELBER: Who does that?

Mr. MILLER: I believe it is a syndicate, including the Aluminum Company of Canada, Greenshields and the Bank of Nova Scotia.

Mr. GELBER: You have no direct interest in that?

Mr. MILLER: We have no financial interest in the insurance companies.

Mr. GELBER: What is the usual custom in respect of trust companies putting money out on mortgages? Is there a rule of thumb that a percentage of their assets has to be in mortgages or would it vary considerably from company to company?

Mr. NELSON: I think it would vary considerably from company to company. If I remember correctly—and I would have to refer to the reports for absolute accuracy—I think slightly over 50 per cent of the present assets of trust companies taken as a block are in mortgages. It is probably nearer 60 per cent but, as I say, I would have to refer to figures in order to be accurate in this connection.

Mr. GELBER: But there is no restriction; it is just a matter of good business judgment?

Mr. NELSON: I suppose the main restriction would be that 50 per cent of guarantee funds must be in trustee securities.

Mr. GELBER: Deposits and such things.

Mr. NELSON: Yes. Of course, it would depend on legislation in the provinces or the jurisdiction under which the trust company was operating. A federal trust company is subject not only to the federal act but the legislation in the province where it is operating.

Mr. GELBER: Now, there has been quite a development in the last number of years in respect of new trust companies, small trust companies.

Mr. NELSON: Yes.

Mr. GELBER: Do you have any reservation about that development which you would like to express or are you in a position to pass an opinion at this time.

Mr. NELSON: I do not know that I would express any formal reservation. There has been a very substantial increase in the number of trust companies and, with one exception, I think these all have been companies granted provincial charters. This has taken place, I think, mainly in Ontario, Manitoba and Alberta. There has been only one new federal charter granted and that company has not become operative.

Mr. GELBER: Are the provincial companies part of your association?

Mr. NELSON: Oh yes, the provincial companies are. There is a tendency for the new companies to apply for membership as they get into operation.

Mr. GELBER: Do you feel they are guided by the same rule of thumb in terms of the percentage of their assets that are invested in mortgages as the larger and older companies are?

Mr. NELSON: I do not think that comment of mine, which was really a recollection as to the percentage, would necessarily apply to every company. I am sure some would be very much higher than that.

Mr. GELBER: Do you recommend any restriction on the amount other than what you have mentioned?

Mr. NELSON: No.

Mr. GELBER: Would you recommend any further restriction on the amount of investment in mortgages?

Mr. NELSON: No, I would not.

Mr. GELBER: A number of members have expressed concern about the fact that a large percentage of the assets of trust companies is on demand and we

are wondering whether existing regulations adequately safeguard the liquidity of trust companies in view of the excitement that prevails in the real estate market?

Mr. NELSON: Yes. There are different jurisdictions here, of course, and somewhat different circumstances in the different jurisdictions. But, I think with prudent management of companies, coupled with the restrictions and the real supervision and inspection to which they are subjected there is an adequate safeguard.

Mr. GELBER: So, you would have no recommendation to make beyond what exists?

Mr. NELSON: No.

The CHAIRMAN: Would you proceed, Mr. Moreau.

Mr. MOREAU: Mr. Chairman, most of the ground I intended to cover has been covered. But, I did wonder about the objection taken in respect of clause 30. It is not specifically an objection but there was a question in respect of a delay. Is not the form which is prescribed under clause 30 already one which is commonly used in the industry? Is it not a pretty commonly used form?

Mr. NELSON: We did express some concern about this prior to our submission to this committee but we have withdrawn our objection. We have no objection to make to the requirement.

Mr. MOREAU: You would not have any idea, I suppose, of how many company audits presently use this form?

Mr. NELSON: I know that we were looking at annual reports on several occasions recently and there is quite a variety of usage which partly stems from different jurisdictions and partly for other reasons. There is certainly a variety of usage; in fact, quite a wide variety.

Mr. MOREAU: You would not have any idea how many would use a substantially different form and how many, by and large, would use this form?

Mr. NELSON: I am afraid I would not be able to say offhand. We have all these reports in our office but I must confess that I have not tried to get any statistics in that respect.

The CHAIRMAN: Have you a question, Mr. Lambert.

Mr. LAMBERT: I am concerned with a couple of matters, and I will take them in the sequence of amendments as proposed by the Trust Companies Association. My first question relates to the addenda at the bottom of page 1A. Under section 32(1) of the bill the trust companies assocation request—

The CHAIRMAN: If I may interrupt, Mr. Lambert, would you give us the page.

Mr. LAMBERT: It is on page 1A of the proposed amendments. It deals with an amendment to section 32 (1) of the bill, wherein it is proposed that trust companies be entitled to invest to a greater extent in common shares, and then there is the introduction of the earnings and dividend test. Then, it is requested that this be applied in part to preferred shares. I draw to your attention the wording of subparagraph (i) of the proposed amendment to paragraph (*h*), wherein the word "or" is used. In other words, we are asked to approve that a trust company may invest to the limited percentage of preferred shares in respect of a corporation incorporated in Canada if the corporation has had a dividend payment record of five years in conformity with the requirement of preferred shares, "or" that this meet the dividend and earnings test in respect of common shares.

Mr. NELSON: Yes.

Mr. LAMBERT: But, not the alternative of "or". Why not make it conjunctive by using the word "and". After all, the Trust Companies Association is

getting an extension here into common shares, where there is a considerable extension on the basis of the earnings record. Would you not agree that notwithstanding the prior claim of preferred shares there could be non-compliance with the common shares and that under the proposed amendment suggested preferred shares would be authorized.

Mr. NELSON: Do you want me to comment, sir, on "and/or"?

Mr. LAMBERT: Yes, I want to draw a clear distinction. You are asking us for something that is a greater extension than what the proposed amendment under the act allows.

Mr. NELSON: I do not think we are asking for a great extension. Section 63 (1) (*h*) of the act now permits trust companies to invest in preferred stocks if these preferred shares have paid regular dividends.

Mr. LAMBERT: Yes.

Mr. NELSON: Now, we are actually losing something when we ask this because what we are asking means that the preferred shares must now have the same requirement as the common stock.

Mr. LAMBERT: I beg to differ. You used the word "or". Under your proposed amendment a company could meet the requirements of the preferred shares but it need not meet the requirements of the common shares, and as long as it met the requirements of the preferred shares you could invest in those.

Mr. NELSON: I see your point now.

Mr. LAMBERT: I am wondering why the word "or" was used rather than "and".

Mr. NELSON: I do not think Mr. Chairman, that was intentional. It was not our intention to ask that we get two things. We meant to ask for this situation, that if we could buy the common stock of a company we could buy its indebtedness or its debentures and bonds, or its preferred stock. We recognize this would lose us a certain privilege in buying preferred stocks if that rule were adopted.

Mr. LAMBERT: I would suggest to you that as far as I am concerned if you had the word "and" inserted there your proposed amendments might make sense and would be acceptable. However, certainly under this proposed form I cannot see how it can be acceptable because you are asking us to give you qualifications in two categories. While a company might meet its requirements under a preferred share category it might not meet the requirements in the common share category.

Mr. NELSON: Just a moment, sir. Number 1 specifies that the common share should have met the specified dividend requirements. That refers, I believe, to the requirements for the common shares.

Mr. LAMBERT: No, No. 1 says that it shall have met the requirement in so far as the rate upon all its preferred shares is concerned.

Mr. NELSON: I must fall back on this, Mr. Chairman, and say that what we are asking is that if the common shares are available for our investment we would like the right to invest in that company's preferred stock or in its indebtedness. If there is an error as a result of draftsmanship, I apologize for it; I received it just before I came here.

The CHAIRMAN: I think perhaps Mr. Humphrys could clarify this.

Mr. HUMPHRYS: Yes, I could perhaps clarify that point, Mr. Chairman.

The provision applying to the insurance companies does permit them to invest in debentures if the company that issued the debentures has paid sufficient dividends on its preferred shares to qualify the preferred shares as investments or if it has paid sufficient dividends on its common shares to

qualify its common shares. Therefore, it is an alternative test for insurance companies that applies under existing legislation, and with the amendments that alternative will continue to apply. As I understand it, the request in this brief is for a similar provision.

Mr. LAMBERT: Do you mean to tell me that if a company qualifies in so far as its preferred shares are concerned it ipso facto qualifies with respect to its common shares, and vice versa?

Mr. GELBER: And debentures.

Mr. HUMPHRYS: No, but if its common shares qualify then its preferred shares qualify. If its preferred shares qualify then its debentures qualify.

Mr. LAMBERT: I think we need to give this point further study because it is certainly not clear to me that if a company has met its requirements for preferred shares it will ipso facto qualify for the purchase of its common shares if you use the word "or". There are two separate tests applied and they are not conjunctive; they are disjunctive.

Mr. HUMPHRYS: The common shares will not qualify on the basis of dividends on preferred shares but its debentures will qualify if the preferred shares qualify.

Mr. LAMBERT: With the greatest respect, nothing is mentioned here about debentures. All we are talking about here is preferred shares in a corporation incorporated in Canada. This is paragraph (h).

Mr. HUMPHRYS: Preferred shares will qualify if the common shares qualify.

Mr. LAMBERT: And if common shares do not?

Mr. HUMPHRYS: Then the preferred shares will qualify if they meet the prescribed dividend test, which is payment of all dividends on all preferred stock at the specified rate every year for the last five years.

Mr. GELBER: What is the test on debentures? How many times must they earn interest before a debenture qualifies?

Mr. HUMPHRYS: For insurance companies they must earn twice their interest requirements in the last five years. In at least four of the last five years they must have earned 1½ times their annual interest requirements. That is, in the five year period taken together it must be ten times the annual interest requirement, and in any four or five years it must be at least 1½ times.

Mr. LAMBERT: That settles my questions on that point. However, unless any other member has anything to ask I have some questions on another point.

The CHAIRMAN: Proceed, Mr. Lambert.

Mr. LAMBERT: With reference to clause 6 as proposed on page 2 of the brief, the trust companies would like to be able to invest their funds in fully paid common shares of any corporation incorporated to acquire, hold, maintain, improve, lease, manage or act as agent for the purchase, sale or lease of real estate or leaseholds.

These real estate firms do act in regard to insurance. The real estate firms usually have an insurance department as an adjunct.

I have raised the point before—and I have not yet had an answer from the superintendent of insurance—whether it is a provision presently in the federal legislation that it shall not be a condition of the granting of a mortgage that insurance shall be placed with any specified company, or that existing insurance shall be cancelled and placed with a specified company, either through a wholly owned subsidiary of the mortgage company or nominee company, or as it will be with life insurance companies where they may control a general insurance company.

Mr. NELSON: In other words, you want to leave the person free to make his own choice?

Mr. LAMBERT: Yes, because it is contrary to some provincial insurance acts. I also think it is a nefarious practice.

Mr. NELSON: I think it is similar in the Ontario act.

Mr. LAMBERT: Would the trust companies be averse to such a provision in federal legislation should there be jurisdiction in this regard?

Mr. NELSON: We have no idea of insurance in this connection at all, Mr. Chairman. I think the answer to that is no, we would not be averse.

Mr. LAMBERT: There is one question I would like to put to Mr. Nelson or one of the other witnesses.

Mr. Humphrys the other day pointed out very definitely that there are limitations or requirements for consolidation for borrowing. Loan or trust companies do borrow funds for purposes of investment and there are provisions in connection with the trust companies that, though under section 33 they may not exceed 12½ times of the excess of the assets over the liabilities, subject to permission they can go up to 15 per cent.

In relation to the proposed amendment to increase loanable values up to 75 per cent, what is the observation of the witness on the fact that by being entitled to borrow greater and greater amounts with an increase in the ceiling on mortgages, trust companies and loan companies which are quite heavily involved in real estate development get into a position that becomes somewhat more precarious? Perhaps precarious is the wrong word, but their position becomes a little more extended in the event of even a minor recession where realty values drop.

I believe Mr. Humphrys said that if you had an excess of assets over liabilities of $1 million you could borrow—subject to the limitations—a further $15 million, giving you $16 million available for investment, and it would require only a 6¼ per cent drop in the realty market to wipe out the capital of a trust or loan company that is committed to these realty transactions.

Do you feel that there is any danger in this particular sector?

Mr. NELSON: No, not under sound management, sir.

Mr. LAMBERT: In other words, you say sound management meaning that you do not go up to 75 per cent?

Mr. NELSON: No, I do not think I could say that. The liquidity requirements of individual companies vary enormously depending on the kind of business they do.

Some companies whose businesses require it do have an extraordinary degree of liquidity because of the business they do; others have a smaller percentage. This in turn relates to the kind of business they do. Many factors come into it, including the way in which money comes into their hands; it may be by demand deposit or it may be by term deposit. For the guaranteed investments certificate or receipt, it is five years and there is a tendency for trust companies to try to match the five year renewable clauses in their mortgages with their five year money on that.

On the average, I think of the 12 companies we use for a monthly report, which represent a pretty high percentage of total assets under administration, in a very rough way it is about 50-50, I believe, for deposit, or demand money, as opposed to term money. Of that demand money an increasing proportion is in the type of account which is not checkable. In other words, people use a true savings account, and I think one might assume that that is a more stable balance than one which a person uses for checking purposes. So it is not just all a demand situation by any means as far as the obligations of the company are concerned.

Mr. LAMBERT: But you will agree that getting into the real estate market and getting out of it is not just like taking off your shirt unless you are prepared to leave it behind.

Mr. NELSON: I would remind you, sir, that I mentioned some time ago on this sample of companies, which represents a high percentage of the industry's assets, that it is not a great deal over 50 per cent that is invested in mortgages. So when you bear in mind the different kinds of liabilities they have and compare them with their assets structure, combined with some prudent management, I do not see anything dangerous.

On the other hand, I do not see that it matters what restrictions you have in the law if you have imprudent or unwise management because then you can certainly get into all sorts of hot water.

Mr. LAMBERT: I am sure the committee do not want to play God in this matter and run the trust or loan company business, but we are all very conscious of the fact that the doors are open so wide that if one of the trust companies gets into trouble they are all in trouble.

Mr. NELSON: I may say, Mr. Chairman, that we are very conscious of things of this sort. This is the kind of matter which engages the attention of our association very closely indeed, and we are aware that there has been for some time a liberalizing trend because of legislation. I can assure you, Mr. Chairman, and your committee, that I think our member companies are in a most prudent mood in regard to these things. They are very very aware of the importance of careful and prudent management.

Mr. MILLER: I believe you used the premise that if the real estate mortgage dropped 6½ per cent the equity in the companies would be eliminated.

Mr. LAMBERT: Under the example I gave, yes.

Mr. MILLER: This, in fact, is not the case. I do not think Mr. Humphrys was giving this illustration in quite that reference. In the first place all mortgages go up to only 75 per cent, so you have to have a 25 per cent drop in real estate values before your 75 per cent loan becomes vulnerable. Then, beyond that you have to have a further drop before the equity of the company becomes impaired.

Mr. LAMBERT: I think you have dealt with mortgages enough, and so have I as a lawyer, to know that if a realty loan gets into trouble, the market value of the property is not the realized value. Therefore, perhaps the thing comes down to 75 per cent and that really is what it is worth on a realization basis because you are under a fire sale and, depending upon the legislation which exists across the country which is uneven, you cannot say that 100 per cent of the value of the property represents an asset in the hands of the mortgagee; it is more like 75 per cent.

Mr. MILLER: The other point, of course, is that your mortgage portfolio itself is maturing all the time so that even if a company is taking on 75 per cent loans, it also probably has far more loans on its books which are paid down to 50 or 45 per cent. Therefore, the proportion of these vulnerable loans is not high in relation to its mortgage portfolio, if you choose to consider them as vulnerable loans.

Mr. LAMBERT: But you agree that a drop in the mortgage value does seriously affect your ratio?

Mr. MILLER: Oh, quite.

Mr. LAMBERT: And while we may be quibbling about one or two per cent, I think it is more in that nature than in the wide figure you gave us.

Mr. NELSON: I would suggest there really is no difference of opinion. The companies are very aware of this.

Mr. THOMAS: I think for the most part the question which I had this morning has been answered. I intended to raise the matter of how close to the 66⅔ per cent limit the trust companies have gone during their past experience. I have taken into consideration there is no rigid measurement in respect of what value really applies; that is, whether it is the assessed value for loan purposes or assessed value for municipal purposes, or somebody's idea of the market value, it has very little meaning. I think, as the witness has pointed out, it is a matter for prudence all the way along the line.

Mr. GELBER: I have one more question. I am very much interested in how the trust companies obtain their income. You receive money from interest and from dividends and from commissions, and some of your companies carry on a very active real estate brokerage business. I am wondering whether you have any figures in respect of the 12 companies you mentioned which represent the bulk of your business, and whether you make a statistical report showing what percntage of their gross business is derived from non-investment income.

Mr. NELSON: We do not have any figures which I remember at all, but I think I can safely say in a general way—and I believe the president of one of our larger companies made this point in his annual address recently—that the income from the fiduciary side, particularly the personal estates management side in the trust company work is a very small return. The major income would come from the financial intermediary side and the service side; that is, where we borrow money, where we take deposits on guaranteed investment certificates and in turn invest that money, and from the services which trust companies supply in the corporate and personal field—mainly in the corporate field.

Mr. GELBER: That would be invested income. I am wondering what percentage of the gross income is from non-investment income?

Mr. NELSON: I am afraid I do not know.

Mr. GELBER: The banks have that information and it is very revealing. It would be very interesting to know to what extent your income is derived from services?

Mr. NELSON: I think the service income is a factor. I have not seen figures on that, frankly. I just know in a general way that the income from the fiduciary aspect, the estate work, is not a substantial percentage; it is very small.

The CHAIRMAN: Do you have any figures in this regard in your report, Mr. Humphrys?

Mr. HUMPHRYS: We do publish a summary of this type of information dealing with trust companies which are licensed by the department.

Mr. GELBER: That is available in your report?

Mr. HUMPHRYS: Yes. I think Mr. Nelson probably is referring to the net income. In the gross income it is a very substantial proportion.

Mr. GELBER: Would you have the gross figures there?

Mr. HUMPHRYS: I have our report for 1962 here. The 1963 report is not yet published. Of the trust companies licensed by the department, the gross income for 1962 was $25 million, of which $14 million was the income represented by fees and commissions earned on estates, trusts and agencies; that is the gross income. Of course, what the expenses would be in connection with that particular operation I have no idea.

Mr. GELBER: Would that include real estate commissions?

Mr. HUMPHRYS: That would be fees and commissions from administering estates, trusts and agencies. So, if they were making real estate transactions on an agency basis, the revenue from those transactions would be in this figure.

Mr. NELSON: I think I was separating that, because I did not include in that figure the charges for services.

Mr. LLOYD: I have a question first for Mr. Humphrys, and then perhaps back to the witness from the Trust Companies Association. I think Mr. Humphrys may have the answer. Clause 6 on page 14 with regard to insurance companies makes provision for investment by insurance companies in a real estate company. In the explanatory notes on the opposite page it says:

> It would also permit life insurance companies to own subsidiary real estate companies.

Do any of the other provisions in respect of investment in common stock in any way affect this power to invest in real estate companies, or is this something separate and apart?

Mr. HUMPHRYS: This power would be apart from the limitations in subsection (1) of section 63 which means that it would set aside the dividend tests and it would set aside the 30 per cent limit on the investment in any other company, but it would not set aside the ceiling on the total investment in common shares.

Mr. LLOYD: But the other qualifying rules with regard to dividend payments and earnings that you provide in other sections do not apply to this particular section on investment in real estate companies?

Mr. HUMPHRYS: That is correct; but I should add that this investment would be subject to terms and conditions prescribed by the treasury board on the recommendation of the superintendent, so there will be some pattern of supervision over this type of thing.

Mr. LLOYD: I would like to come back to Mr. Nelson. The Trust Companies Association has requested the same power as described by Mr. Humphrys.

Mr. NELSON: That is right.

Mr. LLOYD: I am sure you are not seeking powers just for the sake of having them in the statute; there must be some practical reason for acquiring this power. Would you give the committee an illustration of what you may be denied if you do not have this power?

Mr. NELSON: Briefly, there are two reasons. We are asking for this for those of our member companies which are federally incorporated. The total number in the industry is something like 50, and there are seven federal companies. Many of their provincially incorporated competitors have used this power to operate a real estate subsidiary. The second reason is the companies concerned are not seeking to obtain any additional power; they have the power to do these things under their agency power now. This is a more convenient and better way, in some cases, for them to do it, than under their present real estate department.

Mr. LLOYD: You are aware of what I believe is the British practice in respect of insurance companies. In recent years that has been somewhat expanded because of the major redevelopment plans and projects they have in Great Britain. Under this practice a British insurance company will be the lender, the mortgage lender, to a development company, and has the right to convert debentures which it may take as security for its loans or mortgages; it has the right to convert to common stock in the development company, thus giving it an entry into a company they are financing as a hedging operation against inflation. Is that practice at all conducted in Canada?

Mr. NELSON: I am afraid I just do not know the answer to that.

Mr. LLOYD: You are not aware of it?

Mr. NELSON: No.

Mr. LLOYD: Under this provision that practice could develop.

Mr. NELSON: I should explain that that does mean it does not exist. I have been with the trust companies only for two years. Perhaps I might answer the question indirectly in this way. We are not seeking the power for investment as such. We are seeking a way to perform services. We are not trying to find a way to invest money, or to avoid the restrictions on investments in the act; that is not the purpose at all.

Mr. LLOYD: Do you see an advantage in the possibility of the practice of the British insurance companies being developed in Canada?

Mr. NELSON: There well might be.

Mr. LLOYD: Under this provision you could, in fact, use this power for that purpose?

Mr. NELSON: Subject, of course, to the treasury board and the superintendent of insurance who I am sure will keep a very close eye on it.

Mr. LLOYD: May I suggest to you I think the legislation in respect of the insurance companies foresaw such a possibility.

The CHAIRMAN: If I may interject, gentlemen, conditions being what they were, Mr. Nelson has engaged the services of the railway to transport him back home. This morning we understood he would be leaving at 4.15 p.m. The other two gentlemen can remain behind. If the members of the committee will permit, Mr. Nelson will retire, unless someone has a brief question for him.

Mr. LAMBERT: I have one brief question not dealing primarily with the added powers of the trust and loan companies, but rather with their role as transfer agents. I refer to the changes you have made with regard to the residence qualifications of shareholders in these various types of companies that we are considering. I take it that your association has looked at this matter and is satisfied that they will not impose an improper burden on them, outside of due compensation of course.

Mr. NELSON: Yes. We have discussed this in detail with the department, and we have made no representations on it.

Mr. LAMBERT: It will become a great deal more complicated.

Mr. NELSON: Yes, but I do not think a great many companies are involved, so far as our transfer departments are concerned.

The CHAIRMAN: Thank you very much Mr. Nelson for your presence and co-operation. I can assure you that the committee will consider your amendments, and that they will be voted upon and treated favourably or otherwise.

Mr. NELSON: Thank you. I wish to express our thanks to the committee.

The CHAIRMAN: Mr. Rose and Mr. Miller are still with us. Are there any further questions? If not we may permit all the witnesses to retire. I understand that they may be present throughout our hearings as we go along, and will be available if necessary. But we are not insisting on it.

All the recommendations put forth will be dealt with clause by clause. Thank you, gentlemen. Now, having exhausted our witnesses for the time being, we shall meet again next Tuesday when Mr. Robinette will be here to present his case for the World Mortgage Corporation.

Apart from Mr. Robinette I am not aware of any outside witnesses who desire to make representations. But if there are any you have in mind, the Chair would welcome your bringing them to his attention. The committee is now adjourned until next Tuesday at 10 o'clock.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

TUESDAY, NOVEMBER 17, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

WITNESS:

Mr. Richard Humphrys, Superintendent of Insurance.

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

21534—1

STANDING COMMITTEE
ON
BANKING AND COMMERCE

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Vice-Chairman: R. Gendron, Esq.

and Messrs.

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Armstrong
Asselin (*Notre-Dame-de-Grâce*)
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Bell
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
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Côté (*Chicoutimi*)
Douglas
Frenette
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Grafftey
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Macaluso
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McCutcheon
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Monteith
More
Moreau
Munro
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 17, 1964.
(15)

The Standing Committee on Banking and Commerce met at 10.00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Asselin (*Notre-Dame-de-Grâce*), Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Habel, Klein, Lambert, Lloyd, Macaluso, McCutcheon, More, Moreau, Nowlan, Otto, Pascoe, Pennell, Wahn, Whelan—(19).

In attendance: Mr. Richard Humphrys, Superintendent of Insurance.

The Chairman presented the Third Report of the Sub-Committee on Agenda and Procedure, dated November 16, 1964, which is as follows:

(*a*) That Mr. J. J. Robinette, Q.C., be invited to present the brief on behalf of World Mortgage Corporation on Wednesday, November 18, 1964, at 9.30 a.m.;

(*b*) That the Minister be invited to appear if necessary to answer any questions of policy;

(*c*) That the Superintendent of Insurance be invited to appear on Tuesday, November 17, to answer outstanding questions, and that the Committee then proceed to clause by clause consideration of the Bill.

On motion of Mr. Basford, seconded by Mr. Nowlan, the above mentioned report was approved.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

Mr. Humphrys first gave replies to questions raised earlier to which he had undertaken to obtain answers, and was briefly questioned further.

Clause 1 was carried.

On Clause 2

On motion of Mr. Moreau, seconded by Mr. Whelan,

Resolved,—That sub-clause 2 of clause 2 be amended by striking out line 9 on page 2 and substituting therefor the following:

"and has, subject to section 45 one vote for each share held by him subject"

Clause 2 was carried, as amended.

On Clause 3

Mr. Moreau, seconded by Mr. Klein, moved that Clause 3 be amended

(*a*) by striking out lines 3 to 9 on page 7 and by substituting therefor the following:

"long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day,

21534—1½

but this sub-section shall not be construed to prohibit the exercise of voting rights in circumstances where section 16D does not apply.

Change of status of corporate resident.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of a life company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 16C and 16D, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of a life company is reduced, the directors of the life company may, notwithstanding subsection (2) of section 16C, allot shares of the capital stock of the life company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(*b*) by renumbering subsections (4) to (6) of section 16F on page 7 as subsections (6) to (8) respectively; and

(*c*) by striking out line 33 on page 7 and by substituting therefor the following:

"section (7) of this section.

Conclusions reached by directors.

(9) In determining for the purposes of sections 16B to 16F whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 16E or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

The Committee agreed that the motion for amendment and the Clause be allowed to stand.

On Clause 4

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That Clause 4 be amended by striking out lines 34 to 36 inclusive on page 7 and by substituting therefor the following:

"4. (1) Section 45 of the said Act is repealed and the following substituted therefor:

Change in capital stock.

"45. (1) Notwithstanding anything contained in its Act of incorporation or in this Act, if the subscribed stock of a company is fully paid, the company may, by a by-law made by the directors and confirmed by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for considering the by-law, divide the capital stock of the company into shares of one dollar each or any multiple thereof but not exceeding one hundred dollars each.

Voting rights qualified.

(2) Where pursuant to subsection (1) the capital stock of a company registered to transact the business of life insurance is divided into shares the par value of which is less, than five dollars each, a holder of the shares shall have as a shareholder of the company only the number of votes that equals the product obtained by dividing the total par value of all his shares in the capital stock of the company by five.".

(2) The said Act is further amended by adding thereto, immediately after section 45A thereof, the following sections:"

Clause 4, as amended, was carried.

On Clause 5

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 1 of clause 5 be amended by striking out lines 42 to 44 inclusive on page 8 and by substituting therefor the following:

"under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 6 of clause 5 be amended by striking out line 13 on page 11 and by substituting therefor the following:

"or of a province, state or municipality of that"

Clause 5, as amended, was allowed to stand, in order that the Minister may be questioned on this clause.

Clause 6 was allowed to stand.

Clauses 7 to 10 inclusive were carried.

Clause 11, being consequential on Clause 6, was allowed to stand.

Clause 12 was carried.

On Clause 13

On motion of Mr. Moreau, seconded by Br. Macaluso,

Resolved,—That sub-clause 1 of clause 13 be amended by striking out lines 8 to 10 inclusive on page 18 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 8 of clause 13 be amended by striking out line 14 on page 21 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

Clause 13, as amended, was allowed to stand.

Clauses 14 to 17, inclusive, were allowed to stand.

Clause 18 was carried.

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That a new clause 19 be inserted immediately after the headings "Part II" and Foreign Insurance Companies Act" following line 34 on page 24, as follows:

1960-61, c. 16, s. 4(2).

"19. Subsection (6) of section 37 of the *Foreign Insurance Companies Act* is repealed and the following substituted therefor:

"(6) Where a separate and distinct fund with separate assets is maintained pursuant to subsection (5), the assets of the fund so maintained shall be available only to meet the liabilities arising under policies in respect of which such fund is maintained, except that amounts transferred to the separate and distinct fund from other funds of the company may, subject to the approval of the Superintendent, be withdrawn from the separate and distinct fund and transferred to such other funds as the directors may determine."

On Clause 19

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That as a consequence of the insertion of a new clause 19, clause 19 be renumbered as clause 20, and that the clause be amended by striking out lines 35 to 37 inclusive on page 24, and by substituting therefor the following:

"20. (1) Paragraph (b) of section 1 of Schedule I to the said Act is repealed and the following substituted therefor:"

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 1 of clause 19 be amended by striking out lines 5 to 7 inclusive on page 25 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 8 of clause 19 be amended by striking out line 46 on page 27 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

Clause 19 of the Bill, as amended, was allowed to stand.

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That clauses 20 to 39 be renumbered as clauses 21 to 40 respectively.

Clause 20, as amended by renumbering, was allowed to stand.

Clauses 21 to 25, inclusive, as amended by renumbering, were carried.

As the remaining clauses of the Bill dealt with amendments to the Trust Companies and the Loan Companies Acts, it was agreed not to proceed further with consideration of the Bill at this time, as it was felt that Mr. Robinette might wish to deal with these sections in his brief to be presented tomorrow.

At 11.00 a.m., the Committee adjourned until 9.30 a.m., Wednesday, November 18, 1964.

Dorothy F. Ballantine,
Clerk of the Committee

EVIDENCE

TUESDAY, 17 November, 1964.

The CHAIRMAN: I see a quorum, gentlemen, and I will call the committee to order. I would inform the committee that a meeting of the steering committee was held yesterday in my office. At that time we were advised that Mr. Robinette is still tied up in the Supreme Court of Canada but would be free tomorrow morning. The steering committee recommends that we convene tomorrow at 9.30 to hear Mr. Robinette. It is my understanding that his submissions would not take more than half an hour. Allowing for the usual searching questions that come from the committee to the witnesses, it would appear that we would be able to dispose of Mr. Robinette's presentation before the committee in time for the members to attend the caucus meetings that are usually held on Wednesdays. I would ask the committee if that meets with their approval, that we convene tomorrow at 9.30. It is so moved by Mr. Basford, seconded by Mr. Nowlan. Is everyone in favour?

Motion agreed to.

So far as we are aware, Mr. Robinette is the only remaining witness who has indicated a desire to appear before the committee, and so, pending his appearance tomorrow, it was suggested that the superintendent come forward. I believe he is in a position to answer some questions that have been asked and have as yet remained unanswered. I will ask Mr. Humphrys to deal with questions that are still before the committee.

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Mr. Chairman, members of the committee, during the earlier meetings a number of questions were raised to which I undertook to get the answers. I have them now, so I would just like to deal with a few points and put the replies on the record.

One of the questions related to the number of new issues of common shares that would qualify for investment under the new tests proposed in this bill. I gave as an estimate the number of 44 additional common stocks that would qualify. This figure was supplied to me by a life insurance company on the basis of their analysis of the effect of the amendments, and they have now given me a classification by industry of those 44 issues. The classification is as follows: trust and loan, one; acceptance companies, one; investment trusts, one; beverage companies, one; chemical and textile companies, two; construction and materials, two; food and retailing, four; forest products, three; industrial mining, one; metal working, six; oil and gas processing, two; pipe line, two; utility, two; base metals, seven; western oils, four; miscellaneous, five. The total is 44. I should explain that that total does not include companies such as Union Carbide that might qualify if their shares are offered on the market, because this analysis was based upon information that is only now publicly available. Some of the Canadian subsidiaries of foreign companies do not make financial information publicly available, so it was not possible to get a complete analysis.

Another question raised had to do with the volume of business out of Canada transacted by Canadian life insurance companies. At the end of 1963 Canadian life insurance companies had $55 billion of life insurance in force; of this $16 billion was out of Canada, or about 30 per cent. Of the business out

of Canada, 70 per cent was in terms of U.S. dollars, so the most of that would be in the United States. It is interesting to note that the business transacted out of Canada by Canadian life insurance companies at $16½ billion is almost the same as the business transacted in Canada by non-resident companies, a total of $17½ billion.

Another question raised was whether the shares of some companies recently taken over by foreign interests would have been eligible investments for Canadian life insurance companies. The companies named were John Labatt Limited, Canadian Oil Company Limited and Atlas Steel Limited. The common shares of all of those companies were eligible investments.

Another question was raised concerning Union Carbide. At the present time, Union Carbide shares are eligible investments for life insurance companies only pursuant to the basket provision. Under the proposed test in the bill they would qualify—under the earnings test.

A further question related to the requirements in the United States concerning investments in common shares. In my answer I explained that each state has its own requirements, and that there is a great variety. I have the requirements of four states here as a sample. In New York common shares qualify if the issuing company has paid a four per cent dividend each year for the last ten years, and in addition had aggregate earnings in ten years sufficient to pay the dividend.

The maximum investment that a life insurance company may make in common shares is five per cent of its assets, or one half of its policyholders' surplus. A company may not invest in more than two per cent of the issued shares of any one company, nor may it put more than one fifth of one per cent of its assets in any one company. In Illinois the shares are eligible investments if they are listed on a public exchange and if the issuing company has earnings in the three of the last five years at least equal to 12 per cent of the price paid per share.

The maximum investment that a company may make in common shares is 50 per cent of the excess of its capital and surplus over the minimum capital and surplus required by the law. In Pennsylvania a company may invest in the common shares of any solvent company up to a maximum of its surplus and 25 per cent of its reserves. However, there is an additional limitation of 5 per cent of its assets. In Ohio a company may invest in common shares up to the amount of its capital and surplus only, but not more than five per cent of its assets. The shares must have paid cash dividends in three of the last five years and have earned at least four per cent of the par value of the shares over the last five years. It can be seen, therefore, that there is a very great variety, but, generally speaking, the maximum limit on the investment in common shares in the United States is very much lower than it is in Canada.

I would also like to correct a somewhat confusing answer I gave to a question relating to the power of trust companies to purchase the shares of other trust companies. The fact is that under the normal investment provisions a trust company cannot invest in the shares of another trust company. It may, however, buy shares of other trust companies as a step leading to amalgamation of the two companies.

Those are all the comments I have.

Mr. LAMBERT: I have a question on the last point relating to the last answer given by Mr. Humphrys. Mr. Humphrys, how can you distinguish between what might be called wide investment and investment with a view to acquisition? There are two ways of doing it; there is a real take over bid, and there is the quiet picking up of shares on the market. How do you distinguish between the two methods of proceeding?

Mr. HUMPHRYS: There is a general prohibition in the investment provisions against any trust company investing in the shares of another trust company, but a subsequent section permits a company to buy shares off another trust company, notwithstanding that prohibition, subject to certain safeguards: first, they must have the permission of the treasury board; second, the initial purchase must be at least 67 per cent of the shares of the other trust company; third, the purchase must be approved at a special meeting of both companies; and, fourth, the two companies must be amalgamated within a limited time after the purchase.

Mr. LAMBERT: In other words, it is not possible for one trust company to quietly buy up the shares of one of its competitors?

Mr. HUMPHRYS: No.

Mr. KLEIN: What happens when a company buys up securities substantially beyond that provision? What happens if a company would buy considerably more than seven per cent?

Mr. HUMPHRYS: We would require the company to dispose of the excess.

Mr. KLEIN: Suppose at the moment you require them to dispose of it the securities in question had gone down substantially, and if they were sold at that time it might impair the capital of the company?

Mr. HUMPHRYS: If they made the investment beyond their corporate powers, they would have a questionable title to the investment in the first place and they would have acted beyond their powers. We would have to take the view that the investment was an improper one and should be disposed of. If it were a question that threatened the solvency of the company, I would not like to give a categorical answer to that. I think one would have to examine the circumstances to see what action would be taken. I think as a minimum we would have to strike the asset out of the balance sheet of the company in assessing its financial position in meeting the requirements of the act that would authorize it to continue in business.

If the financial condition of the company was such that its solvency was threatened, I think we would have to call for additional capital funds to be paid in, if that could be done. Otherwise, we would have to insert such conditions in the licence as would be needed to protect the public, and perhaps, further, to take steps to try to transfer the business of the company to some other solvent company. There would be quite a variety of actions available, and the one taken would depend very much on the circumstances of the case.

Mr. KLEIN: Would you have discretion in giving them a time limit within which to dispose of these assets?

Mr. HUMPHRYS: The minister has discretion to put any condition that he wishes in the licence of the company which comes up for renewal annually. If this particular event took place between licence renewals, we would require them to dispose of the security. I am not sure that we would lay down a specific time limit, but we would expect them to take action promptly.

Mr. KLEIN: What action would you take if they refused to comply with your order?

Mr. HUMPHRYS: I think we could withdraw their licence, or we could put conditions in it, at least when it was up for renewal.

Mr. KLEIN: Could you ask for the cancellation of the corporate powers of the company or its charter?

Mr. HUMPHRYS: We could not do that. The most we could do would be to recommend to the minister that he withhold the renewal of a licence or else insert conditions in the licence. If the company is such that its financial condition is deemed not to warrant its continuation in business, then it could be deemed insolvent and consequently be thrown under the winding up act.

The CHAIRMAN: Are there any other questions?

Mr. LAMBERT: I was wondering whether Mr. Humphrys was able to determine whether there are any conditions within the regulations or otherwise prohibiting a mortgage company or an insurance company from making conditions on the placing of insurance?

Mr. HUMPHRYS: We have not received a reply from the Department of Justice to our inquiry on that point. I can make a further inquiry to see whether they are in a position to answer now or whether they feel that they have to take a longer time to investigate it.

Mr. LAMBERT: Could you inquire for me, Mr. Humphrys, because I think it may be something on which it may be necessary to put forward an amendment or a proposal.

The CHAIRMAN: Are there any further questions on the answers given by Mr. Humphrys this morning? It was suggested by the steering committee that we commence a clause by clause discussion of the bill, standing those clauses on which further information is required, with a view to expediting the dealing with this bill and bearing in mind that we anticipate that there will be committees going hard to work on the bill now before the house to deal with pensions and so forth. We are spreading ourselves pretty thin as it is as far as this committee's work is concerned. If I have the permission of the committee, I will now call clause 1.

Clause 1 agreed to.

Mr. BASFORD: It was my understanding at the earlier meetings that the minister was going to appear before the committee.

The CHAIRMAN: The steering committee said that if any questions were raised the minister would be called. The minister has no intention of avoiding this committee. Mr. Nowlan will confirm that we decided at the steering committee we would proceed clause by clause. If the minister is asked to come on any particular clause, he will come.

Mr. NOWLAN: It was my suggestion that the minister should not have to be here all the time but that if there was any question asked on any clause that the minister should be asked to come.

The CHAIRMAN: I should add that Mr. Robinette will not be dealing with part 1 of the bill concerning insurance companies which we are now considering in the committee. He will only deal with clause 40 of this bill.

On clause 2—*Qualifications of directors.*

Mr. MOREAU: There was an amendment to clause 2. I must first confess that my folder is over in the centre block in my desk and I have not got my explanatory notes. I do not even remember what this amendment was about.

The CHAIRMAN: The superintendent has a copy, Mr. Moreau, and I believe he is in the position to explain the amendment.

Mr. MOREAU: I have sent a messenger over for my folder. The amendment was to strike out line 9 on page 2 and substitute the following: "and have, subject to section 45, one vote for each share held by him subject".

Mr. HUMPHRYS: This is a consequential amendment by reason of introducing a new clause to the bill subsequently. The new clause gives life insurance companies power to subdivide their shares but modifies the voting rights to some extent. This calls attention to the modification of the rule of one vote per share.

The CHAIRMAN: Shall clause 2 as amended carry?

Mr. LAMBERT: Are you satisfied that as a result of this wording which introduces the word "subject" twice into the subclause no conflict is created between clause 45 and any of the following provisions?

Mr. HUMPHRYS: I am satisfied it does not.

The CHAIRMAN: It is moved by Mr. Moreau and seconded by Mr. Whelan that clause 2 be amended as outlined. All in favour?

Amendment agreed to.

Shall clause 2 as amended carry?

Clause 2, as amended, agreed to.

On clause 3—*Definitions.*

Mr. MOREAU: There is another amendment there. This one has to do with fixing the relationship of the stock presently held rather than the actual number of shares. It deals with further provisions we made for reducing the par value of the stock and therefore the provision for stock splits. The amendment is that clause 3 be amended by striking out lines three to nine on page 7 and substituting wording which I think most members of the committee have before them. I could read it if you like but it is almost two pages long. Can it be taken as read?

The CHAIRMAN: Mr. Moreau moves, seconded by Mr. Macaluso that clause 3 be amended as outlined in the bill. I would suggest that that amendment stand in view of the fact that it has been requested that the whole clause stand.

There is also a motion to further amend clause 3.

Mr. HUMPHRYS: Since this bill was published, we have had a number of inquiries on this particular section. It has to do with the exemption in favour of those companies where more than 50 per cent of the shares are now held by one non-resident. Under the bill such companies would be exempt from these provisions limiting non-resident ownership of shares and the transfer of shares. The amendment which has been proposed by Mr. Moreau would in its first part amend the section which preserves the voting rights for these non-residents who now own more than 10 per cent of the shares of the company. One of the companies which would be exempt from these provisions has expressed a great concern that this particular provision would apply to them; and it was certainly the intention that this should apply. So they have asked that this matter be clarified and have suggested the addition of some words at the end of the first paragraph in the amendment to the effect that this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 16D does not apply. This does not change the intention of the bill or the amendment, but merely clarifies this particular point for the benefit of the company which expressed concern about it.

The CHAIRMAN: It was my understanding that Mr. Moreau was including these additional words in his amendment.

Mr. MOREAU: I accept this, Mr. Chairman.

The CHAIRMAN: Are there any further questions on clause 3 before we move along to another clause?

Mr. LAMBERT: What about the amendment which appears on page 2? Are you going to move it too?

The CHAIRMAN: I think we should have all the amendments put now that we are formally dealing with it.

Mr. MOREAU: The second part of the amendment had to do with the renumbering as follows:

(b) by renumbering subsections (4) to (6) of section 16F on page 7 as subsections (6) to (8) respectively; and

And in the third part of the amendment, part (c):

(c) by striking out line 33 on page 7 and by substituting therefor the following:

"section (7) of this section.

Conclusions reached by directors.

(9) In determining for the purposes of sections 16B to 16F whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 16E or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

The CHAIRMAN: Do you so move?

Mr. MOREAU: I so move.

Mr. MACALUSO: I second the motion.

The CHAIRMAN: It has been moved by Mr. Moreau and seconded by Mr. Macaluso. I presume this will be stood along with the other amendments to this section. Are there any further proposed amendments to clause 3? We shall stand this clause.

Clause 3 stands.

Now, clause 4.

On clause 4.

Mr. MOREAU: There is an amendment to it as well.

The CHAIRMAN: All right. The superintendent is familiar with this amendment.

Mr. HUMPHRYS: This permits life insurance companies to subdivide the par value of their common shares below the present minimum of $10; they can go down to $1 subject to the provisions which will preserve the balance of the voting rights between the participating policyholders and the shareholders. This was not in the original bill because it was not desired to upset the balance of voting rights. But the industry argued very strongly for it. They thought that with the limitation on the rights to sell shares to non-residents the market would be narrowed. If they could subdivide the par value of the shares they would have a better remaining market. They agreed to the limitation on the voting rights in order to preserve a reasonable balance between the policyholders and the shareholders.

Mr. MOREAU: The amendment reads:

That clause 4 be amended by striking out lines 34 to 36 inclusive on page 7 and by substituting therefor the following:

"4. (1) Section 45 of the said act is repealed and the following substituted therefor:

Change in capital stock.

"45. (1) Notwithstanding anything contained in its act of incorporation or in this act, if the subscribed stock of a company is fully paid, the company may, by a by-law made by the directors and confirmed by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for considering the by-law, divide the capital stock of the company into shares of *one dollar* each or any multiple *thereof but not exceeding* one hundred dollars each.

Voting rights qualified.

(2) Where pursuant to subsection (1) the capital stock of a company registered to transact the business of life insurance is divided into shares the par value of which is less than five dollars

each, a holder of the shares shall have as a shareholder of the company only the number of votes that equals the product obtained by dividing the total par value of all his shares in the capital stock of the company by five."

(2) The said act is further amended by adding thereto, immediately after section 45A thereof, the following section:"

The CHAIRMAN: You are tabling the amendment?

Mr. MOREAU: Yes.

The CHAIRMAN: I think everyone has a copy of the proposed amendment. This amendment is moved by Mr. Moreau and seconded by Mr. Macaluso.

Mr. LAMBERT: I think there is some difficulty here. You are striking out the remaining portion of what now stands?

Mr. MOREAU: No. I am striking out lines 34 to 36.

Mr. LAMBERT: That is an awkward portion. There is nothing which will incorporate what you propose in 45B.

Mr. HUMPHRYS: Yes; at the foot of the page, in subclause 2 of the new clause 4 there are these words "The said act is further amended by adding thereto immediately after section 45A thereof, the following section". This would go back to the bill as printed, and it would be 45B.

The CHAIRMAN: These amendments have already been printed in the proceedings. If anyone forgot to bring his copy with him this morning, I think we have enough copies of the proceedings here. Are you satisfied, Mr. Lambert?

Mr. LAMBERT: Yes.

The CHAIRMAN: Shall this amendment carry?

Amendment agreed to.

Shall clause 4, as amended, carry?

Clause 4, as amended, agreed to.

Now, clause 5?

Shall clause 5 carry?

On Clause 5—*Municipal, etc., securities.*

Mr. MOREAU: I have an amendment here as follows:

That sub-clause 1 of clause 5 be amended by striking out lines 42 to 44 inclusive on page 8 and by substituting therefor the following:

"under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

I so move.

Mr. MACALUSO: I second the motion.

The CHAIRMAN: It has been moved by Mr. Moreau and seconded by Mr. Macaluso. Shall the amendment carry?

Amendment agreed to.

Mr. BASFORD: I would like to have a word from the minister on subsection (1).

Mr. MOREAU: Dealing with what?

Mr. BASFORD: Dealing with the earnings record of the company.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is it not at the foot of page nine?

Mr. MOREAU: Could we not carry the amendment then?

Mr. BASFORD: Yes, I have no objection.

Mr. MOREAU: We could carry the amendment, because this is on a different point.

The CHAIRMAN: On Clause 5?

Mr. MOREAU: Yes.

The CHAIRMAN: All right then. This was moved.

Mr. MOREAU: I have already moved the amendment, seconded by Mr. Macaluso.

The CHAIRMAN: Shall the amendment carry?

Amendment agreed to.

At the request of Mr. Basford we shall stand clause 5. I understand there is another amendment being proposed by Mr. Moreau. Perhaps we might deal with it.

Mr. MOREAU: Yes. I move:

> That sub-clause 6 of clause 5 be amended by striking out line 13 on page 11 and by substituting therefor the following:
> "or of a province, state or municipality of that"

Mr. HUMPHRYS: This amendment relates to investment in income real estate. The bill proposes to enable a company to invest in real estate for the production of income, if the real estate has been leased to a national or a state government. This amendment would include a municipal government.

The CHAIRMAN: Shall this amendment carry?

Mr. MACALUSO: I second it.

The CHAIRMAN: It has been moved by Mr. Moreau and seconded by Mr. Macaluso.

Amendment agreed to.

Clause stands.

This carries us over to Clause 7. Clause 5 stands. What about clause 6? Shall clause 6 carry or stand? Are there any amendments to clause 6 before we pass on?

Clause 6 stands.

Are there any amendments to clause 7?

Clause 7 stands.

Shall clause 8 carry?

Clauses 8 to 11, inclusive, agreed to.

Shall clause 11 carry?

Mr. LAMBERT: This is related, I think, to clause 6.

Mr. HUMPHRYS: Yes, it is consequential on the amendment to clause 6.

Mr. LAMBERT: Then I think it should stand.

The CHAIRMAN: All right, it stands. Is there anything else involving this consequential amendment?

Mr. HUMPHRYS: No.

The CHAIRMAN: All right, clause 11 stands.

Mr. MOREAU: Clause 6 did carry, did it not?

The CHAIRMAN: No. Clause 6 was stood. Clause 11 stands.

Shall clause 12 carry?

Clause 12 agreed to.

Shall clause 13 carry?

On clause 13—*Municipal, etc., securities.*

Mr. MOREAU: There is another consequential amendment as follows:

That sub-clause 1 of clause 13 be amended by striking out lines 8 to 10 inclusive on page 18 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Mr. HUMPHRYS: This is the same as the previous amendment. This applies to investments of British companies, which may invest in trusts in Canada.

The CHAIRMAN: Shall the amendment carry to clause 13, moved by Mr. Moreau and seconded by Mr. Macaluso?

Amendment agreed to.

Shall the clause as amended carry?

Clause, as amended, agreed to.

Are there any further amendments.

Mr. MOREAU: I have one on page 21 as follows:

That sub-clause 8 of clause 13 be amended by striking out line 14 on page 21 and by substituting therefor the following:

"government or municipality in Canada or any agency thereof, or"

Mr. HUMPHRYS: This is the same amendment I just described as it relates to British Companies. It enables them to invest in income real estate leased to a municipal government.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I notice in the amendment to subclause (1) of clause 13, that there is a misprint, and you have two "that" in there alongside each other. It should not go into the record that way.

The CHAIRMAN: I think that that appeared when they printed the proceedings. It was not in the original amendment tabled by Mr. Moreau. I think that error crept into our own printing of the amendment.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Well, just so long as it is not carried on.

The CHAIRMAN: Your point is well taken. I think it was a printing error in the proceedings. We have a further amendment then moved by Mr. Moreau and seconded by Mr. Macaluso. Shall the second amendment carry?

Mr. BASFORD: This deals with the investment powers of British companies, and I would like an understanding that we have stood clause 6 which deals with the investment powers of Canadian companies; and while I am prepared to pass clause 13, yet, if there are any amendments made to clause 6, we should be able to reopen the matter.

The CHAIRMAN: It is understood it will be done at any time until we complete the bill; amendments will be entertained by the Chair. Now, then, we are left with the amendments put forth by Mr. Moreau. Is it agreed? Shall clause 13 as amended carry? No, it stands.

Mr. LAMBERT: It is the same as clause 5. I think we should get an explanation.

The CHAIRMAN: That is just fine.

Mr. BASFORD: As long as we have an understanding I see no reason why we cannot pass it.

The CHAIRMAN: I suggest that we stand it, although I follow your point.

Clause stands.

Shall clause 14 carry?

Are there any amendments to be proposed to clause 14? Let it stand.

Clause 14 stands.

Shall clause 15 carry?

Mr. LAMBERT: This relates to clause 5. This amendment corresponds to that proposed to subclause (8). If 5 stands, I think this should stand too.

The CHAIRMAN: All right, clause 15 stands.

I presume we are in the same position in regard to clause 16 then. If anyone has a question, I am sure that Mr. Humphrys would be glad to answer it as we go along. All right, shall clause 16 stand? Are there any questions on clause 16?

Clause 16 stands.

It is the same position with clause 17. Are there any questions of the witness on clause 17 before I stand it?

Clause 17 stands.

Shall clause 18 carry?

Carried.

Now we come to part two. Shall clause 19 carry?

On clause 19.

Mr. MOREAU: I have an amendment as follows:

That sub-clause 1 of clause 19 be amended by striking out lines 35 to 37 on page 24 and by substituting therefor the following:

1960-61, c. 16,s. 4(2)

"19. Subsection (6) of section 37 of the *Foreign Insurance Companies Act* is repealed and the following substituted therefor:

Segregation of assets.

"(6) Where a separate and distinct fund with separate assets is maintained pursuant to subsection (5), the assets of the fund so maintained shall be available only to meet the liabilities arising under policies in respect of which such fund is maintained, except that amounts transferred to the separate and distinct fund from other funds of the company may, subject to the approval of the superintendent, be withdrawn from the separate and distinct fund and transferred to such other funds as the directors may determine."

Mr. HUMPHRYS: This subclause would be the counterpart of the clause which appears as clause 9 in the bill. It should have been inserted here to apply to foreign insurance companies, because clause 9 as previously printed, applied to Canadian and British companies.

The CHAIRMAN: Does the amendment carry?

Amendment agreed to.

Shall clause 19, as amended, carry?

Mr. LAMBERT: Are you introducing clause 20?

Mr. HUMPHRYS: I am introducing a new clause 19 and renumbering the present clause 19 to 20.

The CHAIRMAN: This amendment says that we include a new clause 19 and renumber it. That is included in your amendment, Mr. Moreau, I take it?

Mr. MOREAU: Yes. I thought we had a renumbering amendment later on.

Mr. HUMPHRYS: I think it involves inserting a new clause 19 and renumbering the present 19 to 20, and inserting two amendments in the new clause 20 which corresponds to the amendment previously explained, and then renumbering further the present clause after clause 20.

Mr. MOREAU: The new clause 20 is the old clause 19, and it has also been slightly amended.

The CHAIRMAN: We are going to get bogged down here with these amendments. Are you placing your first amendment?

Mr. MOREAU: Yes. I so move, to insert a new clause 19.

The CHAIRMAN: Is it carried?

Motion agreed to.

I understand there is a further amendment by Mr. Moreau.

Mr. MOREAU: I move that the present clause 19 be renumbered to 20, and then it would read "Paragraph (*b*) of section 1 of schedule 1 to the foreign insurance companies act is repealed".

The CHAIRMAN: Does that amendment carry?

Motion agreed to.

I understand that you have a third amendment to this clause.

Mr. MOREAU: Yes, striking out lines 5 to 7 inclusive on page 25 thereof, and substituting therefor "levied under the authority of a province, and so on".

That sub-clause 1 of clause 19 be amended by striking out lines 5 to 7 inclusive on page 25 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Mr. HUMPHRYS: This relates to a fabrique, and it applies to foreign companies.

The CHAIRMAN: Does the further amendment carry?

Mr. MOREAU: On page 27, line 46.

The CHAIRMAN: Yes.

Mr. MOREAU: Striking out line 46 on page 27 and substituting the following:

That sub-clause 8 of clause 19 be amended by striking out line 46 on page 27 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

Mr. HUMPHRYS: This is the same as the amendment previously discussed, and it enables a foreign company to invest in real estate for production of income, if leased to a municipal government.

The CHAIRMAN: Shall the amendment carry?

Amendment agreed to.

There are no further proposed amendments to clause 19. Shall clause 19, as amended, carry?

Mr. LAMBERT: No. Stand it in the same category as 5 and 13.

The CHAIRMAN: Stand it.

Clause stands.

Mr. MOREAU: You are standing the whole clause?

The CHAIRMAN: As amended. Shall clause 20 carry?

Mr. MOREAU: There is a renumbering amendment here that the bill be amended by renumbering clauses 20 to 39 of the said bill, and clauses 21 to 40. This is as a result of the insertion of new clause 19, and I so move.

The CHAIRMAN: Does this amendment carry?

Motion agreed to.

Shall clause 20 as amended carry?

Clause stands.

Shall clause 21, as amended, carry?

Clause agreed to.

Shall clause 22, as amended, carry?

Clause agreed to.

Shall clause 23, as amended, carry?

Mr. MOREAU: I take it you are using the old numbers.

The CHAIRMAN: Yes. Shall clause 23 as amended carry?

Clause agreed to.

Clauses 24 and 25, as amended, agreed to.

We are getting to the trust companies as to Mr. Robinette's submission. I understand that while Mr. Robinette's submission relates only to loan companies, if we accepted it, then we would have to deal also with trust companies, and it would appear that we have come to the end of the sections with which we can properly deal this morning. That being the case, and in view of the fact that we are meeting again tomorrow morning, it would appear to be in order that we now adjourn until 9.30 tomorrow morning in room 208 of the west block.

Mr. BASFORD: I understand that Mr. Humphrys will be in attendance at all sessions?

The CHAIRMAN: Yes, Mr. Humphrys will be present at all sessions. Thank you. The meeting is now adjourned.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

WEDNESDAY, NOVEMBER 18, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

WITNESSES:

Mr. George Finlayson, Counsel for World Mortgage Corporation;
Mr. J. J. Ross LeMesurier, Wood Gundy and Company Limited.

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

21576—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Gelber	Monteith
Armstrong	Grafftey	More
Asselin (*Norte-Dame-de-Grâce*)	Gray	Moreau
Basford	Grégoire	Mullally[2]
Bell	Greene	Munro
Blouin	Habel	Nowlan
Cameron (*High Park*)	Hales	Nugent
Cameron (*Nanaimo-Cowichan-The Islands*)	Jones (*Mrs.*)	Otto
Caouette	Kindt	Pascoe
Chrétien	Klein	Rynard
Côté (*Chicoutimi*)	Lambert	Scott
Douglas	Leblanc	Tardif
Frenette	Lloyd	Thomas
Flemming (*Victoria-Carleton*)	Macaluso	Vincent
	Mackasey	Wahn
	McCutcheon	Whelan
	McNulty[1]	Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

[1] Replaced Miss Jewett at the afternoon sitting, November 18, 1964.

[2] Replaced Mr. McLean (*Charlotte*) at the afternoon sitting, November 18, 1964.

ORDER OF REFERENCE

WEDNESDAY, November 18, 1964.

Ordered,—That the names of Messrs. McNulty and Mullally be substituted for those of Miss Jewett and Mr. McLean on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

21576—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 18, 1964.

The Standing Committee on Banking and Commerce met at 9.30 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Gelber, Grafftey, Greene, Habel, Lambert, Lloyd, Macaluso, McCutcheon, More, Moreau, Otto, Pascoe, Pennell, Wahn and Whelan. (18)

In attendance: Mr. George Finlayson, Counsel for World Mortgage Corporation; Mr. J. J. Ross LeMesurier, Wood Gundy and Company Limited; Messrs. Charles W. Jameson and W. Scott McDonald, Bank of Nova Scotia; Mr. R. Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman introduced the witnesses. Mr. Finlayson and Mr. LeMesurier presented their views in opposition to Clause 40 of the Bill, and were questioned.

The questioning continuing, the Committee adjourned at 11.00 a.m. until 3.30 p.m. this day.

AFTERNOON SITTING
(17)

The Committee reconvened at 3.40 p.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Asselin (*Notre-Dame-de-Grâce*), Cameron (*High Park*), Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Gelber, Gray, Habel, Klein, Lambert, Lloyd, Macaluso, Mackasey, McCutcheon, McNulty, More, Moreau and Pennell. (18)

In attendance: The same as at the morning sitting.

The Chairman explained that he was unable to remain at the meeting and, at his request, Mr. Lloyd took the Chair.

Mr. Finlayson outlined certain amendments which his clients, World Mortgage Corporation, wished to see incorporated in the Bill. He later agreed to provide copies of the suggested amendments in writing for use of the Committee.

The Committee resumed questioning of Mr. Finlayson and Mr. LeMesurier.

At 4.20 p.m. the witnesses were permitted to retire and the Committee adjourned until 10.00 a.m., Thursday, November 19, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

WEDNESDAY, November 18, 1964

The CHAIRMAN: I see a quorum, gentlemen. Would the committee please come to order?

We had anticipated that Mr. Robinette would be here to make submissions, but the untimely passing of his brother-in-law yesterday afternoon made it necessary for him to return to Toronto. In place of Mr. Robinette we have on my right Mr. George Finlayson who is the counsel appearing on behalf of the World Mortgage Corporation. Associated with Mr. Finlayson in the submissions, on his immediate right, is Mr. James Ross LeMesurier of Wood Gundy & Company Limited, and then Mr. Charles Jameson and Mr. W. S. McDonald, both of the Bank of Nova Scotia.

I will now invite Mr. Finlayson to make his opening. As I understand it his remarks will be directed to clause 40 of the bill.

Mr. GEORGE FINLAYSON (*Counsel for the World Mortgage Corporation*): Thank you, Mr. Chairman and hon. members of the committee. I am appearing on behalf of the principals in a proposed company which we seek to incorporate, to be known as the World Mortgage Corporation. The reason I say it is proposed is that at the present time Bill No. S-32 has been passed by the Senate which would incorporate this company; it has received first reading in the House of Commons, and I am advised it is the first bill to be dealt with among the private bills. Therefore, at the present time it is not a corporation as such.

However, we are appearing here today in opposition to clause 40 of Bill No. C-123, which appears at page 53 of the document I have. We are concerned with clause 40 in so far as it proposes to amend subsection (3) of section 68 of the Loan Companies Act. It is this new subsection (3) which we respectfully object to because if it becomes law it will have the effect of completely frustrating the new venture which we propose through the World Mortgage Corporation. In our submission it is not in the best interests of the lending institutions generally, and accordingly not in the best interests of the public.

The effect of new subsection (3) is twofold. First, it would require new borrowing limits to be applied to the total amount borrowed by the company rather than the amount borrowed less cash on hand and on deposit in chartered banks as at present. So far as that amendment is concerned, we do not take issue with it, or take any position at all. It is the second effect with which respectfully we take exception. The effect of this would be that where a loan company owns more than 10 per cent of the shares of the capital stock of a trust company, the borrowing limit which previously applied will now apply to the two companies taken on a consolidated basis.

This means that if a loan company is to own more than 10 per cent of the shares of the capital stock of a trust company, then it cannot calculate its borrowing limits on the old basis; that is, the present basis. The present basis would be to take the capital of the company, multiply it by four and that would give you the borrowing limit of the lending company. Now, it would be necessary to add the assets of the trust company to the assets of the loan company, and then deduct from those assets the participation of the loan company in the trust company which would give you your assets. You would then add the liabilities of the trust company to the liabilities of the loan

company which would give you your total liabilities. You deduct those liabilities from the consolidated assets in the way in which I have described, which would give you the capital figure of the consolidated companies.

However, when you have calculated this borrowing limit, you would have to deduct from that borrowing limit the amount of money actually borrowed by the trust company. I am advised by my clients and principals in this matter that if this were to happen, so far as the mortgage company is concerned at least, it would be completely impractical for it to operate.

So far as the World Mortgage Corporation is concerned I would like to tell you something about it. The proposed capitalization of the new company would be made up initially of $2½ million in cash to be subscribed as follows: 10 per cent by the Bank of Nova Scotia, and the remaining 90 per cent will be subscribed by Wood Gundy & Company Limited, Burns Bros. & Denton Ltd., Harris & Partners Ltd., and Greenshields & Co. Ltd. These four will not participate in the 90 per cent in such a way to give any one of the four control.

It is proposed that the World Mortgage Corporation will offer its shares in exchange for shares of Eastern & Chartered Trust Company on a one for one exchange basis. If successful, this will mean that the capital will be increased by some $25 million which will be represented by the investment which World Mortgage Corporation will have in the Eastern & Chartered Trust Company.

Mr. MOREAU: Which company would be increased by $25 million?

Mr. FINLAYSON: The World Mortgage Corporation, because it will be acquiring shares of the Eastern & Chartered Trust Company which, for the purposes of my submission, we calculate at a value of $50 a share. Once they have acquired these they will have in their treasury shares worth $25 million. Those are round figures.

It also is anticipated that the offering to the present shareholders of Eastern & Chartered Trust Company will be taken up to an extent of more than 90 per cent. Of course, once this exchange takes place the World Mortgage Corporation will own considerably more than 10 per cent of the shares of Eastern & Chartered Trust Company and its borrowing limit will be restricted to virtually nothing by the proposed amendment.

In effect, instead of being in the position under the law as it now stands wherein we would be permitted to borrow up to four times the capital of the World Mortgage Corporation, we would find ourselves in the position where we could borrow virtually nothing. As it stands now under the present law, you would have $2,500,000 in cash as capital and in addition to that you would have as capital some $25 million which is invested in the Eastern & Chartered Trust Company shares, for a total in all of $27,500,000.

Under the existing law we could then borrow up to four times that amount, or approximately $100 million. If we are not in a position to borrow money in that order, there is no purpose in trying to function at all.

You may ask why is the World Mortgage Corporation a good idea and in what way would the frustration of this proposal not serve the public interest? So far as World Mortgage Corporation is concerned, in my submission, it serves the public interest in several specific areas.

(i) It would have the result of channelling public savings into the mortgage market, where such funds are badly needed. Chartered banks, the biggest repository of public savings, are restricted in this area.

It is generally agreed that sources of mortgage money, for the construction of new homes, and the purchase of older ones, are so limited as to represent a major problem in this area.

(ii) In a period of sustained business expansion, such as Canada is going through, there is always a danger in an overly-rapid development of lending

institutions. This danger is undoubtedly greater with respect to the mushrooming of small, thinly-financed "fringe" institutions, than with strong, well-founded companies which think in long-run terms.

(iii) In the past few years, more and more attention has been focussed on the problem of fostering economic growth in Canada without heavy dependence on foreign capital. If, in the mortgage market, well managed Canadian enterprises are not permitted to facilitate the flow of mortgage capital, it seems very apparent that United States capital, will: In this regard, it is a well known fact that a sizeable share of foreign capital coming into Canada in the past 8 or 9 years has gone into the real estate investment in one form or another.

The loan company, under the act, will be better able to raise funds for the expansion of the overall operations by issues of securities to the public, a means which is not possible for a trust company under existing legislation. This would have the effect of broadening the supply of moneys available to the mortgage market, and would create another Canadian financial intermediary, gathering domestic savings to facilitate the financing and ownership of Canadian resources.

(iv) Mortgage financing, it is generally agreed, represents a large part of total long term capital requirements in the Canadian capital market. In its presentation to the royal commission on banking and finance, Central Mortgage and Housing Corporation pointed out that the net amount of mortgage lending in Canada over the period 1954 to 1961, at $7\frac{3}{4}$ billions, as almost as great as the combined increase in Federal, Provincial and Municipal bond debt in this period, and was actually greater than the increase in debt represented by corporate bonds and stocks.

(v) Recently, excessive interest rates, and other mortgage abuses have been receiving attention, particularly in Ontario. Experience in the consumer loan field, in which entrance of the chartered banks, on a nation-wide and substantial scale, contributed much to stabilizing and regulating this area, would indicate that a similarly beneficial result would follow the entrance of additional well managed, soundly run organizations into the mortgage field.

(vi) The loan company, and the new amalgamated trust company would be better able to service the general public in Canada than either of them could do if they were operating separately. Much broader facilities would be available to the public, since in the same office they will find the combined services of both a loan company and a trust company.

(vii) In many respects the business and operations of loan and trust companies complement each other, and in this instance the combined operations would be more efficient from a business point of view. Significant potential savings could be effected, and the cost of service to the public reduced by the performance of existing trained personnel of dual functions in many cases, and through the sharing of general overhead, rental of space and other facilities.

(viii) Present shareholders of Eastern & Chartered Trust Company will be given the opportunity to share in the ownership of an expanded operation.

(ix) The joint operations will be enabled to compete more successfully with the two loan and trust companies presently enjoying a unique privilege based, so far as we know, only on historical grounds.

Really, the whole point of our submission before this committee is that there is no reason the legislature, with respect, should consider that an investment in Eastern & Chartered Trust Company shares would not be as sound as one in, say, the Royal Bank or International Nickel, or any other sound industrial stock.

In our submission there is no reason to penalize a loan company for investing its capital in such a security any more than you would penalize a loan company for investing its capital in any other worth while stock.

The Eastern & Chartered Trust Company is going to continue to operate as a trust company as it has done for many years. The joint operations of the Eastern & Chartered Trust Company with the World Mortgage Company should strengthen both.

Of course, there is nothing unique about this type of joint operation. As I indicated earlier, it would put the World Mortgage Corporation in a position where it could compete with the joint operations of two other companies. It is common knowledge that the Canada Permanent Mortgage Corporation owns the Canada Permanent Trust Company. It is also common knowledge that the Huron & Erie Mortgage Corporation owns the Canada Trust Company. No objection, apparently, has been taken in the past to this type of operation and, in my respectful submission, there is no reason that objection should be taken now.

It must be kept in mind that all we are permitted, as of right, under the present legislation and in fact under the legislation as amended if the amendment goes through, is to borrow four times capital. It is my respectful submission that this is a very conservative borrowing base. I draw to your attention that trust companies can borrow, as of right, up to 12½ times their capital and there is no limit to the extent of a bank's borrowings of this nature.

As I say, the whole point really turns on the quality, I would say, of the type of investment which the proposed loan company is going to rely on as capital.

I would ask Mr. LeMesurier, who is an authority in this field and who is associated with Wood Gundy & Company Limited, to answer certain questions I would direct to him, so that you would have the benefit of his views on this and similar points. May I do this with your permission?

The CHAIRMAN: Yes; that will be in order.

Mr. FINLAYSON: Mr. LeMesurier, as I understand it you are associated with Wood Gundy & Company Limited.

Mr. JAMES ROSS LEMESURIER (*Wood Gundy & Company Limited*): Correct.

Mr. FINLAYSON: How long have you been associated with them?

Mr. LEMESURIER: I have been in the investment business for the past 13 years and more recently with Wood Gundy & Company Limited.

Mr. AIKEN: Mr. Chairman, I think some of us are a little perturbed about the procedure. Generally it is the committee members who ask the questions. I wonder whether perhaps some other procedure might be adopted.

Mr. FINLAYSON: Mr. Chairman, I am prepared to do it in any way. I must apologize because I never have appeared before this committee.

Mr. OTTO: I think if Mr. LeMesurier would just give us the content of his answers we would listen to him.

The CHAIRMAN: It was not my intention to frustrate the questioning of the witnesses by the committee. I am in the hands of the committee. Personally, I could see no objection to it. He was just going to elicit some information before the committee and he thought he could tie it in more precisely in this way. However, I agree that it is a new departure, but that in itself I do not think should wash it out. It is whatever the committee wishes. If you prefer that it should not be done in this way, I will so direct the witness.

Mr. OTTO: This procedure would be a little too dramatic this early in the morning.

Mr. LEMESURIER: Gentlemen, I think the general area on which Mr. Finlayson wished our opinion as investment people is is there any real reason the shares of Eastern & Chartered Trust Company, which will be owned by the World Mortgage Corporation, should be excluded from the borrowing base of World Mortgage while the shares of any other industrial company could be included. In other words, there seems to be a feeling in some area that because Eastern & Chartered Trust Company already has a substantial debt of its own, therefore the shares are a risky investment and consequently are not a sound investment on which to base further borrowing by the future parent company.

I would submit that there is a certain fallacy in this. First of all the trust company is a regulated company. In fact the present bill proposes to increase its borrowing powers from 12½ to 15 times, so it is hard to see that the shares of the trust company are risky because of the amount of debt it carries. I think this is the nature of trust company business; it is a sound and stable business and can carry a lot of debt.

I would submit there might be paper companies which had a two for one borrowing ratio—that is 66 per cent debt and 33 per cent equity—which would be far more risky shares upon which to form part of the borrowing base of World Mortgage than would the shares of Eastern & Chartered Trust. A steel company with $1 of debt and $1 equity is a more risky investment in most cases than the shares of a trust company even though the shares of a trust company may have debt to the extent of 15 times its equity.

This particular company has a very long history; at least its two component parts have. Eastern & Chartered Trust is an amalgamation of The Eastern Trust Company which was incorporated in 1893 and the Chartered Trust Company which was incorporated in 1905. They have had many years of successful operation; their dividends are stable and it is a well managed company. I submit that the shares of this company are perfectly good shares and have real value and should not be excluded from the borrowing base of World Mortgage Corporation. There is real value in these shares, just as much as there would be if there were an investment in the shares of any industrial company.

On the basis of the proposed formula you have to deduct the liabilities of both companies in working out the joint amount of borrowing which the company can accomplish. If the shares of any other company were owned by World Mortgage Corporation there would be no need to deduct the debt of that corporation from the borrowing power, you might say, of World Mortgage Corporation. Therefore, why should the debt of a trust company in effect be deducted from the joint borrowing power?

I feel there is a great asset which trust companies have which does not show on their books; that is what is known as their E.T.&A. business—the executor, trust and agency business. A trust company like Eastern & Chartered Trust has $210 million of assets of which about $14 or $15 million is its equity. But, over and above that, it has under its control an additional $470 million of assets on which it is earning some return, and it is receiving revenues which become profits for administering these funds. But, in no way is that reflected on the balance sheet of the trust company or, at least, in the equity portion of it.

I would submit to you, if you are looking at security—that is, are the shares held by World Mortgage Corporation in Eastern & Chartered Trust Company suitable investments upon which to borrow—that there are shares of very few companies which would be a safer investment that shares of trust companies. Shares of trust companies are stable—at least, the operations are very stable; it is not a fluctuating business like the steel business, the paper business or the

merchandising business, and yet all the shares of all these companies can be included. We see no reason why the shares of a trust company should not be included in the borrowing base of a loan corporation.

The question also has been raised: Are the future creditors of World Mortgage Corporation prejudiced in any way by the fact that Eastern & Chartered Trust Company shares will form a large part of the assets of the World Mortgage Corporation in the early years. I would submit to you, if we look at this matter in stages, as the World Mortgage Corporation goes out in the capital markets and, say, raises its first $10 million of debenture money, at that time the proceeds of that $10 million debentures will be invested largely in first mortgages. There may be a portion of it invested in short term government bonds, which can be cashed in, if necessary. But, as I say, the larger portion will be invested in first mortgages.

So, you then look at the security which the holders of the mortgage corporation debentures have. Well, they have approximately $10 million of mortgages as security for their debentures. Those mortgages themselves have a safety factor in them owing to the limiting effect of the proposed 66⅔ percent figures. Your bill proposes 75 per cent, and over and above that there is $25 million of Eastern & Chartered Trust Company shares. There is $35 million of protection against the $10 million. Now, that is true in the early stages, so there is adequate protection in the early stages when the company starts to issue debentures, even though the major portion of World Mortgage Corporation's assets are in the form of Eeastern & Chartered Trust Company shares. This is taking the near extreme. If the time ever came—and the World Mortgage Corporation at this time is not asking to go this far—when World Mortgage Corporation had debt outstanding equal to 15 times the amount of its capital, and this would only be with the approval of the superintendent of insurance and with the approval of treasury board,—we would have, in theory, $400 million of debt outstanding and at that time the $25 million of Eastern and Chartered Trust Company shares would be an insignificant portion of the total $400 million assets of World Mortgage Corporation, so there is no real risk there. It is an insignificant portion. Also, at that time, if they ever got to a figure of $400 million of borrowed moneys outstanding the proopsed amendments to the act provide that $100 million of that could be in common stock. The fact that $25 million of this common stock portfolio were invested in Eastern & Chartered Trust Company shares does not seem to me to prejudice the position of the creditors in any way.

The World Mortgage Corporation is asking at this time that it be allowed to include in its borrowing base the shares of Eastern & Chartered Trust Company, which will be approximately $25 million. Also, it has no intention at the present time of asking the Department of Insurance to increase its borrowing ratio above four times. It proposes to wait and see how the corporation grows and develops, and at some future time presumably, after it has raised $100 million of debt money, which would be approximately four times, it will consider whether it wants to go higher. But, at that time the Superintendent of Insurance and Treasury Board have a discretion as to whether they feel this corporation has had the growth, the development, the proper mortgaging, and lending policies and the proper management and sponsorship to warrant a further increase in its borrowing base. That is, this proposal would not be giving the corporation the right as of now, if the bill is passed, to have a 15 times borrowing power. Four times certainly is very conservative, and that is all the corporation is asking for now. It is really conservative in so far as the present bill proposes to give the superintendent of insurance discretion to raise the borrowing limit from 12½ to 15 times.

As I say, four times is extremely conservative. In respect of banks it is about 20 times now—and I am referring to all the chartered banks. Their liabilities to the public through ordinary deposits are very close to 20 times their capital. Ordinary finance companies, which are not regulated in any way, borrow up to six to eight times their equity capital in the open market, and yet, the assets of these finance companies, which is largely consumer paper, are not nearly as secure as the assets which World Mortgage Corporation would have on the asset side of its balance sheet, which will consist mainly of mortgages. I think from an investment point of view we can see no real reason why the shares of Eastern & Chartered Trust Company should be excluded from the borrowing base of the World Mortgage Corporation.

That is all I have to say at this time. Are there any questions?

The CHAIRMAN: I have Mr. Moreau first, followed by Mr. Otto and then Mr. Lloyd.

Mr. MOREAU: If I understand the proposal you are putting before us correctly, by an investment of $2½ million, and then an exchange of paper stock with Eastern & Chartered Trust Company, you then would be under the old regulations and allowed to borrow $100 million.

Mr. LEMESURIER: That is correct, although I respectfully take exception to the use of the expression "an exchange of paper". The shares of Eastern & Chartered Trust Company are presently trading in the market somewhere in the area of $50, although I do not know the precise figure.

Mr. MOREAU: What consideration would you be giving for the shares?

Mr. LEMESURIER: It would be participation in the World Mortgage Corporation.

Mr. MOREAU: Although there is $2½ million invested?

Mr. LEMESURIER: Right. But do you not understand, with respect, what is happening? Instead of someone coming in and giving us $50 for a share in the World Mortgage Corporation, to which there would be no objection to—this is how you raise the capital. People are going to come and give us a stock that is worth that much.

Mr. MOREAU: What is the capitalization of the World Mortgage Corporation?

Mr. LEMESURIER: The initial dollar capitalization would be about $2,750,000.

Mr. MOREAU: How many shares?

Mr. LEMESURIER: I have my notes here. That will end up as 50,000 shares at $50 or $55. If it is $50 it will be $2,500,000 of the initial cash capital.

Mr. MOREAU: As I understand it, with a $2½ million investment and using $25 million worth of shares, if you like, of Eastern & Chartered Trust Company, you then would be borrowing $100 million at a ratio of four times to one, and then you would expect to incur liabilities up to $100 million?

Mr. FINLAYSON: To a maximum of that figure.

Mr. MOREAU: It would seem to me these initial shares in Eastern & Chartered Trust Company already have certain restrictions placed on them and perhaps you have incurred the maximum liabilities under the regulations in respect of these shares. In that case you would be sort of pledging them again.

Mr. LEMESURIER: No, there are no restrictions on the shares. I think the point, with respect, that you are making—

Mr. MOREAU: Well then, the capital they represent.

Mr. LEMESURIER: The capital already has been borrowed on in the sense that the Eastern & Chartered Trust Company can borrow and has borrowed up to close to 12½ times its capital, but we submit that this still leaves good

value in those shares; that is, the company is a going concern, has a long record and successful management. There is value in these shares over and above the book value. It is a going concern.

Mr. MOREAU: I would expect that, but it seems to me that the capital at least which the shares represent essentially, and you can argue about whether the borrowing limits are reasonable or not, is already pledged in so far as the regulations are concerned, up to 12½ times.

Mr. LEMESURIER: I think, so far as Eastern & Chartered Trust Company is concerned, it is fully borrowed, and this proposed change, which you are being asked to make in bill No. C-123, will not affect Eastern & Chartered Trust Company in any way. It gives Eastern & Chartered Trust Company no more borrowing power and also it does not affect its equity. But, what it does do is recognize that the shares of Eastern & Chartered Trust Company, which would be held by the World Mortgage Corporation, have very real value.

Mr. MOREAU: I accept the fact that Eastern & Chartered Trust Company shares have real value. But, you said earlier that they were the same as other industrial. Yet, other industrials, in my understanding, are not regulated in the same way in what they can do with their capital and what they cannot do with it, and the very nature of the trust company has placed certain restrictions on that capital. I do not follow you when you say they are the same as any other industrial. Surely common stocks in industrial companies such as were mentioned, International Nickel and so on, are not in the same category in any way.

Mr. LEMESURIER: I would think, for purposes of the borrowing base of the World Mortgage Corporation, you have more security in trust company shares than you would have in industrial shares. The trust company is a regulated company. It has to meet approved statutory limits. An industrial company does not. An industrial paper company can go out and borrow. For every $5 million of capital it has it can borrow, if people will put the money up, $10 million, say, of debt money. This makes the shares risk shares, with a slight change in foreign exchange, shares of a paper company can go down much more quickly even though they have only a two times borrowing ratio.

I do not think there is any reason why trust company shares should be excluded because they have debt. They come within well defined and generally considered safe limits. Now, there is far more risk in allowing a mortgage company to indiscriminately buy on the open market the shares of a company that is not regulated. There is more risk in these shares than there is in trust company shares as part of the borrowing base.

Mr. MOREAU: I appreciate the risk factor and so on, but surely that is part of understanding when you buy common shares in an industrial company. But, at least, the stock of the trust company and the capital of the trust company are in rather a special category here, and I think we have appreciated that in the way it has been treated under the legislation. But, it seems to me you have been making a good argument for the changes in the borrowing limits placed on trust companies and mortgage companies but then, instead of proposing changes in the limit you are asking us to authorize a device whereby we would be helping you circumvent, in a sense, the limits we now have. This seems to be my interpretation of what you are trying to do.

Mr. LEMESURIER: I do not believe I understand you when you say "circumvent the present limits". I do not think there is any attempt to do that.

Mr. MOREAU: Not to circumvent the present limits but certainly to circumvent what the intention of the regulations would be in that we are

attempting to place borrowing limits on capital in trust and mortgage companies, and here we are faced with what in a sense appears to me to be some form of pyramiding action of the same capital, which would appear to be a rather dangerous practice.

Mr. LEMESURIER: I do not think you can say it is a dangerous practice to include the shares of a well managed trust company as part of the borrowing base of a mortgage company, if you accept the fact that these shares are top grade securities and pretty safe investments. And, remember, trust companies are regulated industry. This is a very strong point in favour of the inclusion of the shares of the trust company.

Mr. MOREAU: But this is essentially a pyramiding device.

Mr. LEMESURIER: I would not accept that proposition. I am not sure whether I am supposed to accept things or not, but I do not agree with that.

Mr. MOREAU: I have one other point. You mentioned the unregulated finance companies and I would suggest that two wrongs do not make a right, and that that is not an argument. I think most finance companies are under a provincial charter.

Mr. LEMESURIER: They may be but how much they can borrow that is set by private discussions between the underwriters and the company. There is no government limit as to how much a finance company can borrow on its equity.

Mr. MOREAU: But they are under provincial control rather than dominion control.

Mr. LEMESURIER: They may be under control as far as the rates of interest, they charge to the public are concerned, and what disclosure they have to give, but that is on the asset side of their balance sheet.

Mr. MOREAU: They are not within our jurisdiction; they are incorporated under a provincial charter.

Mr. LEMESURIER: Yes, but the case we make is that World Mortgage Corporation could invest in those shares and it would not have to deduct a portion of the debt of the finance companies, which are unregulated.

Mr. FINLAYSON: If I could add a word to what Mr. Moreau was saying, it appears to me, with respect that everything you have said in respect of the undesirability of having the trust company shares as a part of the portfolio of capital of the loan company would apply with equal force if it was Royal Bank of Canada stock because the stock of the Royal Bank of Canada certainly reflects the capital and reserves of the Royal Bank of Canada.

Mr. MOREAU: But there are certain liquidity requirements and so on in respect of bank assets.

Mr. LEMESURIER: But, the Royal Bank of Canada has so much capital in reserve for its borrowing, and if you are going to say there is any kind of pyramiding between a trust company and a loan company the same argument would apply between the Royal Trust and the loan company; there is no difference. The shares of the Royal Bank of Canada are also subject to debt. You use the expression "pyramiding" in the same way with respect to the shares of Eastern & Chartered Trust Company.

Mr. MOREAU: Would Eastern & Chartered Trust Company also be using more World Mortgage Corporation stock as part of their assets?

Mr. FINLAYSON: No, they could not.

The CHAIRMAN: Would you proceed, Mr. Otto.

Mr. OTTO: Mr. LeMesurier, earlier you said in your argument—and correct me if I am wrong—that in actual fact if, say, International Nickel owned

Eastern & Chartered Trust Company and the World Mortgage Corporation owned the shares in International Nickel, then it could count the shares they had in International Nickel as their base without any restriction.

Mr. LeMesurier: No. The statement that is made referred to this. If World Mortgage Corporation, instead of owning shares of Eastern & Chartered Trust Company owned shares of International Nickel, it could borrow up to 12½ times its International Nickel base, but it cannot borrow 12½ times the Eastern & Chartered Trust Company base.

Mr. Otto: Then what you are saying is that it is possible right now for World Mortgage Corporation to trade its shares with International Nickel and to say: "Here are shares in Eastern & Chartered Trust Company; give us shares in International Nickel." Therefore, you could circumvent the regulations here, if you wanted to. We are not arguing that if it can be done in that way you should not be entitled to do it legally and properly.

Mr. LeMesurier: I am not saying that would be circumventing.

Mr. Otto: Well, I am not saying it would be circumventing; I say you could, if you wanted to, without circumventing, but you must make a deal with International Nickel and say: "Here are the shares we have in Eastern & Chartered Trust Company; give us the equivalent amount of your shares", and then you can count these shares in your assets.

Mr. LeMesurier: Yes.

Mr. Otto: You see, I am trying to find the purpose of the restriction. I am on your side. What is the purpose of the restriction in connection with not being able to consider the shares that World Mortgage Corporation owns in Eastern & Chartered Trust Company, if it can be done. As you say, it can easily be done.

Mr. LeMesurier: While you are on the question of exchange of shares, it is exactly the same, if they exchange shares, which I believe Mr. Moreau referred to as an exchange of paper or go out and sell treasury stock to the public, raise $25 million cash and buy the shares with the cash. In this way, the net effect is exactly the same as exchanging the shares to start with. But, it is not a paper transaction. There is real value behind these shares. If Eastern & Chartered Trust Company were to be acquired by World Mortgage Corporation, World Mortgage Corporation could raise $25 million cash from the public and then make a cash offer for the shares. The net effect would be the same. As reference was made to an exchange of paper I felt possibly there was a slight feeling that this was a bit of a sham transaction. It would not be.

Mr. Moreau: I was not suggesting that it was a sham transaction. I am sure it is a very real one.

The Chairman: Would you proceed, Mr. Lloyd.

Mr. Lloyd: I am very concerned about procedures here. Some very challenging statements have been put forward by the witnesses today. Comparisons have been made with the experts on credit, the banks, which come under a different field from the trust companies. I do not think some of the comparisons have been taken into account. As you know, there is the difference of government control, through the operations of the Bank of Canada, for example.

I am reluctant to question the witnesses without having a transcript of the evidence that has been given, because certainly their explanation has raised a number of elements which require some reflection in order to ascertain the significance of their observations. I do not think, because of that, that I am in a position to ask some leading questions at this time. In fairness to them, I would prefer that their evidence be taken and then I presume we may have an opportunity to question them further after we have had an opportunity to examine the transcript of the evidence which they have given. Would this be possible?

The CHAIRMAN: I would hope that we would move along with this bill. I do not know how long it would take to obtain the transcript, but I know that the government wishes that there be a determination upon the bill one way or the other as quickly as possible.

With respect, I would ask you to hold in abeyance your request that we wait for a transcript of the evidence, until the committee has asked the questions, and then at that time we could determine the question you raise.

Mr. LLOYD: Then, may I put one question to Mr. Finlayson? In general are you using the World Mortgage Corporation circumstances as a case in point to illustrate that this law in principle is not right; you are not asking for restrictive application for the World Mortgage Corporation, are you?

Mr. FINLAYSON: No, we are not. We are saying that the amendment as such is impractical.

Mr. LLOYD: You are using the World Mortgage Corporation as an illustration?

Mr. FINLAYSON: That is where it hits us, because that is what we are. In fact, there are already two organizations which will be affected by this. Just what the practical effect on them will be, I do not know, because they have been operating for a long time. However, certainly we are asking that the amendment as such either be modified or withdrawn generally.

Mr. LLOYD: Mr. Chairman, I am not going to pursue any questioning. Certainly the wishes of the committee will naturally be followed by me. I am not taking any stand to hold up the bill. I just say that I would require time for careful reflection after seeing the evidence they have given before I could comprehend what the witnesses have put forward.

Mr. LAMBERT: Mr. Finlayson, do you not agree that it is theoretically possible to engage in a pyramiding operation on the organization of a new trust company and a new loan company as part of a framework? I think this is what the legislation may have been designed to curb. In other words, if you were to go out and raise $2 million by the issuance of shares of a trust company which in turn would use that money or part of that money in a loan company, both of them, on the basis of this $2 million, then would be able to go out—one without funds—and borrow up to whatever figure they wanted on that original $2 million.

Mr. FINLAYSON: May I say two things in answer to that? I agree that it is theoretically possible that could happen. If the legislature is concerned about that happening, and imposes restrictions, then my submission is they have gone much too far and that other language could be employed to prevent the type of situation you have suggested.

My second point is that I say you do not really, as a practical matter, get into any difficulty so long as you are restricted to four times the capital. There is no risk involved to the lenders to such an institution when it is restricted to four times the capital. That is a very conservative base.

Now, before you can get any increase above the four times limit, it is necessary to satisfy the superintendent of insurance, Mr. Humphrys, that you should receive such an increase, and of course, also, it must be approved by the treasury board. It seems to me that in restricting fly-by-night outfits or companies which have an irresponsible base, if I may use this expression, that that is where Mr. Humphrys comes in. He can look at not only the capital structure, but also the management of the company and the type of investments it makes, and if he feels the security is not there for creditors, then he can refuse to permit any such expansion. As a practical matter, you are not going to have any difficulty, because of the supervision of Mr. Humphrys and his department, with any increase over the four times limit.

Mr. GRAFFTEY: For clarification purposes, may we recoup here? We have a situation where a trust company is giving its shares to the mortgage and loan company in exchange, may I say, for a controlling interest in the mortgage and loan company.

Mr. LEMESURIER: It is not the trust company which is giving its shares; it is the shareholders. It is the outstanding shares which are being exchanged by the shareholders of the trust company for World Mortgage Corporation shares.

Mr. GRAFFTEY: In a practical vein this will result in control of the mortgage and loan company by the trust company?

Mr. LEMESURIER: That is correct. It is the World Mortgage Corporation which will control Eastern & Chartered Trust Company if its exchange offer is fully taken up.

Mr. GRAFFTEY: If the company was holding shares in a non-financial company or a non-loan company or a non-trust company—as you said before, ordinary industrial blue chip common shares—there would be no problem at all in terms of its borrowing or lending power being limited?

Mr. LEMESURIER: Yes, if they have a dollar investment in the shares of an ordinary industrial company they could go up to four times or probably 12½ or 15 times later.

Mr. GRAFFTEY: Before I get to the point of my final question to you, what we should really be considering today is the fact that the trust company's books have been audited by competent auditors and, as you tell us today, on the market their shares are listed at approximately $50. This is the net equity value of these shares on the market, approximately.

Mr. LEMESURIER: Yes.

Mr. GRAFFTEY: It seems to me that you feel there should be no other consideration of what is behind it in terms of whether this is based on the fact that it is a loan company or industrial company. You fail to see why special consideration should be placed on the fact that it is a loan company or trust company as opposed to an industrial or mining company.

Mr. LEMESURIER: That is correct.

Mr. GRAFFTEY: In the past what have been the basic reasons given to you, apart from this clause, in respect of why there should be basic differences and restrictions.

Mr. LEMESURIER: I believe the main reason is people feel that the trust company is carrying a full load of debt now and there is some concept that perhaps the shares are risky and that if those shares were used as a base to borrow further the whole structure would be a risky structure.

Mr. GRAFFTEY: This perhaps is an answer I should know, but under the regulations could a mortgage and loan company enter into this type of arrangement—perhaps the word "arrangement" is a loose word—with any other kind of Canadian company; in other words, there is a practical case of control involved here. Could a mortgage and loan company enter into this kind of an arrangement with another company other than a trust, loan or finance institution?

Mr. LEMESURIER: It could not invest in more than 30 per cent of the stock of any one company, but it could do a share exchange deal with any company which had a market value of around $80 million or $100 million, and they could acquire a block of $25 million worth of that stock. They could borrow there four times this amount, and with the approval of the superintendent up to a higher figure.

Mr. GRAFFTEY: And to all intents and purposes, the practical issue could evolve into a question of the whole company being involved?

Mr. LEMESURIER: That is correct, if it were a 30 per cent block. I do not think this is a practical question, because there will be very few mortgage companies buying a large block of, for instance, B.A. Oil.

Mr. GRAFFTEY: From what you have said, Mr. Finlayson, as Mr. Lloyd pointed out, there is a real worry, but you feel that this clause could be reworded to prevent this kind of a situation coming about.

Mr. FINLAYSON: That is my view. I just think the drafters of the bill have gone much too far. They have prevented a thoroughly legitimate situation, whereas they may be worrying about things which could be prevented; they have gone too far.

Mr. AIKEN: I think it was made clear that the Eastern & Chartered Trust Company will not be issuing treasury stock.

Mr. LEMESURIER: That is correct. There is no change in the capitalization of Eastern & Chartered Trust Company.

Mr. AIKEN: The present owners of shares in Eastern & Chartered Trust Company will merely in effect be exchanging them for shares in World Mortgage Corporation as a result of the exchange.

Mr. LEMESURIER: That is correct.

Mr. AIKEN: So they will then own shares in both Eastern & Chartered Trust Company and World Mortgage Corporation?

Mr. LEMESURIER: They will own shares directly in World Mortgage Corporation and through their shareholdings there, indirectly in Eastern & Chartered Trust Company.

Mr. AIKEN: In other words, it will not be a partial purchase; it will be a complete transfer of shares so far as the shareholders in Eastern & Chartered Trust Company are concerned.

Mr. LEMESURIER: It could be a complete exchange; they will not likely be turning over half of their shares in the Eastern & Chartered Trust Company. There will be an offer made to them to exchange all of their shares.

Mr. AIKEN: To all shareholders?

Mr. LEMESURIER: Yes. It is up to the individual shareholder of Eastern & Chartered Trust Company whether he accepts the offer in full, in part, or rejects it completely. There is no intention to force them; it is entirely voluntary.

Mr. AIKEN: As I understand this subsection 3, the purpose really is to prevent two companies—that is a mortgage company and a trust company together—doing what one of them could not do alone; in other words that the combined borrowing of the two companies would not exceed what one company could do if it stood on its own. Is that in effect what World Mortgage Corporation will be doing?

Mr. FINLAYSON: In the first place, I do not agree with your interpretation of what it is. It is not just a question of consolidating the balance sheets of two companies and saying that the combined borrowings of the two companies cannot exceed four times the combined assets. It goes further than that. It says that you combine the assets of the two companies and you combine the liabilities of the two companies, but from the combined assets of the two companies you must deduct the participation of the lending company in the trust company, or vice versa, so in our case you would have to add the assets of the Eastern & Chartered Trust Company to the assets of the World Mortgage Corporation, and then deduct the $25 million which reflects the investment of the loan company in the Eastern & Chartered Trust Company. Actually the combined companies are worse off than they would be separately.

Mr. AIKEN: So that in fact in your opinion the section that is drafted goes further than to restrict the two companies from doing together what one could do alone?

Mr. FINLAYSON: What it is really doing is to say what is regarded by everybody as an asset, namely $25 million worth of stock in the Eastern & Chartered Trust Company, is no asset at all. It is taking it right out of the assets of the combined balance sheets of the two companies. It is no asset at all for the purpose of borrowing.

Mr. AIKEN: No, but loan companies and trust companies are placed by this legislation in a separate category. Maybe we are talking about different things but my understanding of the section is that they cannot, by a manipulation of holdings between a loan company and a trust company, exceed what one company can do if it were on its own feet. I think that is a good provision. Are you telling me that this goes further than that, and that if the World Mortgage Corporation were alone it would be in a better position than if the two were combined?

Mr. FINLAYSON: No, I do not say that. This is just hypothetical, but if all the subsection said was that the two companies together cannot do more than each one individually, I do not think we would have any objection. I do not think we should be in a different position if such a relationship were established between the Eastern & Chartered Trust and the World Mortgage Corporation than if we were just the World Mortgage Corporation.

Mr. AIKEN: Can you suggest to us, if not in detail then in general, how this subsection could be amended or changed so as to cover the situation that I have mentioned?

Mr. FINLAYSON: Yes, just take the first two brackets and strike them out. This appears on page 53, line 27.

Mr. AIKEN: Take both of the brackets out, you mean, that is both in "excluding therefrom shares of the capital stock of the trust company", and "excluding therefrom shares of the capital stock of the loan company".

Mr. FINLAYSON: Yes, take out both sets of brackets.

Mr. AIKEN: I think we understand what your proposal is.

There is one more question I would like to ask. Can you tell me how your situation is different from that of the Huron and Erie Mortgage Corporation? Is it because they are an established corporation?

Mr. FINLAYSON: As far as I know we are not in a different legal position. I do not know why they are not objecting or whether they are going to object but they have been operating for a long time and we are just getting started. They may have a dozen reasons why they can operate within these restrictions.

Mr. AIKEN: At least Huron and Erie Mortgage Corporation has had a representative here. When we were discussing the question of the loan ratio on real estate mortgages we had a representative from that company here before this committee.

The CHAIRMAN: You are quite right on that. Mr. Millar was here, but not on this point.

Mr. AIKEN: This is what I am saying. He was here to present a brief on this bill, so presumably they have no complaint with it. I am wondering why.

Mr. FINLAYSON: I cannot speak for them. If they have considered it and decided it does not affect them it is only because they have been operating for so long and they have their capital account in such a state that apparently it is not going to affect them.

Mr. AIKEN: This probably applies to the Canada Permanent Trust Company and others. Their capital structure is already settled and approved by the superintendent, and they have no problem. I would assume this, at least.

Mr. GELBER: Mr. Finlayson, I understand that the Eastern Trust Company issues a million dollars worth of treasury stocks. I believe it is paid in full. Can it use that as a basis for borrowing?

Mr. FINLAYSON: You mean right now? Does it receive cash for it? I see no reason why not.

Mr. GELBER: If those millions of dollars worth of shares being subscribed by the public were subscribed by the World Mortgage Company, could they borrow on the basis of that company? So that the Eastern Trust can borrow to the full based on its capital stock issues?

Mr. FINLAYSON: My problem will also be with the Eastern & Chartered Trust.

Mr. GELBER: The Eastern & Chartered can borrow to the full based on its assets. Your problem is with the holding company.

Mr. FINLAYSON: That is right.

Mr. GELBER: Do you not feel that there is a question of escalation involved here, and that you are considering borrowing twice on the same assets?

Mr. FINLAYSON: The whole point we have been trying to make, with respect, is that we do not regard it as borrowing twice because we do not regard stock in the Eastern & Chartered Trust Company as being a duplication of the capital in the Eastern Trust Company.

Mr. GELBER: Now, World Mortgage in turn can go and sell its shares to another loan company, and another loan company could use World Mortgage shares also. Is that correct?

Mr. FINLAYSON: Under the present law, of course, another loan company is restricted in the number of shares that it could purchase from the World Mortgage.

Mr. GELBER: But you are advocating it. You are saying a holding company should be able to use its investment in the loan company as a basis for borrowing, regardless of the fact that the first company had borrowed to the limit. Is that not what you are advocating?

Mr. FINLAYSON: No, we do not advocate that at all. I appreciate that some of the members of the committee and perhaps the drafters of the bill are concerned about this type of escalation to which you are referring. I am not saying it is undesirable that that be curbed. What I am saying is that you have gone much too far, or at least the drafters of this legislation have gone much too far, in the language they have employed. If you are trying to get rid of that type of operation, it can be done, but in attempting to do it you have used too big a hammer, if I may say so, and you are thwarting commercial ventures such as we are putting forth which are completely legitimate and sound.

Mr. GELBER: But you are against escalation, are you not?

Mr. FINLAYSON: Yes, unlimited escalation. I keep getting a bunch of hypothetical questions.

Mr. GELBER: That is not hypothetical. This is a real situation right here. You have a loan company which is owned in part by another loan company. That is not hypothetical.

Mr. FINLAYSON: This is a real situation and one that I am prepared to stand by 100 per cent, but then you talk about turning around and selling shares of the World Mortgage Corporation to another lending company, and so on.

Mr. GELBER: The same principle is employed here.

Mr. FINLAYSON: It is not the same principle because you keep multiplying. If you want to avoid that multiplicity or escalation, then draft the legislation accordingly. I am not opposed to restricting what you are suggesting but I just say that you do not need to use this broad language.

Mr. GELBER: What would you propose that we should include in the bill to avoid escalation and yet protect the position you are advocating?

Mr. LEMESURIER: Under the proposed bill C-123 I do not believe a loan company can own a loan company or that a trust company can own a loan company. All that is permitted is that a loan company can own a trust company. Also, a trust company cannot own a trust company.

Mr. GELBER: The borrowing power of each company is limited by the law, so it is the same thing.

Mr. LEMESURIER: You cannot keep on pyramiding loan, trust, loan, trust or loan, loan, loan. This stops at the loan above the trust company level.

Mr. GELBER: We do have a pyramid here in this case.

Mr. LEMESURIER: I would prefer to refer to it as the admissibility of the Eastern & Chartered Company shares in the assets.

Mr. GELBER: That is the principle with which you are dealing.

Mr. FINLAYSON: As I said before, in answer to a question by Mr. Moreau, your question would be as apt if we were trying to acquire shares in the Royal Bank. The suggestion seems to be that you should not have, as part of your capital base, the shares of the capital stock of any company which in turn is using a capital base in order to borrow money. If that is the case, you should exclude in this proposed amendment not only the capital stock of a trust company but any bank or finance company or any other company which operates on the same basis. It appears that that is not really what is concerning the drafters of the legislation.

Mr. LEMESURIER: The only thing we are asking for, Mr. Gelber, is that the loan company be permitted to own the trust company shares. I do not know if it is appropriate but I will try it for size, and if it is not appropriate please stop me. Mr. MacGregor, the former superintendent of insurance, when he was testifying before the Senate banking committee on the private bill to incorporate World Mortgage Corporation, stated that there was more justification for a loan company to own a trust company than for any other type of financial institution to control any other type—that the best justification for a parent and subsidiary relationship was for a loan company to own a trust company. We do not go on to say that a trust company should be able to own a loan company and keep on pyramiding. The statute prohibits this.

Mr. GELBER: I wonder if the witness would have any suggestion to make to protect the public against pyramiding, to which they are opposed, and yet to meet their needs?

The CHAIRMAN: Before the witness answers that question, may I say it is now 11 o'clock and the witnesses have indicated to me that they are prepared to meet with us this afternoon. There are still quite a number of committee members who have given me their names as they wish to ask questions. It would seem to me that if the committee would approve, it might be appropriate for us to meet this afternoon. This is an important subject and these gentlemen have come from considerable distances to make their representations.

Mr. LLOYD: I think they made their position quite clear. It is a matter of digesting it in relation to other matters.

The CHAIRMAN: If they are content to wait until this afternoon I would see no harm in joining with them after orders of the day or at 3.30 p.m.

Mr. LAMBERT: Would it be possible to have Mr. Humphrys also since these subjects are so closely related? Perhaps we would like to ask Mr. Humphrys for his opinion on this particular point.

The CHAIRMAN: I would anticipate that would happen. However, this is a new departure. Have you in the past permitted people making representations to examine other people making representations? This would in effect be what we would be doing.

Mr. LAMBERT: No, I think the members would be asking an additional witness questions.

The CHAIRMAN: That would be fine. We will meet this afternoon at 3.30.

AFTERNOON SITTING

WEDNESDAY, November 18, 1964

The CHAIRMAN: Gentlemen, I call the meeting to order. Your pleasure at being here will be enhanced immeasurably when I advise you that I am about to inflict a short speech on the House of Commons which you will escape, and having been so designated I will be retiring. Unfortunately, our Vice Chairman is attending the mayors' convention in Vancouver, of which he is the president, and I would therefore ask Mr. Lloyd to take the Chair.

(Mr. Lloyd took the Chair.)

The ACTING CHAIRMAN (*Mr. Lloyd*): Gentlemen, at our adjournment we were proceeding with questions to the witnesses. I will now call on Mr. More. As he is not present I will call on Mr. Gray. Mr. Gray is also not present, so the next on my list is Mr. Lambert.

Mr. LAMBERT: I wonder if any of the witnesses could comment upon the choice of the figure of 10 per cent as criteria for the ownership of shares. What is the difference between 10 per cent and 20 per cent or less? Is there any particular significance in it, or have the witnesses any comments to make in this regard?

The ACTING CHAIRMAN: I will ask Mr. Lambert this question. Mr. Finlayson indicates there was a specific request for some suggested amendments which they might offer. Do you still wish to proceed with your questioning before that is dealt with?

Mr. LAMBERT: No, I will defer my question.

Mr. FINLAYSON: There were a number of questions directed to me and to Mr. LeMesurier with respect to this aspect of pyramiding, and implicit in some of the questions was a suggestion that it was undesirable. I was also asked specifically what precise amendments I would suggest which would get rid of this possibility. I have already suggested to the committee that subsection 3 on page 53 of this bill should be amended in paragraphs (a) and (b) by deleting the words in brackets "excluding therefrom shares of the capital stock of the trust company", and also deleting, at line 29 the words "excluding therefrom shares of the capital stock of the loan company".

In order to make the same amendment in effect in the Trust Companies Act which has the same provision, I would ask, for the sake of getting the record straight on my amendment, that the members of the committee look at page 43 of the Trust Companies Act contained in this pamphlet where section 33 of bill C-123 dealing with the Trust Companies Act provides for the amendment of section 70, subsection 5(a).

I would suggest respectfully that subsection 5(*a*) at the top of page 43 be amended by deleting the words starting at line 3 which read as follows: "excluding therefrom shares of the capital stock of the loan company", and also

to delete the words commencing at line 5 "excluding therefrom shares of the capital stock of the trust company". Those are the deletions which we desire and for which we respectfully ask. To explain how these deletions will make it possible to prevent the type of pyramiding which was described in particular by Mr. Gelber in his questions I would suggest the following: there is already a provision in the Trust Companies Act, in section 68, subsection 1(*j*) which reads as follows—and this is permissive as it deals with what the trust company can invest in—

> (*j*) fully paid common stocks of a corporation incorporated in Canada which, 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; but not more than 30 per cent of the common stocks and not more than 30 per cent of the total issue of the stocks of any corporation shall be purchased by the company and the company shall not invest in its own stock or in the stock of any other trust company;"

As the law now stands one trust company could not purchase shares of another trust company. The amendment which I suggest would appear in the Loan Companies Act and would be comparable to the provisions in the Trust Companies Act. The powers of the loan company are set out in section 60, subsection 1(*e*). As presently worded it reads as follows—and this again is permissive in that the loan company is permitted to purchase shares—

> (*e*) The fully paid common stocks of any such company or of any chartered bank in Canada which, 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 such company or chartered bank during the year in which the dividend was paid; but not more than 30 per cent of the common stocks and not more than 30 per cent of the total issue of the stocks of any company or bank shall be purchased by the company.

It ends there in the present statute. You will notice that the wording is very similar to the wording of section 68, subsection 1(*j*) of the Trust Companies Act. I would simply suggest that we add to section 60, subsection 1(*e*) of the Loan Companies Act the following words:

> and the company shall not invest in its own stock or the stock of any other loan company.

The effect of this would be that it would be impossible to have the type of pyramiding that Mr. Gelber suggested and about which he seemed to be concerned. Right now one trust company cannot invest in another trust company. If it were made clear by amendment that a loan company could invest in another loan company, it would be impossible, in my submission, to do the type of pyramiding which is regarded perhaps by some of the members as being undesirable.

There is one other amendment which has been suggested in this committee which is set out in the minutes of proceedings and evidence number 5 at page 77. This is a proposed amendment by Mr. Moreau of this committee. It suggests a new section 61(*a*) to the Loan Companies Act. It reads as follows:

> Notwithstanding anything in section 60 but subject to subsection (2) of this section and to such terms and conditions as may be prescribed by

the treasury board upon the report of the superintendent, a loan company may invest its funds in the fully paid shares of a trust company to which the Trust Companies Act applies.

It then goes on to make it clear that in making these purchases you cannot use all the funds.

If the amendment which I suggested is accepted, it will mean that it is only on such terms and conditions that the treasury board may prescribe, upon the report of the superintendent, that a loan company would be permitted to invest its funds in the fully paid shares of a trust company. You will then have the type of supervision and regulation which prevents companies from making unwise investments and having a type of investment in the capital stock portfolio which is regarded as undesirable. At the same time, once that investment is made by a loan company in a trust company with the approval of the treasury board and the superintendent, it would be impossible to carry the thing any further. No loan company can buy shares in another loan company if my suggested amendments go through. As it already stands, no trust company can buy shares in another trust company.

Mr. LAMBERT: I would repeat my question. Does Mr. Finlayson or Mr. LeMesurier see any significance in the figure of 10 per cent of the shares as indicated at the beginning of the proposed clause 40?

Mr. LEMESURIER: It would seem to me that the 10 per cent figure has been selected by the proponents of Bill No. C-123 as being a very low figure, and the proponents of the bill obviously feel that they do not want a major investment by a loan company in the shares of a trust company, and then to let the loan company borrow on that borrowing base. Whether you prohibit it or whether you say that they are not penalized by owning only nine per cent but they are penalized by owning ten per cent, the bill effectually stops the type of transaction which we feel is justified and which World Mortgage is proposing.

I see nothing magic in the figures of five, ten or fifteen per cent. The amendment which Mr. Moreau proposed and which Mr. Finlayson has just read from the proceedings purports to give a loan company the right to own all the shares of a trust company, but at the same time it makes it impractical for it to do so by not allowing it to use the shares of the trust company as part of the borrowing base. It seems to give with the left hand and take away with the right hand at the same time. I can see nothing magic in the figure of ten per cent. It is obviously a low figure which has been selected because the proponents of Bill No. C-123, or this particular section of it, seem to believe there is some risk in the shares of a well established trust company being used as part of the borrowing base of a loan company. We disagree with that proposition.

Mr. MORE: I do not know whether my question has been answered or not. Mr. Gelber has been speaking about pyramiding. If I understand this correctly, the shares of Eastern are limited at 12½ times their value. In the new company they will be permitted four times the value, which gives you 16½ per cent. The present limit is 12½ per cent, and under the act the maximum will be 15 per cent. In this manner you will give them 16½ times the borrowing value on the shares rather than the present maximum of 12½, and the new maximum proposed at 15. Is that not the case?

Mr. LEMESURIER: I do not think that is the case as we see it. I do not think the shares of Eastern & Chartered Trust Company are being borrowed on at 12½ times their value. The book equity of Eastern & Chartered Trust

is being borrowed on close to 12½ times. We still feel that the shares of Eastern & Chartered Trust Company are a very safe investment. The fact it has 12½ times its equity in the form of deposits and other short term liabilities does not make these shares risky. And, there is a real value to the shares when they are held by World Mortgage Corporation.

Bill No. C-123 appears to say that these shares of Eastern & Chartered Trust Company have no value; they have a very real value.

Mr. MORE: I was not getting into that part of it but, in effect, your equity is going to be 16½ times rather than 12½ times.

Mr. LEMESURIER: No sir, I would not agree with that. The book equity of Eastern & Chartered Trust Company is being borrowed upon 12 times—that is, up to 12½ times. But, the shares themselves have a very different value from their book equity. In respect of Union Carbide Canada Limited and the recent public distribution of its shares, taking it at the $24 per share offering price for the total 10 million shares, the market put a total value on the Union Carbide Company of $240 million, whereas the equity on its books was only $80 million. There is no relationship between book value and market value.

A going concern has great value in excess of its book value. But, do you mean to say the people who argue this is double heading would say in respect of Union Carbide Company that the shares have no value over the $80 million book value? We think they have tremendous value over the $80 million book value. I think they were confusing the book value of the trust company equity on its books with the market value of the trust company shares in the hands of the public, or in the hands of World Mortgage Corporation. They are as different as apples and oranges.

Mr. MOREAU: It seems to me we are being asked to make an exception with a special circumstance. I would like to go into the capital structure of the two companies in more detail.

I think you said this morning you have an initial capitalization in World Mortgage Corporation of $2.7 million which, I gather, was cash or paid up stock.

Mr. FINLAYSON: This $2½ million cash figure was the one I used.

Mr. MOREAU: That was $2.7 million.

Mr. FINLAYSON: I think Mr. LeMesurier suggested it might be $2.7 million.

Mr. MOREAU: For approximately how many shares of stock was that? Was the figure 10,000?

Mr. LEMESURIER: That is 50,000 shares, sir, at $55 each. That was the former proposal. It might be $50 now. If it was $50 each that would be 2,500,000.

Mr. MOREAU: That was the subscribed stock at the time. Now, I take it that treasury stock is going to be transferred in exchange for Eastern & Chartered Trust Company stock. Am I correct in this assumption?

Mr. LEMESURIER: An exchange offer will be made by World Mortgage Corporation, by which it will offer—

Mr. MOREAU: Additional treasury shares?

Mr. LEMESURIER: Yes, of World Mortgage Corporation, to the shareholders of Eastern & Chartered Trust Company in exchange for their shares.

Mr. MOREAU: And, the figure you gave of $25 million would be approximately another 500,000 shares, or in that order?

Mr. LEMESURIER: Yes.

Mr. MOREAU: Now, I think you indicated in your brief somewhere something to the effect you expect 90 per cent of the shareholders to accept the offer of transfer and so on.

Mr. FINLAYSON: That was where the figure of $25 million originated, and that was assuming that number accepted.

Mr. MOREAU: What I would like to have a look at is the capitalization of Eastern & Chartered Trust Company now and how its shares are held because it seems to me that conceivably you would have to have almost total control of a company before such a change would be attractive. I am wondering if I am correct in assuming that. I assume that Eastern & Chartered Trust Company shareholders which, essentially, must be a rather compact group, are making this move in a block. I am wondering if I am right in that connection.

Mr. FINLAYSON: Well, the largest single shareholder of the Eastern & Chartered Trust Company is the Bank of Nova Scotia. But, it is a minority shareholder in that company and, as such, the offer that is made would have to be attractive enough to do more than get the Bank of Nova Scotia to accept it. It would have to bring the public in generally. If the general public did not come in the offering would not be a success. At least, we have no guarantee in advance that the offer will be substantially successful.

Mr. MOREAU: Do you know how many shares the Bank of Nova Scotia would hold—that is, what percentage of Eastern & Chartered Trust Company?

Mr. FINLAYSON: We do not have the percentage available and I do not know it, but it is less than effective control. It is not large enough by itself.

Mr. MOREAU: Would it be 10, 20, 40 or what?

Mr. FINLAYSON: No one has ever told me the figure and I am sorry I cannot help you at all in that connection.

Mr. MOREAU: Would you tell me this. Is there any other substantial shareholder, say a group of three or four? Are there any other substantial interests in Eastern & Chartered Trust Company similar to the Bank of Nova Scotia?

Mr. FINLAYSON: There is apparently one other large investor in Eastern & Chartered Trust Company who owns less than the Bank of Nova Scotia, but I do not know who the principals behind that shareholder are.

Mr. MOREAU: So, essentially, there are no larger groups than the Bank of Nova Scotia?

Mr. FINLAYSON: No. The Bank of Nova Scotia is the largest single shareholder, but its shareholdings are not sufficiently large to give it effective control.

Mr. MOREAU: What percentage would you consider necessary for effective control of the stock of Eastern & Chartered Trust Company?

Mr. FINLAYSON: I personally could not answer that question. I think it would vary with every company, would it not?

Mr. MOREAU: I was interested in that point because you said they do not have effective control, and I wondered what you thought effective control was. I realize it is a variable. It does depend on how the other shares are held.

Mr. LEMESURIER: I would not want to answer what effective control in one particular situation actually might be.

Mr. MOREAU: The amendments which you have proposed, as I understand it, were to prevent pyramiding between one trust company and another or between one loan company and another, but you still feel the principle of a trust company to a loan company would be all right.

Mr. FINLAYSON: Well, to answer that, of course, I am really putting everything the other way around, a loan company acquiring an interest in a trust company. It appears that the proponents of the bill do not see any objection in that because the effect of the amendment you proposed is that it is now possible for a loan company to purchase up to 100 per cent of the shares in a trust company subject to the restrictions in the meantime. Now, of course, it is

also true that on the other hand it is made clear by the other amendments suggested that they cannot count the securities in determining what their borrowing limits would be. But certainly it is our position that there is no objection to a loan company acquiring stock in a trust company.

Mr. MOREAU: Well, I appreciate that point but I think you will also appreciate the fact that the principle of escalation is recognized and sort of disbarred or excluded, and if they own more than 10 per cent they can only take sort of the aggregate position of the two companies in determining this.

Mr. FINLAYSON: You talk about pyramiding. To my mind, that involves putting more than one block on another. It is the fear that you are taking the same money and rolling it through a number of companies and, if my proposed amendments go through, once the loan company acquires the shares of a trust company, then it cannot go anywhere else because a loan company cannot buy shares in a loan company and a trust company cannot buy shares in a trust company.

Mr. MOREAU: You are suggesting that one stage is all right but that three or four stages should be ruled out, and I appreciate that.

Mr. FINLAYSON: With respect, you must keep in mind the one stage already is controlled if your amendment is given effect because even in the first stage the purchase by the loan company of the shares in the trust company must be subject to the approval of the treasury board and the superintendent of insurance. So, you have a type of regulation there, and ours is a completely bona fide proposition.

I appreciate the concern of the members of the committee that we are not the only people in the world and that this is a statute of general application. But, I say that the protection that the lending public gets is that each one of these acquisitions of shares by a lending company has to be approved by the superintendent of insurance and treasury board, so if any fly-by-night outfit comes along they are not going to get that approval.

Mr. MOREAU: But, you appreciate it is difficult, you might say, to grant fly-by-night outfits and so on this, and you say yours is a bona fide company. I am not contesting that, but I think you appreciate in legislating it is difficult to draw distinctions between those which are bona fide companies and those which are so called fly-by-night outfits. You have your reservations and suspicions, but it is very difficult to turn down applications on that basis.

Mr. FINLAYSON: Let us look at it another way, if I may. The fact of the matter is that there are two examples of this very thing in existence, the Canada Permanent Trust Company and the Huron & Erie. Now, we are trying to do the same thing. The effect of this proposed legislation will be to prevent us from doing this. Canada Permanent and Huron and Erie have been around a long time and are well established, but they apparently now have reached a stage where they can live under this new legislation because, we must assume, they understand it and they have not come down to protest it. The only effect this is going to have is to keep anyone else from doing the same thing as Canada Permanent and Huron & Erie have done.

Mr. MOREAU: Would you not say then it would be fair to assume that Huron & Erie and the other company involved are, no doubt, in a position where their combined assets versus liabilities would put them under the restrictions; in other words, they already are at the stage the legislation is trying to direct you into, shall we say.

Mr. FINLAYSON: We cannot get going. But, if you give us 10 years perhaps this legislation will not bother us at all. We do not know at what price the loan company purchased the trust company in the case of Canada Permanent

and at what price they are carrying that on their books. We do not know just how adversely affected they would be if they had to delete that from their capital structure. But, you could not get started with this type of a joint operation without starting off in very much the same way as we propose to do.

Mr. MOREAU: There is another point I want to bring up. Reverting to the share ownership and transfer you continually come back to industrial shares and I would like to ask you in respect of the example that has been used quite frequently during this discussion today, that of International Nickel, do you seriously think that International Nickel would put a substantial block of shares into a company which initially had 50,000 shares of paid up stock at $55, and that it would take 500,000 shares of that.

Mr. FINLAYSON: No, but what we might do is to issue our shares for cash, and then take the cash and buy International Nickel stock. You would not have to consult International Nickel at all.

Mr. MOREAU: I quite appreciate that.

Mr. FINLAYSON: But the result would be exactly the same. And we could do the same thing with the shareholders of Eastern & Chartered Trust Company.

Mr. MOREAU: I appreciate that, but then you are bringing new money into the operation, and International Nickel's stock would not suddenly be used a second time, so to speak, as an asset.

Mr. FINLAYSON: If we were to go out and issue shares for cash, and then immediately turn around and convert that cash into International Nickel shares, then we would be in no different position from what we would be in if we were to acquire International Nickel stock directly.

Mr. MOREAU: But you are not acquiring International Nickel stock essentially from the trade or from the exchange; you are going to have to raise the money first; in other words, this involves bringing new finances into the picture; and I think in the two situations you describe you admit that it is very unlikely, or remote, because you could not get any industrial company, shall we say, to accumulate their stock from their shareholders in that way and to substitute it in the same way.

Mr. FINLAYSON: No, I think, with respect, Mr. Moreau, that I cannot have made myself clear in this instance. But let us go back to Eastern & Chartered Trust. I remember this is just another wing of the people I represent here, and unless this offer is made attractive enough to the shareholders of Eastern & Chartered Trust Company, they just are not going to buy it. They have the stock right now which they can sell on the market for $50; so they are not going to turn it over to World Mortgage Corporation unless they think that the shares they are getting in return are worth at least $50. That is point No. 1.

But perhaps we might do it another way. We could go to the public directly or to the shareholders and say to the shareholders of Eastern & Chartered Trust: we will sell you a share in World Mortgage Corporation for $50 in cash. But if we did that, so far as the shareholder is concerned, he would look at it just as hard; because whether he has in his hand a share worth $50, or $50 in cash, he still has to be satisfied that the share he is getting is worth $50.

Mr. MOREAU: What you are saying is that instead of putting $50 into the treasury, you are putting his share into the treasury.

Mr. FINLAYSON: That is right.

Mr. MOREAU: Those shares in effect are being used as security for the stock he receives?

Mr. FINLAYSON: No, they are not a security; it is the purchase price for the stock he receives.

Mr. LEMESURIER: As we discussed it this morning, there is no real difference from the point of view of World Mortgage Corporation and the security of World Mortgage Corporation creditors, if World Mortgage Corporation goes out and raises $25 million in hard cash from the public and then makes a cash offer to the shareholders of Eastern & Chartered Trust Company for their shares. When that deal is completed, Eastern & Chartered Trust Company would have most of its shares owned by World Mortgage Corporation, and there is no new cash staying in World Mortgage Corporation or in the Eastern & Chartered Trust Company, because the cash has gone out to the shareholders of the Eastern & Chartered Trust Company. A share exchange is exactly the same transaction, but it is being done in one step. They have an opportunity to acquire shares in exchange, instead of doing it in two steps, that is by raising the cash and buying the shares for cash. The result would be identical. There is no difference in substance.

The ACTING CHAIRMAN: Are you satisfied, Mr. Moreau?

Mr. MACALUSO: What are you asking this committee to do in reality is to give special consideration to your people in not allowing the bill to go through as it is now; for, as you say, if Canada Permanent and Huron & Erie have done this, you say: "Let us do it too; give us ten years and we would not bother with this bill either". Is that not your meaning?

Mr. FINLAYSON: I did not mean to imply that what Canada Permanent and Huron & Erie are doing is wrong.

Mr. MACALUSO: No, but you just want to have an opportunity to do the same thing and you are asking this committee to give you special consideration because you just happen to be in the midst of organizing this venture at a time when this bill has come before the house and before this committee. So in essence that it what it is. If you were not embarked upon this venture, you would not be interested of course.

And I would like also to get the fact made clear that Mr. LeMesurier brought out just now; namely, that you want to do away with one step in going out and raising cash and buying Eastern & Chartered Trust stock. If you can do what you want to do in the same way, why can you not do it?

Mr. LEMESURIER: That could actually be done, but it does not end at that. How could you provide assurance to the Eastern & Chartered Trust shareholders that they would have an opportunity to become shareholders of the World Mortgage Corporation? You would be asking Eastern & Chartered Trust shareholders to sell their shares for cash and to be out of the picture completely. You would not be giving them an opportunity to participate on a continuing basis in the joint venture. As you raised your cash in the first instance, you could not use the shareholders' list and say: "We will take $55 from shareholders, but not from the public".

Mr. MACALUSO: The offer would not be as sweet that way.

Mr. LEMESURIER: No one wants to sell Eastern & Chartered Trust shares. The shareholders are satisfied with their investment. They believe it to be a safe one, and they want to be associated with the venture. Therefore there is going to be a problem in getting them to sell their shares. Instead, they are going to have to have assurance of having a continuing interest in a joint venture. So the thing to do is to have the shares exchanged.

Mr. MACALUSO: The offer is not as sweet the other way.

Mr. FINLAYSON: There is also another point. No matter how we acquire the shares of Eastern & Chartered Trust, we cannot use them as part of our capital in computing the borrowing limits. After all, the object of the exercise is that World Mortgage Corporation, of course, wants this particular trust company's shares.

Mr. MACALUSO: You could borrow on them as a base?

Mr. FINLAYSON: Yes, to borrow on the base, and also it would be a comparatively simple matter to operate a loan company out of the various branches and things of that trust company. In other words, who is going to pay us $50 for a share of World Mortgage Corporation unless we can demonstrate right at the outset that we have the administration set up with which to start lending money.

Mr. MACALUSO: I can see your problem, but there are two questions. I do not think Mr. More's question was completely answered when he said that you are going to have 12½ times, and with four times it means 16½ times. The fact that you only have 12½ times now does not prevent Eastern & Chartered Trust Company under your amendments from going up to 16½ times, even though they are not there. There is nothing to stop them from going up to 16½ times, as pointed out by Mr. More. Moreover, there is the other problem, as I see it. This bill, as Mr. Finlayson has said, is of general application. The fact that World Mortgage Corporation is a sound venture, or that it may be a sound venture, with sound people behind it, does not help in the case of some of these fly-by-night companies. There are trust companies which were formed very recently which have not even got on their feet yet, nevertheless they would be able to do the same thing. That is what troubles me. And although there is a special situation in your case, it does not prevent the other cases, and what I am having trouble to reconcile is that although you are safe, somebody else may not be.

Mr. FINLAYSON: My only answer is that we have the superintendent of insurance and his department, and they are the ones who would have to approve any future purchases. I can only rely upon them. This is a highly regulated type of business; it is controlled by people who have been doing it for many, many years. The public just has to rely, in fact, upon the competence of the people in the superintendent of insurance activity.

Mr. MACALUSO: I have no further questions.

The ACTING CHAIRMAN: Are there any further questions of these witnesses?

Mr. LAMBERT: This morning I raised the question with Mr. Humphrys, with regard to whether we might have his comments on the proposal for exemption of this application of the proposed legislation to the situation of the World Mortgage Corporation.

The ACTING CHAIRMAN: I take it, Mr. Lambert, that what you would like to do is perhaps to requestion Mr. Humphrys on the clause of this bill in the light of the statements made. We are to meet tomorrow morning at 10 o'clock, and the committee could, if it wished, pursue the questioning of Mr. Humphrys at that time. We did, after all, try to accommodate ourselves to the meetings with the witnesses today, and if you wish to do it that way, you might do so.

Mr. LAMBERT: We could do it in the morning.

The ACTING CHAIRMAN: That is right.

Mr. LAMBERT: I am in the hands of the committee.

Mr. MOREAU: I wonder if it would be possible to supply us with copies of the proposed changes in the bill?

Mr. FINLAYSON: I shall have them typed out and made available to you the first thing in the morning.

The ACTING CHAIRMAN: Before the witnesses leave, I think the Chairman has the right to observe that Mr. Finlayson is particularly concerned with clause 3.

Mr. FINLAYSON: That is correct.

The ACTING CHAIRMAN: That is your major concern, and the thing that bothers us.

Mr. FINLAYSON: That is correct. But of course in order to make the change which is necessary, you have to make a corresponding change in the Trust Companies Act.

The ACTING CHAIRMAN: Your main concern is with paragraph (a) of clause 3. I think it is the pleasure of the committee to release the witnesses and that the Chair entertain a motion to adjourn to meet tomorrow morning.

Let me thank you on behalf of the committee, gentlemen, for coming and giving us the benefit of your explanations.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 12

THURSDAY, NOVEMBER 19, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

WITNESSES:

Mr. George Finlayson, Counsel for World Mortgage Corporation; M. J. J. Ross LeMesurier, Wood, Gundy and Company Limited; Mr. R. Humphrys, Superintendent of Insurance.

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

21578—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken
Armstrong
Asselin (*Notre-Dame-de-Grâce*)
Basford
Bell
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Habel
Hales
Jones (*Mrs.*)
Kindt
Klein
Lambert
Leblanc
Lloyd
Macaluso
Mackasey
McCutcheon
McNulty
Monteith
More
Moreau
Mullally
Munro
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Tardif
Thomas
Vincent
Wahn
Whelan
Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 19, 1964.
(18)

The Standing Committee on Banking and Commerce met at 10.00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Basford, Cameron (*High Park*), Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Gelber, Gray, Habel, Lambert, Lloyd, Macaluso, Mackasey, McCutcheon, McNulty, Moreau, Mullally, Otto, Pascoe, Pennell, Scott, Wahn. (22).

In attendance: Mr. George Finlayson, Counsel for World Mortgage Corporation; Mr. J. J. Ross LeMesurier, Wood, Gundy and Company Limited; Messrs. Charles W. Jameson and W. Scott McDonald, Bank of Nova Scotia; Mr. Richard Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman said that Mr. Finlayson had asked for the opportunity to elucidate a matter to which he had referred at yesterday's meeting. Mr. Finlayson was recalled and gave information concerning the interests of the Bank of Nova Scotia in the Eastern & Chartered Trust Company.

Mr. LeMesurier was recalled, and he and Mr. Finlayson were questioned.

Mr. Finlayson said that he had been advised that the amendments which he had requested at yesterday's meeting would not accomplish the purpose which he had intended; he therefore withdrew them and requested that the Committee consider amending Clause 40 by adding a new sub-clause (4), copies of which he distributed to the members.

The questioning having been concluded, the witnesses were discharged.

Mr. Humphrys was recalled, and questioned.

The Committee resumed clause by clause consideration of the Bill.

Clauses 26, 27 and 28, as amended by renumbering, were carried.

On clause 29

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That clause 29 be amended

(*a*) by striking out lines 45 to 47 on page 37 and lines 1 to 4 on page 38 and by substituting therefor the following:

"be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day

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or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day, but this sub-section shall not be construed to prohibit the exercise of voting rights in circumstances where section 36C does not apply.

Change of status of corporate resident.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 36B and 36C, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 36B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value, but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(*b*) by renumbering subsections (4) to (6) of section 36E on page 38 as subsections (6) to (8) respectively; and

(*c*) by striking out line 28 on page 38 and by substituting therefor the following:

Conclusions reached by directors.

"section (7) of this section.

(9) In determining for the purposes of sections 36A to 36E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 36D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

Clause 29, as amended, was allowed to stand.

Clauses 30 to 33 inclusive, as amended by renumbering, were allowed to stand.

Clauses 34, 35 and 36, as amended by renumbering, were carried.

On Clause 37

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That clause 37 be amended

(*a*) by striking out lines 45 to 48 on page 49 and lines 1 to 3 on page 50 and by substituting therefor the following:

"the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares

held by or for the non-resident and associates on any subsequent day, but this sub-section shall not be construed to prohibit the exercise of voting rights in circumstances where section 51C does not apply.

Change of status of corporate resident.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 51B and 51C, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 51B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(b) by renumbering subsection (4) to (6) of section 51E on page 50 as subsections (6) to (8) respectively; and

(c) by striking out line 27 on page 50 and by substituting therefor the following:

Conclusions reached by directors.

"section (7) of this section.

(9) In determining for the purposes of sections 51A to 51E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declaration submitted under section 51D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

Clause 37, as amended, was allowed to stand.

Clauses 38 and 39, as amended by renumbering, were permitted to stand.

On Clause 40

For purposes of getting on record the amendment requested by Mr. Finlayson on behalf of World Mortgage Corporation, it was moved by Mr. Mackasey and seconded by Mr. Scott, that clause 40 be amended by the addition of a new sub-clause 4, reading as follows:

"(4) Notwithstanding anything contained in subsection 3 of this Section, if the shares of the trust company acquired by the loan company are listed on a recognized stock exchange in Canada and have been acquired for valuable consideration the provisions of subsection (3) of this Section shall not apply."

The clause and the proposed amendment were permitted to stand.

It was moved by Mr. Moreau and seconded by Mr. Macaluso, that the following new clause 41 be inserted immediately after line 24 on page 52:

"41. The said Act is further amended by adding thereto, immediately after section 61 thereof, the following section:

Investment in trust company

"61A. (1) Notwithstanding anything in section 60 but subject to subsection (2) of this section and to such terms and conditions as may be prescribed by the Treasury Board upon the report of the Superintendent, a loan company may invest its funds in the fully paid shares of a trust company to which the *Trust Companies Act* applies.

Limitation

(2) No investment shall be made by a loan company under subsection (1), if, after the making of such investment, the aggregate cost to the loan company of the investments made under subsection (1) and the investments made under section 60 in shares of such trust companies then held by the loan company would exceed the aggregate of the loan company's then paid-up capital and reserve."

The proposed amendment was allowed to stand.

The present clause 41 of the Bill was carried.

At 12 o'clock noon the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

THURSDAY, November 19, 1964.

The CHAIRMAN: Gentlemen, we have a quorum. Would you please come to order.

Mr. Finlayson has requested that he be permitted to give a further elucidating statement on some of the evidence he gave to this committee yesterday, in order to clear up a matter and, if there is no objection, I would ask Mr. Finlayson to make this statement.

Mr. GEORGE FINLAYSON (*Counsel for the World Mortgage Corporation*): Thank you, Mr. Chairman. I was asked a number of questions yesterday by Mr. Moreau in respect of the interests of the Bank of Nova Scotia in Eastern & Chartered Trust Company, and the answers I gave at that time were accurate on the information that I had. They are still accurate; however, I did not have in my possession this recent additional information which, if I had had it, I would have disclosed at the same time to the committee, because I think that my evidence taken as a whole might be a little misleading to the committee. Now, in respect of this additional information, I just did not know anything about it yesterday, but it was drawn to my attention by my clients as soon as the hearing closed.

The questions were related to the interests of the Bank of Nova Scotia in Eastern & Chartered Trust Company. I said then that the Bank of Nova Scotia owned less than 50 per cent of the shares of Eastern & Chartered Trust Company. But, I think that the committee should know that the sponsors of World Mortgage Corporation together own more than 50 per cent of the shares of Eastern & Chartered Trust Company. I listed the sponsors yesterday. They are the Bank of Nova Scotia, Wood Gundy & Company Limited, Burns Bros. & Denton Ltd., Harris & Partners Ltd., and Greenshields & Co. Ltd.

Mr. Chairman, that is all I wanted to add to what I said yesterday.

The CHAIRMAN: Are there any questions arising out of the further information given by Mr. Finlayson?

Mr. LLOYD: Mr. Finlayson, I would have liked to ask you some questions yesterday but I was Acting Chairman, of course, and I was unable to pursue the matter from the chair.

I want to go back a bit to reconstruct the case of your corporation, which you were using as an illustration of the application of these proposed amendments, and, if we may, we will use the particular case you have brought to the attention of the members of this committee, namely the case of your clients. How much approximately had Eastern & Chartered Trust Company in capital and surplus, say, at December 31 last year?

Mr. FINLAYSON: If I may, I would like Mr. LeMesurier to come to the head table, if he may, because he can answer those questions.

Mr. JAMES ROSS LEMESURIER (*Wood Gundy & Company Limited*): Would you please repeat the question?

Mr. LLOYD: At the last balance sheet date approximately in round figures what was the amount of the capital and surplus of Eastern & Chartered Trust Company?

Mr. LeMesurier: It was $14 million to $15 million.

Mr. Lloyd: And, what would be the amount of the loan liabilities of Eastern & Chartered Trust Company?

Mr. LeMesurier: It would be $196 million.

Mr. Lloyd: So, the ratio in this case would be something in the order of 12 times, would it not?

Mr. LeMesurier: I would have to work it out. It is close to the borrowing limit.

Mr. Lloyd: You say it is close to the limit, so $15 million of capital and surplus of Eastern & Chartered Trust Company is now used to the existing limit of the statute?

Mr. LeMesurier: That is correct.

Mr. Lloyd: Now, you propose to incorporate a company known as the World Mortgage Corporation and to exchange the shares of World Mortgage Corporation for the shares of Eastern & Chartered Trust Company. That was you statement.

Mr. LeMesurier: We propose that World Mortgage Corporation would make a share exchange offer, but to the extent that it would be accepted we are unable to tell you at the present time.

Mr. Lloyd: You mentioned a figure in the neighbourhood of $50, and that this would be the current market value; presumably, the values to be attached to the shares of Eastern & Chartered Trust Company for the purpose of this increase would be approximately $50.

Mr. LeMesurier: Yes. The shares of Eastern & Chartered Trust Company would be reflected on the asset side of the balance sheet of World Mortgage Corporation at about $50 a share. When and if the share exchange offer was successful it probably would show about 25 million worth of investment.

Mr. Lloyd: So you would then have invested in Eastern & Chartered Trust Company, and appearing on the books of World Mortgage Corporation, $25 million?

Mr. LeMesurier: That is correct.

Mr. Lloyd: And, on the opposite side you would have $25 million of capital stock value.

Mr. LeMesurier: In respect of these shares, yes, and also shares in respect of an additional $2½ million or $2¾ million cash.

Mr. Lloyd: Then, under the provisions of the law, if the amendments proposed were passed, World Mortgage Corporation would be in the position to seek, subject to the approval of the superintendent of insurance and treasury board, to expand their deposit liabilities—at least, legally—at 12½ times the $25 million?

Mr. LeMesurier: That is correct.

Mr. Lloyd: And, in fact, this is an expansion of $10 million multiplied by 12½ or 15, whatever the law may be. This is the possibility, is it not?

Mr. LeMesurier: Would you please repeat that question?

Mr. Lloyd: Well, in World Mortgage Corporation you are going to have a value, which is the market value today, of Eastern & Chartered Trust Company shares, in the amount of $25 million?

Mr. LeMesurier: Correct.

Mr. Lloyd: That is, according to your illustration.

Mr. LeMesurier: Yes.

Mr. LLOYD: Now, that $25 million is a value which creates a base for expansion of credit in the hands, of World Mortgage Corporation?

Mr. LEMESURIER: It gives them the power to raise money through—

Mr. LLOYD: But, if I may interrupt you, if this proposed amendment passes, you are precluded from expanding.

Mr. LEMESURIER: Yes.

Mr. LLOYD: And this is your objection?

Mr. LEMESURIER: Yes.

Mr. LLOYD: So, in fact, what you are doing by this device of the corporation, an exchange of shareholders, is escalating this $25 million as a base. In other words, you are escalating your power to borrow money by 12½ times or 15 times, as the case may be, of the $25 million in input of additional capital.

Mr. LEMESURIER: I would not express it that way. Our view is—

Mr. LLOYD: Perhaps you would not express it that way. But, will you answer my question. Is that not a fact?

Mr. LEMESURIER: No, I do not believe it is the way you suggest it, sir.

Mr. LLOYD: Then I will try it again.

Mr. LAMBERT: Would you please let the witness finish your question before interrupting.

Mr. OTTO: You are getting close to cross-examination.

The CHAIRMAN: Just let the witness answer and then you can follow with another question, if you wish.

Would you proceed, Mr. LeMesurier.

Mr. LEMESURIER: We feel that the market value of Eastern & Chartered Trust Company shares—and this is a going concern—with a long history of successful operation—is a very different thing from what its book value happens to be. The book value of the equity, $14 million or $15 million, does not reflect in any way the very real asset which the company has in the $470 million which it has in its E.T.A. business. These assets are shown on the balance sheet underneath the totals but they are not reflected in the equity portion. Those assets have very real earning power in the trust company. In fact, the E.T.A. assets are $470 million of the company's total assets, whereas its own assets are only $210 million. The outside assets are over twice the assets of the company itself. We feel there is a very real difference between the book value and the market value. As I mentioned yesterday in respect of the Union Carbide transaction, the market value of Union Carbide is $240 million and the book value is $80 million. We feel that this type of difference is not being given effect to, and that if the market value is excluded from the borrowing base we are saying it has no value.

Mr. LLOYD: But surely the E.T.A. assets are all trust assets.

Mr. LEMESURIER: Yes.

Mr. LLOYD: And are not all these assets equally measured by a liability on the opposite side of the balance sheet?

Mr. LEMESURIER: I am not claiming the trust company owns those assets, but as you look at the real worth of this company you do not find any reflection on to books of the earning power which is added. Any times you have that it is a very valuable "asset". But, none of that earning power is reflected in the $15 million figure on the equity portion of the balance sheet of Eastern & Chartered Trust Company. This is one of the reasons, and it is only one, why there is a real difference between book value and real value.

Mr. LLOYD: When you stated the liabilities of Eastern & Chartered Trust Company were $195 million and the capital was $15 million you were referring to that part of the balance sheet which deals with non-trust assets.

Mr. LEMESURIER: Yes.

Mr. LLOYD: So, that is right, and that is all we need to concern ourselves with for the purpose of examining your proposition to the committee.

Mr. LEMESURIER: No. I think, with respect, that the proponents of the amendments included in Bill No. C-23 feel that there should be no additional borrowing base allowed to reflect the ownership by World Mortgage Corporation of those shares which it will own of Eastern & Chartered Trust Company, and we feel this is a completely unrealistic point of view.

Do you?

The CHAIRMAN: If I may interrupt, Mr. Lloyd, I would ask you to allow the witness to complete what he has to say before you proceed with your next question. With all due respect to you, we are not in a court room at the present time.

Mr. LLOYD: I am not a lawyer but I know when a witness is departing completely from the original question.

The CHAIRMAN: I realize that we are all apt to get carried away in respect of certain discussions but I think we should conduct the questioning in an orderly manner and allow the witness sufficient time to complete his answer.

Mr. LLOYD: I will abide by your decision, Mr. Chairman. Would you finish what you have to say, Mr. LeMesurier.

Mr. LEMESURIER: I am finished.

Mr. LLOYD: Then, we have the situation where Eastern & Chartered Trust Company's assets are invested in mortgage instruments on the one side and on the other side are represented by debentures issued to the public, and the capital and reserves of the company.

Mr. LEMESURIER: That is correct.

Mr. LLOYD: Now, you told the committee that the capital and surplus of Eastern & Chartered Trust Company amounted to $15 million approximately.

Mr. LEMESURIER: The book value, yes.

Mr. LLOYD: Yes, the book value.

Mr. LEMESURIER: Yes.

Mr. LLOYD: And then you indicated that the market values of these shares, if the company was liquidated, would be approximately $25 million.

Mr. LEMESURIER: I did not say if the company was liquidated. If the present shareholders of Eastern & Chartered Trust Company liquidated their investments and sold them to other people, it would come to $50. I did not say if the company itself was liquidated.

Mr. LLOYD: But you admit that approximately $25 million would be the amount that would appear on the asset side of the World Mortgage Corporation upon incorporation if these transactions were completed.

Mr. LEMESURIER: Yes.

Mr. LLOYD: So World Mortgage Corporation now has a capital structure of $25 million plus the cash. You have written up value and instead of the shareholders of Eastern & Chartered Trust Company owning shares of Eastern & Chartered Trust Company they now own shares in World Mortgage Corporation if the transaction is completed.

Mr. LEMESURIER: That is correct. But, you used an expression to the effect that we have written up the values. We have not written up the values.

The values are there and the public recognizes that the shares of Eastern & Chartered Trust Company are worth $50. World Mortgage Corporation has not written up the assets.

Mr. LLOYD: Then we will use another term. You have placed a value on Eastern & Chartered Trust Company shares at $25 million.

Mr. LEMESURIER: If this is the stated value of the shares of World Mortgage Corporation, the value at which they are issued, then it is the value which the market has placed on them. We have not.

Mr. LLOYD: So, you are going to use this market value as the bases of an exchange of shares between Eastern & Chartered Trust Company shareholders and the shares of World Mortgage Corporation, are you not?

Mr. LEMESURIER: Yes.

Mr. LLOYD: So, when you finish the transaction you will have in World Mortgage Corporation $27 million worth of liabilities to shareholders represented by cash of $2,700,000, if that is the theoretical figure we are using, and an investment in Eastern & Chartered Trust Company of $25 million.

Mr. LEMESURIER: Yes.

Mr. LLOYD: Now, under the law, if the amendment was not passed, you then would apply to the superintendent of insurance for the authority to expand your deposit liabilities or issue debentures to 12½ times the $2,700,000, would you not?

Mr. LEMESURIER: As of right, the corporation could borrow 4 times, and at some future date it might well apply for a higher ratio.

Mr. LLOYD: So the capital and surplus of Eastern & Chartered Trust Company still remain. Is that right?

Mr. LEMESURIER: Yes.

Mr. LLOYD: Because there is no change in the corporate existence of Eastern & Chartered Trust Company.

Mr. LEMESURIER: That is correct; it does not affect it in any way.

Mr. LLOYD: So, their 12½ times invested capital and reserves still remain?

Mr. LEMESURIER: That is correct.

Mr. LLOYD: Now, in addition to this device of the corporation you are now going to be in the position, if we acceded to your request, to expand that same base through the device of the corporation 12½ times of the $27,700,000. Is that not so?

Mr. LEMESURIER: No, we are not expanding the same base, and I would not use the expression "through the device of the corporation". I think it is a very justified business transaction. If I am going too far off the track would you please bring me back on the rails. We feel that all our concern here must be that the creditors of World Mortgage Corporation must not be prejudiced in any way by the fact that part of the investments of World Mortgage Corporation is in the form of shares in Eastern & Chartered Trust Company, and even though Eastern & Chartered Trust Company has a debt of up to 12 times its own book value. It is a regulated industry. These shares are a particularly safe investment. These shares, which would be on the books of World Mortgage Corporation are no more risky than those of any other corporation.

Mr. LLOYD: You are getting away a bit again, and I want to bring you back. What you are saying, in effect, at the present time, is that under the law 12½ times of the existing capital and surplus is the maximum credit expansion allowable under this statute?

Mr. LEMESURIER: It is the maximum they are allowed to borrow.

The CHAIRMAN: Order, gentlemen.

Mr. LLOYD: Is it 12½ times?

Mr. LEMESURIER: Yes.

Mr. LLOYD: Without any additional output of capital at all except by the creation of this corporation where you are exchanging the shares and setting up the structure of the World Mortgage Corporation, and am I correct in saying that the shareholders are identical?

Mr. LEMESURIER: If the offer is fully accepted the shareholders will be the same.

Mr. LLOYD: And, there is no change in the capital assets of Eastern & Chartered Trust Company?

Mr. LEMESURIER: Correct.

Mr. LLOYD: It becomes a wholly owned subsidiary?

Mr. LEMESURIER: Yes.

Mr. LLOYD: And, with the exception of the $2,700,000 there is no additional input of capital?

Mr. LEMESURIER: That is right.

Mr. LLOYD: So, in fact, what you are doing is this. You want the multiplier for expansion of credit to be based on the market value of Eastern & Chartered Trust Company shares instead of the capital and surplus as shown by the balance sheet. That is what you want?

Mr. LEMESURIER: Yes. We are saying the market value which, we believe, is the real value of these shares, should form part of the borrowing base of World Mortgage Corporation.

Mr. LLOYD: And if you are allowed to do this why should not another company, in order to increase its capital and surplus, be allowed, without going through the device of corporation, to expand its capital on the base of the market value of its capital and surplus instead of the book value?

Mr. LEMESURIER: You mean why should not a trust company—

Mr. LLOYD: An existing trust company.

Mr. LEMESURIER: Yes. Why should not an existing trust company, rather than increasing its own capital on its own books by infusion of new cash and capital be able to borrow in respect of its own market value.

Mr. LLOYD: Yes. This is what you are asking. Is this not your proposition to the committee?

Mr. LEMESURIER: No, I do not tbelieve it is. But, if you look at a company's own borrowing power it has to relate to its own balance sheet. So, if you are looking at the borrowing power of Eastern & Chartered Trust Company you must look to the values on Eastern & Chartered Trust Company's books of its equity, but when you are looking at the World Mortgage Corporation's borrowing power you are looking to its net assets, and we believe the trust company shares are very safe investment and should be included at their approximate market value in the borrowing base of World Mortgage Corporation.

Mr. LLOYD: I suggest to you that as an investment dealer surely to goodness you admit that the effect of these transactions merely is to increase the capital and surplus to reflect a market value of Eastern & Chartered Trust Company shares; and then multiply that for purposes of expansion for credit. Surely that is basic.

Mr. LEMESURIER: Yes.

Mr. LLOYD: That is what I have been trying to establish.

Mr. LeMesurier: The position we are taking is that the market value of Eastern & Chartered Trust Company shares of the asset side of the balance sheet of World Mortgage Corporation is a perfectly good asset for borrowing and we believe it should be included. I agree with you in that connection.

Mr. Mackasey: I have a supplementary question.

The Chairman: We will let Mr. Lloyd complete his questioning.

Mr. Lloyd: I think Mr. LeMesurier has established clearly for the committee—and correct me if I am wrong—that through the device of the World Mortgage Corporation the corporation will be able to expand really the net assets of Eastern & Chartered Trust Company to many times more than it could without the creation of this corporation, and there is no change in shareholders, no input of new assets except the $2½ million. Now—

The Chairman: Let the witness answer the question so that we will have no misunderstanding. Did you understand that?

Mr. LeMesurier: No, I did not fully understand it.

The Chairman: Now, we do not have to engender any heat in this. This is a very friendly atmosphere.

Mr. Lloyd: Well, certainly.

The Chairman: May I ask you to put the question as quickly as you can and then obtain the answer. In this way everyone will know where they stand on the problem.

Mr. Lloyd: I will put it again.

The Chairman: Yes, and put it slowly and in a conversational tone so that we will know where we stand.

Mr. Lloyd: I think the questions have been put very clearly, Mr. Chairman. I think Mr. LeMesurier will not admit something he already has, in fact, admitted to—

The Chairman: Put the question to him.

Mr. Lloyd: —through the answers he has given to a series of questions. The sum total of this is this—

The Chairman: Just a moment, please. Order gentlemen.

Mr. Lloyd: I wish I had a blackboard for those members who are amused by this in order to enlighten them. By the device of a corporation, in fact, you are increasing the capability of the shareholders of Eastern & Chartered Trust Company to expand the volume of their borrowings. Is this so?

Mr. LeMesurier: To expand the volume of their borrowings?

Mr. Lloyd: Yes, that is right. Instead of owning a piece of paper in Eastern & Chartered Trust Company they now own a share certificate in World Mortgage Corporation, which owns and controls Eastern & Chartered Trust Company.

Mr. LeMesurier: The borrowing power of the companies which, in future, will be controlled by the present shareholders of Eastern & Chartered Trust Company, namely the World Mortgage Corporation directly, and the Eastern & Chartered Trust Company indirectly, will have a bigger borrowing base than the present Eastern & Chartered Trust Company—yes.

Mr. Lloyd: Now, I want to distinguish between what you propose and what has been the present practice. The present practice has been to permit a trust company to expand its liabilities by 12½ times its capital and surplus. Is that not the present law?

Mr. LeMesurier: Yes.

Mr. Lloyd: And this 12½ times the capital goes to the company, plus the retained earnings. Is that not so?

Mr. LeMesurier: Basically, yes.

Mr. LLOYD: What you are saying is that it is not right that a trust company should be able to expand its credit, in effect, through the devise of a corporation, but should be able to expand its credit at 12½ times or 15 times, as the case may be, of the equivalent of the market value of the shares. Is that not correct?

Mr. LEMESURIER: This is what the net effect would be, yes.

Mr. LLOYD: Thank you.

The CHAIRMAN: Would you proceed, Mr. Mackasey.

Mr. MACKASEY: I have one short question. The only thing I enjoy more than two lawyers arguing is two chartered accountants arguing.

Mr. LEMESURIER: I am not a chartered accountant.

Mr. MACKASEY: You obviously place quite a store on the market value of your shares, which you have mentioned to be approximately $50 and, of course, you mentioned that the public has a good investment and they are willing to pay $50 as the market value for trust company shares.

Mr. LEMESURIER: Yes.

Mr. MACKASEY: Therefore on the basis of that you are quite willing in the new balance sheet to present these shares at $50 based on the confidence of the buying public which, after all, is the main factor in the shares being $50; they consider it a good investment. Once you have established your balance sheet with the value of these shares at $50, what will happen if you borrow to the limit of your power if, for some reason beyond your control, the stock market suddenly becomes deflated and the market value drops to $30?

Mr. LEMESURIER: If you look down the road and see that you have a large amount of debentures outstanding, what we are concerned about is not to prejudice the debenture holders if you start to approach the top limit of your debt. If $27 million is the base, and the government is proposing to increase the amount which can be invested in common stocks from 15 per cent up to 25 per cent this could be part of the common stock portfolio.

Mr. MACKASEY: You are naturally using the market value to your own advantage at the moment, which is the natural thing to do.

Mr. LEMESURIER: When you say "to your own advantage", I believe it is proper to reflect it in the borrowing base.

Mr. MACKASEY: You are saying the public has ignored the book value; they have established a market value. You have created a climate for the public to go out and invest. You are then taking the value of $50 per share which the public has established and want to use this in the transfer as a figure. What would be the situation in the event of the possibility that suddenly the market value no longer is $50 and was $30?

Mr. LEMESURIER: This would be true in respect of any common stock investment in which the World Mortgage Corporation may invest.

Mr. MACKASEY: But you do not use the market value as the base for your loaning power?

Mr. LEMESURIER: If World Mortgage Corporation was to buy $20 million of stock in a corporation such as Union Carbide, they would put it on the World Mortgage Corporation's books at $20 million even though it has a book value of $8 million.

Mr. MACKASEY: If the market value of the Union Carbide shares dropped from, say $25 to $15, would you alter your books accordingly?

Mr. LEMESURIER: I believe the trust company practice is to reduce the amount of the investment.

Mr. MACKASEY: You say you believe. Are you sure?

Mr. LEMESURIER: I am not positive. The insurance companies and trust companies have different methods of reflecting common share values in their books. I believe there is something in the amendment on that.

Mr. LAMBERT: There is an amendment which allows three years, I believe.

Mr. LEMESURIER: I am not sure if it is the same for the trust companies.

Mr. GELBER: Mr. LeMesurier, I presume you realize that the reason for the questioning is not any reflection on the ability of the Eastern & Chartered Trust Company or the Bank of Nova Scotia to conduct its business. We have established certain rules and you are suggesting there be an exemption. That is what we are discussing. There is no reflection on the ability of these companies to conduct their business.

Mr. LEMESURIER: In any of the comments I have made, I would not want them to be taken as an indication that I believe this is a good thing for all companies in all situations. However, we believe the general law should not be made in such a way that it would close the door to this type of sponsorship.

Mr. GELBER: You are saying that if others should come along, we should not grant the same privilege?

Mr. LEMESURIER: We realize this is an administrative problem.

Mr. GELBER: We are working on a legislative problem, and this matter has arisen.

Mr. FINLAYSON: That is quite so. Yesterday we were trying to suggest some amendments to the proposed amendments which would give more protection to the public generally. I did suggest some yesterday. We now have another suggestion which I think would limit the type of situation in which somebody could come along and do what we propose to do now. This would consist of a new subsection (4) to be added to the present proposal which is contained in section 40 of the bill at page 53. Section 68 is being amended, subsection (3) is being added, and I propose a new subsection (4). I will read it. If this new subsection (4) is added, it will not be necessary to make any changes at all in section 68 subsection (3) as proposed. It reads as follows:

> Notwithstanding anything contained in subsection (3) of this section, if the shares of the trust company acquired by the loan company are listed on a recognized stock exchange in Canada, and have been acquired for valuable consideration, the provisions of subsection (3) of this section shall not apply.

You would have to have a corresponding amendment to section 70 of the Trust Companies Act.

Yesterday I also suggested an amendment to the Loan Act which prohibited one loan company buying its own shares or the shares of any other loan company. Mr. Humphrys kindly drew to my attention that section 63B of the present Loan Act already contains such a prohibition. Therefore, the amendment I suggested is not necessary. The effect is that where you now have prohibitions in the Trust Companies Act against the trust company owning shares in another trust company, you now have prohibition in the Loan Act against a loan company owning shares in another loan company. You now have the provisions of section 68, subsection (3) as proposed, and if you added a provision that is suggested as a new subsection (4), there are very few situations which could arise whereby anybody could take advantage of the new power proposed, since the loan companies can now acquire shares in a trust company. It is a little difficult for us to see how there could be any serious abuse arise, especially when right now, if the amendments which are before the committee go through, a loan company can only acquire shares in a trust company subject to the conditions imposed by the superintendent of insurance.

Mr. GELBER: Of course, it is realized that if I own shares in Eastern & Chartered Trust Company as an individual, and if I have a credit standing with a bank, I could take those shares, as a corporation, and place them as security and probably borrow against the security of the shares of Eastern & Chartered Trust Company. Is that correct?

Mr. FINLAYSON: Yes.

Mr. GELBER: You say that the World Mortgage Corporation should have the same right as I as an individual?

Mr. FINLAYSON: Not to borrow.

Mr. GELBER: You are suggesting they use it as a base for borrowing. Is that not the whole argument?

Mr. FINLAYSON: Use it as a base for borrowing if it is a part of the capital structure of the company just the same as any other stock.

Mr. GELBER: Yes. The World Mortgage Corporation should have that as a base for borrowing the same as I would have if I own shares of Eastern & Chartered Trust Company.

Mr. FINLAYSON: I will go along with that.

Mr. GELBER: There is a problem involved here which is not being met by your amendment. The reason this restriction is in the bill is that the control is under the same group; that is the problem we are facing. This reminds me of this saying: Great fleas have little fleas upon their backs to bite them, and little fleas have lesser fleas, and so ad infinitum. My understanding is that if there were no exchange of shares each one of these companies would have some borrowing ability. What about the World Mortgage Corporation; if there were no exchange shares, would World Mortgage Corporation have an ability to borrow?

Mr. FINLAYSON: What they would do is they would have the $2½ million subscribed, and then instead of issuring common stock for Eastern & Chartered Trust Company stock, they would issue it for cash.

Mr. GELBER: So, they would have to issue for cash to the public or to Eastern & Chartered Trust Company?

Mr. FINLAYSON: There is no suggestion that Eastern & Chartered Trust Company is to own any shares at all in the World Mortgage Corporation.

Mr. GELBER: The amount that is available to World Mortgage Corporation would be $2½ million, and the balance of this capital is going to come through this exchange of shares.

Mr. FINLAYSON: No. If we cannot do it in the way we hope to do it, then we would either have to abandon the project or do it in some other way, because I do not think you could start a loan company with a base of $2½ million.

Mr. GELBER: But based on the restriction in this bill, if it becomes law—we know what the borrowing capability of Eastern & Chartered Trust Company is—the borrowing capability of World Mortgage Corporation would be limited to $2½ million based on that subscription.

Mr. FINLAYSON: No. Actually the whole thing would go right down the drain because World Mortgage Corporation is not going to command $50 a share for its shares unless it has this association with Eastern & Chartered Trust Company.

Mr. GELBER: We are not concerned with that.

Mr. FINLAYSON: We are.

Mr. GELBER: I know you are; but I am not making my question clear. Whether you proceed or not, the capability of World Mortgage Corporation without this transaction will be based on a $2½ million capital subscription. Is that correct?

Mr. FINLAYSON: That is correct, but there is not going to be any World Mortgage Corporation.

Mr. GELBER: You are suggesting each one of them will have a borrowing capability based on their capital subscription, plus surplus, and you are suggesting that that total capability be increased by this exchange of shares. Is that right?

Mr. FINLAYSON: That is the end result, yes.

Mr. GELBER: That is correct.

Mr. FINLAYSON: That is the end result.

Mr. GELBER: That is the problem with which we are dealing.

Mr. FINLAYSON: Yes.

Mr. GELBER: You want to increase the loaning capability of the complex of the two companies by an exchange of shares. Is that correct?

Mr. FINLAYSON: Well, that is the end result again.

Mr. GELBER: Let me ask you this: If I were a customer of the Bank of Nova Scotia and I was borrowed to the limit, do you think that if I, as a corporation, put the shares of that corporation into a holding company, the Bank of Nova Scotia on top of that would lend money to the holding company?

Mr. FINLAYSON: It depends on what value the Bank of Nova Scotia put on the shares of the holding company.

Mr. GELBER: I would suggest that the Bank of Nova Scotia would tell me I was borrowed to the limit in the basic company.

Mr. LLOYD: Not necessarily.

The CHAIRMAN: Mr. Scott is next.

Mr. SCOTT: I have a couple of questions arising out of Mr. Gelber's questions. He said that if he owned shares in the trust company he could take them to the bank and borrow money against them, and what you want to do is to use those same shares to borrow 15 times their value?

Mr. FINLAYSON: Four times.

Mr. SCOTT: What disturbs me is that if you took them to the bank the bank certainly would not lend you four times their value, and yet this is what you want us to give you permission to do.

Mr. LEMESURIER: That is because you do not have good value. The bank will not give you four times the value and let you do what you want with the money. Here the money you raise goes into the corporation and there is additional security for the loan. In the example Mr. Gelber used, naturally he would not borrow four times the amount and be able to use that in his personal affairs outside a corporation, but so long as it stays within the corporation which is borrowing, I believe it could be done.

Mr. SCOTT: Have you ever heard of a bank lending 16 times the value of the shares of a company?

Mr. LEMESURIER: Whether it is a bank or other creditors, if you have a corporation and it has a basic equity and value to it, in some types of corporations, particularly loan and trust companies, people are satisfied to lend money at four times its capital. That is what a loan company is all about. You form a loan company to borrow against your capital.

Mr. SCOTT: It still seems to me that you are building up the same assets twice.

Mr. FINLAYSON: If you took some security down to the bank and borrowed $1,000 on the basis of that security and then turned around and bought a mortgage with the $1,000 which you had borrowed and pledged the mortgage, you would have a situation which is more comparable to what we are doing, because when we borrow four times our capital we invest the money we borrow in things like mortgages, and the mortgages themselves are security to the debenture holders. The debenture holder always is secured up to the full amount.

Mr. OTTO: Mr. LeMesurier, what Mr. Lloyd has said will be the end result. However, let us suppose that World Mortgage Corporation issued $25 million of common shares to the public; they then would have $25 million in their treasury.

Mr. LEMESURIER: Right.

Mr. OTTO: What would be the final borrowing base on the basis of the $25 million?

Mr. LEMESURIER: Initially 4½, but with discretion 12½ or perhaps 15.

Mr. OTTO: They could then take it up to $312 million. Is that correct?

Mr. LEMESURIER: That is right.

Mr. OTTO: Suppose the World Mortgage Corporation with that cash bought shares in Union Carbide; suppose they invested $25 million in shares of Union Carbide, would they still have the $312 million?

Mr. LEMESURIER: That is correct, but they could not do it quite that quickly, because they are limited under the proposed amendment in that the value of their common stock investments at any one time cannot be more than 25 per cent of their total assets.

Mr. OTTO: They are reduced down to a borrowing base of 15 times 12½.

Mr. LEMESURIER: That is correct. They also could buy the shares of an unregulated finance company which probably would be a much more risky investment than the shares of Eastern & Chartered Trust Company, and in a sense the equity in that finance company has been used as a borrowing base. The market probably has placed a value on the shares in excess of the book value of the finance company, be it I.A.C., Traders or others. The market price they pay is there and they can borrow up to 12½ times it.

Mr. OTTO: Therefore, because of this section they cannot use the market value of Eastern & Chartered Trust Company, whereas they could with another company. You are not denying that what Mr. Lloyd said will be the result, but still in your view, it is unfair to World Mortgage Corporation.

Mr. LEMESURIER: I think, from the way we see it the effect is that if this bill goes through the legislature we discriminate against trust company investments by loan companies, but permit investments in any other corporation which might be a much more risky investment.

Mr. OTTO: Twenty five million dollars in cash in the World Mortgage Corporation when invested in any other corporation is of value, and the minute you invest it in a trust company it reduces the value.

Mr. LEMESURIER: Yes.

Mr. OTTO: There are still many ways, in other words, that you probably could make the same investment in a trust company by a sort of circumventing route by a transfer of shares, or even by proxies; for instance, there is nothing to prevent the World Mortgage Corporation from selling its shares, or taking shares of Union Carbide and Union Carbide in turn taking

shares of Eastern & Chartered Trust Company in equivalent value, and World Mortgage Corporation getting proxy votes from Union Carbide. A deal could be arranged which is not illegal but which would give the same result you are asking for.

Mr. LeMesurier: It would not be the same result because the $25 million investment in Union Carbide is only 10 per cent of Union Carbide, so in effect you would have only a 10 per cent flow through to the trust company.

Mr. Otto: You are asking that $25 million invested in a trust company be made of a value equivalent to that which it would be invested in another company.

Mr. LeMesurier: Yes. We think the trust companies, being in a regulated industry, despite the fact that they have a higher debt ratio than industrial companies, are a safe investment and do not prejudice the position of future creditors of World Mortgage Corporation.

Mr. Moreau: Mr. Finlayson, what would you estimate that World Mortgage Corporation shares would sell for on the open market? From the suggestion you made, I gather that without the Eastern & Chartered Trust Company they would not be worth anything near $50.

Mr. Finlayson: Well, that is quite so but I could not give any kind of figure in respect of what they would be worth without the Eastern & Chartered Trust Company because that is what gives it the administrative framework to go ahead and lend money.

Mr. LeMesurier: I would not say if you formed a trust company or loan company with good sponsorship and you decided to raise $25 million because you believed you could invest $25 million in a good profitable venture that the shares would not sell for $50. It depends what the financial plan is and what the enterprise is going to be, as well as the sponsorship that the company has. It would not raise $25 million unless it had a proper plan of operations which would prove profitable. I would not say you could not sell shares at $50, as discussed before if you were not going to buy Eastern & Chartered Trust Company shares.

Mr. Moreau: Perhaps I misunderstood you. I understood you or Mr. Finlayson to say that without Eastern & Chartered Trust Company, World Mortgage Corporation shares would not be worth $50, and you needed the going concern of Eastern & Chartered Trust Company.

Mr. Finlayson: That is what I said, and perhaps Mr. LeMesurier does not agree with me.

Mr. LeMesurier: No. I think the point is this. If the share exchange with Eastern & Chartered Trust Company shareholders is not feasible due to changes to be effected by passage of Bill C-123 in its present form the sponsors may see fit not to proceed with the development of the mortgage company, but if they did proceed with some alternative plan then if the shares are sold for $50 cash these shares should be worth $50. But, they might decide not to proceed.

Mr. Moreau: Suppose they decided to proceed and perhaps to sell stock through an underwriter on the exchange, perhaps they would get only $30.

Mr. LeMesurier: But surely it depends on the sponsorship that a company has. No responsible underwriter is going to undertake financing before he raises money from the public at $40, $50 or at any other price per share unless there is some plan of operation, projection of earnings and so on, and he will sell stock on that basis. If you sell stock at $50 and put $50 in the treasury starting off it is not going to drop down to $30. There is no rhyme or reason why it should. I do not think you ever would have a group coming out with a plan, raising their first capital of X million dollars, and expect the value to drop

to half. They have a plan and the company is going to do something, or they cannot raise the money. If they cannot satisfy the public that it is a sound operating plan and that the shares are worth $50 they will not raise the money.

Mr. MOREAU: Well, I have seen a number of best laid plans go wrong. Certainly a number of issues which have come out have fallen substantially, and possibly this was because it was not a going concern. I agree with Mr. Finlayson when he asks why would Eastern & Chartered Trust Company shareholders be willing to exchange their shares for shares that were not worth $50 without the virtue of possible exchange.

Of course, the other point is we have had continual references that Eastern & Chartered Trust Company shares should be treated as any other common stock, and I understand there is a restriction of 25 per cent in the holdings of other common stock. So, even with the manipulations that Mr. Otto is suggesting which could be done in a round about way it really is not possible.

Mr. LEMESURIER: As I mentioned several moments ago there is this restriction; if it was an ordinary industrial corporation World Mortgage Corporation could not invest its initial $25 million in the common stock immediately. They would have to wait until they borrowed another $75 million in the open market, so that they would then have a total of $100 million in assets, as a result of which they could put $25 million in common stocks.

Mr. MOREAU: Initially they would be restricted in their borrowing to 4 times capital, which would be $10 million; therefore they could buy only $2½ million worth of common stock.

Mr. LEMESURIER: Would you repeat that please?

Mr. MOREAU: I said that with the initial $2½ million capital investment they could borrow only 4 times their investment, which would be $10 million.

Mr. LEMESURIER: Correct.

Mr. MOREAU: And they would only be allowed to invest 25 per cent of that $2½ million in common stock, so it would be an awful long way before it got up to $100 million.

Mr. LEMESURIER: If you look at the initial capital as being $2½ million, these figures are correct, but if we are talking about a comparable size transaction to the share exchange of Eastern & Chartered Trust Company shares then you are talking of raising $25 million cash from the public.

Mr. MOREAU: We were talking about a $2½ million investment in cash paid into the company, and then a transfer of shares, and this has been likened many times in the discussion yesterday and today as very much the same as any other common stock, and I am suggesting it is not. It could not possibly be and for the very reasons I have outlined, because with a $2½ million cash investment you could only create assets through borrowing up to $10 million, and you are permitted to invest only $2½ million and not $25 million in common stocks.

Mr. LEMESURIER: But if the company raised $25 million of cash, made a cash offer for the shares of Eastern & Chartered Trust Company and at the same time they raised $75 million of debenture money or other debt money, maybe partly from the bank to start off with or, perhaps over the counter or through an underwriting of debentures they could put themselves in a position of having $100 million of total assets. This company could raise money very quickly, so its total assets could be $100 million, and they could put $25 million in common stock.

Mr. MOREAU: That is all, Mr. Chairman.

The CHAIRMAN: You are next, Mr. Wahn.

Mr. WAHN: If the question I am about to put has not already been answered I would like to know if there are any other well established and reputable financial institutions operating upon the bases proposed by World Mortgage Corporation?

Mr. FINLAYSON: I think that was dealt with yesterday, Mr. Wahn. We did refer to Canada Permanent.

Mr. LEMESURIER: Canada Permanent Mortgage owns Canada Permanent Trust. Then there is also Huron & Erie Mortgage which owns Canada Trust, and they have been operating for some years.

Mr. WAHN: And, this proposed section will apply to them as well as to all other companies such as World Mortgage Corporation.

Mr. LEMESURIER: Yes.

The CHAIRMAN: Unless I have overlooked someone I do not have any other questioners.

Mr. OTTO: In respect of what Mr. Moreau has said, he has put some impossibilities in the way, but the Bank of Nova Scotia could buy in the open market the shares of Eastern & Chartered Trust Company. Is that not right?

Mr. LEMESURIER: Yes, it could.

Mr. OTTO: And, for $25 million, which is the amount you are going to pay, the Bank of Nova Scotia could buy the controlling interest of the shares of Eastern & Chartered Trust Company.

Mr. LEMESURIER: Yes.

Mr. OTTO: Could the Bank of Nova Scotia then give you their shares and in turn take the shares of World Mortgage Corporation?

Mr. LEMESURIER: Yes.

Mr. OTTO: So, we have the same result, do we not?

Mr. FINLAYSON: No.

Mr. MOREAU: Not if we do not allow the transfer of the shares.

Mr. OTTO: Let us say the Bank of Nova Scotia keeps these shares.

Mr. LEMESURIER: Yes.

Mr. OTTO: And, you have the shares of World Mortgage Corporation, you could give the voting rights of the proxy to the bank.

Mr. LEMESURIER: When you say "you" do you mean the World Mortgage Corporation has them in its treasury, not yet issued, or that someone else owns them?

Mr. OTTO: No. You have issued shares of World Mortgage Corporation.

Mr. LEMESURIER: To the public?

Mr. OTTO: To the public. You have $25 million.

Mr. LEMESURIER: Yes.

Mr. OTTO: And, the Bank of Nova Scotia has the Eastern & Chartered Trust Company shares?

Mr. LEMESURIER: Yes.

Mr. OTTO: Then, you could make some exchange with voting rights or exercise some control with the voting and be fully protected without the amendment.

Mr. LEMESURIER: No. I am not sure that I follow you.

Mr. FINLAYSON: No. There are two things you are thinking of. If the Bank of Nova Scotia were to acquire all the shares of Eastern & Chartered Trust Company, and then exchange them.

Mr. OTTO: It does not exchange them; it just gives you the voting rights and control under a long term option agreement of 25 years.

Mr. LEMESURIER: We have no proposition in that respect.

Mr. OTTO: I know you have not but I am saying what you really want is that World Mortgage Corporation buy the shares.

Mr. LEMESURIER: Yes.

Mr. OTTO: And, you want to put them in the same status as any other shares you could use for a borrowing base.

Mr. LEMESURIER: Yes.

Mr. OTTO: So, what you really want is an amendment to allow you to do it in a straightforward manner.

Mr. LEMESURIER: Perhaps I am wrong but my understanding is that the proposed amendment to this bill in itself will not give the right of the share exchange initially but that will have to come in the private bill, so they initially can have the right, on $27.5 million of capital in World Mortgage Corporation to have $25 million invested in Eastern & Chartered Trust Company shares.

Mr. OTTO: That is right.

The CHAIRMAN: Would you proceed, Mr. Scott.

Mr. SCOTT: I would like to raise a point in connection with the explanatory note opposite page 53 under subsection 3, the last sentence, beginning:

> The new provision would require that where a loan company owns a substantial proportion of the shares of a trust company the borrowing limit that previously applied to each company separately will also apply to the two companies taken on a consolidated basis.

Do you agree that that is the effect of this section?

Mr. LEMESURIER: Generally speaking, I believe that is the effect, yes.

Mr. SCOTT: In your opinion, is that not a perfectly reasonable proposition?

Mr. LEMESURIER: No, I do not think it is necessarily, at all. There are numerous situations where debt is not taken on a consolidated basis, if there is a special reason for it. You could have an operating merchandising company and it might have certain restrictions in its own trust deed, in respect of how many debentures it could issue. It might have a wholly-owned finance company, an acceptance company. It is the trust deed that determines the amount of debentures which the operating department store might have outstanding. In many cases, it will not require the consolidation of the total debt of its acceptance company subsidiary on the basis that the businesses are basically different and that there is no reason the two should be consolidated.

Mr. GELBER: But, for operating purposes they would net out the subsidiary shareholdings. Any consolidated statement takes each shareholding as an additional asset.

Mr. LEMESURIER: Not necessarily. If you had an established operating company which wanted to buy shares, possibly at a negotiated price, but it had an arms length price which reflected their true value they would put the shares of the subsidiary they purchased, which might be an acceptance or finance company—that is, they could put the shares in their books on the asset side of the balance sheet at the price the top company paid for the common shares. There is usually a net tangible asset test in respect of an operating company borrowing a certain number of times its equity, and they often are able to include the shares of the subsidiary in the formula at the price which they paid for the shares.

Mr. GELBER: But, as a full subsidiary you would not keep multiplying and adding up the value of subsidiaries; you take the net asset value of the entire complex.

Mr. LEMESURIER: It depends what the business is.

Mr. GELBER: Well, let us say if it is equally held, no lending institution would add to the capital value of a holding corporation the investment it has in the shares of its subsidiary. It is not required.

Mr. LEMESURIER: It depends what the nature of the business is. Suppose there was going to be an underwriting of World Mortgage Corporation debentures and the Trust Companies Act restricted the amount which the trust company could borrow but the Loan Companies Act did not restrict the amount of borrowing of a loan company because loan companies were not regulated. If that was the case as the loan company borrowed, you might very well draw the trust deed of the loan company on an unconsolidated basis because you were satisfied there was more value in the shares of the trust company, and you would use them as part of the borrowing base in the loan company.

Mr. GELBER: Well, you have had a great deal of experience on both sides of Bay street or, perhaps I should say along King street on either side of Bay. When you issue a prospectus you net out subsidiary investments, in certain situations, if it is fully owned.

Mr. LEMESURIER: It depends. In certain situations you do, but when you have a special situation, an investment in a well established going concern business or that of a finance company which becomes your subsidiary you would not necessarily consolidate them.

Mr. GELBER: But it probably would not be the same type of business.

Mr. LEMESURIER: That is correct.

The CHAIRMAN: Gentlemen, do you wish to have the witness stand down now?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Gentlemen, if you wish to leave your amendments here, together with any others you wish to submit in writing, I can assure you that when we continue with the clause by clause coverage of the bill your amendments will be given full consideration, the same as all others.

Mr. MOREAU: I take it that you would prefer this to what you suggested yesterday.

Mr. FINLAYSON: That is correct. It was pointed out to me that simply striking out these words in the brackets was not really going to help us, because you have the trust company which can now borrow at 12 times its base and the loan company would only be entitled as a right to borrow four times its base, so you cannot really consolidate them in that way.

The CHAIRMAN: Is it the wish of the committee to have the superintendent of insurance give evidence at this time?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Mr. Humphrys, would you please come forward.

Mr. OTTO: Are we going to consider this particular section now or are we going to proceed clause by clause?

The CHAIRMAN: I will let Mr. Humphrys give whatever evidence he wishes to the committee at this time, and then we will take up the bill clause by

clause. We broke off at the beginning of the trust company section and we will pick it up there and continue through clause by clause. At least, that is my suggestion.

Mr. CAMERON (*High Park*): Is Mr. Humphrys prepared to make some comments on this proposal?

The CHAIRMAN: Yes, and the committee could then put some questions to him. Is it your wish that Mr. Humphrys make certain comments at this time or do you want to direct questions to him?

Mr. MACALUSO: What does Mr. Humphrys think of the proposed amendments?

Mr. Richard HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Well, the purpose of this provision, as I mentioned when we discussed it a few meetings ago, is to deal with the parent-subsidiary relationship. In the absence of this consolidation rule the owners of a trust company would be able to borrow substantially more than is intended by the borrowing limit. They could do so by forming a loan company and exchanging their trust company shares for shares of the loan company. They would then be in a position through the loan company to borrow by the issuance of debentures, which a trust company cannot do. Also, they would be able to borrow a multiple of the capital of the new loan company.

Now, the multiple would depend upon whatever multiplier had been approved for the company in accordance with the provisions of the act. This has much the same effect as permitting a trust company to increase its borrowing on the basis of its existing capital structure. I think the matter might be rather clearly illustrated by looking at it from this angle. The essential powers that a loan company has which a trust company does not have in respect of this borrowing question is the power to issue debentures. If the proposal before the committee were to authorize a trust company to borrow by the issuance of debentures would it be reasonable to suggest that not only should the trust company have power to borrow by debentures but also that it should be able to borrow a further multiple of its capital of the surplus equal to what it is already able to borrow; that is, not only give it the power to borrow by debentures but greatly increase its borrowing power at the same time.

If you take it a step farther and say not only should the trust companies be able to borrow double what it could before but also it should be able to increase its surplus for the purpose of a borrowing base by taking into account possible future earnings (which is the effect achieved by adding in the difference between the shareholders equity as it appears on the balance sheet of the trust company and the total market value of its shares as they appear on the exchanges) then you get an enormous expansion in the borrowing power.

In the discussion, the example has been used on a number of occasions of the power of a loan company, say, to invest in other shares and the question has been asked, what is wrong with trust company shares that they require special treatment? Well, I would say that there is nothing wrong with trust company shares. We hope there is nothing wrong because part of our business is to try to see to it that the financial position of trust companies is sound. But, I think the problem here is in the parent-subsidiary relationship.

If there were no exceptions to the rule that a loan company could not buy more than 30 per cent of the shares of any other company, then I believe there

would be no need for a consolidation rule. We have two exceptions of loan companies that do own subsidiary trust companies. These examples have been in existence for a long period of time. The parent-subsidiary relationship existed at the time that the 30 per cent rule was introduced in 1922, and an exception was made from the 30 per cent rule in favour of these companies because the situation was then existing. And, there have been no other exceptions since that time until the proposed incorporation of World Mortgage Corporation. Of course, this company is not yet incorporated but it has been considered by the Senate and passed by the Senate, including in the private bill an exception from the 30 per cent rule.

In this bill now before you one of the amendments to the bill that was tabled would propose that trust companies generally be given this power subject to some supervision. But, in the light of the possibility at least of further parent-subsidiary relationship being established then it is necessary to adopt a consolidation rule if the borrowing limit otherwise prescribed is to be meaningful.

Reference was made yesterday to the remarks that Mr. MacGregor, the former superintendent of insurance, made in the Senate committee, where he stated that if parent-subsidiary relationships are to be allowed in this general field probably loan companies and trust companies are the least objectionable of the pairs. Further, in this evidence he did oppose the making of an exception to the general limitation in the act that would put a limit of 30 per cent on the shares of any company that could be purchased. He also said that in his view if an exception is to be made—or, rather, if the limitation is wrong—then, the general act should be changed rather than deal with exceptions that might come along from time to time.

Further, he said that if an exception were made, then it was essential that a consolidation rule be adopted in order to make the borrowing limit meaningful.

It has been suggested that no consolidation rule is needed because the superintendent of insurance and the treasury board have authority to impose whatever limit they think is needed in specific cases. Now, this is tantamount to saying you do not need a borrowing limit in the statute, but it should be left to the discretion of supervisors or government officials to impose a limit in the particular case. This is a point of view which may be held quite widely and quite reasonably. I myself do not believe, from the point of view of a supervisor, that it is a sound approach. I agree you cannot exercise appropriate supervision in a blind fashion by merely looking at rules. But, I do think they serve as a guideline and, at least, as an outside limit.

I think, in the absence of rules, there would be no practical way of administering these provisions without adopting a rule for the purpose of the supervisors, and we would be back in the same position.

There was one particular point raised that I think certainly merits some explanation, and that is the possibility, or the problem, that might arise if the approved multiplier for the two companies in a parent-subsidiary relationship were different. The example used was where the subsidiary trust company had an approved multiplier for borrowing purposes of 12½ times its capital and surplus and the parent company had an approved multiplier of only 4 times. The application of the consolidating rule in this situation could—if the subsidiary were borrowed to its limit and if the subsidiary were large compared to the parent—result in the parent company not being able to borrow. The con-

solidation rule has been drawn in this way to permit the application of the borrowing ratios that may be approved in the particular circumstances to be applied. It would not be expected in a case such as was under discussion that the new company would be held to a borrowing limit that, in effect, would stultify its operations. Where a company has good backing and where its pattern of operation is clear, the experience and general rule used has been to permit the borrowing limit to rise quite rapidly. In the case under discussion, it would very likely be a case where the borrowing limit of the parent would go up very rapidly, so this particular effect would not be experience in any serious way.

There has been a good deal of discussion on the question of the value of shares of a subsidiary in the balance sheet of the parent. I think in some circumstances it may be perfectly in order for investors to carry their investment on their books at the market value, or at what they paid for it. In fact, this is the normal practice and the permitted practice for trust companies and loan companies. The valuation limits say that they may not carry their securities on their balance sheet at a valuation that exceeds the market valuation; but different considerations apply when you have a parent and subsidiary relationship. Here the possibility is open for a subjective value on the part of the parent in respect of the value of the shares and, where this situation exists, the exchange of shares can be made at values that are determined by those who own the complex of companies. It may or may not be related to the equity value in the subsidiary and the value at which minority shareholders are buying and selling shares on the market. It may be determined on many different bases. It is just this difficulty of selling upon the value of shares of a subsidiary that leads to the widespread practice in business and industry of showing consolidated balance sheets so that this question of the value of shares in excess of the net equity in the subsidiary does not enter the consolidation by way of inflating the total assets.

I do not raise this in any sense of criticism, but an illustration of this difficulty was brought out in the discussion where it was suggested, in the particular illustration, that shares of a subsidiary might be put on the books at $50. When this same company was being considered by the Senate, the figure of $55 was mentioned. I do not know which is appropriate. However, it illustrates the difficulty of ascertaining an appropriate value. The $5 difference there, multiplied by 500,000 shares, results in a difference in the borrowing limit of perhaps $30 million.

In permitting an investment of up to 10 per cent of one of these companies in shares of another, some recognition is given to the fact that, on a normal investment basis, shares of the trust company in the balance sheet of a loan company, or vice versa, can be treated in the same fashion as any other shares, and they would be so treated.

The question then may be asked, why, if the main problem is the parent-subsidiary relationship, is a 10 per cent figure used instead of 50 per cent. The answer is that if the consolidation rule were to operate only where the share ownership was in excess of 50 per cent, it wold not necessarily be completely effective in all cases because you might have two companies each owning 45 per cent of the shares of the trust company, or three companies, each owning 30 per cent. Therefore, it was considered that the limit should be placed at some point where there would be room for some degree of investment which might be considered a normal investment basis. However, when the investment became substantial, moving up into an area that begins to move to the point where the

investment is more than an incidental investment, but begins to enter into the realm of control, then the consolidation rule should come into effect.

Where control becomes operative, no one can say. There is no special magic in 10 per cent compared to 9, 11 or 12 per cent, but it is a figure that is reasonably current in discussions concerning the limit of investment of one company in another where control is to be avoided. It was used by the royal commission on banking and finance. It is a figure that commonly is used by mutual funds. So, it is a figure that is in common currency for this particular purpose. It is true it is not quite consistent with the 30 per cent limit now in the act; that is a rather high figure. It is an old figure which was introduced in 1922; it had its origin there.

I think those are all the general remarks I wish to make, Mr. Chairman. The principal point I would like to emphasize again is that it is a question of parent-subsidiary relationship that gives rise to this particular problem. If the consolidation rule is not adopted, the way will be open generally for a great expansion of borrowing beyond the limits otherwise intended, and to an extent that would make the borrowing limit very largely meaningless.

Mr. GELBER: Mr. Humphrys, is the World Mortgage Corporation taking money from the public by way of deposits?

Mr. HUMPHRYS: The company has not been incorporated yet.

Mr. GELBER: Is it proposed?

Mr. HUMPHRYS: The company, if incorporated, would have the corporate power under the Loan Companies Act to accept deposits from the public.

Mr. GELBER: Is that the reason you want to control its ratio of borrowing? I wonder why you are concerned.

Mr. HUMPHRYS: We are concerned because it is a company subject to the Loan Companies Act and will have the power to accept deposits from the public and borrow from the public by the issuance of debentures. In subjecting this particular class of company to a general supervisory act and placing borrowing limits on them, parliament has imposed the supervisory requirements from the point of view of protecting the public, whether the public consists of depositors or purchasers of loan company debentures.

Mr. GELBER: Thank you.

The CHAIRMAN: Are there any further questions? If there are no further questions, gentlemen, I would respectfully suggest that we carry on until noon, because everyone has difficulty getting to meetings and the pension committee, I presume, will be sitting shortly; some of the members no doubt will be diverted to that committee.

For those who were unable to attend the last meeting, what we have been doing up to date is that we have covered everything up to the end of clause 25 on page 31. Some of the clauses in between have been stood because it was thought these involved policy matters. We dealt with other clauses which more or less were of a mechanical nature.

If it is the wish of the committee, I would suggest we proceed until 12 o'clock.

Agreed.

Mr. FINLAYSON: May we retire, Mr. Chairman?

The CHAIRMAN: These meetings are open and you are quite free to leave or remain. Any amendment you have submitted today will be stood. The

matters you raise will be given every consideration and a full discussion when we are going through the routine sections. You are excused or you may remain if you wish.

Mr. FINLAYSON: Thank you. I think we will leave.

The CHAIRMAN: We will proceed to page 31.

Clauses 26 to 28 inclusive agreed to.

On Clause 29—*Definitions.*

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Again we have this business of a definition of a non-resident. This is quite vaguely worded. You may recall that I brought this up earlier in the hearings. Perhaps Mr. Humphrys might tell us how he would interpret this. It is subsection (*b*) of subsection (*i*) of section 36A:

> an individual who is not ordinarily resident in Canada

Is there any specific time limit on this?

Mr. HUMPHRYS: No. It would be up to the directors who are considering the proposed transfer of shares to make whatever investigation they think necessary to satisfy themselves in respect of the normal residence of an individual and to make their decision in that regard.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But the legislation does not provide those directors with a yardstick upon which to make their decision?

Mr. HUMPHRYS: That is correct.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): If I may, I would like this clause to stand.

The CHAIRMAN: If I may be allowed to agree with what Mr. Cameron says, I might point out that we already have asked that the similar clause relating to the insurance companies in this regard stand.

Mr. MOREAU: In the amendments which were circulated, clause 29 is to be remembered as clause 30. The amendment states:

> That clause 29 be amended
>
> (*a*) by striking out lines 45 to 47 on page 37 and lines 1 to 4 on page 38 and by substituting therefor the following—

It is very lengthy.

The CHAIRMAN: This is in the proceedings?

Mr. MOREAU: Yes. It is on page 75 of Minutes of Proceedings and Evidence No. 5.

The CHAIRMAN: I would suggest that we deal with the amendment and if it carries I will stand the section as amended.

Mr. HUMPHRYS: When this amendment was being considered in connection with the earlier part of the bill, there were some words added at the end of the first paragraph.

The CHAIRMAN: What are they?

Mr. HUMPHRYS: I think the clerk would have them.

The CHAIRMAN: I understand that the proposed amendment was to include these additional words to which we are now referred by Mr. Humphrys:

> This subsection shall not be construed to prohibit exercise of voting rights in circumstances where section 36C does not apply.

Does the amendment carry?

Amendment agreed to.

Clause 29, as amended, stands.

On Clause 30—*Contents of report.*

The CHAIRMAN: It has been brought to my attention in respect of clause 30 that the Trust Companies Association had left with us certain suggested amendments. I think they should be stood. With the concurrence of the committee, we will stand clause 30.

Agreed.

Clause 30 stands.

On Clause 31.

Mr. HUMPHRYS: Clause 31 contains amendments to the investment powers of trust companies and the Trust Companies Association requested certain amendments which would affect clause 31.

Clauses 31, 32 and 33 stand.

Clauses 34, 35 and 36 agreed to.

On Clause 37—*Definitions.*

Mr. MOREAU: There is an amendment to the effect that clause 37 be amended by striking out lines 45 to 48 on page 49 and lines 1 to 3 on page 50, and by substituting therefor the following—

The CHAIRMAN: I believe this is all set out on page 76 of our Minutes of Proceedings and Evidence No. 5.

Amendment moved by Mr. Moreau, seconded by Mr. Macaluso.

Amendment agreed to.

Clause 37, as amended, stands.

Clauses 38 and 39 stand.

On Clause 40—*Limitation of borrowing powers.*

Mr. MOREAU: There is an amendment to this clause.

The CHAIRMAN: I think there is an amendment which was proposed this morning by Mr. Finlayson.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): The amendment proposed by Mr. Finlayson is not before the committee.

Mr. MACKASEY: For the purpose of discussing the amendment, I will move that it be before the committee.

Mr. SCOTT: I second the motion.

Clause 40 stands.

On Clause 41—*Limitation on holding of land.*

Mr. MOREAU: There is a new clause to be inserted here as clause 41:

> The said act is further amended by adding thereto, immediately after section 61 thereof, the following section—

And so on. I will not read the amendment because it is a rather long one. It further states that the present clauses 40 and 41 be renumbered as clauses 42 and 43 respectively.

The CHAIRMAN: I think there should be a separate motion in respect of the numbering. Perhaps Mr. Humphrys might tell the committee the gist of this proposed amendment.

Mr. HUMPHRYS: This amendment would give loan companies the general power to own the shares of trust companies apart from the 30 per cent limitation that is now in the act on the investment of shares. It would permit a loan company to own a trust company as a subsidiary. I believe this clause should be allowed to stand until decisions have been reached in respect of the consolidation rule.

The CHAIRMAN: With the concurrence of the committee we will stand the proposed amendment.

Amendment stands.

Mr. MOREAU: There is a final amendment that this clause be renumbered 42 and the subsequent clause, which is 41 in the proposed bill, now become clause 43.

The CHAIRMAN: We will have to stand that too, because this is consequential upon the fate of the one you moved immediately before this.

Mr. MOREAU: I appreciate that.

Clause 41 agreed to.

The CHAIRMAN: This brings us to another matter. The minister will be appearing before the committee in respect of some of these clauses we have stood. I can give you a day's notice and I am asking the indulgence of the committee in this regard. The minister now is receiving submissions on the budget, as you know. He said he would advise me when would be a convenient day for him. If I have your authority I will adjourn now until the call of the Chair. Is that agreeable to the committee?

Agreed.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

THURSDAY, NOVEMBER 26, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

WITNESSES:

The Hon. Walter L. Gordon, Minister of Finance; Mr. Richard Humphrys, Superintendent of Insurance.

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

21580—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken
Armstrong
Asselin (*Notre-Dame-de-Grâce*)
Basford
Bell
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Habel
Hales
Jones (Mrs.)
Kindt
Klein
Lambert
Leblanc
Lloyd
Macaluso
Mackasey
McCutcheon
McNutly
More
Moreau
Mullally
Munro
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
[1] Skoreyko
Tardif
Thomas
Vincent
Wahn
[2] Watson (*Châteauguay-Huntingdon-Laprairie*)
Woolliams—50.

Dorothy F. Ballantine,
Clerk of the Committee.

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[1] Replaced Mr. Monteith, November 23, 1964.

[2] Replaced Mr. Whelan, November 20, 1964.

ORDERS OF REFERENCE

FRIDAY, November 20, 1964.

Ordered,—That the name of Mr. Watson (*Châteauguay-Huntingdon-Laprairie*) be substituted for that of Mr. Whelan on the Standing Committee on Banking and Commerce.

MONDAY, November 23, 1964.

Ordered,—That the name of Mr. Skoreyko be substituted for that of Mr. Monteith on the Standing Committee on Banking and Commerce.

Attest.

LEON-J. RAYMOND,
The Clerk of the House.

21580—1½

MINUTES OF PROCEEDINGS

THURSDAY, November 26, 1964.
(19)

The Standing Committee on Banking and Commerce met at 10.20 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Asselin (*Notre-Dame-de-Grâce*), Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gendron, Gray, Greene, Habel, Klein, Lambert, Lloyd, Macaluso, Moreau, Mullally, Otto, Pennell, Skoreyko and Thomas.—(18)

In attendance: The Hon. Walter Gordon, Minister of Finance; Mr. R. Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman welcomed the Minister and invited him to make a statement.

The Minister made a statement dealing with some of the question raised during earlier proceedings and said he was prepared to answer any additional questions.

The Committee then resumed consideration of the clauses which had been allowed to stand.

On Clause 3

The Minister was questioned, and was assisted by Mr. Humphrys in answering questions.

Clause 3, as amended, was carried, on division.

On Clause 5

The Minister was questioned and the clause, as amended, was carried.

On Clause 6

The Minister was questioned and was assisted by Mr. Humphrys. The clause was carried.

Clause 11 was carried.

Clause 13 was carried, as amended.

Clause 14 was carried, on division.

Clauses 15, 16 and 17 were carried.

Clauses 19 and 20, as severally amended, were carried.

Clause 29, as amended, was carried, on division.

Clauses 30, 31 and 32, as severally amended, were carried.

On Clause 33

Mr. Humphrys was questioned and the clause, as amended, was carried, on division.

On Clause 37

The Minister was questioned and the clause, as amended, was carried, on division.

Clause 38, as amended, was carried.

Clause 39, as amended, was carried, on division.

On motion of Mr. Moreau, seconded by Mr. Otto,

Resolved,—That the present Clauses 40 and 41 be amended by renumbering as clauses 42 and 43, respectively.

On Clause 40

The Chairman reminded the Committee that at the last meeting an amendment requested by the World Mortgage Corporation had been moved by Mr. Mackasey and seconded by Mr. Scott, for purposes of putting it on the record, and had been allowed to stand.

And the question having been put on the proposed amendment of Mr. Mackasey, it was negatived on the following division: Yeas, 2; Nays, 7.

Clause 40, as amended by renumbering, was carried.

Clause 41, as amended by renumbering, was carried.

The Chairman then put the question on the motion of Mr. Moreau for further amendment of the Bill by insertion of a new Clause 41, which had been allowed to stand, and the amendment was carried.

On motion of Mr. Macaluso, seconded by Mr. Lambert,

Resolved,—That a new clause 44 be inserted immediately after the renumbered Clause 43 as follows:

"44. Sections 31 and 39 shall come into force on the 1st day of January 1966."

The Title was carried.

The Bill, as amended, was carried, on division.

The Chairman was directed to report the Bill, as amended.

On Motion of Mr. Moreau, seconded by Mr. Macaluso,

Ordered,—That the Bill, as amended by the Committee, be reprinted.

At 12.05 p.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

NOTE: The Ninth Report to the House respecting Bill C-123 will be included in a subsequent issue.

EVIDENCE

THURSDAY, November 26, 1964.

The CHAIRMAN: Gentlemen, I see a quorum. I will ask the committee to come to order.

We are honoured this morning with the presence of the Minister of Finance, and with the permission of the committee the minister will make a statement relating to Bill No. C-123.

Hon. WALTER L. GORDON (*Minister of Finance*): Mr. Chairman, first of all I apologize for being late. I like to think that I was brought up to be reasonably punctual, but I got into some difficulties this morning. I have been kept informed about the various points that have been raised in the course of the committee's discussions, and I thought that perhaps it might save time if I prepared some notes on them and, as the chairman suggested, start off by reading a memorandum which I have here.

I understand that the attention of the committee is now directed particularly at those provisions of Bill No. C-123 that relate to the investment powers, provisions designed to retain in Canada ownership and control of federally incorporated insurance companies, trust companies and loan companies, not now under foreign control, and to the borrowing power of trust companies and loan companies. This brief statement will therefore relate to these matters.

In considering investment powers, it is essential to keep in mind that the purpose of having any legislative limitation on the investment powers of insurance companies, trust companies and loan companies, is to safeguard the interests of those who have entrusted sums to them, whether in the form of insurance premiums, savings deposits, or money lent through purchase of debentures or guaranteed investment certificates. The investment provisions should therefore be so drawn as to establish a general framework of a good quality of investment, and care must be taken in making changes that broaden this framework.

It is to be recognized at the same time that the pool of assets accumulated by these companies forms a very important source of investment capital in the Canadian economy, and for this reason it is in the public interest that these funds be allowed to play a useful and flexible part in the development of the economy. This end is best accomplished by broadening the investment powers as far as is reasonably possible in the light of their fundamental purpose, and then letting the investment judgment of the individual companies allocate the funds in accordance with the market demand and the discharge of their obligations toward their policy holders, depositors, debenture holders, and share holders. This balance the bill attempts to achieve. The amendments proposed would very materially broaden investment powers while still maintaining a standard of quality consistent with the broad purpose of the investment provisions.

For common shares, the present requirement for a seven year dividend record would be reduced to five years, and a new earnings test would be introduced to qualify common shares on an earnings basis, regardless of dividend record. Further, the provision enabling insurance companies to invest at their

own discretion would be amended to raise the maximum amount that might be so invested from five per cent of a company's assets to seven per cent. The maximum limit on investment on common shares would be increased from 15 per cent of a company's assets to 25 per cent. These changes broaden very materially the power of these companies to invest in common shares.

I would like to interject at this point, if I may. I understand that some members of the committee questioned whether an earnings test based on five years was too restrictive. I think suggestions were made that it might prevent an investment in the shares of a company that had one bad year out of five. I would remind you, however, that the so-called basket clause which will now amount, if this bill is approved, to seven per cent of the company's assets, would be ample to take care of a situation of that kind; that an investment in the shares of a company that had one bad year out of five could be made and included under the basket clause, and as soon as there is a clear five year record, it would then be moved out of the basket category and into the 25 per cent of the company's assets that may be invested in common shares.

For mortgages, companies would be permitted to lend up to three quarters of the value of the real estate instead of up to two thirds as at present. This also represents a broadening of investment powers, but one that can safely be made. Experience under mortgage lending in the last 20 years has been good, and the almost universal practice of monthly repayment has greatly improved the security of these investments. I think this is a point that perhaps I did not stress sufficiently on second reading, but the fact that the principal is paid down on a monthly basis certainly does give the investor a considerable measure of security that he would not have if he had to wait until the end of the mortgage term.

Insurance companies would be given broader powers to invest in real estate for the production of income either directly or on an equity basis through subsidiary real estate companies.

All this adds up to a significant broadening of investment powers, and it is about as far as it seems to us anyway desirable to go at the present time.

Concerning the provisions relating to Canadian ownership and control, it has already been noted that the essence of the plan is to limit to a maximum of 25 per cent the proportion of the shares of a life insurance, loan or trust company that may be held by non-residents, and to limit to 10 per cent the proportion of the shares that may be held by anyone non-resident together with the associated shareholders. This permits a very considerable degree of investment participation in such companies by non-residents, but will ensure that control remains in Canada.

Some question has been raised, or at least doubts have been expressed, concerning the administrative problem. These problems are perhaps not easy, but I believe that the provisions as drafted are quite workable, and so I might say do the people concerned. The responsibility for the application of the limitations is placed on each company. The directors of the company, through their control on the entry of transfers in the share register, will have to exercise their judgment in allowing or refusing to allow transfers as required by the proposed new sections.

Now of course, some borderline cases may have been found, or opinions may differ, on the question of the control or residence. In drafting the legislation the choice here is between, on the one hand, using a broad definition and leaving borderline cases to someone's discretion, and, on the other hand, attempting to write a precise definition of all such terms. The choice in the bill is in favour of the former alternative. The reasons are in the main that it is

difficult, if not virtually impossible, to write definitions with such precision as to sweep in all the cases which should be swept in within the spirit and intention of the law and leave out those that should not be swept in. However, some element of discretion is necessary to deal with borderline cases, and in any event investors are careful of their own money and are not likely to make any substantial investment where their rights may be open to question. The provisions are therefore, to considerable extent, self-regulating.

If the choice is in favour of leaving some element of discretion, the next question is who is to exercise it? The bill proposes to leave the discretion in the hands of the directors of each company. It is considered that they can be relied on to exercise such discretion in the spirit and intention of the law. This approach makes it unnecessary to invoke a more cumbersome procedure that would be necessary if the discretion were to rest with, say some government official.

When I say that I am thinking of the superintendent of insurance who, I am sure, would prefer not to have that discretion. I do not see that this is a very major point. If, in a particular case, there was a transfer which might bring the percentage held by non-residents up to 25.10 per cent, and there was some question whether the transferee was really a non-resident or not, I would think that if the directors decided to give that particular transferee the benefit of the doubt, and if they were wrong and it only brought it up to 25.10 per cent, I do not think any serious damage would be done. What we are trying to do is to limit the total investment by non-residents to 25 per cent. I can assure you there are a whole lot of difficult borderline cases, and ideally I am sure we would all agree if we could be absolutely precise that it would be preferable, but this will provide a much greater degree of flexibility, and as you know, provisions are made so that the directors are in a position to find out if they have any doubts and wish to do so.

On the question of residence, I believe the difficulties of interpretation would be few and then only in relation to individual persons rather than corporations. The main pattern of takeovers has involved purchase by foreign corporations rather than individuals.

If in a particular case a person is living in Canada for periods such that anyone can reasonably take the view that he is "ordinarily resident in Canada," I believe it would be within the spirit and intent of the law to treat him as a resident for purposes of these provisions. It would be left to the directors to make a decision in individual cases where a transfer of shares is involved. However, it is important to note that if shares are transferred, the shareholder does not have to worry about his status after that, unless he owns a very large block of shares—over 10 per cent. The small shareholder has full voting rights, whether he is a resident or a non-resident.

It is important to note also that any shareholder having more than 10 per cent of the shares of a company is prohibited from voting if he is a non-resident (except, of course, in the case of shares owned on the day the bill was introduced, which are exempted from these restrictions on the ground that there is no thought of applying these proposals retroactively.) Even if as a result of a very broad interpretation of the meaning of the phrase "ordinarily resident in Canada", a particular individual accumulated more than 10 per cent of the shares, the opinion of the directors would not necessarily confirm his voting rights. Thus, there is a protection against a strained interpretation of the definition, carelessness or inattention on the part of the directors.

If a dispute or a question arises respecting the voting rights, it would be a matter for the court to decide in connection with the imposition of any penalty. It seems unlikely however that any person would invest so heavily in shares of one of these companies as to accumulate more than 10 per cent of the shares unless he were certain of his voting rights.

As respects the borrowing powers of trust companies and loan companies, it is to be noted first that the proposal is to expand their powers, subject to the treasury board approval, from a maximum of 12½ times capital and surplus to 15 times. This is a further step in the long trend of expanding these powers, and one that can now be safely taken in the light of the strong position and experienced management available, at least as respects the major companies.

The other measure proposed in this connection would require a consolidation of assets and liabilities where a loan company owns a substantial interest in a trust company and vice versa. I believe that such a consolidation is necessary in order that the borrowing limit be effective. There would be little point in prescribing a limit but permitting it to be greatly expanded by forming two companies in the place of one, and then perhaps three in the place of two, and then perhaps four in the place of three, and so on by pyramiding it up ad infinitum. This could equally happen if this approach were not taken.

One of the reasons for avoiding parent-subsidiary relationships in companies such as life insurance companies, trust companies and loan companies, is the importance of maintaining a clear and sound financial position. The whole extensive legislative pattern is designed to safeguard and publicize the financial position of each such company. Where parent subsidiary relationships are allowed, and we are moving in that direction in this bill, it is most important to ensure that assets are not inflated by carrying shares of the subsidiary on the books of a parent at values in excess of the shareholders equity in the subsidiary. I do not know if there are any members of my own profession present, but if so I will take it for granted that they will agree with this as axiomatic. While it may be that a particular investor would take into account possible future growth and earnings in deciding how much he would pay for a company's shares, it would be most dangerous to permit a company to treat as an asset held against the deposit liabilities an estimate of future earnings, whether this were done directly by inflating the assets of the company or indirectly by establishing a parent subsidiary relationship.

There are, at the present time, two parent-subsidiary relationships in the loan and trust field as respects federally incorporated companies. As the law now stands, these companies could expand their borrowing by using a particular injection of capital twice over, once in the parent, and again in the subsidiary, or even by writing up the value of the shares of the subsidiary in the books of the parent with no new capital at all. However, the companies in question have not borrowed beyond the limits that would be available to them under the proposed consolidation rule.

Perhaps I should just emphasize this, that there are two companies and they actually have been concerned about this. However, they have been careful in their administration and they have not over-borrowed, and if we approve the expansion of the borrowing powers from 12½ to 15 times their capital and surplus, which I think is a perfectly safe thing to do, then both these two cases will be in the clear.

But the existence of these two cases and the existence of the extra borrowing capacity available to them because of the ability to borrow twice on the same capital or increase the value of the shares of the subsidiary, has been used as an example to justify a further exception to the general rule that prevents a loan company owning more than 30 per cent of the shares of any other company.

The question of borrowing limits in the case of a parent-subsidiary relationship must therefore be dealt with specifically. I believe that the door must be closed to expansion of borrowing limits through establishing a parent-subsidiary relation. I am only saying we should not allow that relationship to permit a greater degree of borrowing than we would otherwise permit in the case of individual companies. This is of course elementary to Mr. Lloyd. When you look at these things you must look at them on a consolidated basis or you might get into the kind of trouble that others have got into through pyramiding in the past, in other spheres and at other times and in other circumstances. The time to deal with this situation, it seems to me, is when the act is under review and before we are confronted with a difficult situation. We are not confronted with a difficult situation now and that is why I want to tidy it up while we are reviewing this bill.

To go back to my previous remark, I believe I said that the door must be closed to the expansion of borrowing limits through establishing a parent-subsidiary relationship. If it is not, then other cases will come along seeking the same privilege, and the result would soon be not a borrowing limit of 12½ times or 15 times the shareholders' equity but 25 times, 30 times, 100 times—the whole thing would get out of control.

The proposed consolidation rule would not close the door to the formation of new loan companies or to the establishment of parent subsidiary relationships. The two examples now existing have operated for years within the borrowing limit that would be established under this bill by the consolidation rule. New loan companies are being formed without any subsidiaries; there have been five in the past two years, and another is now before parliament. The capital paid in has, in each case, been of the order of $3 million or less.

Gentlemen, those were the preliminary remarks I wished to make and which I thought it might be useful to make. If I could expand on them in any way or answer any questions, I would be glad to try to do so.

The CHAIRMAN: I think some members of the committee have already anticipated your offer. Mr. Moreau and Mr. Lambert have already put their hands up.

Mr. MOREAU: Mr. Gordon, I was wondering what your reaction would be to amending the provision on the non-resident definition in clause 3 of the bill, Part 1 in particular, which reads "An individual who is not ordinarily resident in Canada" to read "An individual who is a Canadian ordinarily resident in Canada"? The reason I say that is that it would seem to me that it would encompass a lot of the borderline cases that might not be clear such as cases of people trying to reside or residing in Canada. Perhaps a further inclusion of Canadian citizenship status might be desirable.

Mr. GORDON: Quite frankly we did give quite a lot of thought to including the citizenship question, but I think that if we did we would impose very severe administrative problems on the companies concerned. They just do not know whether people are citizens or not. There are thousands and thousands of people who are residents of Canada and have lived here for many years but who have not gone through the technical process of taking out their citizenship, including, I would think, about half the residents of my riding—not that the residents of my riding are in a special position to invest in these companies—but that is a fact. Also, many people have no reason for taking out a Canadian citizenship, for instance if they are British subjects. There are many U.S. citizens living in this country who have not taken out Canadian citizenship because they would forfeit certain benefits or potential benefits if they did so. As long as they are living here and are really

normally residents of Canada, I would think they would probably acquire a Canadian point of view. However, the main problem, to be perfectly frank, is that I do not see how you could administer it.

Mr. MOREAU: I think that in the case of British subjects we have recognized in many ways that a British subject can vote, and I certainly would not take exception to that. However, it is my understanding that after you have lived in the United States for five years you darn well have to take out U.S. citizenship or you are out.

Mr. GORDON: I think that is probably a point that this committee or some other committee will probably wish to go into when the citizenship act is up for amendment, but I do not know whether we should deal with that in a financial bill.

Mr. MOREAU: Perhaps you are right.

Going on to the loan company consolidation aspect, I should like to say—

Mr. LAMBERT: Mr. Chairman, on a point of order; could we deal with subject matters rather than allow each member to proceed with all his questions? We could then clean up this matter of residence which is one of the areas of the bill that has been left open. After that, we can go on to the question of the loan companies and the trust companies relationship because that also would generate a little bit of discussion. I think we could relate our discussion a lot more closely that way.

Mr. MOREAU: I have no objection to that.

The CHAIRMAN: I would think there is merit in that suggestion. Could we first deal with the major sections which have been stood? Your first question, Mr. Moreau, was pertinent to clause 3, and so I will invite further questions on clause 3. After they are exhausted we can come back to Mr. Moreau on another clause.

Mr. MOREAU: I have no further questions on residency.

Mr. LAMBERT: This is one of the areas which I wish to discuss. I am glad to see I have a convert to my point of view which I have expressed in other discussions in the last 18 months in connection with this introduction of the residency concept in some of my fiscal legislation. Here again I think the minister has not quite the courage of his convictions.

Mr. GORDON: Am I the convert or is Mr. Moreau?

Mr. LAMBERT: Mr. Moreau is the convert.

Mr. MOREAU: I am not a recent convert.

Mr. LAMBERT: In any event I find it a little difficult to accept the minister's statement that it is so much easier for the board of directors to determine whether a person is a resident or is not a resident and to leave it up to the board of directors to decide. Frankly, I would hate to be a corporation solicitor asked to advise a client with regard to the interpretation of the legislation that is now proposed in so far as residence is concerned. We only have to look at the Income Tax Act which contains this provision. I think this is as important in this act as it is in the Income Tax Act. One of the essential features of any law is its certainty, and frankly, the law as it is now drafted in this bill, in so far as residency requirements are concerned, is just a bag of woolliness, if I may say so, because what one board may decide to be ordinary residents, because they happen to want to get a particular shareholder, another board may deem not to be. One corporation solicitor may say yes to a case while the other may say no. To say the courts will decide is also not satisfactory because we know very well that the courts will not relinquish their discretion. What is the view of the superintendent of insurance? I would have preferred to see

the following wording in C of clause 6: "An individual who is not ordinarily resident in Canada for a period of 180 days in any calendar year." This is the spirit of the income tax. I can tell a client as a solicitor on what side of the fence he is—and that is why he comes. The client wants some certainty, and it is for that reason I feel there should be a greater degree of certainty in this legislation.

There is a further point you have made in this regard, that if a borderline case was taken and it took you up to 25.10 per cent of foreign ownership there might not be too great a disability. In my opinion, I say the superintendent of insurance has no discretion whatsoever to disregard that one tenth. This legislation says 25 per cent, and it does not allow him any discretion.

Mr. GORDON: I was not suggesting that the 25 per cent limit should be raised. I was saying that if it was the determination of the directors a particular case was borderline and was thrown into the resident basket on the discretion of the directors and only limited to one tenth of one percent it would not make it much different in substance.

Mr. LAMBERT: But there are the disabilities imposed as a result thereof, and I feel the superintendent's hands are bound by the legislation and he would have to take cognizance of that one tenth or slight excess.

Mr. GORDON: I could ask the superintendent of insurance to comment on that question.

Mr. LAMBERT: I want to continue first. The last point I want to deal with is in respect of 16(c) and 16(d) of this clause, the voting rights in excess of 10 per cent. I would like to have clarification in respect of whether or not the ownership of 10½ per cent is a disability to the entire owning.

Mr. GORDON: Yes.

Mr. LAMBERT: To the whole?

Mr. GORDON: Yes.

Mr. LAMBERT: Well, again I think we are getting into a situation where there is such scope for discretion—that is, an individual discretion in interpretation that it becomes entirely impossible to advise a man. If he is going to be a resident he can buy over 10 per cent and it does not affect him, but if there is a very hairline decision to be made in regard to his residence and the chips should fall the other way, then his total investment and the whole transaction is thrown out.

Mr. GORDON: Well,—

Mr. LAMBERT: Yes, because his investment carries with it certain rights, the voting rights, and a man investing 10 per cent or more in one of these companies surely to goodness wants to be able to exercise his voting rights. These are major holdings. And, if there is this uncertainty about his residence which consequently disentitles him to voting rights, then surely to goodness we must ge this cleared up once and for all. Because he is in excess of 10 per cent do you disqualify him for the entire ownings? If he owns 9.99 per cent of the shares he would be entitled to vote capital but if he owns 10 per cent plus one one hundredth of one per cent he loses the entire amount. This, with the greatest respect, I cannot see.

Mr. GORDON: I could explain that point very easily. The point of this section of the bill is to prevent control of our financial institutions getting into the hands of non-residents. It would be very simple for a non-resident to acquire, first of all, just the 10 per cent and then to acquire another 80 per cent. Now, under your theory he would not have any right to vote.

Mr. LAMBERT: On the 80 per cent?

Mr. GORDON: We say on the 80 per cent, but under your theory he would not have any right to vote on more than 10 per cent, but that plus the other 70 per cent he could not vote on still would give him control.

Mr. LAMBERT: In essence, you still allow it.

Mr. GORDON: No, we do not.

Mr. LAMBERT: Well, you disallow it only as to voting rights behind nominee holdings. This is so. You do not invalidate nominee holdings but you disentitle them to voting rights. What is the difference?

Mr. HUMPHRYS: In respect of that last point, because there is no limit on the holdings by a resident whether he is holding for himself or is holding as nominee for a non-resident, it would be possible for a non-resident to buy 10 per cent in his own name and to buy all the rest of the shares in the name of a Canadian nominee. Then, if he was permitted to vote the 10 per cent in his own name but he was disentitled to vote the other shares he would have control of the company, and 10 per cent of the shares would give him complete voting power. The bill says that if a non-resident, directly or indirectly, owns more than 10 per cent of the shares he cannot vote. But, if a non-resident got himself in a position where he owned 10.1 per cent of the shares and then lost all his votes he could sell the .1 per cent and his voting power would be restored.

Mr. LAMBERT: Now, I am giving you fair warning that in respect of these provisions you are providing a field day for litigation.

Mr. HUMPHRYS: Also, I would say that the number of residents or non-residents who own more than 10 per cent of the shares of any of these companies is very few. Further, the phrase "ordinarily resident of Canada" is not a new phrase that has been thought up for this bill; it runs through the act already, and it runs through other corresponding acts. For example, there is already a provision that a majority of the directors of any of these companies must be ordinarily resident of Canada. There is already a provision that gives the directors of a life insurance company discretionary powers to refuse transfer of shares to persons not ordinarily resident of Canada. This phrase is in the Loan Companies Act, in the Trust Companies Act and in the Bank Act. As I say, it is not a new phrase; it is one that has been in the statutes for some time. With respect, I do not believe it would cause any great difficulty and trouble in this case.

Now, you raised the question of what would happen if the proportion of shares owned by non-residents goes over 25 per cent. There is no obligation on the superintendent to take any action in that respect. What the bill does is to say that the directors shall not permit a transfer in the defined circumstances; but, if in their opinion a man is a resident and they permit the transfer then it is valid, whatever the facts subsequently turn out to be; and the transferee, whether he is a resident or non-resident will have full voting rights, unless he owns more than 10 per cent. Then, if he is a non-resident, he would not have voting rights. But, he knows this. As I said, the number of cases would be very few. The worst that could happen to him is that he would not be able to vote and, if he wanted to, he could sell down to 10 per cent.

Mr. LAMBERT: I will accept that as your interpretation but with the greatest respect, I feel there are differences of opinion here, and I hope we are not merely opening a can of worms.

The CHAIRMAN: At this time I would like to remind members of the committee that we are going to proceed clause by clause. Have you a question in respect of this clause, Mr. Cameron?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I have a question on this clause. I was rather puzzled by the minister's statement that it would be possible for the directors of a company to determine whether or not a prospective

purchaser was a resident or non-resident, but it would be very difficult for them to determine whether or not he was a citizen. It seems to me this is an odd position to take. One is a matter of fact and the other, under this legislation, is a matter of opinion.

Mr. GORDON: He would have to file a birth certificate and that sort of thing. You know, it is not impossible to determine whether or not a man is a citizen. But, every time he would want to buy a share he would have to produce a birth certificate, if he had one, or he would have to produce his citizenship certificate, or whatever form it took.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would this be any more onerous on him than it would be for a non-citizen seeking to establish his right to be a resident? He also would presume his status was being investigated by the directorate and he would have to produce some proof of his resident qualifications. It seems more difficult than simply sending birth certificates.

Mr. GORDON: It is a matter of opinion. As the superintendent of insurance has stated, the phrase "ordinarily resident of Canada" is used all through these financial acts. We have had a lot of experience with it and it has not caused any trouble. When we considered the citizenship test we thought there would be a lot of red tape and difficulties with it.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): In that connection can you or Mr. Humphrys tell me whether or not there have been court decisions in respect of this question of residency and non-residency, and have there been any precedents established?

Mr. HUMPHRYS: I am not aware of any.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): There is another point I have in mind upon which I would like clarification. I was not quite sure whether the minister was rejecting the idea of putting in the proposal of Mr. Moreau in respect of citizenship from the point of view of practicability of administration or the point of view of justice to people living in Canada but who are not citizens. I am in doubt in this respect because he mentioned he thought many non-citizens who had been residents of Canada and who have carefully preserved their previous citizenship status nevertheless have acquired a Canadian viewpoint. In my opinion, anyone who has acquired a Canadian viewpoint would almost be compelled to seek Canadian citizenship. Is your objection with regard to administration or from the point of view of justice toward those residents who are not citizens.

Mr. GORDON: There are two points of view and both are valid. I think if we had a citizenship test it would involve a great deal of administration work, and so I am against it on that ground. I myself had thought of a citizenship test until people pointed out that there are individuals in Canada who have lived here all their lives but they never got around to taking out their citizenship. I think it is too bad but it is their privilege, and we never have put any pressure on them in this country, as they have in the United States, to become citizens. Maybe this is something we all should think about when the Citizenship Act comes up for review. But I certainly would not want to reach a conclusion on that in this financial act.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I somehow feel that Mr. Lambert's point really has not been answered with regard to the spot that this legislation is leaving not only Mr. Lambert in but also the directors of corporations, when there is no yardstick given to them which they can apply. I gather there have been no court decisions and, therefore, no precedents set which could be referred to, with the result that we are all in the dark. How are they going to advise their prospective purchasers in this regard? On what basis will they advise them?

Mr. GORDON: I never thought the day would come when I heard you take this solicitous view of companies' directors.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Well, I am a humanitarian and until I can abolish them I am going to see that they are not too badly treated.

Mr. GORDON: I would call that, if I may, a qualified kind of humanity.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yes, very qualified. I am just facing the fact that so long as we have company directors they will have to be protected more or less and I do not think a proper job is being done in this connection, and they are going to face a serious problem.

Mr. GORDON: I must say this is an admission.

Mr. HUMPHRYS: On the question of citizenship, it would be a tighter test; it would involve a considerable further narrowing of the share market, considerable restriction of the share market within Canada; and unless that further tightening seems to be absolutely necessary to accomplish the purpose intended it would throw up a good many problems in the whole pattern of distribution of shares which could be avoided.

In respect of the problems which would face directors, I suggest that the number of borderline cases in fact, would be quite few. And, if there are only a few shareholders involved there would be little difficulty. Where a person purports to be ordinarily resident of Canada he would at least have to be living in Canada for some period of time, and I do not think it would be a great problem to the directors to make an assessment of whether he is living in Canada sufficiently long to be judged on any reasonable basis as ordinarily resident. Different boards of directors might apply different tests, but you would never get a case where they would judge a man ordinarily resident of Canada if he is not resident at all, or only comes one day a year. So, actually I believe that the number of problem cases would be quite few. In any event, it is not a feature; there is a penalty, a fine or tax involved. The worst that could happen would be he would not be able to buy a particular share of a particular company or he would be able to buy it; so there is not a great prize at stake or great penalty involved.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Both Mr. Humphrys and the minister have referred several times to borderline cases. I do not understand how you can have a definition of that if you do not know where the border is, and you have very carefully avoided telling us that.

Mr. GORDON: It is usually the 49th parallel.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): As I understand the purpose of this legislation—and, this is the thing I endorse—financial institutions should not fall into the hands of non-residents. But, I would say the term "all non-citizens" would be preferable because even in the case of non-residents I could see this legislation providing a great many loopholes. What are you going to do with an American who lives six months of the year in the United States and the other six months of the year in Canada? Is he a borderline case?

Mr. HUMPHRYS: My reference to borderline cases has been an attempt to answer questions that have suggested there would be difficulty in deciding in some cases, and it was in answer to those questions I was referring to the borderline cases.

Now, if a man lives six months of the year in Canada on a regular basis I think it is quite possible that someone might take the view he is ordinarily resident of Canada, and I would not see anything contrary to the spirit and intention of this act if he were so judged. You may also have a case where a person lives three months of the year in Canada and one month of the year in

several different countries; perhaps he is travelling. He may be a member of the government foreign staff but still ordinarily resident of Canada. He might be moving.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You say that in your view—and I am not holding that as a judgment—a man who lives ordinarily six months of the year in Canada may be regarded as a resident. But, if he is living the other six months of the year in the United States he quite easily could be regarded as an American resident.

Mr. HUMPHRYS: Surely.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): And, the question then arises which country is he ordinarily resident of?

Mr. HUMPHRYS: But, on the other hand, if an American was up here for a year on a temporary posting, and he and everyone else knew he was going back at the end of the year, no one would judge him within the intention of this act to be ordinarily resident of Canada. So, if you try to adopt a formula and say because he is here 180 days he is a resident of Canada you raise certain problems.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I realize that and that is why I am inclined to favour Mr. Moreau's suggestion.

The CHAIRMAN: Mr. Greene is next, followed by Mr. Otto, Mr. Gray and Mr. Gelber; and if Mr. Cameron is finished now I would ask Mr. Greene to put his questions.

Mr. GREENE: Might I suggest here, that the term "ordinarily resident of Canada" has appeared on our statute books, succession duties and so on, in order to act as a guideline. Now, as you said yourself, in the United States there are great pressures and, in fact, legislation, making citizenship compulsory. I think we have to start somewhere. You have been the champion of Canadianization from a fiscal standpoint. Should we not start going farther by gradually making citizenship a requirement in this country rather than using the ordinary resident criterion, which has been the case to date. And, if we do so throughout our statutes gradually the term "citizenship" will be the order of the day.

I think the problem at present is that there are no disadvantages to not having Canadian citizenship, except possibly the franchise, which may be a dubious privilege at times. As I say we have to start somewhere and I would suggest, with the greatest respect, that you, as the one who has championed Canadianization from a fiscal standpoint, should take it one step farther by making Canadian citizenship the test throughout all our statutory privileges and rights rather than "ordinary resident".

The CHAIRMAN: I think it is a rather broad question to go into all the statutes and to say that we should make "citizenship" the test in respect of all of them. With respect, may I say that we are dealing with this particular act and I think we should limit our scope. I am not objecting to references to other acts in the course of answers or questions. However, I think we are going far afield at this point and I think the term "citizenship" is being somewhat removed from the considerations at hand. I just pass on that caution from the Chair.

Mr. GREENE: May I say one other thing. I think there is a case for a Canadian citizen who is not ordinarily resident of Canada; we certainly have legislated against him here. As I said, I think we have to start somewhere making Canadian citizenship the test, and if the minister saw fit I think this might be one place where we could start without too great a difficulty being imposed on the business community. I understand Mr. Humphrys' point of view when he says that it does cause difficulty in respect of directors, but they are going to have some difficulty in any event in determining borderline cases.

And, this is the very place where it may not do a great deal of harm and perhaps we should consider this as a time when we should impose the test of citizenship rather than the test of ordinary resident as the Canadian criterion.

The CHAIRMAN: Mr. Otto is next.

Mr. OTTO: I have a few comments to make.

The CHAIRMAN: Are you finished, Mr. Greene?

Mr. GREENE: Yes.

The CHAIRMAN: Would you proceed, Mr. Otto?

Mr. OTTO: There have been several statements made in this committee in respect of citizenship. I am surprised at what two very learned gentlemen have said in this connection. As you know, a Canadian by birth retains his citizenship forever. But, if you are a naturalized citizen you can lose it by leaving the country for a certain period of time. In my opinion, we cannot use the term "citizenship" until the whole Canadian Citizenship Act is made more definite. A period of 180 days was mentioned in respect of the term "ordinarily resident" and surely with the jet age in which we are living we are not going to consider a firm time limit in obtaining residence. Mr. Humphrys mentioned that he was not aware of any cases. When you made that statement were you referring to this particular act?

Mr. HUMPHRYS: I said I was not aware of any case on his particular question of "ordinarily resident".

Mr. OTTO: The question of "ordinarily resident" has been decided in court on many occasions and the definition is fairly certain now.

Mr. HUMPHRYS: As I said, I am not aware of any case, Mr. Otto.

Mr. GRAY: I want to enlarge upon a point raised by Mr. Otto. I was speaking on the telephone when Mr. Lambert was speaking with regard to this topic and I do not know whether the point upon which I am going to speak was touched on at that time. But, I was surprised when I came back in to hear suggestions that the term "ordinarily resident" apparently had not been a matter of some judicial consideration. In my opinion, this term has been the subject of a great deal of judicial decision and interpretation.

Mr. GORDON: Well, I am in the hands of all you lawyers; you know the answers. It would be very unwise for me to answer that question. I suspect you are right.

Mr. GRAY: In view of that answer coming from a member of the accounting profession I presume he would agree that lawyers have had occasion to raise this question in courts and that decisions have been made with regard to it quite regularly.

I would like to ask the minister whether he feels that the test of citizenship alone really would not answer the problem of Canadianization because you may run into people who have Canadian citizenship or are Canadians by birth and then at some point in their lives they leave and spend the remainder of their lives in another country.

Mr. GORDON: I think the present definition is much more workable and more appropriate for this bill.

Mr. GRAY: I gather the aim of the legislation is to give these rights to those whose lives are linked with the country by being present in that country and taking part in its activities.

Mr. GORDON: That is correct.

The CHAIRMAN: Would you proceed, Mr. Gelber.

Mr. GELBER: I find this discussion a bit unreal. Are not the chief investors corporations? Would you not envisage foreign corporations as being likely purchasers of these shares rather than individuals who are non-residents of Canada?

Mr. GORDON: In the life insurance field I believe, in the main, the investors would be individuals but, if there were any takeovers, this might involve foreign corporations.

Mr. GELBER: That is what I was thinking of. I am thinking of those who bought control of Canadian life companies.

Mr. GORDON: You mean, foreign corporations.

Mr. GELBER: Yes.

So, the question of whether or not they are residents or non-residents is easy to determine.

Mr. GORDON: Yes.

Mr. GELBER: And the question of citizenship would not be relevant so far as a corporation is concerned?

Mr. GORDON: No, it is not relevant.

The CHAIRMAN: If there are no further questions on clause 3 the next one we stood was clause 5.

Mr. MOREAU: Are we going to carry clause 3?

The CHAIRMAN: Shall clause 3, as amended, carry?

Mr. LAMBERT: On division.

Clause 3 agreed to, on division.

On clause 5—*Municipal, etc., securities.*

The CHAIRMAN: Does any member wish to speak on this clause?

Mr. LAMBERT: The difficulties I have here are as follows: At whose discretion or in whose judgment will the earnings test be? If we look at page 10, line 7, it reads:

> (ii) had earnings in each such year available for the payment of a dividend upon its common shares—

Mr. GORDON: What is your question?

Mr. LAMBERT: This concerns me. On a dollars and cents basis perhaps the money is available, but from a business point of view it would be sheer irresponsibility to declare the dividend. Does the superintendent of insurance, in the ultimate, have to be God?

Mr. GORDON: Yes, he does. That is part of his responsibility, and if his decision is objected to, there is an appeal to the exchequer court. I might point out that if he ruled that a particular common stock was not eligible under the earnings test, the insurance company could still buy it and include it in its assets under the basket clause.

Mr. LAMBERT: There is a little bit of an escape there, but I want to get this point clear because prior to this the superintendent of insurance did not have to do this since it was a factual event that the dividends had been paid. Now he has to say that they could have been paid regardless of the working capital provision of the company, and these are the factors that he has to take into account. We therefore know that it is ultimately the superintendent of insurance who decides.

Mr. GORDON: Subject to appeal.

Mr. LAMBERT: There again I am wondering whether the exchequer court will ever substitute its discretion for that of the superintendent, making thereby the appeal meaningless because the superintendent of insurance would have to be wrong on a point of law.

Mr. GORDON: That is right.

The CHAIRMAN: Will clause 5 as amended carry?

Clause agreed to.

On clause 6—*Power of life insurance company to invest in shares of insurance and real estate companies.*

The CHAIRMAN: This is a totally new clause.

Mr. LAMBERT: Clause 6 was stood because it was the parent clause of a related clause under the Trust Companies Act on which we received representations. What is the minister's view with regard to the representations made by the Trust Companies Association of Canada that they should be permitted the same powers that are granted under clause 64A, subclause (c), as appears in line 13 on page 14?

Mr. GORDON: I think my main reaction is that their request deals with hypothetical situations which may arise in the future. They have not arisen so far, and they are not real situations. Quite frankly, this proposal of the trust companies came late in the day, and I would like an opportunity to study it in greater detail and in more depth before deciding one way or the other. I do not think it would do any harm if it were not approved quickly here. Most of these proposals are considered by the superintendent over a period, sometimes, of several years, in association with the people concerned, before a decision is reached.

I think that in this particular case he will want to explore this particular proposal. This does not apply to all the suggestions of the trust companies but only to this particular proposal. I should like to have more time to see if there are any bugs in it which I do not see at a quick glance. If it develops that the trust companies might benefit from these proposals in some way or another, then that would be something that would be taken into account when the next revision of the act is undertaken. In the meantime I do not think anyone will be hurt because, as far as I know, this is just hypothetical.

Mr. LAMBERT: It is so to the extent that the trust companies say you wish to protect the life insurance companies. You are now granting the life insurance companies these particular extensions for investment so the trust companies ask you whether you do not think that they could have them also.

Mr. GORDON: I would just like to give you an example of the reason why I think this sort of thing should be considered more deeply before a decision is taken. The Royal Commission on Banking and Finance felt very strongly, or expressed strong views, that the so-called near banks, that means the trust companies amongst others, should be dealt with in the same way as banks, and subject, or to a degree, to the same kind of legislation as applies to banks. I might say that this proposal was reasonably popular with the banks which felt that the same sort of thing should apply. I have not noticed any great enthusiasm for this recommendation on the part of the trust companies, but I am not sure that until all aspects of these proposals have been very carefully dealt with—and I am sure they will be by this committee when the Bank Act comes up—we should make a move of this kind. This is what I mean by saying that this kind of proposal requires a lot of thought and a lot of careful consideration before the request is granted. I do not usually duck these things, but in this case I know of no trust company that is planning to do any other things than what they ask for power to do.

Mr. LAMBERT: I have one more question. Has Mr. Humphrys received the information for which I asked; that is, has the Department of Justice given him an opinion on whether trust companies and life insurance companies will be prohibited from making it a condition of investment that insurance be placed with this or that company or that it should be cancelled and placed with a nominee company?

Mr. HUMPHRYS: I have had an oral reply to my inquiry. The officers of the justice department told me that the question raised a good many difficult constitutional points, and they would require more time than seemed to be available within the scope of this committee to give a written reply. But they did say, on the basis of the review that they had made of the question in the time available, that they had very considerable doubt whether it would be within the power of parliament to impose such a condition. They thought that parliament had the power to grant corporate powers to companies and to prescribe conditions that had to do essentially with the exercise of those powers, but they thought that a condiion such as the one you have in mind would move rather far in the direction of the terms of the contract and property and civil rights. They felt very considerable doubt whether it would be constitutional.

Mr. LAMBERT: As you know, there are some provinces that have these provisions. I have stated all my reasons for this.

Mr. OTTO: On clause 6, Mr. Gordon said that he was not quite clear why some insurance companies may want this clause.

Mr. GORDON: I spoke about trust companies, not insurance companies.

Mr. OTTO: This is something for the minister to watch, and especially for Mr. Humphrys to watch. Under (c) life insurance companies are given the power to own, control and lease land. Up to now what they have been doing is to buy equity, because as time goes on the equity improves. Up to now they have been purchasing the equity of these lands or properties from their own funds, that is their earned surplus. I wonder if this clause gives them now the power to buy the land and also mortgage the land under the 75 per cent mortgage, so that they can put down 25 per cent of the depositors' money, which would mean 100 per cent of the value of the land in respect of deposited money. I wonder whether this clause limits or prevents the insurance company from buying the equity and then mortgaging the redemption with two different funds.

Mr. HUMPHRYS: There would have to be a number of terms and conditions prescribed in any case where a life insurance company wished to own a real estate subsidiary. Among the terms and conditions that I would recommend that the treasury board should prescribe, would be conditions limiting the degree of investment that a company could put into a subsidiary of this type and the volume of funds that it could invest in a certain enterprise. I think it would clearly be improper to permit a company, through the ownership of a subsidiary, to indulge in investment activities that it could not do on a direct basis.

Mr. OTTO: In other words, if a company decided, under this section, to buy land for $250,000 from the depositors' money and then mortgaged the building and the land for $750,000, making it a million dollars, which may be 100 per cent coverage, do you anticipate a provision in the regulations prohibiting this?

Mr. HUMPHRYS: We would have to give careful consideration to the terms and conditions, and we would certainly want to make sure that a company did not invest to any extent in real estate property directly or indirectly in such a way as to circumvent any provisions in the legislation.

Mr. LAMBERT: I have a supplementary question on that. I would take it that in making those recommendations you would take into account the competitive position in which you would put Canadian insurance companies with their real estate subsidiaries vis-à-vis the real estate subsdiaries of foreign insurance companies who, we know, own very substantial pieces of Canadian real estate development, some of the choiciest in the country. Foreign insurance companies are really getting part of the promotional icing on the cake.

Mr. HUMPHRYS: This of course is the basis of this provision.

The CHAIRMAN: Is clause 6 agreed to?

Clause agreed to.

On clause 11—*No power to form other companies.*

The CHAIRMAN: This was stood because it was consequential upon the passing of clause 6.

Clause agreed to.

On clause 13 as amended—*Municipal, etc., securities.*

Mr. HUMPHRYS: This relates to the assets that British companies may invest in trust. It is the counterpart of the investment provisions for Canadian companies.

Mr. LAMBERT: The trust companies wished to have an amendment to a clause which related to this one. They wanted an amendment to clause 31.

Mr. HUMPHRYS: This was in part 3 of the Bill.

Mr. LAMBERT: Yes, clause 31 is related to this one.

Mr. HUMPHRYS: They asked for certain amendments that would parallel those for insurance companies in clause 5, but that will come in part 3 when we deal with the trust companies.

The CHAIRMAN: Is clause 13 as amended agreed to?

Clause agreed to.

Clause 14 agreed to.

Mr. LAMBERT: Mr. Aiken was not able to be present but he made his point in this regard. On his behalf I would say that this caluse be carried on division. I myself also have some reservations.

Mr. MOREAU: If Mr. Lambert himself wishes to go on division I think we could accept the explanation made.

Mr. LAMBERT: I will say on division.

The CHAIRMAN: It is probably too late for me to say, and it may be indiscreet for the Chairman to say, but the National House Builders Association advised me that they want me to put on the record that they approved of the raising of the limit of the mortgage to 75 per cent of the value, and I will put that into the record.

Is clause 15 agreed to?

Clauses 15, 16 and 17 agreed to.

On clause 19 as amended—*Municipal, etc., securities.*

The CHAIRMAN: The numbering may have caused some confusion. Clause 19 is a new clause that we put in.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I did raise some question on whether the term "philanthropic corporation" covered hospitals such as we have in British Columbia which are established by a hospital improvement association.

Mr. HUMPHRYS: I was advised by the Department of Justice that this term would cover hospitals.

The CHAIRMAN: Clause 19 as amended agreed to.

Mr. MOREAU: This would be clause 20.

The CHAIRMAN: It will become clause 20 as amended.

On clause 20 as amended—*Real estate mortgages.*

Mr. HUMPHRYS: This clause refers to foreign companies, and is parallel to the clause on British companies.

The CHAIRMAN: Clause 20 as amended agreed to.

On clause 29 as amended—*Definitions. "Corporation." "Non-resident."*

Mr. LAMBERT: Again I will agree to it on division, with reservations as to the feasibility of defining residents.

The CHAIRMAN: Clause 29 as amended agreed to on division.

On clause 30—*Contents of report.*

Mr. LAMBERT: I was wondering whether the minister considered the application, it now being late in the year and the auditors having now carried out the duty of their audits. In this clause they are going to be asked to sign a certificate for an operation which in effect was not carried out for this particular year. Perhaps somehow or other they could be given more notice.

Mr. GORDON: As an ex-auditor of trust companies I am quite sure that any auditor of a trust company would, in the course of his audit, do enough work so that with that knowledge he would be able to sign a certificate in the present form. However, this point has been raised by the trust companies, and if the members of the committees are willing I would have no objection to having this made effective as from next year.

The CHAIRMAN: The superintendent tells me he has an amendment with this principle in mind. Maybe the committee may agree to accepting it if it is in support of this amendment. This amendment would carry the spirit of the request made by the trust companies.

Mr. LLOYD: On this point I share the view of the minister. I think the very nature of trust company audits is such that I do not foresee any auditor having any difficulty in meeting the wording of this particular certificate.

Mr. GORDON: They have asked for it.

Mr. LLOYD: One more year would not do any harm.

Mr. GORDON: We have registered our professional purity in this matter.

The CHAIRMAN: It has been pointed out to me that the wording could be amended by substituting wording to the effect that this clause would come into force on the first day of January 1966. If that is accepted by the committee it would go in as the last clause in the act so as not to disturb our numbering.

Mr. HUMPHRYS: It should also refer to the corresponding clause in the part dealing with the loan companies.

The CHAIRMAN: It is moved by Mr. Macaluso and seconded by Mr. Lambert that a new clause 44 be inserted to provide that clauses 30 and 38 shall come into force on the first day of January 1966.

Motion agreed to.

Is this clause as amended agreed to?

Clause 30, as amended, agreed to.

On clause 31.

Mr. HUMPHRYS: Clause 31 deals with investment in mortgages by trust companies. The Trust Company Association submitted representations and wished to have the power to make mortgage loans on lease loan properties as well as freehold properties.

The CHAIRMAN: I have the duty, gentlemen, to bring that to your attention. I told the trust companies we would bring it to your attention.

Mr. GORDON: I already made a comment about the relative views of the banks, insurance companies and trust companies, and I am not sure I would be happy if we did do this at this time.

The CHAIRMAN: Is clause 31 agreed to?

Clause agreed to.

On clause 32.

Mr. HUMPHRYS: The trust companies had further representations about some amendments dealing with investments.

The CHAIRMAN: I draw that to your attention.

Clause, as amended, agreed to.

On clause 33—*Limitation of amount.*

Mr. LAMBERT: Mr. Chairman, this is the clause which was related to clause 40. It deals with the trust companies. I have noted what the minister has said. It is unfortunate we did not have the transcript of what Mr. Finlayson and his associate had to say and the replies that Mr. Humphrys gave because quite a question of principle is involved here. I may say that while I agree that all this pyramiding should not be possible, yet my interpretation is that there cannot be continuous pyramiding because a trust company cannot own a loan company, and therefore it stops there, whereas we permit a loan company to own a trust company. We therefore cannot pile one on top of another.

Mr. GORDON: The loan company comes on top and the trust company below. Why cannot another loan company come on top?

Mr. LAMBERT: That cannot be done either. The Loan Companies Act does not allow one loan company to own another. With the greatest respect, may I say that I find it rather hard, under the present circumstances, to agree. We are going to kill the World Mortgage Corporation in essence. Oh, I know, you are going to give them a little bit of string. I was not able to attend the latter portion of Mr. Humphrys' and Mr. Finlayson's presentation owing to a call to another committee, but, unless some changes have been made which I have not seen I am wondering frankly whether you are not using an elephant gun to kill a mosquito. I know what you are trying to get at but it seems to me it is too drastic a provision for this purpose. I think the counsel for the World Mortgage Corporation was quite fair in saying that the superintendent and the treasury board had ample power to deal with this sort of thing. They have discretionary powers to prevent pyramiding. After all, I think there is no business in this country that is subject to more control, and to more paternal control, than the mortgage and trust company business which comes under the superintendent of insurance. I am not talking about trust companies operating under provincial charters. Now the provision requiring approval of the treasury board prevents the sort of pyramiding of which we are so afraid. Let me say, with the greatest respect, that to say that the value of the shares of the Eastern and Chartered Trust Companies, which is a separate body, could not come under the investment base of the World Mortgage Corporation is to me absolutely ludicrous.

Mr. HUMPHRYS: I would say first on the point of the power to control the pyramiding, that the purpose of this amendment is to control pyramiding, so that it seems to me there should be no objection to putting it into the legislation. It is better to do it through legislation, if the principle is sound, than to leave it to discretion. Secondly, I do not think the enactment of this provision would necessarily kill World Mortgage. They may decide not to go ahead because they would not have the same leverage that they would if such a consolidation provision were not adopted, but they could still operate as a loan company.

We have had several loan companies incorporated in the recent years and none of them have had a paid capital of more than $3 million, so that paying in the $2,750,000 that they speak about is quite respectable in the light of what other loan companies are doing. I will admit that if the World Mortgage were held at a borrowing limit of four times, then it would prevent them from borrowing at all. But I do not think anyone expects a company such as that to stay at a borrowing limit of four times.

Mr. LAMBERT: I am sorry, but I think you are knocking right on the head something which is a perfectly justifiable proposition.

Mr. MOREAU: It seems to me, Mr. Chairman, that Mr. Lambert while accepting the principle is now wanting us to legislate in a particular way for this particular situation of World Mortgage Corporation and it seems to me we should not be put in that position.

Mr. LAMBERT: I want to make myself abundantly clear. I think the language of the amendment is far too sweeping. There are antipyramiding provisions available to the superintendent of insurance without this.

Mr. GREENE: There is one point I would like you to clear up. I also had to miss a part of what was being discussed this morning. First of all, I was somewhat disturbed by the fact that apparently there is one corporation already doing exactly what this section prevents. I am thinking of Canada Permanent. By our legislation here are we putting that company in a favourable position and are they able to do exactly what we are now preventing others from doing, to the detriment of other companies?

Mr. HUMPHRYS: There are two examples of parent-subsidiary relationships in the federal loan and trust fields, and as the law now stands these two companies would have the power to expand their borrowing limits by using the shares of one company as a borrowing base in the other; but, as a matter of fact, they have not made use of the additional borrowing capacity that exists in that way. The enactment of this amendment would put them under the same borrowing limitations as would apply to any other company, so they would be in exactly the same position. They would have no special privileges.

Mr. GREENE: You are not afraid that this section will force this type of company into the provincial field where they could acquire broader powers?

Mr. HUMPHRYS: Provincial companies cannot own subsidiaries, at least not in Ontario. In Quebec they have broader powers.

The CHAIRMAN: Have you a question, Mr. Lloyd.

Mr. LLOYD: My question has been answered Mr. Chairman.

The CHAIRMAN: Does clause 33, as amended, carry?

Mr. LAMBERT: On my recorded division.

Clause agreed to, on division.

The CHAIRMAN: Clause 37 on page 45 is next.

On clause 37—*Definitions.*

Mr. OTTO: This is the first occasion I have had to ask the minister the reason for the great emphasis on control. Now, presuming that we are talking about Americans as foreigners we all know that American businessmen have been more venturesome, more daring and have shown more foresight than Canadians have. If we presume it does not matter who is in control of a company, is not the purpose to make money in accordance with the rules and safety precautions taken? Why is such emphasis put on control? What would be wrong with a Canadian company controlled by foreigners who are good business people provided the shares and dividends are left in Canada? Is your concern not really the dividends? Why is such emphasis put on control?

The CHAIRMAN: Are you directing your remarks to the companies under this act?

Mr. OTTO: Yes, under 51A, limit on shares held by non-residents.

Mr. GORDON: I suppose from a philosophic standpoint there are some people —and certainly I am included in them—who believe that the financial institutions of a country should be, for the most part anyway, in the hands and control of people who live here. These institutions have the privilege of accumulating and acquiring in a very substantial proportion all the savings of the Canadian people. These savings are invested by the directors and the management of these companies. There are some people who are completely international in their outlook. These people do not think it matters who controls these institutions. But, there are others who think that as long as a country is striving to remain independent that the people who invest the savings of the citizens should be people who reside in that country.

Now, you ask me if I could prove this one way or another; of course, I cannot, because this sort of thing does not lend itself to empirical proof. But, I have talked with many people in many countries who, while they are not prepared to agree that it makes any difference whether our great resource industries are controlled by Canadians—and I am talking about Americans in this connection—do agree with me completely that any country which allows its financial institutions to fall into the hands of those who do not live there is risking something and is giving up some measure of local independence, if you like. Now, this is the purpose of this bill; this is the purpose of the corresponding sections under the insurance and trust company sections of the act, and it was one of the major points of principle that were approved by the house at the resolution stage and certainly on second reading. I do not think that I could help very much except by these general remarks. I do not suppose you think it proper for me to repeat what was said on second reading. But, I have not very much more to add.

Mr. OTTO: You have answered very well, Mr. Gordon. But, there always has been a presumption that business acts for the sake of business, and that the prime purpose of the directors or those managing loan companies and so on, is to make money. They are not influenced by politics, nationality and so on. I am wondering why you are placing such great emphasis on control rather than on shares. For instance, I can think of several cases where I would have loved to have had an American director control one of my companies because I think he would have made me a lot of money, and as long as I got the money what would be wrong with that? But, they did not want to do that.

Mr. GORDON: Well, in answer to that I can only say that I do not know many enterprising Americans who would be prepared to invest in one of your companies and let you make the money.

Mr. OTTO: Then that is really what you are concerned about; you are really concerned about the dividends?

The CHAIRMAN: Does clause 37 carry? Mr. Lambert has stated his position and, I presume, it is on division.

Mr. LAMBERT: Yes, on division.

Clause 37 agreed to, on division.

On clause 38—*Contents of report.*

Mr. LAMBERT: That is the clause which is subject to the amendment we made to clause 31.

The CHAIRMAN: Yes, as amended. This was included.

Clause agreed to.

On clause 39—*Common shares.*

The CHAIRMAN: Does clause 39 carry?

Mr. LAMBERT: On division.

Clause agreed to on division.

On clause 40—*Limitation of borrowing powers.*

The CHAIRMAN: We have to deal with a further amendment on clause 40, and this was in connection with the World Mortgage Corporation. This amendment was moved and we have to deal with a new subclause 4 to be added. This is the new subclause:

> Notwithstanding anything contained in subsection (3) of this section, if the shares of the trust company acquired by the loan company are listed on a recognized stock exchange in Canada and have been acquired for valuable consideration the provisions of subsection (3) of this section shall not apply.

That amendment was moved and seconded, and I am now ready to call it. Shall this proposed amendment carry? All those in favour? All those opposed? I declare the amendment lost.

Mr. LAMBERT: I wanted to ask the minister if there is any particular significance to that figure of 10 per cent, or is it deemed 10 per cent or less is insignificant?

Mr. GORDON: That is right; it would not be enough to control.

Clause agreed to.

The CHAIRMAN: We have a new clause 41 that was introduced the last time. I will have Mr. Humphrys refresh your memory in this respect.

Mr. HUMPHRYS: This clause would enable a loan company to own a trust company as a subsidiary subject to conditions to be prescribed by the treasury board, so it would give general power for loan companies to own subsidiaries.

The CHAIRMAN: Having refreshed your memory are you ready for the question?

Mr. LAMBERT: That of course, also would be subject to the limitations on clause 40 that we put in.

Mr. HUMPHRYS: Yes. There is a case before parliament now that constitutes an exception from the rule that a loan company may not own more than 30 per cent of the shares of another company. If that is granted it is considered the exception should be considered on a general basis, and the power might be granted generally to loan companies to own subsidiary trust companies subject to such conditions as may be prescribed by treasury board, having in mind there are two examples now in existence of another under consideration.

Mr. LAMBERT: One being World Mortgage Corporation?

Mr. HUMPHRYS: Yes.

Clause 41 agreed to.

The CHAIRMAN: Now, I have to have a motion to renumber the present clauses 40 and 41 to read clauses 42 and 43 respectively.

Mr. MOREAU: I so move.

Mr. OTTO: I second the motion.

Motion agreed to.

Title agreed to.

Mr. GELBER: Were we not going to put in an additional clause?

The CHAIRMAN: We did that some time ago, although it may have been slightly out of order to do it at that time.

Shall the bill, as amended, carry?

Agreed to.

The CHAIRMAN: Shall I report the bill, as amended?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Now, I have to have a motion to reprint the bill.

Mr. MOREAU: I so move.

Mr. MACALUSO: I second the motion.

The CHAIRMAN: It has been moved and seconded that the bill be reprinted. All those in favour? All those opposed?

Motion agreed to.

The CHAIRMAN: I think the minister would like to say a word at this time.

Mr. GORDON: I just want to thank the committee for the time and attention they have given to this bill. This is a difficult bill and an important one, in my opinion, and I want to assure you that there will be more to come. I hope the resolution on the Bank Act will be on the order paper today. I can assure you it will engage your attention and interest as well as your time. This revision happens only once every ten years and there are lots of important points in it.

Mr. LAMBERT: I have a suggestion to make to the Minister of Finance. In view of the fact that the pension committee is going to be sitting for a very considerable time and if we are to proceed with a study of the Bank Act at this time I think you should suggest that the House of Commons recess for the next nine months.

The CHAIRMAN: I would like to thank the minister for his remarks and I hope that the spirit which has prevailed in this committee when differences of opinion have arisen will carry over into the house.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

PROCEEDINGS

No. 14

TUESDAY, DECEMBER 8, 1964

Respecting

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

INCLUDING NINTH REPORT TO THE HOUSE

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

21609—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken
Armstrong
Asselin (*Notre-Dame-de-Grâce*)
Basford
Bell
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Habel
Hales
Jones (Mrs.)
Kindt
Klein
Lambert
Leblanc
Lloyd
Macaluso
Mackasey
McCutcheon
McNulty
More
Moreau
Mullally
Munro
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Skoreyko
Tardif
Thomas
Vincent
Wahn
Watson (*Châteauguay-Huntingdon-Laprairie*)
Woolliams—50.

Dorothy F. Ballantine,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, October 15, 1964.

Ordered,—That Bill C-123, An Act to amend certain Acts administered in the Department of Insurance be referred to the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

21609—1½

REPORT TO THE HOUSE

DECEMBER 8, 1964.

The Standing Committee on Banking and Commerce has the honour to present its

NINTH REPORT

Your Committee has considered Bill C-123, An Act to amend certain Acts administered in the Department of Insurance, and has agreed to report it with the following amendments:

Clause 2

Amend sub-clause 2 by striking out line 9 on page 2 and by substituting therefor the following:

"and has, *subject to section 45,* one vote for each share held by him subject"

Clause 3

Amend as follows:

(*a*) by striking out lines 3 to 9 on page 7 and by substituting therefor the following:

"long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 16D does not apply.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of a life company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 16C and 16D, to be shares held by a resident for the use or benefit of a non-resident.

(5) Where on or after the prescribed day the par value of shares of the capital stock of a life company is reduced, the directors of the life company may, notwithstanding subsection (2) of section 16C, allot shares of the capital stock of the life company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(*b*) by renumbering subsections (4) to (6) of section 16F on page 7 as subsections (6) to (8) respectively; and

(*c*) by striking out line 33 on page 7 and by substituting therefor the following:

"section (7) of this section.

(9) In determining for the purposes of sections 16B to 16F whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 16E or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

Clause 4

Amend by striking out lines 34 to 36 inclusive on page 7 and by substituting therefor the following:

"4. (1) Section 45 of the said Act is repealed and the following substituted therefor:

"45. (1) Notwithstanding anything contained in its Act of incorporation or in this Act, if the subscribed stock of a company if fully paid, the company may, by a by-law made by the directors and confirmed by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for considering the by-law, divide the capital stock of the company into shares of *one dollar* each or any multiple *thereof but not exceeding* one hundred dollars each.

(2) Where pursuant to subsection (1) the capital stock of a company registered to transact the business of life insurance is divided into shares the par value of which is less than five dollars each, a holder of the shares shall have as a shareholder of the company only the number of votes that equals the product obtained by dividing the total par value of all his shares in the capital stock of the company by five."

(2) The said Act is further amended by adding thereto, immediately after section 45A thereof, the following section:"

Clause 5

Amend sub-clause 1 by striking out lines 42 to 44 inclusive on page 8 and by substituting therefor the following:

"under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Amend sub-clause 6 by striking out line 13 on page 11 and by substituting therefor the following:

"or of a province, state or municipality of that"

Clause 13

Amend sub-clause 1 by striking out lines 8 to 10 inclusive on page 18 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Amend sub-clause 8 by striking out line 14 on page 21 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

New Clause 19

Immediately after the headings "Part II" and "Foreign Insurance Companies Act" on page 24, insert a new clause 19, as follows:

"19. Subsection (6) of section 37 of the *Foreign Insurance Companies Act* is repealed and the following substituted therefor:

"(6) Where a separate and distinct fund with separate assets is maintained pursuant to subsection (5), the assets of the fund so maintained shall be available only to meet the liabilities arising under policies in respect of which such fund is maintained, *except that amounts transferred to the separate and distinct fund from other funds of the company may, subject to the approval of the Superintendent, be withdrawn from the separate and distinct fund and transferred to such other funds as the directors may determine.*"

Original Clause 19

Amend by renumbering as clause 20, and strike out lines 35 to 37 on page 24 and substitute the following:

"20. (1) Paragraph (*b*) of section 1 of Schedule I to the said Act is repealed and the following substituted therefor:"

Amend sub-clause 1 by striking out lines 5 to 7 inclusive on page 25 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Amend sub-clause 8 by striking out line 46 on page 27 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

Clauses 20 to 39 inclusive

Amend by renumbering as clauses 21 to 40 respectively.

Original Clause 29

Amend as follows:

(*a*) by striking out lines 45 to 47 on page 37 and by substituting therefor the following:

"be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 36C does not apply.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of

the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 36B and 36C, to be shares held by a resident for the use or benefit of a non-resident.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 36B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value, but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(*b*) by renumbering subsections (4) to (6) of section 36E on page 38 as subsections (6) to (8) respectively; and

(*c*) by striking out line 28 on page 38 and by substituting therefor the following:

"section (7) of this section.

(9) In determining for the purposes of sections 36A to 36E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 36D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

Original clause 37

Amend as follows:

(*a*) by striking out lines 45 to 48 on page 49 and lines 1 to 3 on page 50 and by substituting therefor the following:

"the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 51C does not apply.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 51B and 51C, to be shares held by a resident for the use or benefit of a non-resident.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 51B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(b) by renumbering subsections (4) to (6) of section 51E on page 50 as subsections (6) to (8) respectively; and

(c) by striking out line 27 on page 50 and by substituting therefor the following:

"section (7) of this section.

(9) In determining for the purposes of sections 51A to 51E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 51D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

New Clause 41

Immediately after line 24 on page 52, insert a new clause 41, as follows:

"41. The said Act is further amended by adding thereto, immediately after section 61 thereof, the following section:

"61A. (1) Notwithstanding anything in section 60 but subject to subsection (2) of this section and to such terms and conditions as may be prescribed by the Treasury Board upon the report of the Superintendent, a loan company may invest its funds in the fully paid shares of a trust company to which the *Trust Companies Act* applies.

(2) No investment shall be made by a loan company under subsection (1) if, after the making of such investment, the aggregate cost to the loan company of the investments made under subsection (1) and the investments made under section 60 in shares of such trust companies then held by the loan company would exceed the aggregate of the loan company's then paid-up capital and reserve."

Original Clauses 40 and 41

Amend by renumbering as clauses 42 and 43 respectively.

New Clause 44

Immediately after the renumbered clause 43, insert a new clause 44, as follows:

"44. Sections 31 and 39 shall come into force on the 1st day of January, 1966."

Your Committee has ordered a reprint of the Bill, as amended.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issues Nos. 5 to 13 inclusive) is appended.

Respectfully submitted,
LAWRENCE T. PENNELL,
Chairman.

MINUTES OF PROCEEDINGS*

THURSDAY, November 26, 1964.
(19)

The Standing Committee on Banking and Commerce met at 10.20 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Asselin (*Notre-Dame-de-Grâce*), Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gendron, Gray, Greene, Habel, Klein, Lambert, Lloyd, Macaluso, Moreau, Mullally, Otto, Pennell, Skoreyko and Thomas—18.

In attendance: The Hon. Walter Gordon, Minister of Finance; Mr. R. Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman welcomed the Minister and invited him to make a statement.

The Minister made a statement dealing with some of the questions raised during earlier proceedings and said he was prepared to answer any additional questions.

The Committee then resumed consideration of the clauses which had been allowed to stand.

On Clause 3

The Minister was questioned, and was assisted by Mr. Humphrys in answering questions.

Clause 3, as amended, was carried, on division.

On Clause 5

The Minister was questioned and the clause, as amended, was carried.

On Clause 6

The Minister was questioned and was assisted by Mr. Humphrys. The clause was carried.

Clause 11 was carried.

Clause 13 was carried, as amended.

Clause 14 was carried, on division.

Clauses 15, 16 and 17 were carried.

Clauses 19 and 20, as severally amended, were carried.

Clause 29, as amended, was carried, on division.

Clauses 30, 31 and 32, as severally amended, were carried.

On Clause 33

Mr. Humphrys was questioned and the clause, as amended, was carried, on division.

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*Also published in Issue No. 13.

On Clause 37

The Minister was questioned and the clause, as amended, was carried, on division.

Clause 38, as amended, was carried.

Clause 39, as amended, was carried, on division.

On motion of Mr. Moreau, seconded by Mr. Otto,

Resolved,—That the present clauses 40 and 41 be amended by renumbering as clauses 42 and 43, respectively.

On Clause 40

The Chairman reminded the Committee that at the last meeting an amendment requested by the World Mortgage Corporation had been moved by Mr. Mackasey and seconded by Mr. Scott, for purposes of putting it on the record, and had been allowed to stand.

And the question having been put on the proposed amendment of Mr. Mackasey, it was negatived on the following division: Yeas, 2; Nays, 7.

Clause 40, as amended by renumbering, was carried.

Clause 41, as amended by renumbering, was carried.

The Chairman then put the question on the motion of Mr. Moreau for further amendment of the Bill by insertion of a new Clause 41, which had been allowed to stand, and the amendment was carried.

On motion of Mr. Macaluso, seconded by Mr. Lambert,

Resolved,—That a new Clause 44 be inserted immediately after the renumbered Clause 43 as follows:

"44. Sections 31 and 39 shall come into force on the 1st day of January 1966."

The Title was carried.

The Bill, as amended, was carried, on division.

The Chairman was directed to report the Bill, as amended.

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Ordered,—That the Bill, as amended by the Committee, be reprinted.

At 12.05 p.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964-65

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 15

FRIDAY, FEBRUARY 26, 1965

Respecting

Bill S-22, An Act to amend the Companies Act.

WITNESS:

Mr. Louis Lesage, Q.C., Companies and Corporations Branch, Department of the Secretary of State.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

21611—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken
Armstrong
Asselin (*Notre-Dame-de-Grâce*)
Basford
Bell
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Habel
Hales
Jones (Mrs.)
Kelly
Kindt
Klein
Lambert
Leblanc
Lloyd
Macaluso
Mackasey
McCutcheon
McNulty
More
Moreau
Mullally
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Skoreyko
Tardif
Thomas
Vincent
Wahn
Watson (*Châteauguay-Huntingdon-Laprairie*)
Woolliams—50.

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, December 9, 1964.

Ordered,—That the name of Mr. Kelly be substituted for that of Mr. Munro on the Standing Committee on Banking and Commerce.

THURSDAY, February 18, 1965.

Ordered,—That Bill S-46, An Act to incorporate Settlers Savings and Mortgage Corporation be referred to the Standing Committee on Banking and Commerce.

FRIDAY, February 19, 1965.

Ordered,—That Bill S-22, An Act to amend the Companies Act be referred to the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

21611—1½

MINUTES OF PROCEEDINGS

FRIDAY, February 26, 1965.
(20)

The Standing Committee on Banking and Commerce met at 9.20 a.m. this day. The Acting Chairman, Mr. Gelber, presided at the opening of the meeting; later the Chairman, Mr. Pennell, took the Chair.

Members present: Messrs. Basford, Chrétien, Côté (*Chicoutimi*), Gelber, Greene, Habel, Kindt, Klein, Lambert, Lloyd, Moreau, Mullally, Pennell, Wahn—(14).

In attendance: Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

In view of the unavoidable absence of the Chairman and the Vice-Chairman, the Clerk called for nominations for an Acting Chairman. On motion of Mr. Greene, seconded by Mr. Lambert, it was

Resolved,—That Mr. Gelber take the Chair as Acting Chairman.

The Acting Chairman thereupon took the Chair.

The Acting Chairman presented the *Fourth report* of the Sub-Committee on Agenda and Procedure, dated February 24, 1965, which recommended as follows:

(*a*) That the Committee meet on Friday, February 26, at 9.00 a.m. to consider Bill S-22, An Act to amend the Companies Act, and to hear a statement from Mr. Louis Lesage, Director, Companies and Corporations Branch, Department of the Secretary of State;

(*b*) That the Committee meet at 9.00 a.m. on Tuesday, March 2nd to consider Bill S-46, An Act to incorporate Settlers Savings and Mortgage Corporation, and to resume consideration of Bill S-22.

On motion of Mr. Moreau, seconded by Mr. Habel, the report was approved.

The Committee then proceeded to consideration of Bill S-22, An Act to amend the Companies Act.

On Clause 1

The Acting Chairman introduced the witness, Mr. Lesage, who made a brief statement on the general purpose of the Bill, and who then gave more specific explanations of Clauses 1 to 11.

During the meeting, the Chairman, Mr. Pennell, took the Chair.

The witness tabled a number of amendments which his Department wished to have included in the Bill, and the Clerk was directed to have these mimeographed and distributed to the members before the next meeting.

At 11.00 a.m. the Committee adjourned until Tuesday, March 2, 1965 at 9.00 a.m.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, February 26, 1965.

Note—The evidence, adduced in French and translated into English, printed in this issue, was recorded by an electronic apparatus, pursuant to a recommendation contained in the Seventh Report of the Special Committee on Procedure and Organization, presented and concurred in, on May 20, 1964.

The CLERK OF THE COMMITTEE: Gentlemen, you have a quorum, but the Chairman and Vice Chairman are unavoidably detained.

I will ask for nominations for acting chairman.

Mr. KLEIN: I move that Mr. Moreau be acting chairman.

Mr. LAMBERT: I second the motion.

Mr. MOREAU: I have another meeting and will have to leave at 10 o'clock.

Mr. LAMBERT: Either Mr. Gelber or Mr. Greene would be satisfactory to me.

Mr. GREENE: I also have to leave at 10 o'clock. Mr. Gelber is a financier and I would move he be made acting chairman.

Mr. LAMBERT: I second the motion.

Motion agreed to.

The ACTING CHAIRMAN (*Mr. Gelber*): Gentlemen, I will call the meeting to order.

I will read to you the report of the subcommittee on agenda and procedure, which met on Wednesday, February 24, 1965, and agred to recommend as follows:

(*a*) That the committee meet on Friday, February 26, at 9.00 a.m. to consider Bill No S-22, an act to amend the Companies Act, and to hear a statement from Mr. Louis Lesage, director, Companies and Corporations Branch, Department of the Secretary of State;

(*b*) That the committee meet at 9.00 a.m. on Tuesday, March 2nd to consider Bill No S-46, an act to incorporate Settlers Savings and Mortgage Corporation, and to resume consideration of Bill No S-22.

Is there any discussion on this report?

Mr. MOREAU: Mr. Chairman, I should explain the reason for the switch on Tuesday. There will be some applicants from western Canada at that time and that is why we decided to take the private Bill No S-46, before we proceeded with Bill No. S-22.

Mr. Chairman, I move the report be adopted.

Mr. BASFORD: I second the motion.

Motion agreed to.

The ACTING CHAIRMAN (*Mr. Gelber*): Gentlemen, we have Bill No. S-22, to amend the Companies Act. Mr. Lesage is available to give evidence this morning.

Preamble agreed to.

On clause 1.

The ACTING CHAIRMAN (*Mr. Gelber*): Will you proceed now, Mr. Lesage. cedure, which met on Wednesday, February 24, 1965, and agreed to recommend

Mr. LOUIS LESAGE Q.C., (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): Mr. Chairman and gentlemen, there have been no amendments to the Companies Act for 30 years. The last revision of the act was in 1934 and, a year later, in 1935, some minor amendments were made to the act. Since that time the department has administered the act without further amendments. Of course, during that period of 30 years the department received many suggestions for amendments to the Companies Act but, due to circumstances it was not until one and a half years ago that the department was prepared to give to the government a list of proposed amendments.

An interdepartmental committee was established and three outside practising lawyers were invited to sit with the departmental officials from various departments to consider the bill.

In December, 1963, we discussed and studied this matter for a period of five days, after which the recommendations of the committee were handed to the Department of Justice, which had representatives at all times in attendance at that meeting. They prepared the first draft of Bill No. S-22.

Mr. BASFORD: Mr. Lesage, who were the three outside lawyers?

Mr. LESAGE: Mr. Cudney, now of Winnipeg. I do not recall the name of his firm but, previously, he was assistant provincial secretary of Ontario. There was Mr. Gordon Blair from the Tolmie firm in Ottawa, and Mr. Laurent Belanger from Montreal.

Thereafter, the bill was introduced in the Senate. But, may I say that the committee's terms of reference were, to a certain extent, limited, in that only procedural amendments were to be considered. This is what brought Bill No. S-22 before the Senate on Thursday, May 7, 1964.

Before the bill was referred to the Senate banking and commerce committee the government leader in the Senate, on second reading, indicated a wish of the government for the Senate to go deeper into their study of Bill No. S-22, and even the Companies Act. The banking and commerce committee of the Senate was invited to amend not only the bill but also the Companies Act, if it wished to do so. As a matter of fact, this accounts for many differences between Bill No. S-22, as it was introduced in the Senate, and the one which now is before your committee this morning.

I must say that some very good amendments were made by the Senate in producing the present bill in its present form.

In order that you may have a full picture of how the bill was prepared I should tell you that in the Senate banking and commerce committee invitations were tendered to interested major associations in Canada. Also, full consideration was given to representations received from many law firms. I have a list here of those associations who appeared before the Senate committee and presented briefs. They are: The Canadian Bar Association; The Canadian Institute for Chartered Accountants; the Canadian Manufacturers Association, and the Metropolitan Toronto Board of Trade. We also had representations from the following law firms: Osler, Hoskins & Harcourt; O'Brien, Home, Hall; Campney, Owen & Murphy; Campbell, Godfrey & Lewtas, and Blake, Cassels & Graydon. We also received correspondence from those who submitted briefs, which was given serious study. During the last 30 years the department has kept all recommendations received concerning the Companies Act in a separate file. The Senate invited the comments and suggestions of everyone in this country, and I can assure you that all those suggestions and recommendations were given consideration.

The Senate banking and commerce committee also set up a subcommittee, which sat behind closed doors. I was invited to attend their meetings and I gave evidence. The hon. Senators worked on this bill in that committee. They were not only working on it section by section they worked on it word by word and even comma by comma. They made a thorough study of the whole matter.

Then the bill was passed by the Senate on November 25, in the form in which you have it now. In the last three months, the department has received further suggestions, which were very constructive. These suggestions came from different parts of the country. Let us say that we had a suggestion from Toronto; the same one came from Winnipeg. In another instance, we had a suggestion from Montreal, and we received the same suggestion from Toronto. These suggestions, which were few in number, were studied.

We have to offer, for your consideration, four amendments, three of which are of a very minor nature. One is with regard to clarification of interpretation of something which has been introduced by the Senate. Another is a mere correction of a clerical error. There is only one which would appear to be of a more important nature, namely the broadening of the definition of mutual fund companies. When we come to that particular section in the bill I will explain to you the reasons for the broadening of that definition of mutual fund companies.

I think I have given you a very brief history of the bill which is now before you gentlemen, and perhaps I may add two or three comments on the nature of the Companies Act itself so that no one will be misled as to its importance.

Mr. LAMBERT: Mr. Chairman, before Mr. Lesage does that and we get into this particular bill would he advise us to what extent consideration was given to any of the deliberations and recommendations of the committee on the uniform companies act.

Mr. LESAGE: I will do that. The uniform companies act was among the documents which were compiled for study in the Senate. Of course, in the interdepartmental committee this formed a basis of discussion, together with the Ontario act which, at that time, was the latest statute in Canada on corporate law. I understand the Ontario act has a very good reputation and the draft uniform act is also a most valuable document. No amendments were considered without going to both the draft uniform act and the Ontario act. The main reason both the interdepartmental committee and the Senate referred to the uniform companies act was to make sure that our federal act would not depart from the principles which may be accepted across the country by other jurisdictions, and to avoid departing from the principles adopted in other jurisdictions.

As a matter of fact, a very few months ago the province of Manitoba also made revisions to its Companies Act and, to a large extent, they followed the principles of the draft uniform act. But, neither the province of Manitoba, the Senate, nor the interdepartmental committee took the draft as is. As a matter of fact, the terms of reference to both were not to prepare a complete revision of the Companies Act because it was considered, and it is still considered, to be a too heavy responsibility for the department. And because of the administrative duties it could not be prepared within a short period of time. But in many fields there was some urgency for amendments, particularly after a period of 30 years. That speaks for itself. I can assure the hon. members of this committee that the draft uniform act was respected. Many good ideas were borrowed from the Ontario act. We even went to other legislation. In one instance we followed Quebec. In another instance, we went to the New York legislation. We endeavoured to give to those amendments the most careful

attention and endeavoured to keep the act within the principles outlined in the draft uniform act.

Does that answer your question, Mr. Lambert?

Mr. LAMBERT: Yes.

Mr. BASFORD: Then, would it be correct to say that Bill No. S-22 does not represent a real revision but, rather, a correction of certain anomalies which have developed over a period of 30 years?

Mr. LESAGE: Exactly. It is not a complete revision of the act and it was never intended to be. But, I am not saying that later on the government would not consider a complete revision of the Companies Act. We are now pressed for more modern legislation in various fields, for example, the sections relating to the financial statements of companies, the content of financial statements and so on. We cannot work on the text which we had in 1934, and the chartered accountants cannot. Also, there are some amendments regarding the prospectuses which we could not contemplate in 1934 because securities commissions in the provinces had not developed to the extent they have now. This is the type of amendments which were foreseen. Of course, at the same time there will be here and there odd amendments because of the experience of Ontario and the discussion over the years on the draft uniform act. So, it is almost imperative to bring forward some of those amendments. But, I would not suggest you take this bill as being a complete revision of the act; as a matter of fact, it is not.

Before proceeding to study the bill clause by clause perhaps you would be interested in knowing that the Companies Act primarily is a procedural guide for the incorporation of companies. As you will recall, historically, companies or corporations are fictitious persons created by the authorities. Through the centuries the procedure was instituted in England and was followed in Canada of incorporating corporations or companies by issuing letters patent under the Great Seal. Later, with an increase in the number of companies and corporations it was not deemed advisable to leave to the cabinet the responsibility of the issuance of these letters patent under the Great Seal, and it was not felt that parliament should consider each and every case as a private bill. The first Companies Act was introduced in 1869 in Canada. Of course it followed the English law. It is what I would call the codification of the common law and the corporate law, mostly so far as companies are concerned. In addition, it is an act which regulates the relations between the shareholders and the company itself, and incidentally takes care of the public interest. However, this is not the primary purpose of this legislation.

The primary purpose of this legislation is twofold; firstly, as I said, it is a guide for incorporation and, secondly, it is an act to regulate the relations between the shareholders and the company. It is not legislation which is for the advantage of the government of Canada itself as such; it is not a tool in the hands of the government. Rather, it is by coincidence that the government itself would make use of the Companies Act for the incorporation of a few crown companies. There are a few crown companies which were incorporated under the Companies Act, such as Canadian Arsenals Limited. In doing so, I think the Canadian government considers itself as a person and not as an administrator of the company law. This is what I would call private law and not public law.

If I may make a comparison it is like the Civil Code of the province of Quebec. This, of course, is general legislation, but it is for the benefit of the citizens generally. This has very little to do with the public administration.

Now, gentlemen, perhaps I might come to the bill itself. Here perhaps I can tell you a little about each of the clauses in the bill. As I told you, they are not all of the same importance. If I go over these too quickly, I would

hope that you would stop me so that I may give a fuller explanation in respect of any particular clause.

The first is the title of the act. According to clauses 1 and 2, the act would now become the Canada corporations act. The reason for this change is to make it easier to differentiate between this act and the various provincial companies acts. As you know, there are 11 companies acts in Canada, and ours also is called the Companies Act. Sometimes this is a little confusing.

Following the pattern of Ontario, it was suggested that the title might be Canada corporations act. Why "corporations" instead of "companies"? The reason is similar to that in respect of Ontario; that is, in part I, the Companies Act deals with companies, but in part II and in other parts it also deals with corporations without share capital. I think it would be misleading to retain the title "Companies Act"; I would say it would not be the right appellation for that piece of legislation. We have copied Ontario, I think, to the best advantage and, in placing the word "Canada" in the title, it would make it clear that this is an act under the authority of this parliament.

Clause 3 is a very minor amendment to the definition of a court. This has nothing to do with the Companies Act itself. The Department of Justice brought to our attention that our definition is a little outdated in so far as the Northwest Territories are concerned. The definition now includes the territorial court of the Northwest Territories. This is in an effort to keep up to date with other legislation.

Another amendment is in respect of the definition of the word "officer". Of course, everyone in the department had a fairly good idea of the definition of the word "officer", although it was not defined in the act itself. For the benefit of everyone and to avoid confusion because there are so many references in the act to the word officer, and so many duties imposed upon officers by the law itself, it was deemed advisable to bring in a definition of the word "officer".

It is necessary to amend the definition of the word "shareholder" because the other amendments to the Companies Act have the effect of combining the petition itself and the memorandum of agreement in one document only.

Mr. WAHN: Under these amendments there no longer will be a separate memorandum of agreement.

Mr. LESAGE: No. You will see this immediately in section 7. In clause 4 the words "or insufficiency" are added to section 4 of the act in order to follow Ontario and the draft uniform act mostly. This will help to clarify the validity of the letters patent.

In clause 5, at the bottom of page 2, there is a slight amendment in defining the persons by adding the words "being 21 years of age or over and having power under law to contract". This is necessary because in the province of Quebec the status of the married woman is far from being well defined. I have taken the advice of specialists at civil law in respect of this. It is rather difficult to determine whether under Quebec law a married woman can or cannot be an applicant for incorporation. The question is: is that an act that she can perform alone or only with the consent of the husband? There is a question mark there.

In order to avoid any such confusion it was deemed advisable to bring in this slight amendment, especially nowadays when so many married women work in law firms. Everyone knows that very often the applicants are employees of a law firm and many of them are married women. If this woman has to obtain the consent of her husband, it may cause some inconvenience. Therefore, the intention is to make it very clear who can be an applicant for incorporation.

Mr. LAMBERT: In the other provinces a minor has the power to contract. It is true that this is something he may repudiate on reaching the age of 21 if it is an improvident contract. You say the person must be 21 or over?

Mr. LESAGE: Yes.

Mr. LAMBERT: I am wondering why the definition is not limited merely to those persons having the power under law to contract. Now you definitely are excluding any person under 21, whereas you did not have this before.

Mr. LESAGE: Yes.

Mr. LAMBERT: You did not have it before?

Mr. LESAGE: I do not think so. Oh, yes, I think we did. I will go back to the act. Yes; the applicant must be of the full age of 21 years. That is in the 1934 statute.

Mr. LAMBERT: It is not in section 5, subsection (1) of the old act?

Mr. LESAGE: It is in section 7 of the old act. I think you gave the reason when you mentioned that a person under 21 years, if he feels aggrieved, can have the contract cancelled. That is the law in Quebec.

Mr. LAMBERT: It is in the common law, too.

Mr. LESAGE: And if so, the contract can be revoked if it is not deemed to have been to the advantage of the contractor before he is 21 years of age. I think it would be a real danger to permit persons under 21 to contract. We have not innovated there; we merely have taken it from section 7.

Mr. LAMBERT: What did the draft uniform act say in that regard, if anything?

Mr. LESAGE: It says the same thing.

Mr. BASFORD: You have added "having power under law to contract".

Mr. LESAGE: Yes.

Mr. BASFORD: That is the addition?

Mr. LESAGE: Yes.

Mr. BASFORD: You say that this is in order to make clear who can be part of the original charter, but then you say that under Quebec law it is not clear who has the power in the case of a married woman.

Mr. LESAGE: Because the power to contract in respect of a married woman is limited. It very well may be, with regard to a type of corporation or company, that a married woman would not be illegally contracting, but in other instances if it is of major importance, it may have this effect. As I mentioned, this is a grey area and this is to make sure that accidents do not occur and will warn the law firms about their employees.

Mr. LAMBERT: The enforcement of this requirement will be by way of a statutory declaration.

Mr. LESAGE: Of course.

Mr. LAMBERT: It will be on the person's own assertion under the declaration to the effect that the person is not under a disability.

Mr. LESAGE: Yes; it always has been like that, at least since 1934. We have to take what the applicants say under their statutory declaration.

Mr. LAMBERT: I am wondering what is the effect of such a statutory declaration when it may be a question of law whether or not a person has the power to contract, and so assert. If it is found by law that this power does not exist I do not think you could charge them for making a false declaration.

Mr. MOREAU: Might this not void the application?

(*Translation*)

Mr. CHRÉTIEN: Mr. Lesage, when you prepared that article, you say that in the province of Quebec you doubted that a married woman could legally

be a petitioner in obtaining letters patent. Was there a study made of jurisprudence in this matter? I do not think there were any contested cases.

Mr. LESAGE: No, there never were contested cases, but I discussed the matter on a few occasions with the Companies branch Director in Quebec City, Mr. Louis Gravel, and he also seemed uncertain in this regard. He consulted with other practising lawyers and I myself had the opportunity to consult such lawyers in the province of Quebec. There certainly exists a doubt. We cannot say more than that. Then, since there is doubt, we thought it advisable to point out the danger.

Mr. CHRÉTIEN: Thank you.

(*Text*)

Mr. BASFORD: This creates no problem for the Secretary of State.

Mr. LESAGE: None whatsoever. It is an indication only that there may be a danger there and there is an invitation to be more careful.

Mr. MOREAU: If you will excuse us, Mr. Chairman, we have another meeting to attend.

Mr. LESAGE: There is another amendment to section 5, subsection (3) which deletes unnecessary words which might be confusing. Subsection (3) of section 5 read, in part:

> —to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money—

Very few words have been deleted therefrom. Those which have been deleted were considered to be redundant. The words deleted are:

> —any note payable to the bearer thereof or—

We could not see the necessity to have a duplication in the wording. That is the reason for the redrafting of this subsection.

Mr. WAHN: Will that mean a company now may issue a promissory note payable to bearer by alleging, perhaps, that it was not intended that it should circulate as money? Previously there was a very specific prohibition against a company issuing any note payable to bearer. Now, the prohibition is against issuing a promissory note intended to be circulated as money. Presumably that would mean a company could issue a note payable to bearer, because it would have to be established that there was an intention that it should circulate as money.

Mr. LESAGE: I fail to see a major difference between a note to the bearer or a promissory note.

Mr. WAHN: This probably is an improvement, because certainly very often companies issue bonds which are payable to bearer.

Mr. LESAGE: Yes.

Mr. WAHN: There is very little difference between a bonding and a note; it is a difference, really, in terminology. I am inclined to think it is an improvement, but I believe it may make a substantive change in the act, because very often companies issue instruments which are payable to bearer. All the unregistered bonds issued by an incorporated company are payable to bearer. You say there is very little difference between a bond and a promissory note; it is just a difference in terminology. I think it is an improvement but does mark a substantive change in the legislation.

Mr. LESAGE: I think I can find something on that in the report of the subcommittee of the Senate. But, since you think it is an improvement perhaps I need not go into that at this time.

Mr. WAHN: I am quite happy with it.

Mr. LESAGE: Next is an amendment to section 4. This is a redrafting. It appears to be the first application of the new method of drafting legislation. We will find that this occurs in many other places in the bill. I think this subsection had to be redrafted to make it conform more with the general drafting principle now adopted by the government.

The most important change is the addition of subsection (5), which deals with the cost of the winding up of a company.

The ACTING CHAIRMAN: I am interested in knowing that the costs should be borne by the directors rather than the shareholders.

Mr. LESAGE: Yes, because the shareholders are not responsible for the administration of the company. In my opinion, the administration of a company is the responsibility of the directors and they, being the responsible persons, would have to take the responsibility if they infringed in any way on the prohibitions in the three subparagraphs, (*a*), (*b*), or (*c*). It leaves to the court the authority to determine whether the costs shall be borne by one or the other.

Clause 6 is of major importance. It had been found advisable to follow as closely as possible Ontario and the draft uniform act in the preparation of petitions for the issue of letters patent. In the old system we had a petition, to which was attached a memorandum of agreement. During the past 10 years Ontario has combined the important elements in the memorandum of agreement, which is a subscription for shares by the applicants, and has inserted that in the application itself. This was studied by the drafters of the draft uniform act, and the same pattern has been adopted by the drafters of that act. So far as the department was concerned, we were only too pleased to follow this modern practice, which does away with a lot of unnecessary papers and practices.

Mr. LAMBERT: Then, this brings it a little closer to the practice followed in those provinces which use the memorandum of association?

Mr. LESAGE: Yes, much closer. We would have only one document. Would you like me to go into the details?

Mr. LAMBERT: What is the purpose of having the place of residence and not the business address? I am referring to (2) (*a*):

> The name, the place of residence and the calling of each of the applicants.

What is the reason for using the place of residence rather than their business address?

Mr. LESAGE: It is always easier to trace persons by their place of residence. If I were in busines I could change my busineess address each and every morning, if I so desired. I could hire the services of a public stenographer, who could give her business address as the address of my office. I think it would make it too difficult to trace.

The ACTING CHAIRMAN: Is that for the purpose of making service?

Mr. LESAGE: To a certain extent, yes, because the applicants become the first directors of the company, and they remain as directors of the company until the company is organized. This may take up to three years, and if anyone wants to sue the directors of a company which has not filed its first annual summary then the applicants are deemed to be the directors of that company. Because of a delay of three years I think it is important that those persons could be reached. Later on we will note that section 125 has some reference to this.

We had the names in full in the act, and, as a matter of practice, most people would give their name as, for example, John S. Smith. In the previous act there was this obligation of giving the name in full, and the solicitors

in the department had to write or phone the solicitor and ask, for instance, what the letter "S" stood for. This gentleman might never use the initial and might never be known as John Samuel Smith but, rather, just John Smith. I was told that the former president of the United States, Mr. Harry S. Truman, was asked what the letter "S" stood for in his name, and his reply was that it did not stand for anything, that he put it there only for appearance. We have had similar replies from other people. In our opinion, the usual name by which the person goes would be sufficient.

To proceed a little further in clause 6, there is a slight change in the capital structure of the company. Subparagraph (g) states:

> where the shares of a class are to be without par value, the maximum consideration for which each share or the maximum aggregate consideration for which all shares of the class may be issued.

As is noted in the Manitoba act, it appears they had the same concern as we did and, as a matter of fact, they also put in a maximum. There was no direct connection or discussion between the two jurisdictions; it just happened that we experienced the same difficulty.

The CHAIRMAN (*Mr. Pennell*): Gentlemen, I apologize for being late. I am a victim of the weather. This is the second time this has happened to me in the last two weeks. I flew out on Wednesday evening and I was going to return by air on Thursday evening. But, the airport at Toronto was closed down yesterday afternoon; it was still closed this morning, and the train from Toronto arrived two and a half hours late. That is my explanation, gentlemen, and I hope you will be good enough to accept it.

Mr. LAMBERT: Mr. Chairman, the moral may be to remain in Ottawa when the house is in session.

The CHAIRMAN: Would you continue, Mr. Lesage.

Mr. LESAGE: Another slight amendment will be seen in subsections (3) and (4), which makes a difference between the objects and the powers of a company. Of course, we all know it is very difficult to draw a line between the objects and the powers of a company. But, the intent is to endeavour to make the application more severe in so far as the powers granted to a company are concerned. The first attempt to make that distinction can be traced back to somewhere between 1927 and 1934, when there was an amendment to bring section 14 which avoided the necessity of repeating the long list of powers granted to all companies, and this is our present section 14, which remains unchanged. Since the department has received many applications which repeated unnecessarily the provisions of section 14 we felt by the clarification in section 7 of the act solicitors would note more clearly the importance of section 14 and not repeat themselves unnecessarily. But, of course, when administering the Companies Act and when preparing the draft letters patent from a petition we realize it is a very very difficult problem which cannot always be solved, and that we cannot make any drastic changes and say: "No. You cannot have that in your letters patent because this is a power; this is not an object." Of course, we have to use a lot of discretion in these cases. We are rather inclined to be lenient, especially with regard to powers, on an application coming from a province where they have the other system of incorporation by way of deposits of a memorandum of agreement. The major difference between both systems is that a company incorporated by letters patent has all the powers of a natural person while a company incorporated under the memorandum of agreement system has the powers which are vested by law or in its letters patent, and the ultra vires theory applies differently in both instances. Therefore, we put it in the act, as we think it

should be, but left the door open for a very smooth interpretation because it cannot be otherwise. We cannot administer this particular legislation without taking into consideration the real difficulty of defining powers as distinct from to the objects of a company.

Mr. WAHN: I believe there has been some uncertainty in the case of letters patent in the effect if a company should violate a specific statutory prohibition. Does this revision clarify to any extent the problem for us? In other words, does it make it clear that if a company should violate a specific statutory prohibition that the result simply is that it makes itself liable to be wound up? Or does this uncertainty whether the act itself is valid or invalid still persist?

Mr. LESAGE: So far as I can see, Mr. Wahn, the general rules of interpretation of the Companies Act are not the general rules of statutory interpretation.

As I said in my opening remarks, this is rather a codification of common law and, therefore, the only real ground anyone could have for saying that a company has exceeded its power is when it is recited in the letters patent that this company shall not be authorized to exercise the powers mentioned in certain paragraphs of section 14. If it is not excluded by the letters patent it would be pretty difficult to say that a company has acted ultra vires, and nullity would be different than it would in the case of those corporations incorporated by memoranda of agreement because there would be a nullity de plano under a statutory corporation. But, under the letters patent I think this nullity would have to be proven in the courts; it is not what we call a presumption juris et de jure. It is merely something which could be attacked in the courts.

Mr. WAHN: Under clause 5 it states that you cannot incorporate a company which is authorized to carry on the business of insurance. Suppose one of those companies quite improperly started to issue insurance contracts. Would these insurance contracts be void under this new revision or would they be enforceable by the insured and the penalty simply be that this company which acted improperly would have rendered itself liable to be wound up?

Mr. LESAGE: It would render itself liable to be wound up.

Mr. WAHN: Would the insurance contracts be void?

Mr. LESAGE: I do not think so. I think they would be valid if they are not invalidated by any statute. But, under the Companies Act that insurance contract still would be valid. An aggravated person could easily ask for the annulment of that contract. It is possible that it is not void but voidable.

Mr. WAHN: Is there anything in these provisions which specifically state that?

Mr. LESAGE: No.

Mr. WAHN: Then would there not still be some doubt?

Mr. LESAGE: Of course, there will always be doubt.

Mr. WAHN: Could that doubt not be removed? Would it not be desirable to have in this revision a specific statutory statement that in the event a company exceeds its objects or in the event that it violates certain of these statutory prohibitions that the contracts or acts are not null and void. I understand that the penalty is that the company renders itself liable to be wound up, and that is the only penalty.

Mr. LESAGE: What you say is exactly the law as is.

Mr. LAMBERT: And there are no changes to be made?

Mr. LESAGE: That is exactly the law as is; the company is liable to be wound up. As you know, it has to come under the Winding-Up Act and it has to go before a judge of the supreme courts, or, in the case of the province

of Quebec, the superior court. All those contracts would have to be studied. But, I think those contracts are voidable but not void.

Mr. WAHN: I was under the impression that there is some considerable doubt now as to the status of contracts entered into by a company which does so in violation of a specific statutory prohibition. I do know that certain people take the position that the doctrine of ultra vires may still apply where the company violates a statutory prohibition or a specific prohibition is charged.

Mr. LESAGE: I would agree with that interpretation if it were not for subsection (4) of section 5, which provides for the winding up of a company. If this part of section 5 provides a mechanism to remedy the situation, and indicates the acts which were performed by the company then this would not be void but voidable. If there was no sanction then I would entertain a different view. I would say if there is no sanction then these prohibitions in the previous subsections of section 5 may have that meaning. But, since there is a statutory sanction of possible winding up then it indicates that the general law applies, that the company carries on its authority as a person, and the acts performed by the company are valid until they are declared to be void.

Mr. WAHN: If that is the state of the law I certainly would be quite happy. But, if there is any doubt about it—and I always understood there was some doubt—then I would think that this would be an ideal opportunity to remove any such doubt. My only thought is that perhaps you should have an opinion from the Department of Justice whether or not there is any such doubt and, if there is not, then we could be quite happy with the revision. But, as I said, if there is any doubt this is the time we should remove it because I think it should be removed. In the case of a company which exceeds its objects, for each action in contravention of prohibition contained in the charter or in the statute that involves a contract it should be quite clear that that contract is valid and enforceable against that company, and that the doctrine of ultra vires does not apply. If that is clear now then I am satisfied, but if it is not I think it should be cleared up. I know in the past I have had occasions when doubts have been raised in my mind on this particular point. Perhaps I misread the law but there was a real doubt in my own mind.

Mr. BASFORD: Mr. Chairman, I would go along with Mr. Wahn and say that this never has been quite as clear as Mr. Lesage makes it out to be. I have had doubts too.

Mr. LESAGE: Mr. Chairman, my doubts or worries are not so great because of section 14. If you look at the wording of section 14 of the act you will note at the end, subparagraph (1) (*bb*):

> To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

This is very broad. At this point I might mention the business of loan companies and all those companies whose main business is to lend money on mortgages or other things. This is a very difficult point because any company has the power to lend money under (*k*) of section 14 but it has not the power to carry on the business of a loan company, and protection against those recitals of insurance companies, trust companies and loan companies which appear in section 5, as you mentioned, or telephone and telegraph companies, is given in particular legislation covering those fields. As you know, the department of insurance administer the Trust Companies Act, the Loan Companies Act as well as the Insurance Companies Act. For these reasons I think there are no other statutory grounds upon which to make a case where a company exceeds its powers or its objects. We would have to go to the letters patent; and, if we go to them I fail to see how we could make a general statement and try to define what is the common law. I think it is a matter of

interpretation in each and every instance. I really wonder if it would be wise to go into that field and to try to say this is not 'voidable' but definitely void.

Mr. LAMBERT: Mr. Chairman, I support Mr. Lesage's remarks. I think Mr. Wahn is going too far. I think it is a matter of public policy to say that actions may be voidable rather than void. When they are void there are consequential results which you may not be able to undo and, being void there is a definite, shall we say, lack of life or action right from the beginning. It is far better to go into court and get an action declared to be voidable because the court then can look at the consequential results and see what damages may have flowed as a result of that. On balance, and on a question of public policy, I think it is better to consider them as voidable rather than void.

Mr. LLOYD: I have observed the practice followed in Nova Scotia, which brings to mind what we are attempting to do here in respect of eliminating the memorandum of agreement. The practice was that attempts were made to qualify the articles of association in such a way as to modify the act through provisions in the articles which had particular application in the case of special resolutions. The act did define the special resolution and the significant thing was the requirement that it carry a three-quarters vote of the shareholders.

In the articles of association they did attempt to modify the provisions of the act; in fact, they did modify them, and the result was that many innocent people did try to follow the Companies Act and would say that X group of shareholders cannot do so and so because it requires a three-quarters vote. Then they would discover that the articles had attempted to modify this provision of the statute. Of course, this is a shocking thing to persons who are very careful about whether or not they are part of a 51 per cent group in the operation of a company. Was there a similar practice under the Canadian Companies Act?

Mr. LESAGE: This is one of the reasons that I prefer the letters patent system in Canada rather than the memorandum of agreement system. The memorandum of agreement system in principle may be a better system than that of letters patent, but it does not give to the public administration the same authority that we have under the letters patent system. Of course, if we receive an application which would ask for something contrary to the act—and that is the reason we would be studying the application—we immediately would refuse to grant the application. However, in the case of a memorandum of agreement my understanding is that the administration does not have the same authority.

Mr. BASFORD: Oh, yes.

Mr. LLOYD: I can recall in my mind very vividly—

Mr. LESAGE: I do not know what your experience is with the provincial administration.

The CHAIRMAN: May I respectfully suggest that Mr. Lloyd finish and then if someone else has questions to direct to the witness he may do so.

Mr. LLOYD: I might bring this down to reality for the benefit of those of us who are not barristers by stating that a very prominent firm of solicitors in the field of corporation work had established a standard set of articles. This standard set of articles contained a provision that clauses 22 to 42, or clauses such and such, of the Companies Act would not apply in effect in their wording of it. This had to do with the requirement in respect of special resolutions. It so happened that others accepted this standard set which issued from the corporation law office and everybody assumed they had the right to modify the provisions of the statute through the articles.

After many years of practice the firm which had originated the standard set of articles began to have some doubt about whether or not they had the power to modify the act itself under the memorandum of agreement combined

with the articles of association. I do not know whether or not the matter has been resolved.

Mr. LESAGE: I hope it will be resolved. However, perhaps the answer is not so easy. Of course, there will be an attempt to say that definitely this part of the articles is not legal. There are some instances where the limitations imposed by the act may be changed by letters patent and where the qualifications for some purposes may be changed and it will be legal. Therefore, without seeing the exact text, I would not venture to say whether it is legal or illegal. It is possible that this may be in the grey field.

Mr. BASFORD: I have a question in respect of a different matter. I have not had an opportunity to review the evidence of the Senate committee on this matter, but I am wondering whether they went into a discussion of par value and non par value shares, and the elimination of one class or another, as suggested by some writers.

Mr. LESAGE: No. It was considered that a company could have as many classes of shares as they wished. It was never considered that there should be a limitation on the classes of shares. The basic principle is you must have a class of common shares and the other classes are preferred or deferred.

Mr. BASFORD: Some writers have suggested we could do away with the distinction between shares of par value and shares without par value. The Senate committee never went into that?

Mr. LESAGE: I do not think so. Those persons are advocating that the par value system is unrealistic. This was not considered. In the actual legislation in Canada I do not think it would be wise in any way to innovate in that field. This is something which is far from being acceptable to everyone. I know of these views. Later, when we come to mutual fund companies, you will see that some aspect of what you mention is being introduced in our law.

I would say that before we go into specific legislation we must have had experience before it can be adopted, and we cannot go into statutory law to intervene in an effort to settle something which still is very controversial. However, I do know exactly what it is.

Mr. BASFORD: You want us to be typically Canadian and not innovate.

The CHAIRMAN: Do you think it would speed up things if it were possible, between now and our next meeting, for Mr. Lesage to prepare a memorandum describing each clause? The reason I bring this up is that this is likely to be a long haul and we are anticipating that the session may end.

Mr. LAMBERT: Rather than have Mr. Lesage give an explanation in respect of each clause, I would suggest that as each clause is being discussed you ask whether there are any questions, and if not we will pass on. I think this would help. Every time Mr. Lesage furnishes an explanation it opens up some questioning.

Mr. LLOYD: At least when we have a lot of explanation it is in the records of the proceedings for anybody who does not happen to be present.

The CHAIRMAN: We might follow the suggestion of Mr. Lloyd, and Mr. Lesage thinks it will meet his position too. We will proceed on that footing.

Mr. LESAGE: I will carry on without entering into too many details.

Clause 7 contains a consequential amendment to the system of deletion of the memorandum of agreement.

Clause 8 is an amendment of a minor nature concerning corrections. This has nothing to do with principles.

Clause 10 concerns section 12 of the act which is an important section. Although there is a slight redrafting of section 12 (1), there is no matter of principle involved therein. We discussed the problem of subsection (12),

on page 8, when we were on section 5. Section 12A is the one in respect of which I would like to say a few words; it has to do with mutual funds. As you know, the mutual fund companies made their first appearance in 1932 and they were almost unknown when the act was revised in 1934.

The system of mutual funds has some particularities which were not covered by the act. That is to say, shares can be surrendered by the shareholders to the company. The purpose of the addition, 12A, is to give a definition of mutual funds and to indicate the authority which can be granted in letters patent or supplementary letters patent to create shares which can be redeemed or purchased for cancellation by the company upon the surrender of the shares by the shareholder. This is of daily application. The only purpose in this amendment is to confirm what is being done.

When the bill was before the Senate a new definition in section 12 (1) (*a*) was given and afterwards the association of mutual fund companies came to us and said that this definition as prepared is a little too narrow and does not cover all the implications so far as the mutual fund companies are concerned. Therefore, with the close co-operation of the officials of the Mutual Fund Association and with the help of the Department of Justice a new definition has been prepared. Everyone appears to be happy about this amendment. I expect, Mr. Chairman, that this will have to be submitted at the next meeting.

Mr. LAMBERT: Do you have it in mimeograph form so that it could be distributed to the members of the committee?

Mr. LESAGE: I have one or two carbon copies.

The CHAIRMAN: We might have copies of this amendment distributed to the members before we meet next Tuesday.

Mr. LESAGE: This is merely a broadening of the definition. I am convinced that everyone is happy about this and that there will not be difficulty, because in this case as in many others we have been very careful to contact the interested parties.

Mr. WAHN: We are moving along so quickly under your guidance, Mr. Chairman, that I had not realized we had passed by clause 10.

The CHAIRMAN: I think sometimes we get the sections in the bill and the clauses intermixed. I appreciate your difficulty.

Mr. WAHN: May I ask what is the purpose of the change in clause 10?

Mr. LESAGE: Do you mean (1*a*)?

Mr. WAHN: New section 12. This seems to provide that a company now may issue preferred shares which can be redeemed out of capital.

Mr. LESAGE: Yes.

Mr. WAHN: I believe the existing practice is that the department takes the position you can redeem preferred shares out of accumulated income only if you go through the rather detailed procedure set out for the reduction of capital in respect of the protection of creditors' rights.

Mr. LESAGE: Yes.

Mr. WAHN: This represents a substantive change in the act.

Mr. LESAGE: That is one of the most important changes in the bill. I was going to take this up in respect of section 49, but I think you are right, that it should be taken up immediately in respect of section 12.

The Ontario act provides that any preferred shares can be redeemed out of capital. I think it was the general opinion that Ontario had gone a little too far in that field. The new legislation of Manitoba is more restrictive. Perhaps to a certain extent we are a little more restrictive in that we say a class of preferred shares may be created with the specification that it can be made

redeemable out of capital. However, the difference between the Ontario legislation and the legislation proposed by this bill is that it will have to be indicated in the letters patent or supplementary letters patent that this class of shares may be redeemed out of capital if it does not render a company insolvent, and so on.

It was suggested that our legislation in the 1934 act was outdated and unrealistic. When this was being worked out the intention was to permit the redemption of preferred shares out of capital, but only if the letters patent or supplementary letters patent so permitted, so that anyone would know whether or not a company has this authority to redeem out of capital. The public will know in advance the number of issued shares which are subject to redemption out of capital, and knowing the conditions of such redemption the public will be protected fully against the possible miscalculations by a board of directors in redeeming preferred shares at large out of capital. Instead of saying "at large", we say "if permitted by letters patent" and therefore no one will be taken by surprise.

Mr. WAHN: From what Mr. Lesage has stated I gather that it is considered important the public should realize at least that this power exists.

Mr. LESAGE: Yes.

Mr. WAHN: I think there is good reason for this. For example, there might be $1 million worth of free assets, or assets available for creditors generally, but there might be redeemable preferred shares to the extent of $999,000, and if the company redeemed those shares it would not render itself insolvent but would cut down the assets available to creditors if anything should go wrong.

May I ask whether there is any provision among these amendments requiring a public company, at any rate, to indicate on its published financial statement, and specifically its balance sheet, that it does not have this power in its letters patent, or supplementary letters patent, because although the documents are a public record, they certainly are investigated very rarely. It would seem to be a simple procedure to request that public companies indicate on their financial statement that they have this power.

Mr. LESAGE: There is no specific requirement in the financial statement provisions in this bill.

Mr. WAHN: Should there be?

Mr. LESAGE: I wonder, because there is the obligation to print, to attach, or to make available a copy of the conditions on each share certificate.

Mr. WAHN: As a practical matter an investor will look at the published financial statement but he will not read very closely the fine print on the back of a share certificate, nor will he examine the letters patent. If the principle is important, this would seem to be a convenient way to provide this service to the investor.

Mr. LESAGE: Yes, but the way these preferred shares are defined in the letters patent or the supplementary letters patent, I think it will be necessary for the auditor of the company when preparing the financial statement to indicate the type of shares—that is, whether they can be redeemable out of capital or only out of profits. The company will have to file with the department a notice of redemption and in that notice must indicate whether redemption is out of capital or out of profits.

So, having defined the obligation in the notice, I think as a consequence it has to be reflected in the balance sheet. If the redemption is out of profits, a capital surplus has to be created; if redemption is out of capital, our new section 49 (3) says that the shares are to be cancelled. If you have shares cancelled, the legal reason must appear on the balance sheet. If they have been

redeemed out of net profits, the shares are not cancelled and a capital surplus is created. I think it will have to be audited separately on a new balance sheet if you want to give a full explanation, as is required, of the capital structure of the company. I think it flows by itself.

Mr. BASFORD: I think Mr. Wahn should think about this between now and the next meeting. I would move that we adjourn.

Mr. LAMBERT: On Tuesday initially we will be dealing with another matter which we hope will not take unduly long. Will consideration be given to sitting while the house is sitting?

The CHAIRMAN: Before we close our meeting on Tuesday I would suggest that it may be necessary to entertain such a motion, because as I say the time is getting very short now.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964-65

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 16

TUESDAY, MARCH 2, 1965

Respecting

Bill S-22, An Act to amend the Companies Act.

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, 1965

21613—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken
Armstrong
Asselin (*Notre-Dame-de-Grâce*)
Basford
Bell
Blouin
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Habel
Hales
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Kindt
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Lambert
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Mackasey
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Moreau
Mullally
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Skoreyko
Tardif
Thomas
Vincent
Wahn
Watson (*Châteauguay-Huntingdon-Laprairie*)
Woolliams—50.

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, March 2, 1965.
(21)

The Standing Committee on Banking and Commerce met at 9.10 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Gelber, Gray, Greene, Habel, Kindt, Klein, Lambert, Lloyd, Mackasey, McCutcheon, McNulty, More, Moreau, Mullally, Nowlan, Pennell, Scott, Watson (*Châteauguay-Huntingdon-Laprairie*) (22).

In attendance: Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Committee first dealt with a private bill in respect of which verbatim evidence was not recorded.

The Committee resumed consideration of Bill S-22, An Act to amend the Companies Act.

On motion of Mr. Moreau, seconded by Mr. Basford,

Resolved,—That the Committee cause to be printed 750 copies in English and 300 copies in French of the Minutes of Proceedings and Evidence relating to Bill S-22.

The Chairman stated he had received a letter from J. Peter Williamson, Associate Professor of Law, University of Toronto, making some suggestions for amendments to Bill S-22. Mr. Lesage was of the opinion that the proposed amendments which he had filed with the Committee at the last meeting would meet the objections of Professor Williamson, and the Clerk was therefore directed to send him a copy of the proposed amendments.

The Clerk was further directed to have Professor Williamson's comments and suggestions mimeographed for distribution to members of the Committee.

Mr. Lesage explained Clauses 11 to 33 of the Bill, and was questioned.

On motion of Mr. Moreau, seconded by Mr. Chrétien,

Resolved,—That the Committee continue study of this Bill on Wednesday, March 3, 1965, at 3:30 p.m. or after Orders of the Day.

At 11.00 a.m., the Committee adjourned until Wednesday March 3, 1965, at 3:30 p.m.

Dorothy F. Ballantine,
Clerk of the Committee.

21613—1½

EVIDENCE

TUESDAY, March 2, 1965

Note—The evidence, adduced in French and translated into English, printed in this issue, was recorded by an electronic apparatus, pursuant to a recommendation contained in the Seventh Report of the Special Committee on Procedure and Organization, presented and concurred in, on May 20, 1964.

The CHAIRMAN: Gentlemen, before we proceed with the clause by clause study and explanation of Bill No. S-22 may I say that earlier we passed a motion which called for the printing of the evidence on each bill to be dealt with separately. We did not have a blanket motion at that time so I will have to ask for a motion at this time for the printing of the evidence on this particular bill.

It has been suggested that we have 750 copies printed in English and 350 in French. But, I am in the hands of the members of the committee and will accept a motion at this time.

Mr. MOREAU: Mr. Chairman, I move that we have printed 750 copies in English and 350 copies in French.

Mr. BASFORD: I second the motion.

Motion agreed to.

The CHAIRMAN: I have a further matter to bring to your attention at this time. I have a letter from J. P. Williamson, Associate Professor of Law at the Faculty of Law, University of Toronto.

This letter, which is dated February 26, 1965, is addressed to myself, and reads as follows:

> I have spent some time studying the provisions of Bill S-22, which has been referred to your committee, and I enclose an analysis and some suggestions as to some of the sections of the bill. Your committee may find some of the observations useful. I would like to offer comments on other sections but have restricted myself so as to place the commentary in your hands quickly.
>
> If it would be of any help to the committee I would be willing to appear before it, if an appearance could be arranged so as not to conflict with my classes.

A copy of this letter was sent to Mr. Lesage. I am having his commentary mimeographed so that a copy can be put in the hands of every member of the committee.

Is it your wish that we defer any action on this matter to the steering committee or do you feel that we should discuss it at this time?

Mr. MOREAU: Mr. Chairman, that is rather a difficult matter to decide. We have no idea how substantive the commentary is. We do not know the extent of the suggestions or the changes which are proposed. I think the decision whether or not we should hear Mr. Williamson would depend on the nature of the amendments.

The CHAIRMAN: Perhaps we should hear from Mr. Lesage at this time. He is conversant with the proposals put by Professor Williamson. Mr. Lesage would know how extensive these proposals are and to what extent they are dealt with in the bill.

Mr. LOUIS LESAGE, Q.C. (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): Mr. Chairman, this letter was put on my desk at 8:30 this morning and I had a quick glance at it at that time. This letter appears very sound, if we consider the original section 12A as proposed in the bill but, at the last meeting I indicated I had a copy of a proposed amendment to that section and, in my opinion, if Mr. Williamson had had a copy of that amendment in his hands before he wrote the letter I am sure he would have changed his views.

In substance, Mr. Williamson says that the section, as proposed in the bill, is far too restrictive. Mr. Williamson is not the only one to have mentioned that. We have received the same comment from the Metropolitan Toronto Board of Trade and from the Association of Mutual Fund Companies. As a matter of fact, we have discussed with officials of mutual fund companies an entirely new section. The re-draft was prepared by Justice and verified by interested people in the field of mutual funds. They have declared themselves entirely satisfied with the amendment we are about to propose.

I do not think it would be fair at this time to criticize Mr. Williamson or to make any comments on the letter he wrote because it does not have reference to the bill as we have amended it.

I think at least we should give Mr. Williamson an opportunity to read the amendment we are proposing because, like Mr. Williamson, no one was happy about it.

Mr. MOREAU: Mr. Lesage, do you feel the proposed amendment to the bill meets Mr. Williamson's objection?

Mr. LESAGE: I would think so. As I told you a moment ago, I received this letter at only 8:30 this morning. I have read it a second time since I have been waiting to give evidence. Mr. Williamson's approach is to make a comparison with some of the United States statutes, as well as statutes from other jurisdictions. The danger in making comparisons with other statutes is that a statute must be considered as a whole. A section might appear to be very appealing at first reading, but you may find that it does not fit into the Companies Act. We have amended it by greatly widening the definition of mutual fund shares and mutual fund companies so that it now will embrace all the possibilities. I think this will meet the basic criticism of Mr. Williamson. If he had been the only one, of course, I could not make the same comments. But, Mr. Williamson is the third one who has raised this matter. We in the department agreed immediately with the views of the Metropolitan Toronto Board of Trade. We have worked with persons and associations who are very interested in mutual fund companies. This is the reason we are offering, for your consideration, an entirely new section. However, I do not think that many of Mr. Williamson's comments would have been made if he had had an opportunity of considering this amendment.

Mr. SCOTT: Does his letter refer only to section 12?

Mr. LESAGE: Yes.

The CHAIRMAN: May I intervene at this point and state that we are having it mimeographed so that every member will have an opportunity of looking at it between now and the next meeting. Mr. Williamson has made a painstaking investigation and I think his letter deserves consideration. I will read one line from his letter: "I believe section 12A, as proposed, can be much improved on." Mr. Williamson then proceeds to quote authorities and set out his views.

Mr. SCOTT: Mr. Chairman, in the interim, would there be any value in sending a copy of the proposed amendment to Mr. Williamson? It might be that the proposed amendment would meet his objection. This procedure might save him a trip.

The CHAIRMAN: Mr. Scott, that is a very good suggestion. If Mr. Williamson is still interested in coming, after having seen the new amendment, that would be fine. But, perhaps, as you have suggested, after seeing the proposed amendment, he may decide that it is not necessary to come.

Would that procedure be agreeable to the members of the committee?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: We will now revert to Bill No. S-22. I believe we were on page 10 when we adjourned.

Mr. Lesage, have you completed all your comments or are there any further observations you wish to make at this time?

Mr. LESAGE: Mr. Chairman, when we adjourned we were discussing mutual funds. We were dealing with section 12A. This morning's discussion will be only a continuation of our last meeting.

The CHAIRMAN: Then you are commencing at page 10.

Mr. LESAGE: Yes, page 10, clause 13.

Mr. BASFORD: Mr. Chairman, we only got as far as clause 12A during our last meeting and I take it that at the present time we will be dealing with the proposed amendment to Bill No. S-22.

The expression "mutual fund shares" was used in both sections. I question the wisdom of using the word "share" for something which usually carries with it no voting rights and no rights to express opinion on management, as well as the usual things that go with the word "share". As I said, I question the wisdom of using the word "share" in the Companies Act.

Mr. LESAGE: I have had some experience with people in mutual fund share companies and, as you say, these are not shares within the strict meaning of the Companies Act or corporate law. But, these have so many features of a share that the closest term we can use is the word "share". As you indicate, they have another very important feature, somewhat in the nature of a trust ticket. They have both elements.

You also made reference to voting rights. In some instances there are almost no voting rights, but in most mutual fund companies the mutual fund shares carry a voting right; but, I understand, as is the case in many public companies, they are not exercised by all the shareholders because there are a great number of the small shareholders who do not appear to have sufficient interest to attend the meetings. These people may vote by proxy and leave the administration in the hands of those management companies who advise these mutual fund companies on administration. But, in order to change the word "share" we first would need to have a substitute, and even if we did come up with a substitute I wonder if it would be fair not to give these mutual fund shares a broader meaning than the one they have now. They have been known in Canada since 1932 as shares. They have been known in the markets as shares. Although I admit that the definition does not meet exactly with the normal definition of a share, I think it would be unfair to those companies and even to the people to take out the word "shares" from the term "mutual fund shares".

(*Translation*)

Mr. CÔTÉ (*Chicoutimi*): Mr. Chairman, when we speak in French of "mutual fund shares" we make a certain distinction. In general "mutual fund shares" are called participation units so as to distinguish them from company shares or various other shares. I do not see the expression "participation units" in the French text. What does Mr. Lesage think about it?

Mr. LESAGE: Well, the expression "participation unit" does not appear in the French text but in the English version there is "participating interest"

which is to be found in the bill as it was submitted and, I think, in subsection 3 of the amendment we intend to submit which indicates that the definition of a mutual fund share includes this factor of participation unit.

Like you, Mr. Côté, I recognize that it is very difficult to arrive at a definition that can meet all the factors, and in the amendment we have tried to keep the share factor and the factor of participation units. I think both should be kept. On reading the amendment I think it can be realized that in subsection 3 of section 12(a) that factor has been retained.

Mr. CÔTÉ (*Chicoutimi*): Thank you.

(*Text*)

The CHAIRMAN: Are there any further questions on clause 12(a) at this time?

Mr. BASFORD: What control is exercised over the operation of the mutual fund? I take it there is none under the Companies Act.

Mr. LESAGE: This is the same principle as that which you will see later when we come to the prospectus section for which we have proposed amendments in this bill.

The Companies Act was revised in 1934; and even before—I think in 1917—the prospectus sections were brought into the Canadian Companies Act for public companies, copying the 1908 Imperial Act.

To varying degrees, in all provinces there has developed a securities commission or an agency of a similar nature. Dealings in shares or securities is primarily a provincial affair. We are keeping the prospectus sections in our Companies Act, but we are exempting from those sections those companies which have to comply with provincial securities commissions. As you know, most of them will be in Montreal, Toronto and Winnipeg. The mutual fund companies cannot offer their mutual fund shares on the market without satisfying those securities commissions.

As you see, protection is not federal, and we think it should not be federal since the provinces have exercised their authority the protection of the public is complete within the provincial agencies. But in certain cases and in circumstances in which the government feels that those securities commissions do not offer to the public proper protection, the prospectuses provisions in the Companies Act remain, and the government may require any company or any group of companies to comply with the prospectuses sections as they are now in the Companies Act.

I would say that our decision not to entirely delete the prospectuses section was to provide a safety precaution; but mutual fund companies are public companies and they have to comply with the prospectuses sections or, if this bill is approved as drafted, they will have to satisfy the securities commissions.

Does that answer your question.

Mr. GREENE: I would like to ask a question along the same lines, Mr. Lesage. I am not quite sure whether such items as disclosure of the prospective purchases and sales in mutual funds should or could be within the purport of the Companies Act in this section. So far as I can determine, unless there is provincial legislation to this effect, there is no requirement federally that mutual funds shall disclose holdings or purchases and sales during the year to their shareholders. In this day of financial dealings, we get directors of many companies who are also directors of mutual funds, and surely it is in the interests of the shareholder in the mutual fund to see to it that there is no conflict between purchases and sales by the directors that are not in the interest of the shareholders.

Mutual funds are sold across Canada and bought by purchasers in good faith from one end of the country to the other. If we leave this matter purely to the provinces, it seems illogical that while we permit their incorporation we should say, "After you are incorporated you are in the hands of the provinces.

If you cannot get information or if there is insufficient disclosure or you are not permitted to know what your fund is doing with your money, then that is too bad; it is up to the provinces."

I wonder what are your views, and whether you think within the ambit of the Companies Act it should be mandatory that this kind of information be made available on a periodic basis to shareholders in mutual funds. Or do you think we would be out of our league if we were to proceed along those lines?

Mr. LESAGE: I think the answer to your query is in the act and in the bill. The provinces will require a prospectus. Although we have provided an exception in the bill for prospectuses, it will be a requirement that a copy of the document which has been filed with the provinces be filed with the Secretary of State. Then, if this document is not sufficient, the federal authority retains the power to require that company to give information which would be normally required under the prospectuses section. Even if they have to file only to obtain the approval of the provinces, the prospectuses will be filed in the department of the Secretary of State and the copy that will be filed in that department will have to contain the full financial statement and full disclosure of the funds operations. If it does not, then the department will require the extra prospectus just as though the exception did not exist. Those prospectuses are public by their nature; they are very widely open to the public and full disclosure of that information is permitted.

I think once you have seen the mechanism of the amendments we are proposing you will realize that we are not giving birth to the baby and then letting him cry alone. We will continue to supervise by way of requiring the filing of prospectuses.

Mr. GREENE: Is this on an annual basis?

Mr. LESAGE: In the case of mutual funds it has to be at least on an annual basis because of the nature of their operations.

Mr. GREENE: That prospectus will require to give details of purchases and sales during the year?

Mr. LESAGE: Of course.

Mr. MOREAU: Is this not also regulated to a considerable extent by the fact of the listing and the exchanges? In the provinces it is taken care of to a certain extent, perhaps to a greater extent.

Mr. LESAGE: I think so, but at the same time we keep a federal control.

Mr. GREENE: I think all of us have felt that it is ludicrous that a United States company doing business in Canada—and this applies to mutual funds as well as to ordinary companies—has to give far more detailed information to its United States shareholders than to its Canadian shareholders. That is my greatest concern. Most of those companies prepare two statements for their shareholders. They prepare one for their United States shareholders, and this contains much more detail of inside trading and benefits going to directors. By the United States S.E.C. law it is mandatory to give such information. However, these United States companies in Canada, even though they are doing business in Canada and have their main assets in Canada, are able to publish financial statements which give far less information for Canadian shareholders because we have not seen fit to protect our shareholders to the same degree as the United States.

I am wondering, within the purport of these amendments, whether you feel there is sufficient power and whether the situation will be remedied with regard to mutual funds. I am referring to the degree to which Canadian shareholders will be required to be given more information from their mutual fund

companies in connection with dealings during the year, inside operating, interlocking directorships, benefits going to directors, and so on. Is there sufficient power to ensure that more information is given in his regard than they presently obtain? Have we gone that far or do you feel we should go as far as the United States?

Mr. LESAGE: Companies which have to sell their shares or any part of their shares on the United States market have to comply with the S.E.C. regulations. Our amendment to the prospectus sections requires that if they file with the S.E.C. they will have to file a copy of what is filed with S.E.C. Therefore, Canadian shareholders will have the same protection as United States shareholders in that way. I admit that we may never have gone as far as the United States, but I wonder whether the entirely new provisions we are bringing in concerning financial statements will not to a great extent force more disclosure and give more information. When you come to the financial statement sections you will see that all the old material has disappeared and that completely new legislation is being brought in.

The CHAIRMAN: Are there any further questions?

Mr. BASFORD: What is the need for subsection (4)? Surely this is the very essence of a mutual fund share, that it does participate.

Mr. LESAGE: Of course. I think Mr. Côté asked that very question. It is to help with the definition of a participating interest. Let me take my text here. There, you see, I read subparagraph (4):

> There may be included in the conditions attached to mutual fund shares a condition providing for a participating interest in any fund administered by the company.

Some mutual funds which are in existence in Canada at this moment have only one class or one group of shares. The shares of administration and the shares which represent the participating interest are creating the same fund, I would say. By adding this subsection (4), it clarifies the definition of a share. Earlier, Mr. Basford, you worried about the definition of the word "share" and I told you that in the amendment we had brought in the element of a participating interest. It is in the very subsection (4) that we see the participating interest which is coming into that definition by way of subsection (4).

Mr. BASFORD: I think it should read "shall be included" rather than "may be included".

Mr. LESAGE: If a share is by its nature a participating interest, is there any need to indicate it separately? But if it is not, if you have a type of share that corresponds with the common law definition of a share on one hand and the other type, I think that (4) is necessary here to cover both cases and to clarify the definition of which we were not too happy earlier. If you do not have that participating interest notion well indicated I think there would be a possible misunderstanding. But the word "shall" is not necessary there. It may include—

Mr. BASFORD: I am not entirely satisfied but I will not pursue it further.

The CHAIRMAN: Is everyone else satisfied?

Some hon. MEMBERS: Yes.

The CHAIRMAN: Very well. We will turn to page 10 and come back to clause 13 later.

Mr. LESAGE: We have to deal with clause 12 first at the bottom of page 9. These are, I would say, almost drafting amendments to section 14 concerning the powers of the company and, unless some members have some precise questions, perhaps it need not be explained further than what we have said in the notes on the right hand page.

On clause 13—*"Holding Company" "subsidiary company" defined.*

The amendment is for the purpose of prohibiting the practice of a subsidiary company holding shares in its own holding company. This comes from the draft uniform companies act.

Mr. MOREAU: What would you say constitutes a subsidiary company? Are you sure you are not trying to prevent entirely the interlocking ownership of shares?

Mr. LESAGE: No.

Mr. MOREAU: Just what is your definition of "subsidiary"?

Mr. LESAGE: We have to refer to 121 (b), for the definitions.

Mr. MOREAU: We will be coming to that later?

Mr. LESAGE: Yes.

(*Translation*)

Mr. CÔTÉ (*Chicoutimi*): Mr. Chairman, I would like to revert here to section 13. In the French text the term "holding company" (in English) is used time and time again.

Mr. LESAGE: Yes.

Mr. CÔTÉ (*Chicoutimi*): We have the term *"société de gestion"*. I think it is a very satisfactory translation of the term "holding company" and I wonder why it could not be used here in the text. I am not an academician, of course, but I think the term *"société de gestion"* fully translates the meaning of "holding company".

Mr. LESAGE: I do not pretend to be an academician either, Mr. Côté. The main reason why the French term was not changed, and it is difficult to change them in an amending bill, is because the term does not always coincide with the one used in other sections that have not been amended. So the French text we have at the present time will have to be entirely redrafted when the statutes are revised, and you can rest assured that, particularly in the part dealing with financial statements, quite a number of French terms will have to be changed. But it cannot be done at the present time because the same terms would be defined in a different way in the same act. So we have to abide by what the gentleman concerned decided to use as a translation in 1934. Even since 1934 the French terms used for accounting have changed. We have a glossary of the modern French terms prepared by the Association of Chartered Accountants and, like yourself, they have asked us to use it in translating the bill, but for the reason I have just given you, it is better to wait a year or two until the statutes are entirely revised. You may rest assured that the department is following the matter closely.

Mr. CÔTÉ (*Chicoutimi*): Thank you, Mr. Lesage.

(*Text*)

Mr. LESAGE: Thereafter in clause 14 there is an amendment to section 17. The main amendment to section 17 forms part of a series of amendments in the changes of the capital structure of companies. Heretofore, the provisions of sections 48 to 58 of the Companies Act, which provide for an increase and decrease and other changes in the capital structure, were far too limited and there was a temptation by the solicitors in practice by all the companies, and even with the complaisance of the department, to make use of section 17 to cover some cases which were not covered by those previous sections, 48 and 49 particularly. But, you will see that we have opened section 48 to prevent misinterpretation or too large an interpretation of section 17. Therefore, we are closing slightly in section 17 and reopening in the right place, in sections 48 and 49. We have also provided that a public company can be converted into a private company.

The CHAIRMAN: Excuse me. Would you be kind enough to give us the page?

Mr. LESAGE: We are still on page 11, section 2. We are also providing for the reverse. The act as it stood was permitting merely a private company to be converted into a public company and we had no specific authority for the reverse although we were using the general authority of section 17 (1) to do so we thought it was perhaps too broad an interpretation and we have tried to correct this situation by amending subsection (2) of section 17.

On clause 15—*Change to be sanctioned.*

Mr. BASFORD: This is a very small drafting point, Mr. Lesage. Why, in subclause (1), do you speak of two thirds of the votes and in subclause (2) to three fourths of the votes?

Mr. LESAGE: I think if my memory is good, it is because of the other legislation, it is to conform with other legislation. I think if we go to the draft uniform companies act we will find there three fourths and in other jurisdictions we would find three fourths for that purpose. When we changed it from two thirds to three fourths there were no other reasons than to seek as much uniformity as we could with other jurisdictions.

Mr. BASFORD: Surely it would be easier for law students to have it two thirds all the way through.

Mr. LESAGE: Yes, if I understand the situation in Ontario, Ontario asked in that particular case for three fourths. It is better to have the section identical all across the country.

Mr. MOREAU: It is too easy for law students as it is. There are too many of them!

Mr. LESAGE: Clause 15 is a mere drafting amendment for the publication of the bylaws. Clause 16 is twofold. On page 12, section 22, it has the use of the word "limited" or the provision "Ltd." In the past we have received applications for change of name of companies for the mere reason that certain companies preferred to use only the letters "Ltd" instead of the word "Limited", and the reverse. We do not think that anyone could be misled if a company chooses to use either the word "Limited" or the abbreviated "Ltd" as the last word of the corporate name. This would be of great advantage to companies when designing their advertisements and so on and they still would be keeping within the law. In 1929 or 1930 the word "Limited" did not form part of the corporate name. But, in the revision you will see that the wording of the act is changed and the word "Limited" or the abbreviation "Ltd" shall be the last word of the name of each company. We felt this would be helpful to the companies.

The second important part of section 22 concerns the use of the French and English form of the company's name. This suggestion has come forward during the last five years and we are implementing only the general wish of interested parties across Canada. We are permitting the use of bilingual names so that the company can use its name either in its French or English form or, if it wishes to do so, in both.

Mr. MOREAU: But, the assignment of a French name still rests with the letters patent.

Mr. LESAGE: Yes. Of course, a company cannot translate its own name without asking for supplementary letters patent.

If you would permit me to go right to the very last clause of the bill, page 44, clause 51 vests a similar authority in the Secretary of State to permit the translation of corporate names of corporations or companies incorporated by special act of parliament so these companies will not have to go to parliament for only the translation of their names; these will be implemented in the department and given sufficient publicity in the *Canada Gazette.*

Clause 17 at page 13 refers to the surrender of charters. We are giving an opportunity here to some companies who never have operated or who ceased operation many years ago and still have a charter which they want to surrender, but they do not do it because there is a $50 fee as well as other fees. It is our feeling that we should help these companies to surrender their charters by simplifying the procedure, and we have dispensed with the fee. We feel this is in the best interest of the company as well as the general public of Canada.

Clause 18 provides for an amendment in respect of the requirements of printing the information or the text of the conditions attaching to preferred shares on the back of share certificates. In the past it has been almost impossible, even with two pairs of glasses and a magnifying glass, to read the printing, and in order to correct the situation companies will be permitted to attach a rider to the share certificate, giving all statements or notices that such a company has preference rights, conditions and restrictions attaching to a certain class of shares, and that the full text may be obtained without cost from the company itself. If the company fails to do this the department can always furnish that text.

Clause 19 refers to a very slight amendment on share warrants. Only public companies are authorized to issue share warrants. I have looked at the text of other provincial legislation and it also restricts the share warrants to public companies. This always has been the law because the definition of a private company is that it cannot offer shares to the public and the right to transfer its shares is restricted, whereas a share warrant is, by definition, a document which can be transferred to the bearer.

Mr. MOREAU: How can you stop trading on an if, as and when basis in the case of a company which is going public? Usually trading develops long before conversion is made; in other words there develops a street market for some of these and, I presume, we are not attempting to prevent that.

Mr. LESAGE: This is a matter of share warrants.

Mr. MOREAU: I am thinking of a case where perhaps certain rights become available, even if a company is going to go public, and so on; quite often a street market develops in respect of those shares, before the rights to them are available, and I am wondering if you have any way of coping with that.

Mr. LESAGE: It is the responsibility of the holder of the share to see that the share is registered in his name, and the share warrant is a mere exception. But, if the holder of a share warrant wants the shares registered in his name he has to ask the company and they are obliged to do it. I do not think anyone can complain about the fact that his share is not registered if he has not asked the company to register it. I do not think any rights would be lost in that respect.

The next is clause 20. You will recall when we were on clause 17 I said we were stating the conditions for alteration of the capital. In clause 20 we are providing for a new scheme, mainly under sub-sections (4) and (5), which would cover cases where unanimous consent of shareholders can be obtained. This is a daily application in cases of closely held companies. If it were not for those amendments, even with unanimous consent, these companies would have to go to the courts under section 126 for a compromise or arrangement, and when there is unanimous consent of all interested parties we feel that the department should be given the authority to sanction by supplementary letters patent a bylaw so unanimously approved. But, when there is not such a unanimous approval and if the case does not fall under one of the headings of section 48 then the provisions of section 126 apply and the company may ask for a confirmation of a compromise before a judge of the supreme court or the superior court, depending in which provincial jurisdiction you are.

We will now take up clause 22 near the top of page 16. We have a slight amendment to offer regarding the possibility of redemption of preferred shares out of capital. I am referring to line 4 where, pursuant to sub-section 1 of section 12 we will be more precise in our amendment to sub-section 1A of section 12. This is to cover the case of shares being redeemed out of capital. We have asked for the repeal of section 50.

Mr. SCOTT: In respect of section 21, why is it that when they are redeemed the capital of the company is decreased?

Mr. LESAGE: Well, because it is out of the capital. It is, by definition, a redemption out of capital, so automatically it follows if you redeem out of capital you are decreasing your capital.

Mr. SCOTT: When they reduce the capital do they have to do anything to satisfy you that that is not harmful to their creditors?

Mr. LESAGE: They have to file a notice under section 62 when the shares are taken out of capital. But, it is the responsibility of the company to indicate that the redemption out of capital is not made when the company is insolvent or, if it is, that such action would render it insolvent. There is no practical means for the department to verify whether or not the transaction is bona fide; it is up to the company to do that. And, the same legislation is used where the redemption out of capital is permitted. But, the difference between this legislation and other provincial legislation is that the feature of a share being redeemable out of capital has to be expressed clearly in the letters patent or supplementary letters patent. This does not concern the shares at large which can be redeemed out of capital; it refers to only those shares which are provided for in the letters patent or supplementary letters patent.

Mr. SCOTT: Is there any limitation in the act in respect of the granting of charters as to the ratio or percentage of shares that can be redeemed out of capital?

Mr. LESAGE: No, actually this was not permitted; it is an improvement which is being brought by this bill. Other jurisdictions have gone much farther than we are going and we are taking more precautions in limiting to a class or classes of shares that feature of redemption out of capital. But, in some other provinces you will note that redemptions out of capital are permitted, but none that I know of as yet on common shares; it is only on preferred. Even the draft act was going as far as permitting redemption out of common shares.

Mr. MOREAU: How would the redemption of common shares fit within the context of the Income Tax Act? In my opinion, there would be room for all sorts of abuse.

Mr. LESAGE: I would be at a loss to answer your question, but we are not contemplating the redemption of common shares.

The CHAIRMAN: Do I understand that this is the only act in Canada which will permit redemption of common shares out of capital?

Mr. LESAGE: Oh, no, we are not. No one has even ventured that far yet. In some foreign jurisdictions you have that situation but to date it has not existed in Canada.

The CHAIRMAN: That is what I thought.

Mr. LESAGE: Clause 22 repeals section 50, which seldom has been used because it was imposing the addition of the words, "and reduced" after the word "limited" in a corporate name, where the company was reducing its capital. I have been told that it was used once many, many decades ago, but the morning after another supplementary letters patent was issued to delete those words. So, this is a remnant of 19th century legislation and we are taking it out.

Clause 23 is merely a drafting amendment, and I do not see anything of substance there. Clause 24 is the same; we have the same principle of keeping the period of six months after the sanctioning of a by-law before the issuance of the supplementary letters patent. There is nothing new.

Clause 26 has the appearance of being more important but, in practice, it is not. It takes from the companies the right, by bylaw, to create from their common shares a class of preferred shares. I have been in the department for eleven years and have only noted one or two cases, although none in the last seven or eight years, where a company itself would create its preferred shares.

Section 59 so limited the possibilities of the conditions attaching to preferred shares that it was not responding to the normal needs of the present day and, therefore, this section being of no use we are now suggesting its deletion. We are giving the public better protection by having any change in the capital structure made by supplementary letters, with a notice published in the Canada Gazette; otherwise, a company could change part of its capital stock into preferred stock without giving notice to anyone except the Secretary of State and, therefore, no one would know about it.

Mr. MOREAU: Does any jurisdiction permit this?

Mr. LESAGE: It is still a remnant of old legislation. I think you will find that in the Province of Quebec it has not been deleted from its companies act. The Province of Quebec has not revised their legislation because all that material comes from imperial acts which were brought into Canada in 1869 and so on. At that time these sections were all-important. But, corporate law has stated otherwise and new legislation does not permit that. But the old companies can still keep them since we have not come before parliament in the last thirty years. Perhaps we are a little old fashioned.

Mr. MOREAU: You said that this has not occurred in the last six or seven years. Would this not coincide with changes in the Income Tax Act which puts certain restrictions on the recapture of capital?

Mr. LESAGE: Although the Income Tax Act is not a statute for corporate law it did have very deep influence on corporate law and the practices connected therewith.

In respect of clause 27 and section 61 at page 17, experts in the Department of Justice tried to clarify the text of section 61 of the Companies Act so that it could be read intelligently. We were all of the same view that it was almost impossible to read section 61. It took three or four readings to digest it. However, it now has been split into paragraphs and sub-paragraphs. We have taken very unnecessary parts from section 61 to clarify it. We hope it will be clearly understood in its present form.

Mr. MOREAU: I know the Senate spent a great deal of time on that particular section.

Mr. LESAGE: They did. In respect of section 61, heretofore only two conditions were accepted in cases of redemption or purchase for cancellation. The bringing in of subsection (3) of section 49, as we have seen earlier, permitting the reduction out of capital, relieves to a very large extent section 61, which certainly was too restrictive and too difficult to read. We hope to have achieved something by this amendment.

With regard to clause 28, section 62 is amended and section 62A is inserted. Section 62, provides for notice of redemption out of profits or out of capital and section 62A provides for the notice of surrender of charters of mutual fund companies.

There is a small amendment in clause 29 which permits the introduction into this legislation of a principle which was outlined by the courts of the

Province of Quebec, borrowing on the guarantee of future assets which, according to some old judgments are not permissible under the civil code. So, the amendment set forth in clause 29 provides for present or future borrowing. The other expression used is "currently owned or subsequently acquired". As a matter of fact, when we issue letters patent for companies with head offices in the Province of Quebec we add those words in our letters patent. We have provided for that in the act now. This is only to cover a situation which is peculiar to the one province.

Clause 31 covers the prospectus situation, which I explained earlier this morning. I think I have told you what the government's intent was in that respect.

Mr. MOREAU: This covers Mr. Greene's point, that the same information should be available to the shareholders.

Mr. LESAGE: Yes.

Mr. MOREAU: Clause 32 is a consequential amendment.

Mr. BASFORD: If I may revert to clause 31, what is the effect if they fail to file this prospectus with you?

Mr. LESAGE: If they fail then the offering to the public is null because we are keeping these prospectus sections. If you will note, all the sections are not removed by the exception which is provided for and the nullity of the offering to the public would be exactly the same. But, this has worried us very little since provincial jurisdictions are keeping a very close eye on it.

Mr. BASFORD: I would like you to comment on the theory put forth by many people that we should have a security exchange commission and that in many jurisdictions the provincial securities legislation is inadequate.

Mr. LESAGE: I wonder, Mr. Chairman, if I should come down to that?

Mr. MOREAU: Well, you have maintained the prospectus sections of the bill that cover at least those jurisdictions where securities and exchange commissions are not operative, for instance, in the Yukon and in the Northwest Territories, so there is some appreciation of this in the bill.

Mr. LESAGE: Yes.

Mr. BASFORD: How do you determine the meaning of the word where a company makes an offer to the public of those securities in any province? Surely if you advertise in the *Financial Post*, which is published in Toronto, this is read and subscribed to by people in New Brunswick who would purchase the shares.

Mr. LESAGE: It is a matter of civil law to determine where the contract takes place and I think it always takes place at the company's head office or at the transfer agent office of the company. If it is offered in Toronto I think the transaction is made through a broker in Toronto.

Mr. BASFORD: I disagree with this section in principle. I think the federal government should be exercising far more control than it is already instead of going away from it.

The CHAIRMAN: You will be allowed to formally register your dissent, Mr. Basford, when we start calling the clauses.

Mr. LESAGE: I can tell you, Mr. Basford, that in changing that legislation we are only getting out of the field in appearance. As a matter of fact, we are remaining in the field in requiring the filing of an identical document to the prospectus. This document will have to be filed with the department exactly the same, but instead of requiring it as a condition seven days after the offer is made, it is 10 days after the prospectus is approved by the other jurisdiction, but the filing requirement is still there. We are relying to a certain extent on the provincial jurisdiction. We are keeping our hands in it at the same time.

Mr. BASFORD: I think we should not only remain in the field; we should start closing the gate to the field.

Mr. GREENE: Do you not think there is a contradiction in the fact that certainly at the federal level we are apparently trying very hard to encourage participation in Canadian equities—I think the Minister of Finance has stressed this very strongly—while, at the same time, instead of making the game more open, more even, more fair, more understandable, to the average person purchasing stock, we have taken no steps in the revision of the Companies Act which is certainly necessary if we are going to work together with the Minister of Finance on the idea that there should be greater participation in Canadian equities by the average Canadian citizen. We have taken no steps to make the game fairer, more even and more palatable. Are we not working in two different directions?

Mr. LESAGE: No, we are not working in a different direction at all. We are not taking off anything. You say if the provincial requirements are going further than the federal one at the moment then you will not have to comply strictly to make a duplication of work and comply strictly with the provisions of the Companies Act. But if you are not, then we will ask you to comply at least with what we have in the Companies Act. We are not working in opposite directions as the Minister of Finance has indicated. Far from it. The effect which appears to be there is only an appearance, I say, of closing the door. As a matter of fact, it is opening the door wider. If it were to have the effect in each and every case of closing the door, then we would come into the picture and say in this respect that at least the federal standard that we have at the moment should obtain.

Mr. MOREAU: It seems to me there is a constitutional problem here in that unlike the United States, where they have a securities and exchange commission which prohibits the selling of shares between states without complying with the law, we cannot do that and if we were attempting to close the door, as I think Mr. Basford has suggested, we would simply drift away from the Companies Act into provincial charters. This would not prevent the very thing that we want to prevent in any case because they would simply follow a provincial charter and they would still be able to sell stock in other jurisdictions.

Mr. LESAGE: That is right.

Mr. GELBER: Mr. Moreau says we do not have the right to regulate securities on an interprovincial basis, that the Americans have. How do we know we have not the right? Have we tested it?

Mr. LESAGE: That is a matter on which I would prefer not to comment. It is not in the bill.

Mr. GELBER: I think it is very important.

Mr. LESAGE: Yes it is very important. Mr. Gelber, you are asking me a question on a matter of principle. The most I could give you is a personal opinion and I wonder, as a civil servant, if I could give a personal opinion on something which is not directly before this committee, unless I were to ask for protection for what I am going to say. I do not want to be put on the spot for expressing views which might be different from that of the cabinet.

Mr. GELBER: I am asking Mr. Lesage if it has ever been tested in the courts and if Mr. Lesage feels that he cannot answer, I do not think he should be pressed to, but I think perhaps we should have someone who is prepared to.

The CHAIRMAN: I think what Mr. Lesage says, is he understands your question but he is not speaking for the Department of Justice. He is not giving any policy. What is your question, Mr. Gelber?

Mr. GELBER: I would like to know whether the question of the right of the federal government to regulate the distribution and sale of securities between provinces has ever been tested in law?

The CHAIRMAN: Do you know if it has or has not?

Mr. LESAGE: I have never personally heard of a specific court case on this precise subject.

Mr. MOREAU: You do not care to comment either. Do you think there is a constitutional bar? Do you feel that under the B.N.A. Act—

The CHAIRMAN: I do not think he should be qualified to answer that question. He would be expressing a legal opinion, which would not be fair to the witness. I think we should follow through with Mr. Gelber.

Mr. GELBER: Now I sympathize with Mr. Basford's position in this matter, Mr. Chairman. I understand, Mr. Lesage, that under property and civil rights, the provinces have their authority to issue charters and regulate corporations. What gives us the right to have the Companies Act as a federal authority?

Mr. LESAGE: The origin of the federal authority can be found in the royal commissions appointed by the Governor General from time to time. The origin of the authority is vested in the person of the sovereign. This power can be and has been exercised in the past by our Governor General and in 1869 for the first time parliament enacted a Companies Act which was predicated, as I understand it, on this royal authority to issue charters or letters patent.

There is also the constitutional aspect of section 91 on trade and commerce which covers most of the cases of trade and commerce for the good of Canada and this covers, I would say, 95 per cent of the companies which are incorporating. In some other fields where there is a specific federal authority under the B.N.A. Act then the authority of the Governor General is being transferred down for administrative purposes to the Secretary of State under his seal of office. It is so bad that even in some provinces the authority to issue letters patent is still vested in the Lieutenent Governor. Take, for instance in Quebec, the letters patent under the Companies Act are still issued under the seal of the Lieutenant Governor and not under the seal of the provincial secretary. But for administrative purposes the federal authority has transferred this authority from the Governor General to the Secretary of State. I think that is, in a very few words and very simplified, the history of the authority of the federal government to issue letters patent and to incorporate companies.

Mr. GELBER: The Governor General can issue a charter for any purpose whatsoever. Is that correct?

Mr. LESAGE: No.

Mr. GELBER: What are the restrictions?

Mr. LESAGE: I think the restriction is well expressed in section 5 of the Companies Act:

> The Secretary of State may, by letters patent under his seal of office, grant a charter to any number of persons, not less than three, who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body corporate and politic, for any of the purposes or objects to which the legislative authority of the parliament of Canada extends, except the construction and working of railways within Canada or of telegraph or telephone lines within Canada—

I think I cannot put it in any better words.

Mr. GELBER: When people decide whether they want a provincial or federal charter they are limited then by the authority of the federal government, is that correct?

Mr. LESAGE: Pardon me, please, Mr. Gelber.

Mr. GELBER: I have a feeling that people who are deciding whether they want a provincial or federal charter, do not seem to be restricted when they apply by considerations of limitations of the authority of the federal government. They decide which is going to be more useful.

Mr. LESAGE: Yes.

Mr. GELBER: They apply for a federal charter if they think it will be more useful than a provincial charter. There does not seem to be any limitation in their considerations.

Mr. LESAGE: If the field was considered entirely and exclusively provincial we could not issue letters patent for that particular field. You may find some example of this in education. We would not have authority to issue letters patent to a group of persons who would like to carry on a company to dispense public education, I would say.

Let us take a clear-cut case on the primary level.

Mr. GELBER: Well, in normal commerce and business do you refuse to issue charters to people who want to carry on commercial enterprises in Canada because of lack of authority?

Mr. LESAGE: No. We refuse in specific cases because they are out of the jurisdiction of the department only. We do refuse in cases of loans, insurance, telephone and telegraph companies. We have no jurisdiction on pipe lines. We have no jurisdiction there because of other statutes, federal statutes; we definitely have no jurisdiction. We have, of course, in some letters patent, in a few instances, secondary powers which would be borderline cases; whether there is sufficient insurance elements in its objects to classify that company as an insurance company or a loan company.

Mr. GELBER: Now there are in existence in Canada many thousands and thousands of corporations and while in certain areas you would refuse to grant a charter by reason of jurisdiction, I assume that most of those charters could just as easily have been granted on a federal as on a provincial basis?

Mr. LESAGE: May I have some examples of that?

Mr. GELBER: People carrying on business in a commercial place could just as easily have had federal as provincial charters and I think most of the charters would relate to that type of enterprise.

Mr. LESAGE: I do not see any example at the moment where we would have refused incorporation.

Mr. GELBER: This is right and therefore, for all intents and purposes, most people could just as easily get a federal as a provincial charter.

Mr. LESAGE: Almost, but for some reasons it is more convenient to have a provincial charter. Take, for instance, where a company has to get a licence in mortmain for some construction companies it is more convenient to operate under a provincial charter; because some provinces make such a link between a mortmain and the granting of powers to companies that it is more convenient to ask for a provincial charter. You have other instances where more specific and adequate legislation is provided for mining companies. Mining companies operate almost by necessity within one province and those mining companies prefer to take advantage of provincial legislation on mines. That is the reason why we have so few mining companies incorporated under the federal jurisdiction.

Mr. GELBER: That answers my question. I just wanted to establish that the distinctions are not quite clear.

The CHAIRMAN: I apologize for interrupting, but a suggestion was put forth by Mr. Lambert at the last meeting that we sit during the sittings of the house. We still have a number of sections to cover yet and time is of the essence. I wonder if it would meet with the approval of the committee that we do sit while the house is sitting.

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Could I have a motion?

Mr. MOREAU: I so move.

Mr. CHRÉTIEN: I second the motion.

The CHAIRMAN: Do you wish to sit this afternoon? We could sit on a day when the house is not sitting. Mr. Lesage feels that we are going to move much more quickly in the latter part of the bill. We could try another day, probably tomorrow afternoon. We will sit tomorrow afternoon at 3.30 or after orders of the day, whichever is better.

Mr. BASFORD: I have a question. In section 76A page 18 line 33, where the words:

> 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...

Mr. LESAGE: It covers the cases where there would be an exemption in any case, but the application of this exemption does not override the general rule that the authority of the government will still be there to require a prospectus in any event. If they are exempted provincially they have not, as a general rule, to file unless we would, under our other authority, ask specifically. There are some cases where no one is interested and they are exempted by provincial authority. So, if they are exempt, the rule will be that they are exempted unless we come and ask for it. This is not putting the Companies Act as I feel you fear, entirely under the exceptions of other jurisdictions.

Mr. CHRÉTIEN: I have two or three questions in French.

(*Translation*)

You mentioned a while ago that charters were sometimes refused for jurisdictional purposes. Does that happen often?

Mr. LESAGE: It does happen but not very frequently.

Mr. CHRÉTIEN: On what basis do you determine federal or provincial jurisdiction?

Mr. LESAGE: On the basis of section 5, if the Act formally forbids it; the other, of course comes under the province. Then, in most cases where a doubt exists, applicants are required to submit an amended application and we tell them why we have doubts about such and such an item. We nearly always come to an understanding and the applicants realize that it would be better if they applied to the provincial authorities. But as to our categorically refusing applications, it happens extremely rarely.

Mr. CHRÉTIEN: Mr. Lesage, are you aware of a certain decision handed down by the courts, which, it would seem, cancelled or stated that the existence of companies was invalid for lack of jurisdiction.

Mr. LESAGE: No.

Mr. CHRÉTIEN: Thank you.

(*Text*)

Mr. BASFORD: I am sorry to be so long on this, but I do not see that the section corresponds with the explanatory notes.

Mr. LESAGE: That may well be.

Mr. BASFORD: The explanatory note is very detailed and comprehensive where it says the requirement of the act is only 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. It certainly does not specify in subsection (1) in very great detail what the provincial laws must require. It just says a prospectus. It does not say what the prospectus must contain.

Mr. LESAGE: No.

Mr. MOREAU: The security commissions in the provinces do.

Mr. LESAGE: We would have no intention or no jurisdiction to legislate on what the provinces should do or not do.

Mr. BASFORD: But if you are going to allow companies to be exempted under the federal law, if there are certain provincial requirements for the issuing and sale of stock, surely you can legislate the minimum requirements of those provincial laws which would entitle the company to exemptions.

Mr. LESAGE: I wonder if it is necessary.

Mr. BASFORD: Well, I was just asking.

Mr. LESAGE: I do not see any necessity for that because those laws are not foreign laws, they are provincial laws and even if you have a few foreign laws, these cases of non-filing would, if they would come to our attention, that a company has used this provincial authority not to file and to sell its securities to the public without filing, then if we have a complaint in the department we can very well look into that complaint and ask for a prospectus being filed in the department under our general provisions. I do not see any practical problem there.

Mr. MOREAU: In other words you are allowed to exclude or waive the provision of filing providing you are satisfied that they are within that jurisdiction? I think the provisions are at least that strict.

Mr. LESAGE: Yes, but even if they are not sufficiently strict then we will intervene.

Mr. BASFORD: I think our difficulty is that you place a higher value on provincial securities commissioners than I do.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): If you dealt with them in Quebec or Ontario, they are dealt with differently.

Mr. MOREAU: That would speak very highly of British Columbia.

Mr. LESAGE: It will certainly be an improvement because there are no federal security commissions. There was no authority to look into the prospectuses they were filed in the department for the convenience of the public and we will be filing at least an equal document which is still going to be there as it was before for the protection of the public and so we are not weakening our position; on the contrary. We may in appearance rely on provincial securities but what we are asking before was even less. We were creating, I would say, procedural problems on those matters and delays of seven days in Ottawa, of all those delays that companies had to rush the lawyers to Ottawa for approval of the prospectus, rush to the securities commission before they can go on the market and coming into the office at the very last moment—that is all right—you may go on the market. That is duplication of unnecessary procedure. That is what we want to avoid but not the substance; the substance remains at least unchanged. But for the procedure, we are much easier on the procedures to help the companies go on the market. It is a matter of procedure, more than a matter of substance.

Mr. GELBER: I move that the meeting adjourn.

The CHAIRMAN: Very well. The meeting will be adjourned until tomorrow afternoon after the orders of the day or at 3.30 p.m.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964-65

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 17

THURSDAY, MARCH 4, 1965

Respecting

Bill S-22, An Act to amend the Companies Act.

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, 1965

21639—1

STANDING COMMITTEE
ON
BANKING AND COMMERCE

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Vice-Chairman: R. Gendron, Esq.

and Messrs.

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Armstrong
Asselin (*Notre-Dame-de-Grâce*)
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Blouin
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Cameron (*Nanaimo-Cowichan-The Islands*)
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Côté (*Chicoutimi*)
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Otto
Pascoe
Rynard
Scott
Skoreyko
Tardif
Thomas
Vincent
Wahn
Watson (*Châteauguay-Huntingdon-Laprairie*)
Woolliams—50.

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, March 4, 1965.
(22)

The Standing Committee on Banking and Commerce met at 9:30 a.m. this day, the meeting called for Wednesday, March 3, 1965, having been cancelled. The Chairman, Mr. Pennell, presided.

Members present: Messrs. Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Gelber, Gendron, Habel, Lambert, Leblanc, Mackasey, McCutcheon, McNulty, Moreau, Pennell and Tardif (13).

In attendance: Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Committee resumed consideration of Bill S-22, An Act to amend the Companies Act.

Copies of an additional proposed amendment and of the letter from Professor Williamson, referred to at the previous meeting, were distributed to the members.

Mr. Lesage explained the purpose of Clause 34 to 39 inclusive, and was questioned.

At 10:30 a.m. the Committee adjourned until Friday, March 5, 1965, at 9:30 a.m.

Dorothy F. Ballantine,
Clerk of the Committee.

21639—1½

EVIDENCE

THURSDAY, March 4, 1965.

The CHAIRMAN: I am pleased to see a quorum. I believe we were on clause 34, page 20, and I presume members of the committee have a copy of the letter received from Professor Williamson. I should add that he was sent a copy of the act as amended and also a copy of the further amendment. You will notice his remark: "If it would be of any help to the committee I would be willing to appear before it if it can be arranged not to conflict with my class." Before you make a decision you might like to hear Mr. Lesage's reply to Mr. Williamson's comments.

Have we come to the clauses on which he comments?

Mr. LOUIS LESAGE, Q.C. (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): No.

The CHAIRMAN: We will just carry on for the time being in the ordinary order and then come back to Mr. Williamson's comments.

Mr. MOREAU: Perhaps it would be better to make that decision while we have a quorum present.

Mr. MACKASEY: I have to leave, Mr. Chairman; I have no choice.

The CHAIRMAN: We shall continue and then come back and deal with Mr. Williamson's comments later if it is agreeable to the committee.

Some hon. MEMBERS: Agreed.

Mr. LESAGE: Mr. Chairman, clause 34 is, I would say, a minor amendment which keeps the minimum number of directors on the board. It requires at least three. The words "however designated" have been added in paragraph (1) of section 84 to cover the cases mostly of corporations without share capital where the directors are referred to as governors or administrators and so on. This is the reason for the addition of the word "designated". I do not believe this is an amendment of major substance.

Clause 35 is an amendment to bring our Companies Act in line with the draft Uniform Companies Act and also the Ontario Companies Act and some other new legislation which permits the appointment as a director of a person who is not a shareholder, and it imposes upon such a person an obligation to become a shareholder within 10 days.

Mr. LAMBERT: In this connection, Mr. Chairman, what consideration is given to following the provisions of the Alberta Companies Act which permits a director to hold office without being a shareholder. This is often the case where there are legal requirements whereby a solicitor may act as the secretary of the company without actually owning shares. In some instances, as we know, the requirements for shareholding is merely proforma because there is a trust agreement behind the shareholding and, in any event, the solicitor director is in no way the beneficial owner of the shares.

Mr. GELBER: Are we talking about officers or directors?

Mr. LESAGE: Directors.

Mr. LAMBERT: Officers and directors.

Mr. GELBER: In New York state I do not think you have to be a shareholder.

Mr. LESAGE: That is right, Mr. Lambert. This problem was studied in the Senate. It was decided there that it was better to keep with the system of qualifying the director as a shareholder for the very reason that it is only a matter of procedure. A company always has in its treasury an odd share to qualify the new director. The Senate preferred to keep that system. They found it more practical to permit the appointment of a director, while he is not a shareholder but thereafter they felt they should keep with that principle that the director should be a shareholder.

Mr. MOREAU: Does it accomplish anything? I know of a case under the Ontario act where, in spite of being a registered shareholder, a man was re-elected a director when he was 40,000 shares short, at least in street certificates. I wonder how effective that section is?

Mr. LAMBERT: My own view, Mr. Chairman, is that it is a question of judgment. I think that the Alberta act in this regard is more flexible. It does not require you to go behind the setting of this sort of trust agreement on a share. It should be permitted within the memorandum of the association or the articles of the company to so provide. But, I am not going to make anything of this. I will indicate my preference and it would really be to conform with the Alberta Companies Act.

Mr. LESAGE: Mr. Lambert, I think the system that you propose has very great merits. However, what was considered was the possibility of maintaining the principle that those who are taking care of the administration of the money of other shareholders be themselves interested. I understand it is only a matter of principle that they want to save there and it is for the sake of the principle that this procedure has been maintained. I think at this moment I have to say what is the stand that has been taken by the Senate and approved by the government.

Mr. LAMBERT: You agree though that you could drive a 48 passenger bus through the principle of this clause?

Mr. LESAGE: Yes. This is not, I would say, of very major importance in corporate law. It is a matter of convenience.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do you think it would increase the tender regard of the directors for the welfare of the shareholders, Mr. Lesage?

Mr. LESAGE: Clause 36, subsection (3) of section 87 is amended to delete from the act the obligation for companies to publish a copy of the bylaw in the Canada *Gazette*. The bylaw changing the number of directors is not a bylaw which must be known to everyone in this country but only to interested persons and we have kept the procedure of the filing of the bylaw in the Department of the Secretary of State and added the words, "such copy shall be open for inspection, without fee, during normal office hours." We had received some remarks in the department that this was a costly procedure of publishing in the Canada *Gazette* a copy of the bylaw, that this was not necessary and was not adding any protection to anyone to know whether the company has six or seven directors.

Mr. MOREAU: The bylaws referred to in subsection (3) only refer to changes—

Mr. LESAGE: —in the number of directors only. When we studied the matter of the change of the location of the head office of the company we maintained the policy of publishing in the Canada *Gazette* because it is of public interest to know where the head office of the company is and where service can be made.

Section 98 of clause 37, is an amendment regarding the disclosure of the purchase of securities by the directors or officers of the company and this

gives them responsibility of disclosing their dealings in the shares of the company.

Mr. GELBER: Mr. Chairman, I just glanced at this. That would mean that where an individual has a corporate entity in which he is the sole beneficial owner he still will have to go through this procedure despite the fact that no one else has a beneficial interest in this transaction. Is that correct?

Mr. LESAGE: Yes, but the procedure is simple; he merely has to disclose to himself.

Mr. GELBER: Yes, but if he is the sole beneficial owner—I notice that under the penalty clause, for instance, if he fails to comply with the procedure, he is guilty of an offence and liable under summary conviction to a fine not exceeding $1,000 or to six months imprisonment or to both. Yet he is the sole beneficial owner and no one else is concerned.

Mr. MOREAU: How can he be? There must be at least two others. There is a provision for two qualifying shares.

Mr. GELBER: I said "beneficial owner." He can be the sole beneficial owner; the others could be nominal shareholders.

Mr. LESAGE: Who would be interested in launching a prosecution?

Mr. GELBER: I do not think that is the answer, Mr. Lesage. You are saying he can break the law and no one else will be interested in the proceedings. Why should he be put in the position of breaking the law if he is the sole beneficial owner?

Mr. LESAGE: I wonder if he can really be in the position of breaking the law, because being the only beneficial owner when he holds the annual meeting he discloses to himself and to the nominees, who are usually two of his employees, and who are necessarily aware of the affairs of the company because those nominees are his own employees.

Mr. MOREAU: He only has to furnish this information to the secretary.

Mr. GELBER: But you are asking him to file a return on this.

Mr. MOREAU: To the secretary.

Mr. LESAGE: To the secretary, yes.

Mr. MOREAU: This is not a securities commission procedure.

Mr. GELBER: It seems to me that we are involving people in a lot of procedures in corporations where there is only one beneficial owner. According to what you say, Mr. Lesage, we are encouraging people to talk to themselves—under penalty if they do not, of $1,000.

Mr. LESAGE: Yes.

Mr. LAMBERT: I find this a most remarkable section, if I might say so. First of all, the upgrading of the ownership reporting from once a year to within one month of the transaction. Then secondly, there is the penalty. Why, under these circumstances, is it an indication of a personal offence? The returns are deemed to be filed by the company, not by the individual.

Mr. LESAGE: Oh, no.

Mr. LAMBERT: May I continue? It is the responsibility of the company. It is the company that is registered with the secretary of state. It is not the individual therein. If there is to be a disability under clause 3, there should be a disability imposed upon the company, such as one that fails to file its annual return. It is the company that is in default and therefore it puts its actions in jeopardy as you do when a company is in default for failure to file such returns.

Under the Alberta Companies Act the annual return, Form 21, will include a record of the transactions with the shares of the company during that year.

If there is a failure to file within the specified time the company is noted in default. Of course its actions are then subject to attack. It cannot, for instance, launch an action in a court of law. It cannot file a statement of defence in a court of law unless it regularizes its position and I would have thought that a similar type of penalty should apply here. The responsibility vis à vis the companies act or the corporations act is that of the company, not of the individual.

Mr. MOREAU: Mr. Chairman, I gather this section was designed to give a company some power to get at the problem of insider trading, I think most security commissions now require disclosure of insider trading. But, can a company comply with the securities exchange regulations in advising the securities commission on insider trading if they have not been given some sort of teeth to get at the information? I do not know where this comes from, but it probably comes from the Ontario act.

Mr. LESAGE: Exactly.

Mr. MOREAU: And it is a sort of a parallel to what is being done in most securities commissions in the provinces in order to get at the problem of insider trading. I would think it is a very good section, and I think the onus should be on the directors to report their trading.

We were discussing a problem a moment ago. I thought it was ludicrous that you can get a director of a company being re-elected as a director when he is 40,000 shares short. I feel this is the kind of problem that we have to overcome and this section takes part of the step at least in order to give the companies the information for the securities commissions and exchange commissions in the various provinces to get at the problem.

The CHAIRMAN: Mr. Gelber, you are next.

Mr. GELBER: I would like to deal with the whole matter but I would also like to deal with the point that Mr. Moreau made a few moments ago, when he said it only has to be filed with the secretary of the company. Actually you will note at the top of page 21 the words: "within 30 days of the receipt by him, furnished to the secretary of state a copy of each such statement." So it does involve the secretary of state. Personally I am sympathetic to what Mr. Moreau has said and I think there is a very important principle in this clause. However, Mr. Moreau is thinking about people in industry in which he is an active and distinguished member, but I am interested in the entire implications of this to corporations that are not public corporations and corporations which are single beneficial owners, and I suspect, Mr. Chairman, that in the total of corporate entities in this country—they are not public companies. They are not companies with a lot of shareholders, but they are closely held or single beneficial owner companies. Therefore, I am just wondering whether some qualification should not be introduced to say that this applies when there is a certain distribution of shares to deal with the very real problem which Mr. Moreau has in mind and which, undoubtedly, the framers of this clause had in mind. This has universal application, and I think it involves a lot a people in red tape even when there is no one concerned except themselves. That is the reaction which I want to put forward.

Mr. MOREAU: I have a very short question. Could a distinction be made in this section between public and private companies?

Mr. LESAGE: I have been giving a little thought to the distinction between public and private companies but, as you know some private companies are held by other companies and they are very closely held and it may well be that the transfers in the shares of those private companies might have a very great bearing on the other companies. If we are to make a distinction between public and private companies I am afraid we would lose control of some

so-called private companies which are in fact major companies. If the transactions are not reported I am afraid the purpose of the act would not be achieved. I fail to find any other possible basis for eliminating some of the small private companies which may be adversely affected by such a provision.

Mr. MOREAU: Would it not be possible for you to have a company with a single beneficial owner, that is a corporate owner, and to have the same problem as you indicated there as far as trying to exclude a single, totally owned subsidiary and a private company and a public company?

Mr. GELBER: I do not think that is insuperable, Mr. Chairman.

Mr. LAMBERT: I do not know whether they want to continue but I want to go into clause 3 again.

Mr. GELBER: You could exclude private companies. You were talking about shareholdings. You could exclude private companies but include companies where the shareholder of the corporate entity is a public company. That would solve your difficulty. I wonder if we could not leave this section until the end?

The CHAIRMAN: I am not asking for them to be carried at this stage. We will come back to that later. We are only having a discussion now. Are there any other questions?

Mr. LAMBERT: I look back to subsection (4) of the old section 98 which subsection (3) is replacing. This is a question of the offences and I am just wondering if there have been any prosecutions in this regard?

Mr. LESAGE: Not that I know of.

Mr. LAMBERT: Why have this type of penalty, because it is, shall we say, a rather drastic penalty, a fine up to $1,000 or up to six months imprisonment or both. This is not just a light tap on the wrist by any means, at least potentially. I am just wondering why there should not be as well some responsibility placed or an alternative responsibility placed upon the company putting it in default for failure to comply. Now I am advancing that for your consideration and perhaps comment on some other occasion, Mr. Lesage. Remember, at this time the penalty is being extended to a shareholder reporting.

Mr. LESAGE: Yes.

Mr. LAMBERT: In the past it has been limited to the director. The whole of section 98 dealt with the actions of a director. You will recall that subsection (4) of the present section 98 says: "A man who speculates for his own account." Now you have done away with that in so far as the new section 98 is concerned. Now is it felt that there is no danger of a director speculating on his account? Why was this removed from the replacing clause?

Mr. LESAGE: I cannot remember that part. I think if it has been removed it is because other legislation has been copied there.

Mr. LAMBERT: I see. This is out of the Ontario act more or less.

Mr. LESAGE: The draft uniform act and the Ontario act were considered at that time and, in so far as we are concerned in the department, you will appreciate that we have little direct interest in that secion which concerns the internal management of a company.

Mr. LAMBERT: I do not know. I have an uneasy feeling about this. I hope that you do not have any unhappy experience arising from this clause.

Mr. GELBER: There is one aspect that concerns me about this. We require companies and corporations to have a certain form. We require them to have three directors and we say to them they can be nominees. The law does not say that but we are saying right here; "If you do not have enough directors, get nominees." Then we start putting penalties into the law. We say to the nominee; "You are obliged to have knowledge." What are we going to do

about estates being wound up? A person actually has no knowledge of the previous administration of a company and he has to sign papers to wind up an estate. He could not have knowledge really of all these matters. We are placing penalties into this act of such a nature. Now I am very much in agreement with Mr. Moreau's position but I think we have to be careful how we do it.

Mr. MOREAU: Mr. Chairman, on Mr. Lambert's point of speculation, would you not say, Mr. Lesage, that old section 98 virtually was unenforceable and it was perhaps beyond the ambit of the federal companies act jurisdiction in that you had no way of enforcing that section; you had no way of determining who was speculating and who was not. Would you not also say that this is a field perhaps of which the security commissions in the provinces have become increasingly aware and that actually they have been taking steps to correct it? I do not see that your department would have either very much jurisdiction or ability to cope with or enforce such a section. I just wondered if that was perhaps why you left it out.

Mr. LESAGE: If a case were submitted for enforcement, of course, our department as such would not intervene but would refer the matter to the Department of Justice. In so far as the department is concerned this section has no direct interest for the public generally. It might affect the rights of a few persons or a number of shareholders. If there is fraud this is the way to avoid it because then this section is there to make a prosecution possible. But that is the only purpose of a section like that. This is not to have a better administration of the act itself. I would say it is incidental to the general principles, but it is rather, as has been said, a matter for the security commissions.

Mr. MOREAU: Surely it is not being suggested that there had never been any speculation. It was simply that you had no means of determining this as far as I can gather.

Mr. LESAGE: It is not that we had no means. Rather it is that we had no complaints in our department. If we were to receive a complaint to that effect then we would have to ask the company for explanations and in most, if not all, of those similar cases when we asked for explanations we are given the explanation and we can satisfy the public. We have always been able to cope with those problems on the administrative level without having to refer to the courts of justice.

Mr. LESAGE: Clause 38 is a consequential amendment because of the deletion of section 59. It is now impossible for companies to create preferred shares by by-law. The text had to be changed. At present section 103 reads:

> (1) In the absence of other provisions in that behalf in the letters patent, supplementary letters patent or by-laws of the company,

This is also to give a measure of protection in order to avoid the possibility of a company, by by-law, depriving a class of shareholders of all voting rights. This would come in conflict with subsection 13 and subsection 14 of section 12 of the act.

Mr. LESAGE: Clause 39 covers a number of pages and continues to page 37. All those amendments are revisions of the financial statements section.

As I said at a previous meeting, the text we now have in the Companies Act comes from the 1908 Imperial Act. It was brought in in Canada in 1917 and has received very little amendment since.

What has been suggested as clause 39 was worked out in very close co-operation with the Canadian Institute of Chartered Accounts. We were following there the principles of accounting adopted by the draftsmen of the draft uniform companies act, and it follows the Ontario act to a great extent. In one

word, what has been done is to make a 1965 edition of the normal accounting practices. Everyone understands that the 1908 principles have varied considerably, and this accounts for the very important change in the Companies Act, but we have not gone any further than adopting the normal practices.

Mr. MOREAU: Mr. Lesage, I have a question to put. I have gone through this section very carefully and I have read the Senate proceedings. I am wondering where section 121F(2) comes from. In the Senate proceedings I saw no discussion of that section. I have gone through them quite carefully, but I have found no discussion at all on that. I wonder how or why it got there.

The CHAIRMAN: I do not want to interrupt you, but I think we should just go through these sections one at a time and when we reach 121F I will ask you to put your question again.

Mr. LESAGE: In section 120 we suggest a slight amendment as the result of a clerical error in the Senate.

Mr. GELBER: May I revert to section 117? What type of information could be withheld upon the authorization of the chief justice? I am referring to section 117 (1)(*a*). Would that be in connection with patents or something like that?

Mr. LESAGE: No. It refers to the amount of sales made by the company. They do not want to disclose their figures because their competitors may very well use those figures for their own advantage, and to the disadvantage of the company who publishes them. Authority is being given to a judge to determine whether or not there is a superior or public interest to be satisfied by having those figures disclosed.

Mr. GELBER: It would not be a public interest. There may be a pecuniary interest to the shareholders; but it would not be of public interest to disclose them.

Mr. LESAGE: That is why there is a provision permitting such disclosure with the permission of a judge.

Mr. MOREAU: This is parallel, Mr. Chairman, to section 121F and the point I was going to raise. I think the point was very well made in the Senate that the competitors are not the people to whom a company would not want to give information. The competitors know what are your sales in any event. I think that is a pretty valid point. I think we should be very careful about these exclusions from disclosure. That is my only reaction. The competitors, the people who are in the business, usually know exactly what you are doing and what your sales amount to.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I cannot really see that it does much good to know that people are selling there. It is just a fact of business. If it were a disclosure of how the sales were made or something of that kind, I could see some point in it, but I do think the shareholders should have an idea of how their company is doing.

Mr. GELBER: Could Mr. Lesage tell us if something of that sort exists in the present act and whether many such exclusions have been granted.

Mr. LESAGE: The procedure of giving authority to a judge to authorize the disclosure was not in the act as it is at the moment. The disclosure of sales as I see it is not a requirement under the act as is.

Mr. GELBER: I presume there is also a consideration of protecting a Canadian company against foreign competitors. It seems to me there must be some reason why this was introduced in this act and not included in the previous act.

Mr. LESAGE: It was because the extent of the disclosure in previous acts was not as broad as in this act.

Mr. LAMBERT: We have failed to note here that sections 117 to 121A do not apply to private companies. I am sure you do not require a private company to file a financial statement.

Mr. LESAGE: No.

Mr. LAMBERT: Therefore this does not arise in the case of private companies, and even if this exception will provide for withholding information from shareholders it is not applicable to private companies.

Mr. LESAGE: No.

Mr. LAMBERT: Therefore, if the shareholders of a private company want to know something they will know it, and the financial statement will disclose it.

Mr. LESAGE: Yes.

Mr. LAMBERT: It is only in the case of financial statements of private companies that there is this provision for a judge, in appropriate circumstances, to say that the statements shall be somewhat less than those normally required.

Mr. LESAGE: That is right.

Mr. MOREAU: Mr. Chairman, it seems to me it is a very important principle which has been introduced in this section. I think there is a very real danger in the view that a company can apply for exemption from giving information to its own shareholders because it could lead to abuse.

I am merely indicating at this time that I would like to look very closely at these sections before they pass, both 117A and 121F(2) to which I referred a moment ago which deals essentially with the same point.

The CHAIRMAN: You will raise that when we come to it. I am going through the sections now, Mr. Moreau. When questions have been exhausted on the earlier sections we will come to 121F and I will ask you to raise your point again.

Are there any more comments on section 117?

Mr. MOREAU: Only to the effect that I am likely to prepare an amendment or a deletion, Mr. Chairman.

Mr. GELBER: Mr. Lambert has kindly drawn to my attention section 116(4) which contains wording that could be applied. The wording here for penalties regarding transfers of shares is very appropriate.

> ...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...

and so forth. That would satisfy me on the previous clause we were discussing.

The CHAIRMAN: Then you will raise this when I start calling the clauses.

Mr. GELBER: I think Mr. Lesage might want to consider this. Possibly the department might agree.

Mr. MOREAU: May I deal with this point in section 117A? Do you see any serious difficulty, Mr. Lesage, resulting in the deletion of the exclusion of disclosure of information to the shareholders on an application to the chief justice?

Mr. LESAGE: I think there the principle is disclosure. The exception is possible only with the permission of a judge. I think the fact that the company has to ask a judge for permission indicates that the company has to prove the necessity for the retention of the information.

Mr. MOREAU: Has anyone offered any argument to you in support of this section? Has anyone submitted to you that there should be absolution, so to speak?

Mr. LESAGE: This was discussed in a subcommittee of the Senate committee on banking and commerce when no reporters were present because we were sitting behind closed doors.

Mr. MOREAU: I went through it very carefully and I could not find it.

Mr. LESAGE: No, you would not find an explanation in those reports because they are the reports of the committee itself, not of the subcommittee. You will appreciate that the subcommittee dealing with the detailed study of the sections had to be very limited in the number of members because it is very difficult to work on such a text with a large committee.

Section 117A is good legislation, I think, because the protection is in the hands of the courts. When there is a doubt, we have to rely on our courts of justice in order to obviate any hardship on a company. The possibility of an exception was inserted in order that we should not be unfair to a company placed in certain circumstances. However, this exception would come into effect only after the company had proved to the satisfaction of a judge that the requirements should be dispensed with.

Mr. MOREAU: Can you give me one example showing why this should be necessary?

Mr. LESAGE: Not at the moment, but it would be up to the judge to decide on the merits of the particular case before him.

Mr. GELBER: It may be necessary in the national interest in the case of international competition.

Mr. LEBLANC: Mr. Lesage, do you not think it would take time to go to a judge for a ruling in this matter?

Mr. LESAGE: No.

Mr. LEBLANC: The cost would have to be borne by the company itself, and it might be considerable.

Mr. LESAGE: Mr. Leblanc, all these procedures are summary procedures before a judge in chambers. There is no appeal whatsoever because the judge is not sitting as a court but as the designated person. He decides who should be called to express their objections to the motion which will have to be presented in chambers, and I think it may be a matter of days before a judgment is rendered. It is not a case which is subject to appeal and so on; it is a very summary procedure.

Mr. MOREAU: Application could be made long before the annual meeting.

Mr. LESAGE: Yes.

Mr. MOREAU: It seems to me, Mr. Lesage, that a very dangerous possibility is being introduced and the door which many security commissions have been trying to close is being opened to insider trading. I think it is a very dangerous principle to introduce, and I would certainly like to have one example at least showing why we should introduce this provision.

Mr. LAMBERT: I can see the degree of flexibility that is wanted because by the elimination of this one possibility companies could be completely cornered. I can assure you that any chief justice or any justice of a court in a province would have to be really persuaded before he would grant such an application. I think it would be a very tough procedure, but it is one that is necessary.

Mr. MOREAU: Have you one example to show why it is necessary?

Mr. LAMBERT: I would say that a chief justice would be tougher than any securities commission.

Mr. MOREAU: Can you give me any example showing why it should be needed? It eludes me.

Mr. LAMBERT: Yes, I think of a situation in which we are engaged in hostilities. If information on gross sales of certain types of products were to be given it may lead to undesirable disclosure to hostile nations.

Mr. MOREAU: But surely in that type of situation special measures would be enacted.

Mr. LAMBERT: I would say that would be strictly ad hoc. A company would then have to come running to the government and would have to move the whole of the government machinery to get a provision under a special war measures act to exempt them from the absolute disclosure which would be imposed upon them by the Companies Act.

I can see the necessity for this. However, let me assure you that a chief justice would be as tough as if not tougher than any securities commission. I do see the value of this type of provision.

The CHAIRMAN: If there is no more discussion on section 117 I will proceed to 118.

Mr. GELBER: Mr. Chairman, in the earlier section which deals with the whole matter we make a distinction between a public and a private company. Where is the distinction made earlier in the act? Where is it defined?

Mr. LESAGE: It is defined in 3(*j*) and (*k*).

The CHAIRMAN: In the act itself?

Mr. LESAGE: It is in section 3 subsection (*j*) and (*k*) of the act itself.

The CHAIRMAN: Subsection (*j*) defines a private company but I think Mr. Gelber wants to know how we determine, whether we are referring to private or to public companies.

Mr. LESAGE: It is in the act itself.

The CHAIRMAN: How do we know when we are dealing with the amendments whether it is a public or a private company?

Mr. LESAGE: That is contained in section 121E on page 34 of the bill, which requires disclosure to the shareholders. That is in 121E and 121F.

The CHAIRMAN: I thought Mr. Gelber asked how do we know when we are dealing with private or public companies in the amendment.

Mr. MOREAU: He wants a definition.

The CHAIRMAN: No, he did not want the definition; he just wanted to know whether we are dealing with public or private companies when we are dealing with the amendments.

Mr. GELBER: Yes. We do know from section 116 paragraph 4. Private companies are not required to supply all this information. Sections 117 to 121A do not apply to private companies.

Mr. LESAGE: They do apply to private companies.

Mr. LAMBERT: But their shareholders may waive the requirement.

The CHAIRMAN: That is a point I am trying to clear for you, Mr. Gelber.

Mr. MOREAU: Subsection 4.

Mr. LESAGE: This is an exception for private companies because those sections normally apply.

Mr. MOREAU: But if the shareholders waive that right—

Mr. LESAGE: They can waive that right because in some very small companies many of the requirements would not apply.

Mr. GELBER: I would like you to consider excluding completely companies with a sole beneficial owner when we bring in an amendment. I think we should eliminate the red tape.

Mr. LESAGE: Oh, no.

Mr. LAMBERT: With respect, I think Mr. Gelber is asking us to go much too far.

Mr. LESAGE: Yes, that would be going much too far.

Mr. LAMBERT: This is precisely what we are trying to get at.

Mr. GELBER: No, I do not think so. I am referring to a sole beneficial owner, and to a case in which the owner is not a public company.

Mr. MOREAU: Section 116(4) says:

> 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 parliament...

Mr. GELBER: That is right, but they have to obtain written permission.

Mr. MOREAU: From the shareholders.

Mr. GELBER: I am suggesting that where there is no interest involved except the individual himself we should eliminate as much red tape as possible. We should not require companies to pile paper on paper on paper where no other interest whatsoever is involved.

The CHAIRMAN: This might be a good place to pause. I have to apologize to the committee because I have a commitment which cannot be broken.

With the permission of the committee we will meet at 9.30 tomorrow. The clerk will send out the notices.

Mr. GELBER: I move adjournment, Mr. Chairman.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964-1965

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 18

FRIDAY, MARCH 5, 1965

Respecting

Bill S-22, An Act to amend the Companies Act.

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, 1965

21641—1

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ON

BANKING AND COMMERCE

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Scott
Skoreyko
Tardif
Thomas
Vincent
Wahn
Watson (*Châteauguay-Huntingdon-Laprairie*)
Woolliams—50.

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, March 5, 1965
(23)

The Standing Committee on Banking and Commerce met at 9:40 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Chrétien, Gray, Greene, Habel, Klein, Leblanc, Macaluso, Moreau, Nowlan, Pennell (10).

In attendance: Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Committee resumed consideration of Bill S-22, An Act to amend the Companies Act.

Mr. Lesage continued his explanation of Clause 39, and was questioned.

At 10:00 a.m. the Committee adjourned until 9:00 a.m., Tuesday, March 9, 1965.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, March 5, 1965

The CHAIRMAN: Gentlemen, we will proceed informally and then if sufficient members come I will formally call the meeting to order.

As I recall, when we adjourned we were dealing with section 117 in clause 39 at page 23. Mr. Moreau put the last question and I do not know whether or not there are any further questions in respect of this section.

Mr. MOREAU: Mr. Chairman I may have some amendments to propose on this section when we again go through the clauses.

The CHAIRMAN: We will then proceed to sections 118, 119, 120 and 121.

Mr. MOREAU: Mr. Chairman, if you take that clause in its entirety the same arguments apply to section 121F.

The CHAIRMAN: Are there any questions on section 121F, at page 34?

Mr. MOREAU: Subsection (2) of section 121F states that documents filed with the department of the Secretary of State shall not be open for public inspection except upon the written direction of the Secretary of State. I cannot think of a reason for that being there. I think we explored this argument the last time we met.

Mr. LOUIS LESAGE, Q.C., (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): We have not explored it as yet.

Mr. MOREAU: Well, a very similar argument could be put forward.

Mr. LESAGE: No, I have not said a word on that problem to date.

Mr. MOREAU: Then perhaps we could hear from you in that regard.

The CHAIRMAN: Mr. Lesage, would you like to make a few remarks on this subsection?

Mr. LESAGE: This section appears to be an extraordinary one. It is rather difficult to explain the theory behind this section without approaching the general subject of disclosure of companies' financial information.

Before giving that explanation I would like to make clear that I have no intention whatsoever of making any statement which would have any bearing on the general policy because I am not qualified for that purpose; and I think that the problem of disclosure is different from the one we have in section 121F in substance although, in appearance, it has some resemblance.

In looking at this problem, first, we must note the definitions of a private and public company. In my opinion the word "public" as used in the Companies Act has been misleading in many instances. When we are speaking within the context of the Companies Act a public company is one defined in section 3, subsections (*j*) and (*k*). I do not think that we have to limit the meaning of the word "public" to that of the act. As you know, all corporations may be divided into public corporations or private corporations. Examples of public corporations are municipalities, school boards and so on. In law these usually are referred to as public corporations. But, when we have companies operated with share capital subscribed by individuals or other companies, in law, we call these private corporations. Within the so called private corporations you have the companies falling under the Companies Act. Only for the purpose of the Companies Act itself have they used the words "public" and "private" to make a distinction between the two types of companies and within that meaning the word "public" has not at all the same meaning. It is public only

in that it has a right to offer its shares to the public, as set out in the definition, and is an exception to the general rule of privacy of the private affairs of persons and companies.

For the greater protection of the public and for greater interest these companies, having a right to offer their shares to the public, have an obligation to file prospectuses disclosing all the affairs of the company. It is only within that meaning that those companies are public; otherwise, they are private corporations as opposed to government agencies like, as I said a few minutes ago, municipalities and school boards.

I have told you that an exception has been made by the prospectuses section because of the greater interest. Many people have in mind that it would be to the public interest if some of those companies falling under the category of private corporations also would have to disclose their affairs and financial positions. This is a matter of policy and of principal and, as a civil servant, I cannot express any views whether or not I would favour such a system or whether or not I would be against such a system. This is a matter of high policy for the government and I do not feel qualified to discuss that. But, we do not need to discuss public disclosure in order to explain subsection (2) of section 121F of the act.

Mr. MOREAU: Mr. Chairman, I have two questions with regard to section 121F and section 117. I note that the information is going to be withheld from the shareholders at the annual meeting on an application to a judge and so on. This is one thing. We have the positions reversed in section 121F in the sense that the Secretary of State must get permission to make public certain information required to be filed under the Companies Act.

Now, first, I would like to know where this section comes from and, second, after reading the Senate banking and commerce committee's reports I find absolutely no discussion of this section. As you say, it is a very important principle. I find it very strange that we have not had some discussion on it. I thought it would have been at least discussed in the Senate committee or that some arguments would have been put forward for having this. I cannot think of a reason this should be necesary. As I say, I would like to know where it comes from and how such a very important principle with regard to an exclusion of this kind got into this bill.

Mr. LESAGE: In so far as the discussion in the Senate is concerned, I indicated yesterday that the Senate banking and commerce committee set up a subcommittee and that that subcommitee, behind closed doors, without the assistance of a reporter, discussed these matters. This is the reason that the information is not published. But, I cannot tell you exactly or precisely the origin of this section or subsection, although I know the reasons for it. I will explain that to you because, as I said before, this bill started in the department and then it was sent to an interdepartmental committee, which had the assistance of outsiders. When the subcommittee finished with it this subsection appeared. With regard to the principles outlined—and this is the major question —we can explain it as follows. As a general rule, private corporations's affairs are private. This is true not only for the Companies Act now before this committee but also for the ten other companies acts in existence throughout Canada.

Mr. MOREAU: I appreciate that.

Mr. LESAGE: There are 11 jurisdictions. The only jurisdiction which receives a copy of the financial statements of the companies is our jurisdiction. None of the provinces have provisions for filing financial statements.

Mr. MOREAU: That applies, Mr. Lesage, to private companies, but this section covers public companies.

Mr. LESAGE: That is right. Even in the provinces you do not have similar provisions of disclosure for public companies. I have offered to explain why

the department comes into possession of those financial statements. I would say it is merely incidental to another procedure. Section 121 requires the company to send to the shareholders a copy of the financial statements at least 14 days prior to the annual meeting. To make sure the shareholders are protected, the Companies Act requires from an official of the company, generally the secretary of the company, an affidavit which must go to the department establishing that the financial statements have been mailed to the shareholders as required by the act. Attached to that affidavit is a copy of the financial statement. This is to make sure that the copy which is delivered to the shareholders is a true copy; the same copy is received in the department.

Originally those financial statements were received in the department for the protection of the shareholders only; and that is still the theory behind the Companies Act. Therefore, if we start from that point, the drafters of the bill have in no way changed the policy or the philosophy behind this act. They have only given a measure of further protection to the shareholders and to the company to ensure there will be no leakage of information from the department of the Secretary of State. This was introduced only to ensure the secrecy of government files.

Continuing from that point, the drafters had also to consider the very important fact that the federal jurisdiction is only one of 11 jurisdictions. If it were imposing disclosure of information from its own companies, then there would be great and very dangerous discrimination against companies incorporated federally under this act.

Mr. MOREAU: Is this exclusion permitted under the provincial act?

Mr. LESAGE: There is no such problem under provincial laws.

Mr. MOREAU: What about the conflict—or perhaps I should say the apparent conflict—with the Corporations and Labour Unions Returns Act.

Mr. LESAGE: I told you it was a very difficult subject for me to explain because it involves matters of policy, and I can hardly discuss other legislation which is now before parliament and which, I understand, passed third reading last night. I do not think it would be proper for me to comment on the merit of another act.

Mr. MOREAU: Mr. Chairman, I think this principle has been recognized by this parliament. The public interest is involved here too, and I would like to say again that I will perhaps have some amendment to move to this section. I am not completely satisfied.

Mr. LESAGE: I have not finished, Mr. Moreau.

If the drafters of the legislation had imposed an opening for application of the general principle of publication against only one jurisdiction, there would be discrimination against existing companies, and other people would naturally seek incorporation in other jurisdictions rather than under the federal authority. If it is desirable to have companies incorporated federally, I think until a general law applying the principle of disclosure is in force all across Canada, the federal Companies Act must give exactly the same protection to the public as the provincial acts. Otherwise the business people and the people of the financial world will seek incorporation elsewhere, and that would mean almost destruction of the system, until general legislation applicable across Canada is brought into force.

I do not think this amendment changes in any way the existing situation with regard to secrecy of the financial statements. It does not prevent a study or legislation containing the principle that there is major public interest in having disclosure. In the meantime, we have to offer to our companies the same protection as the provinces, and we cannot put our companies at a disadvantage thereby almost closing the facilities of incorporation at the federal level.

Mr. MOREAU: Would it not be fair to say the provinces have approached this from a somewhat different direction through their securities and exchange commissions? I do not think it is completely fair to say there is no recognition of this problem by most of the provinces.

Our most important problem here is on the question of wholly owned subsidiaries and the lack of disclosure of information.

Mr. LESAGE: I know.

Mr. MOREAU: I personally feel it is not in the public interest and not in the national interest. We have to begin to cope with this problem at some time.

Mr. LESAGE: I agree that something may have to be done but not at this moment. You were saying that provinces with their securities commissions have taken a similar approach but the federal companies are subject to all the provincial securities commissions the same way as the provincial companies are.

Mr. MOREAU: Only if they list their shares for trading.

Mr. LESAGE: It is exactly the same problem for provincial companies. The only thing that is important is to keep both types of companies, federal and provincial incorporated companies, at the same level and at the same advantage at the moment. I see no objection whatsoever to the general legislation. I do not see how this amendment would in any way affect the further study.

Mr. GREENE: What provisions are in the draft uniform act?

The CHAIRMAN: I do not want to interrupt here but we do have a caucus and Mr. Nowlan's party is already at the very moment caucusing. I think we should rise. The point I want to make now is I think we are going to meet next Tuesday. I think we should complete the explanatory notes if we have to have three sessions on Tuesday, and ask to have the sections carried because we have to get it back to the house. Time is of the essence. I am not going to suggest that we meet at 9 o'clock on Tuesday. If necessary we will carry on in the afternoon and in the evening but we must finish this bill.

Mr. GRAY: Do you want a motion, Mr. Chairman?

The CHAIRMAN: Yes.

Mr. GRAY: I so move that we adjourn to next Tuesday at 9 o'clock.

HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964-65

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: LAWRENCE T. PENNELL, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 19

TUESDAY, MARCH 9, 1965

Respecting

Bill S-22, An Act to amend the Companies Act.

INCLUDING TWELFTH REPORT TO THE HOUSE

WITNESSES:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State; J. Peter Williamson, Associate Professor of Law, Universiy of Toronto.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

21643—1

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.
and Messrs.

Aiken
Armstrong
Asselin (*Notre-Dame-de-Grâce*)
Basford
Bell
Cameron (*High Park*)
Cameron (*Nanaimo-Cowichan-The Islands*)
Caouette
Chrétien
Côté (*Chicoutimi*)
Douglas
Frenette
Flemming (*Victoria-Carleton*)
Gelber
Grafftey
Gray
Grégoire
Greene
Habel
Hales
Jones (Mrs.)
Kelly
Kindt
Klein
Lambert
Leblanc
Lloyd
Macaluso
Mackasey
McCutcheon
*McLean (*Charlotte*)
More
Moreau
**Morison
Mullally
Nowlan
Nugent
Otto
Pascoe
Rynard
Scott
Skoreyko
Tardif
Thomas
Vincent
Wahn
Watson (*Châteauguay-Huntingdon-Laprairie*)
Woolliams—50.

*Replaced Mr. Blouin on March 8, 1965.
**Replaced Mr. McNulty on March 8, 1965.

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

THURSDAY, March 4, 1965

Ordered,—That Bill S-48, An Act respecting The Economical Mutual Insurance Company, be referred to the Standing Committee on Banking and Commerce.

(*Note*: *The Proceedings on this Private Bill were not printed.*)

MONDAY, MARCH 8, 1965.

Ordered,—That the names of Messrs. Morison and McLean (*Charlotte*) be substituted for those of Messrs. Blouin and McNulty on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND
The Clerk of the House.

21643—1½

REPORT TO THE HOUSE

MARCH 11, 1965.

The Standing Committee on Banking and Commerce has the honour to present its

TWELFTH REPORT

Your Committee has considered Bill S-22, An Act to amend the Companies Act, and has agreed to report it with the following amendments:

On Clause 11

Amend by striking out lines 14 to 39 on page 9 and substituting therefor the following:

"12A. (1) In this section the expression "mutual fund shares" means any class of shares having conditions attached thereto that include conditions requiring the company issuing the shares to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof, that are fully paid.

(2) Where the only undertaking of a company is the business of investing the funds of the company, its letters patent or supplementary letters patent may provide for the issuing of one or more classes of mutual fund shares, in which case the letters patent or supplementary letters patent shall set out the conditions governing

(*a*) the surrender of fully paid mutual fund shares or any fractions or parts thereof that are fully paid; and

(*b*) the determination of the price to be paid therefor and the manner and time of payment thereof.

(3) Any mutual fund shares or fractions or parts thereof surrendered to the company pursuant to the conditions attached to such shares shall be deemed to be no longer outstanding and shall not be reissued by the company.

(4) There may be included in the conditions attached to mutual fund shares

(*a*) a condition providing for a participating interest in any fund administered by the company; and

(*b*) a condition that, upon the surrender of any fully paid mutual fund shares, or any fractions or parts thereof that are fully paid, the price to be paid therefor may be paid out of capital.

(5) Where in any letters patent or supplementary letters patent the expression "redemption or purchase for cancellation", or an expression of like import, is used in relation to any shares of a company, the expression shall, in relation to mutual fund shares of the company, be deemed to be a reference to acceptance by the company of the surrender of those shares."

On Clause 21

Amend as follows:

(*a*) by striking out line 4 on page 16 and by substituting therefor the following:

"section, where pursuant to subsection (1a) of section 12";

(*b*) by striking out line 11 on page 16 thereof and by substituting therefor the following:

"of the company shall be thereby decreased; and subsections (1) and (2) of this section and sections 51 to 58 do not apply."

On Clause 27

Amend as follows:

(*a*) by striking out line 9 on page 17 and by substituting therefor the following:

"cancellation, otherwise than out of capital, if such purchase or redemption is made";

(*b*) by adding thereto, immediately after line 35 on page 17 thereof, the following subsection:

"(5) Nothing in this section shall be construed to apply to a redemption or purchase for cancellation of shares that are redeemed or purchased for cancellation pursuant to subsection (3) of section 49."

On Clause 39

Amend as follows:

(*a*) by striking out line 44 on page 27 and by substituting therefore the following:

"redemption price thereof, and indicating separately any class of shares that is redeemable out of capital;"

(*b*) by striking out lines 37 and 38 on page 29 and by substituting therefor the following:

"bonuses, fees and other emoluments;"

(*c*) by deleting lines 26 to 33 inclusive on page 34.

On Clause 41

Delete Clause 41.

On original Clauses 42 to 52

Amend by renumbering as Clauses 41 to 51 inclusive.

On new Clause 52

Immediately after the renumbered clause 51, insert a new Clause 52, as follows:

"This Act shall come into force on the 1st day of July, 1965."

Your Committee has ordered a reprint of the Bill, as amended.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (*Issues Nos. 15 to 19 inclusive*) is appended.

Respectfully submitted,

LAWRENCE T. PENNELL,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, March 9, 1965.
(24)

The Standing Committee on Banking and Commerce met at 9:40 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Basford, Cameron (*High Park*), Chrétien, Gelber, Gray, Greene, Kelly, Lambert, Leblanc, Lloyd, Macaluso, More, Moreau, Mullally, Nowlan, Pennell, Rynard (18).

In attendance: J. Peter Williamson, Associate Professor of Law, University of Toronto; Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Committee resumed consideration of Bill S-22, An Act to amend the Companies Act.

The Chairman introduced Professor Williamson who made a statement amplifying the comments contained in his letter to the Chairman (distributed to members of the Committee), and was questioned.

Mr. Lesage was recalled, commented on Professor Williamson's statement, and was questioned.

Mr. Lesage completed his explanation of the clauses of the Bill, and was questioned.

The Committee then proceeded to consideration of a private bill in respect of which verbatim evidence was not recorded.

At 11:15 a.m. the Committee adjourned until 3:30 p.m. this day.

AFTERNOON SITTING
(25)

The Committee reconvened at 3:45 p.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Basford, Cameron (*High Park*), Chrétien, Douglas, Gelber, Gendron, Gray, Greene, Habel, Kelly, Kindt, Lambert, Leblanc, McLean, More, Moreau, Mullally, Pennell, Rynard, Watson (*Châteauguay-Huntingdon-Laprairie*) (20).

In attendance: Louis Lesage Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

Clauses 1 to 10 were severally carried.

On Clause 11

On motion of Mr. Lambert, seconded by Mr. Moreau,

Resolved—That Clause 11 be amended by deleting lines 14 to 39 on page 9 and by substituting therefor the following:

"12A. (1) In this section the expression "mutual fund shares" means any class of shares having conditions attached thereto that include

conditions requiring the company issuing the shares to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof, that are fully paid.

(2) Where the only undertaking of a company is the business of investing the funds of the company, its letters patent or supplementary letters patent may provide for the issuing of one or more classes of mutual fund shares, in which case the letters patent or supplementary letters patent shall set out the conditions governing

(*a*) the surrender of fully paid mutual fund shares or any fractions or parts thereof that are fully paid; and

(*b*) the determination of the price to be paid therefor and the manner and time of payment thereof.

(3) Any mutual fund shares or fractions or parts thereof surrendered to the company pursuant to the conditions attached to such shares shall be deemed to be no longer outstanding and shall not be reissued by the company.

(4) There may be included in the conditions attached to mutual fund shares

(*a*) a condition providing for a participating interest in any fund administered by the company; and

(*b*) a condition that, upon the surrender of any fully paid mutual fund shares, or any fractions or parts thereof that are fully paid, the price to be paid therefor may be paid out of capital.

(5) Where in any letters patent or supplementary letters patent the expression "redemption or purchase for cancellation", or an expression of like import, is used in relation to any shares of a company, the expression shall, in relation to mutual fund shares of the company, be deemed to be a reference to acceptance by the company of the surrender of those shares."

The Clause, as amended, was carried.

Clauses 12 to 20 were severally carried.

On Clause 21

On motion of Mr. Moreau, seconded by Mr. Leblanc,

Resolved,—That clause 21 be amended

(*a*) by striking out line 4 on page 16 and by substituting therefor the following:

"section, where pursuant to subsection (1*a*) of section 12";

(*b*) by striking out line 11 on page 16 and by substituting therefor the following:

"of the company shall be thereby decreased; and subsections (1) and (2) of this section and sections 51 to 58 do not apply."

The clause, as amended, was carried.

Clauses 22 and 26 were severally carried.

On Clause 27

On motion of Mr. Lambert, seconded by Mr. Moreau,

Resolved,—That clause 27 be amended

(*a*) by striking out line 9 on page 17 and by substituting therefor the following:

"cancellation, otherwise than out of capital, if such purchace or redemption is made";

(*b*) by adding, thereto, immediately after line 35 on page 17, the following subsection:

"(5) Nothing in this section shall be construed to apply to a redemption or purchase for cancellation of shares that are redeemed or purchased for cancellation pursuant to subsection (3) of section 49."

The clause, as amended, was carried.

Clauses 28 to 38 were severally carried.

On Clause 39

On motion of Mr. More, seconded by Mr. Rynard,

Resolved,—That clause 39 be amended by stet line 44 on page 27 and by substituting therefor the following:

"redemption price thereof, and indicating separately any class of shares that is redeemable out of capital;"

On motion of Mr. Lambert, seconded by Mr. Leblanc,

Resolved,—That clause 39 be amended by striking out lines 37 and 38 on page 29 and substituting therefor the following:

"bonuses, fees and other emoluments;"

Mr. Moreau, seconded by Mr. Leblanc, moved that clause 39 be amended by the deletion of lines 26 to 33 inclusive on page 34.

After discussion, and the question having been put on the proposed motion of Mr. Moreau, it was resolved in the affirmative on the following division: Yeas, 9; Nays, 3.

Clause 39 was carried, as amended.

Clause 40 was carried.

On Clause 41

Mr. Lesage was questioned, and following discussion, Mr. Moreau moved, seconded by Mr. Douglas, that clause 41 be deleted. The question having been put, the motion of Mr. Moreau was resolved in the affirmative, on the following division: Yeas, 10; Nays, 2.

Clauses 42 to 52 were severally carried,

On motion of Mr. Moreau, seconded by Mr. More,

Resolved,—That, as a consequence of the deletion of clause 41, the present clauses 42 to 52 inclusive be amended by renumbering as clauses 41 to 51.

On motion of Mr. Moreau, seconded by Mr. Leblanc,

Resolved,—That a new clause 52 be inserted immediately after the renumbered clause 51, as follows:

"This Act shall come into force on the 1st day of July, 1965."

The Title was carried.

The Bill, as amended, was carried.

Ordered,—That Bill S-22 be reported, as amended.

Ordered,—That Bill S-22, as amended by the Committee be reprinted.*

At 5:00 p.m., on motion of Mr. Rynard, the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

**Note: It was later found to be not feasible to reprint the Bill.*

EVIDENCE

TUESDAY, March 9, 1965.

The CHAIRMAN: Gentlemen, we have a quorum. I would like to present this morning Professor Peter Williamson from the faculty of law at the University of Toronto. The professor has some news relating to mutual funds which he would like to place before the committee. On that note I will invite the professor to address the committee.

Professor J. P. WILLIAMSON (*Faculty of Law, University of Toronto*): Thank you very much, Mr. Chairman. I appreciate the chance to add some oral comments to the written submission I made. I apologize for not giving you more copies of the written submission; I just do not have the duplicating facilities.

With respect to the mutual fund shares, my chief concern was that what the proposed amendments do for mutual funds is simply to validate some arrangements that have been made that, I think, are not particularly appropriate arrangements but were the only arrangements anyone could make to handle mutual funds under the existing act.

Some of the comments I made in my written submission, I think, are no longer applicable. The latest version of this is in the proposed amendment, in subsection 4 of section 12A which would make the price paid by the mutual fund for its shares when they are surrendered payable out of capital. This is one thing that concerns me. I think the funds that have been set up so far have been redeeming their mutual fund shares out of paid in surplus. Most of them have not run into any trouble. Some of them provided, in their letters patent, that they may purchase their shares only out of paid in surplus; some did not. I presume all of them have been redeeming only out of paid in surplus, not out of capital. I do not think this has caused any trouble so far, but I think it may some time in the future. I would judge, from looking at a few financial statements, that paid in surplus amounts to something like two thirds to three quarters of the total asset value of at least the large funds, but I presume the day may come when it would constitute a much smaller fraction of the total assets of the funds, which means there could be a fairly serious limit on the extent to which a fund could redeem its shares. This, I think, is taken care of by subsection 4 (*b*) which will permit repayment out of capital.

However, I think there are still some problems in this payment out of capital. The position taken by the companies branch, as I understand it, is that a mutual fund share is not a share within the ordinary meaning of the word. I think this was probably the only way in which you could interpret mutual fund shares under the present act because, under the present act, you simply may not redeem common shares. It was necessary to think up some new type of interest that could be redeemed. I do not think there is really any need to preserve this concept of the mutual fund share as being something that is not a share within the ordinary meaning of the word "share". In this, I think, I disagree with Mr. Lesage.

One thing that concerns me is that if, under the Income Tax Act, a mutual fund share is not a share, then it may be a little difficult to know precisely how dividends, for example, would be treated. Are dividends on mutual fund shares necessarily subject to a dividend tax credit? I would presume that these dividends would at present be treated as eligible for a dividend tax credit, but there may be some doubt. I do not really see why mutual fund shares cannot be

considered shares, why it is not possible simply to say that certain kinds of shares purchased by the mutual fund may be surrendered. This I think would simplify the tax problem. As things stand, I am not sure that it is clear from the proposed amendment that mutual fund shares are not shares in the ordinary sense of the word. I know this is the interpretation which the companies branch gives to the mutual fund shares but I am not certain that it is the interpretation, that, for example, a court would give.

If they are shares, while it is true that they may be paid for out of capital, then I think you are still faced with the question of whether paying for these shares out of capital would constitute a reduction of capital and bring on all the formalities of sections 48 to 59 of the act which deal with a reduction of capital—and certainly no mutual fund can go through all these formalities each time it purchases shares from a shareholder, and there is really no need for it. The creditors are well protected as long as the mutual fund does not make itself insolvent as it goes through a purchase of shares, and I think perhaps even without that rule creditors are pretty safe. There are very few creditors of a mutual fund. I suppose they are a few suppliers of office equipment perhaps, where the directors' fees are payable and the management fee is payable. I think few funds actually borrow money, but apart from that I cannot imagine claims of creditors actually arising. In any case there should be very little problem because when shares are purchased by a mutual fund they are normally purchased at at least no more than the net asset value which you calculate in this way: You take the asset value of the funds, subtract the liabilities, and what is left is available to pay out to shareholders. So there is very little chance that a creditor is going to be injured, unless, of course, the assets of the company do not consist of the ordinary kind of mutual fund assets, that is stocks and bonds. I suppose a mutual fund might become involved in non-marketable assets, and there might be some difficulties, although a balance sheet test may indicate there was plenty of protection for the creditors which there might not actually be.

As the amendment stands, I think there is a question whether sections 48 to 58 would apply. This is why I suggested that there should be an amendment to section 49 which appears on page 16, clause 21, subsection 3, which provides an exemption from these elaborate formalities where preferred shares are redeemed out of capital. I think there is a misprint in this proposed subsection 3. I understand that has been corrected. The reference should be to subsection A. This makes it quite clear that when a company is redeeming its preferred shares there is no need to go through these elaborate arrangements for the protection of creditors even though preferred shares are being redeemed out of capital. I suggest that the same subsection should refer to the redemption or surrender of mutual fund shares under section 12A. There is no doubt about whether or not the companies must go through all of these formalities when their mutual fund shares are surrendered.

There is one other element that takes me back to the question of whether mutual fund shares are shares. I think there is no reason why a mutual fund should be forced to have more than one class of shares. The funds that are set up now all have, as far as I know, two classes: They have a class that may be called special shares that will now be called mutual fund shares, and they have another class sometimes called common shares and sometimes called deferred shares, that are not redeemable. So far as I can see, this second class is simply a nuisance. All the funds have them. The total par value of this second class is usually $500, perhaps $1,000 or $2,000. In many cases the shares have never been issued; they have been authorized because it was inconceivable that you would have a company with only these mutual fund shares. They certainly offer little protection to the creditors, if that is their purpose, and I

see no real reason for requiring that a company have any shares other than the mutual fund shares. I do not think this is a very serious problem; it is simply a nuisance at the present time.

Mr. LESAGE (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): Where is it provided in section 12A that a company must have two classes of shares?

Mr. WILLIAMSON: I do not think section 12A or any other section requires that you have other shares. What concerns me is the interpretation that mutual fund shares are not really shares, which would lead me to the conclusion that even with section 12A we would be in the same position as we are in now without it; that is, in order to have a company that looks like a company you have to have both mutual fund shares and another class of shares. I would agree there is nothing in section 12A that requires it; but I do not think it is consistent with a single class of shares to say that the mutual fund shares are not shares because this leaves you with a company that does not have any shares at all in the ordinary meaning of the word. I think this would bother most people setting up these funds, and it might bother as well the creditors and the shareholders.

If I may go on, Mr. Chairman, I would like to mention some sections that do not deal with the mutual funds. An element that concerns me a good deal is in clause 10 on page 7 of the bill, section 12(1*a*), one that I had already referred to. It permits the redemption of preferred shares out of capital. This subclause (1*a*) was put in after the bill was introduced in the Senate because, I believe, a number of witnesses suggested that the Ontario experience with preferred shares redeemable out of capital had been satisfactory and there was no reason why the dominion act should not permit the redemption of preferred shares out of capital. I think the explanation given in the Senate committee for including this subclause (1*a*) was that it seemed appropriate to provide for redemption of preferred shares out of capital. However, section 61, which appears on page 17 of the bill, has been retained. It has been redrafted but its essential meaning, I think, has been retained. I think section 61 still says that preferred shares can be redeemed only out of earned surplus. I suggest that there is a contradiction here, that the amendment would keep the concept that preferred shares may be redeemed only out of earned surplus and would introduce the concept that they may be redeemed out of capital.

I am not sure where this leaves the company, whether it has a choice. I do not think it really has a choice. Section 12(1*a*) seems to say it may redeem out of capital, and section 61 seems to say it may not redeem out of capital. I would suggest that section 12(1*a*) is a good section to have. This does follow the Ontario pattern that preferred shares may be redeemed out of capital. In this case I would think section 61 should simply be deleted entirely. However, if preferred shares are to be made redeemable only out of earned surplus, then I would think section 61 should be kept, but section 12(1*a*) would then be dropped. If section 61 is kept, I think some rewording is indicated. The accountants in particular have objected to the phrasing in subsection 4 which says: "The surplus resulting from a redemption or purchase for cancellation of shares of a company made in accordance with this section shall be designated as a capital surplus....." I suppose everyone knows—at least I suppose all company lawyers know that surplus resulting from a redemption of shares is something very different from what is meant here. I think, as the accountants said, the only surplus that results from a redemption of shares would arise if you redeemed the shares for less than you had received for them, perhaps for less than the par value, which would be very unusual. What this subsection means, I think, is that when the shares are redeemed, what would have been a reduction of capital is cancelled out simply because then a reduction in the par

value must be made up by a transfer from earned surplus to capital surplus. The language I think is simply inappropriate, although perhaps it is true that not many people misunderstand it.

Finally, I think there could be a good deal more improvement in a section that has certainly been improved. This appears on pages 8 and 9, clause 19, section 12, subsections 14 and 15. I think the meaning of subsections 14 and 15 has never been entirely clear. These are the subsections that prevent the issue of non-voting shares. They were put in in the 1930's. I think it was pretty clear that the original subsection 14 was aimed directly at the device of management shares where a company issued a few shares carrying voting rights to an inside group and then issued a lot of shares with no voting right to an outside group, giving the inside group a monopoly of voting power with perhaps a very small investment.

Unfortunately, the original subsection 14 was worked a little too explicitly in terms of blocking this device. It said you might not give to one class of shares exclusive voting power. I think it did leave open the possibility of giving voting power to two classes of shares and then having a third class with no voting power. I do not think the companies branch has ever been willing to permit a class of shares with no voting power; I do not think it was entirely clear from the old subsection 14 that this was forbidden. The new subsection 14 seems to take care of the point; it says that no class of shares may be issued with voting rights limited in such a way as to attach to any other class or classes of shares the exclusive right to control the management of the company, so this would preclude an issue of non-voting shares, I suppose.

I think subsection 15, however, still needs some improvement. Subsection 15 provided an exception to subsection 14. As I would paraphrase the two sections as they now stand in the act, subsection 14 says you may not create a class of shares that has exclusive power, and subsection 15 says there is one exception to this, you may give exclusive voting power to a class of preferred shares on the happening of a stated event. I think one of the defects in the subsection is that it does not expand on what a stated event is. Pretty clearly the intention was that when dividends had been passed for a certain number of periods it would be appropriate for the preferred shares to take over the company. I think subsection 15 was intended to permit exclusive control of the company to the preferred shares in this sort of situation. I do not suppose that exclusion is really very important. Very few companies give exclusive control to an issue of preferred shares under any circumstances. Many companies do give voting rights to their preferred shares, not exclusive control but at least voting rights when the dividends have been passed. I think subsection 15 has been interpreted to mean that this is all right; that is, that you do not have to give full voting rights to preferred shares, and it is sufficient to give them the right to vote when certain things have happened. I am not sure that the passing of dividends carries this inevitable interpretation, but I think it is the interpretation given by the companies branch. I believe it would be appropriate to redraft subsection 15 to make it clear—if this is the meaning—that the voting rights of preferred shares may be limited to the extent that they may be able to be voted only when certain things happen. I would hope the term "stated event" might be spelled out in a little detail. I believe the intention was that the stated intent would be the passing of some dividends. I do not think it is at all clear from the wording of subsection 15 alone that that is what is meant by stated event.

I think that is all I have to say, Mr. Chairman.

Mr. GELBER: I was interested in the discussion about shares in mutual funds. I wonder whether some of these problems would dissolve when you view mutual fund as a partnership. Do you not think that a mutual fund really is a form of partnership?

Mr. WILLIAMSON: I think it is important to know what your mutual fund is. A few mutual funds are organized legally as trusts. I think this is perhaps uncommon, although on the coast there are some funds organized as trusts; they probably avoid all the company law problems that other firms have run into, although at the same time I think they have avoided some tax benefits that the other companies enjoy. I believe most of us think in non-legal terms of a mutual fund as a sort of trust or partnership, but the difficulty is you have to come back to the Companies Act and this is where we have run into trouble in the past. The Companies Act really does not take care of mutual funds. I would hope the act itself could be amended to provide what is needed for a mutual fund without working out these rather unorthodox arrangements which I believe never have been challenged in the courts, but which might be.

Mr. GELBER: When you say trust or partnership, it seems to me trusts or partnerships are radically different concepts.

Mr. WILLIAMSON: I think the legal concept of a trust, a partnership or a corporation is radically different. This is why it is important to say what you have for any particular fund.

Mr. GELBER: If the law recognizes a mutual fund as simply a partnership, would that not simplify the problem?

Mr. GRAY: No. You would not have the benefit of limited liabilities.

The CHAIRMAN: Would you please be courteous enough to address the witness through the Chair?

Mr. GELBER: If we viewed mutual funds as a partnership, it would simplify many of the problems.

Mr. WILLIAMSON: I think it would require the drafting of a whole set of laws for these partnership mutual funds and others to take care of the limited liability. The taxing consequence would have to be thought of fairly carefully. They would be quite different today from the tax consequences of a corporate mutual fund and quite different, perhaps, from the tax consequences of a trust mutual fund. As the Income Tax Act now reads, there are some advantages in being able to use the corporate form for a mutual fund. There are some choices which would not be available if the fund were a trust or a partnership. I think this would require a lot of legislative drafting, but it could be done.

Mr. GELBER: I understand that many funds prohibit the hypothecation of assets for borrowing. In that event the fund simply remains a mutual investment instrument.

Mr. WILLIAMSON: Yes, I think this is true.

Mr. GELBER: And the problems that are mentioned about limited liabilities therefore disappear.

Mr. WILLIAMSON: Well, I am not sure. I suppose in most cases this would be a very small problem. Today some mutual funds have fairly substantial liabilities owed to brokers, for example. I think almost all these funds now are in a position that no shareholders, even if they had limited liabilities, would be very much worried about this. The day might come when they would be. I think it would be possible to construct the fund as a limited partnership to take care of the limited liability.

Mr. GELBER: A person who wanted to be free of a liability could invest in an investment trust?

Mr. WILLIAMSON: Are you thinking of a legal trust?

Mr. GELBER: A closed end trust. I would like to come back to the question of the tax complication and whether the 20 per cent benefit would be available, and whether this is clear. Does a mutual fund not have to declare whether or

not its income is received from Canadian taxpaying corporations, and is not the holder of shares in a mutual fund then able to get the benefit of his 20 per cent on that portion of the income which is derived from Canadian taxpaying corporations.

Mr. WILLIAMSON: Yes, but I think, as the Income Tax Act is worded now this privilege would depend upon his receipts from the mutual fund being dividends.

Mr. GELBER: He would not be liable for capital unless he was in the stockbrokerage business; any distribution of capital for capital gain under the Canadian income tax law would not be taxable unless he is in the stockbrokerage business.

Mr. WILLIAMSON: Yes.

Mr. GELBER: So there is no problem in respect of the 20 per cent.

Mr. WILLIAMSON: There is a problem only to this extent; if these dividends which the mutual funds distribute must be dividends within the meaning of the Income Tax Act, the tax credit would be passed on, and then it is important to know whether they are dividends under the act. At the present time I do not think the Department of National Revenue would be likely to challenge this, but it opens up one more ambiguity, perhaps, in the Income Tax Act.

Mr. GELBER: If the fund is regarded as a partnership and if there is full disclosure to the shareholder of the source of the dividend, then the tax problem disappears.

Mr. WILLIAMSON: In that case I suppose it would lose the opportunity to have the fund taxed as an ordinary corporation. This is what I presume the trusts in Vancouver have been willing to give up.

Mr. GELBER: If it distributes 90 per cent of its income, it is tax free. Is that correct?

Mr. WILLIAMSON: I have forgotten whether it is completely tax free; I think not. Is it not still subject to the 21 per cent rate of interest on dividends which do not qualify as dividends from taxable corporations? However, it has the choice of shifting out of the corporation tax classification into the ordinary tax classification. I know some companies have moved back and forth over the years. At the moment the only companies I have checked on are being taxed as investment companies rather than as ordinary companies; but they do have this flexibility that would not be available to the trust or partnership, and I assume this is of some value to them.

Mr. RYNARD: Is there anything in the act which prohibits mutual funds buying on margin in the market.

Mr. WILLIAMSON: No. In general, I think mutual funds can do pretty much as they please so far as the act is concerned. The Mutual Fund Association has drawn up a code of ethics and regulations. I believe most of the large funds belong to this association and have subscribed to the code. The code says there will be no buying on margin and no short selling. The letters patent of most of these large funds specify there will be no margin buying and no short selling. Some of them specify that there shall be no borrowing, but I think the code of ethics permits some borrowing.

Mr. RYNARD: Do they all subscribe to the code of ethics?

Mr. WILLIAMSON: I think the large firms do, but of course there is no legal requirement to abide by the code of ethics.

Mr. RYNARD: A company could operate in Canada without subscribing to the code of ethics and without being under any control by the act?

Mr. WILLIAMSON: I suppose only if the companies branch would be willing to accept letters patent that did not explicitly forbid short selling and buying on margin. I suppose the companies branch would object at this point.

The CHAIRMAN: Are there any further questions? If not, on behalf of the committee, may I express our appreciation for your attendance here at your own expense and for the very informative statements you have offered to the committee. You are quite at liberty to stay here for our further deliberations. Mr. Lesage probably will have some comments to make on the views you have expressed to the committee.

Mr. Lesage, do you wish to carry on with your explanatory notes and then proceed to the professor's comments?

Mr. LOUIS LESAGE (*Director of Companies and Corporations Branch, Department of the Secretary of State*): Perhaps it would be better, since I have my notes, to comment on what Professor Williamson said.

Generally speaking, I think Professor Williamson and myself will not have any difficulty in coming to full agreement. His first worry now has disappeared by the new amendments we are going to propose and which have been distributed this morning. Before Professor Williamson came this morning, some conversations had been held and we also had some correspondence. This has brought forth an amendment by the addition of subsection (4)(*b*).

The CHAIRMAN: You are referring to the amendments on the single full page?

Mr. LESAGE: The last one. It takes care of the major objection of Professor Williamson. We agree that the previous text was not sufficiently clear and could present some difficulties.

In so far as the problem of income tax is concerned, before drafting those amendments we had extensive conferences with the officials of the mutual fund companies association. Since this did not appear to be a worry to them with the text as now amended, we think we can say—because the mutual fund share is defined otherwise than it was in the bill—that mutual fund share "means any class of share" and, therefore, since the word "share" is there, this appears sufficient to meet the requirements of the Income Tax Act. As Professor Williamson indicated, there may be a remote possibility that the income tax department would express other views in the future, but of course this will be a matter of policy for the government, and I do not think I am in any way qualified to discuss taxation problems. However, since everyone appears to be reasonably satisfied that a mutual fund share means a class of share—although at the same time it means something else—there will not be too many problems therefrom.

Another very interesting point brought up by Professor Williamson is in respect of section 49 on page 16, where he would like to see some clarification of the very last line, where it says, "shall be thereby decreased", because the implication is that sections 49 to 58 shall not apply. For clarification of the text, I think, with Professor Williamson, the addition of the words "and sections 49 to 58 shall not apply" can be agreed upon very easily.

The CHAIRMAN: Excuse me, Mr. Lesage, are you adding that to the clause?

Mr. LESAGE: Yes. The words "and sections 49 to 58 shall not apply."

The CHAIRMAN: That is at the end of subclause (3)?

Mr. LESAGE: Yes. It is page 16.

Mr. WILLIAMSON: There may be one problem there, Mr. Chairman, because we are in section 49 now.

Mr. LESAGE: Section 49, subsections (1) and (2)?

Mr. WILLIAMSON: Yes.

Mr. LESAGE: Then, for proper drafting, it should be "section 49, subsections (1) and (2), and sections 50 to 58 shall not apply".

The other problem which was raised by Professor Williamson, a problem which is of great interest, is one arising from section 61. If we come back to section 12(1*a*)—

The CHAIRMAN: Page 7.

Mr. LESAGE: —we see the words "the letters patent or supplementary letters patent may provide for issuing of preferred shares...subject to redemption or purchase for cancellation out of capital..."

This means that it must be spelled out in the letters patent whether preferred shares may be redeemed out of capital or out of profits. This system is different from the Ontario system whereby preferred shares may be redeemed at large or out of capital or out of profits.

The scheme we have provided is twofold. The companies will have to elect to redeem out of capital or out of profits. Section 62 has been drafted accordingly. It provides that a company must indicate whether the redemption is to be out of capital or out of profits for the obvious reason that redemption out of capital, by the operation of the new subsection (3) of section 49, implies an automatic decrease of capital while section 61, on the other hand, says that a redemption out of profits shall not be deemed to be a reduction of the paid-up capital.

There is such a difference between redemption out of capital and out of profits that we had to create both systems. It will be possible to have the same class of preferred shares redeemable out of capital and out of profits, or only out of profits or only out of capital; but the necessity to mention that in the letters patent or supplementary letters patent while describing the capital stock will avoid all possibility of misunderstanding in that particular field of redemption.

Professor Williamson indicated that in subsections (14) and (15), which deal with the voting rights of preferred shares, the words "stated events" are not sufficiently defined or delineated. I agree that they are not defined or delineated, but that was the intention.

In most cases the practice of the department has been to say that the holders of preferred shares shall have no voting rights unless the company shall fail for two years to pay dividends on those shares. But this is not the only possibility. Voting rights may also be attached to other features such as redemption or purchase for cancellation of part of the capital stock. The broad wording of subsection (15) gives an opportunity to companies to ask for different "stated events", and the stated events must be those stated in the letters patent. In some legislation, I know, the "two years default" is defined, but we think it is too narrow and we think we would be doing harm to some companies in cases where that scheme would not be appropriate.

Mr. GRAY: May I interrupt, Mr. Chairman?

There would be nothing in the section to prevent a charter from saying that in the event that Christmas occurs after the issue of the charter the voting rights will be vested in that class of shares. Are we not just making it easy for unscrupulous operators?

Mr. LESAGE: The purpose is certainly not to permit at all times a group to be vested with the only authority over the invested capital in other classes of shares.

Mr. GRAY: But, Mr. Lesage, the "stated event" would be interpreted by the courts in the broadest possible way, and you would have no powers to prevent the issue of the charter because of any frivolous event. I suspect if you attempted to prevent people having a frivolous event and they went to court the charter would have to be granted.

Mr. LESAGE: We have kept the act as much as possible as it is. We have operated with those sections over the years and we are predicating our accept-

ance or refusal of conditions upon departmental policies; we think that is the only way in which to do it. If we acted otherwise we would be limiting too much the various possibilities of "stated events." They have to be defined in the letters patent or in the supplementary letters patent.

Mr. GRAY: Where does the act give you discretion to reject applications in respect of some stated events and not others?

Mr. LESAGE: The Secretary of State may issue or may not issue letters patent. There is nothing compulsory upon the Secretary of State. The Secretary of State may refuse to issue letters patent for any reason and without giving any reason; but as a matter of practice the department would never refuse to grant letters patent or supplementary letters patent without giving the reasons to the applicants.

Mr. GRAY: Some things in the act are spelled out precisely, as for example the contents of the financial statements that have to be filed, and so on. If the draftsman of the act was able to be precise with respect to that particular portion of the act, why could not the clause dealing with acceptable events be spelled out?

Mr. LESAGE: It is very dangerous to close the door. We are apparently retaining complete authority, but in fact we are aiming to open the door more widely. If any particular event was not listed, under the scheme you are suggesting it would not be possible for the department to grant letters patent. Under this other type of stated events, which we can not foresee at the moment but which could come as part of a contract between the applicants, we may very well confirm a stated event in a very particular case—by our letters patent or supplementary letters patent. If we were to limit that to a certain type of cases, then we would be barred from granting letters patent confirming a contract between parties, and we want to keep the possibilities broad because that is a very practical arrangement in many instances.

Mr. Chairman, this covers my notes on Professor Williamson's comments.

The only amendment you thought desirable at this moment is being covered, Professor Williamson? If there is something else will you please mention it?

Mr. WILLIAMSON: I would like to refer to section 12(1*a*) and section 61 which deal with the redemption of preferred shares out of capital.

I would suggest that at least section 12(1*a*) should refer to section 61 and that it should say where section 12(1*a*) applies 61 does not.

Section 12(1*a*) appears on page 7 under clause 10. It states that 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.

Mr. LESAGE: As a matter of drafting, I do not think we can make any reference to it in section 12 because this is the part of the act which describes the possibilities. If such a reference were to be made we would have to say "or in section 49 or in section 61". I would see no objection to "or in section 49 or in section 61".

Mr. WILLIAMSON: I think it is necessary to say that section 12(1*a*) does not apply where section 61 does apply. What bothers me is that as the sections stand it is not clear that section 61 would not apply when section 12(1*a*) would apply.

Mr. LESAGE: I would agree with you that some clarification could be made here, and it could perhaps be made by the addition of a subsection (5).

The CHAIRMAN: Are you referring to clause 27 and section 61 which appear on page 17?

Mr. LESAGE: Yes.

What text would you suggest, Professor?

The CHAIRMAN: If the explanatory notes are finished, may I suggest that as Mr. Lesage and Professor Williamson are now on common ground they should meet and complete the drafting?

Agreed.

Mr. WILLIAMSON: I missed one point, Mr. Chairman, on the mimeographed page which deals with section 12(*a*) clause 11. In the second line the words "means any class of shares", should I think read "means shares of any class". It is not a major change.

The CHAIRMAN: Again, that is a matter of drafting that you can discuss with Mr. Lesage.

Mr. LESAGE: Yes, Professor, we can discuss these points together, and perhaps we can deal with section 49 at the same time.

The CHAIRMAN: If it is agreeable to the committee we will turn to the explanatory notes and, in particular, to section 121F on page 34.

Mr. MOREAU: There are one or two questions that I would like to ask Mr. Lesage on that section.

Would the deletion of subsection (2) of section 121F involve any other consequential amendments?

Mr. LESAGE: I would say it would probably involve a similar amendment to section 125A (2).

Mr. MOREAU: Yes, that is the other section I had in mind.

Mr. LESAGE: I do not think it would have direct consequential effect on the text, but it would have the effect of indicating to the companies that the government may at any time and without notice change its policies and open all the files. This may have very serious bearing on the incorporation of companies at the federal level.

Mr. MOREAU: I appreciate that point. I just wondered whether the deletion of that section would naturally result in any other amendments.

Mr. LESAGE: No, I do not think so, unless you wanted to follow your idea and come to something similar in section 125A.

Mr. LAMBERT: Any suggestion of the deletion of section 121F(2) and any similar deletion would go to the heart of this whole matter.

Mr. MOREAU: I would agree, Mr. Lambert, through you, Mr. Chairman, that it is quite an important principle. There is a matter of principle involved; there is no question about that.

Mr. LAMBERT: In my book, if it is deleted the whole thing becomes meaningless. In other words, there would be no provision in any circumstances for withholding information. There is provision here for certain exceptional cases in which you have to go before a chief justice.

Mr. MOREAU: Section 117.

Mr. LAMBERT: The whole thing flows from it.

Mr. MOREAU: I did not want to get into a debate on this matter because I had thought we might finish the bill and the explanatory notes, but if Mr. Lambert is talking about section 121F I would add that it applies in the other way to the section we were talking about earlier, section 117, where the company could apply to the chief justice to withhold certain information from the shareholders at the annual meeting.

In the instant case, the Secretary of State must apply to the chief justice to release anything. I think there is a very important difference in those two sections. I wonder what would be the consequences so far as this act is concerned. I know Mr. Lesage is concerned about incorporations of federal companies as opposed to provincial companies. But the Kimber commission in

Ontario has been hearing similar submissions concerning the release of financial statements. I think the provinces are moving in this direction anyway. My own view is that we should take a very careful look at this.

The CHAIRMAN: Are there any further questions on page 34?

Mr. MACALUSO: I was just going to corroborate what Mr. Moreau has said. I think 121F(2) is a clause on which I have certain reservations. I would agree with him that perhaps it should be held over until we have finished with the bill because I for one have further questions on it.

The CHAIRMAN: I think this is the time to raise them. We are going through the bill right now. I would hope that when we start going through the clauses everybody will be clear as to their purpose.

Mr. MACALUSO: Mr. Lesage, on subclause 2 of clause 121F, I know there are certain reasons why some documents are not made a matter of public information as far as public companies are concerned but what is the purpose for that subclause? Perhaps you can restate it because I was unable to be here earlier.

Mr. LESAGE: The real purpose is to put the companies incorporated under the federal Companies Act on the same level as the provincial companies at the present time. No provincial jurisdiction requires the filing of financial statements with the department. It is only accidental that we in the department have a copy of those financial statements. This is for the protection of those companies. Until a general policy is established we think that we would be discriminating against those federal companies already incorporated and we would be discouraging the incorporation of the federal public companies because those companies would not have the same protection that they would have if they were incorporated provincially.

Mr. MACALUSO: Do you not think it would be best to wait until a general policy is established rather than to do it piecemeal? As you, Mr. Lesage, and I know it is very difficult to have this removed from the statute book or altered. I would think that until your general policy is established it would be best to leave it as it is. You mention the protection of the companies but I am thinking of the protection of the shareholders of these public companies. That does not mean to say I agree with the laws that are set down in the provincial companies act at the present time.

Mr. LESAGE: But we have to consider the fact that the federal jurisdiction is only one out of 11. Otherwise it would amount to discrimination and make preferential statements on the possibility of information being disclosed under the companies act. This is only a temporary measure until a policy is established. I do not see how the fact of putting the federal companies under the same protection as they have under their provincial jurisdiction would in any way prevent all jurisdictions from considering another general policy.

Mr. MACALUSO: That is my point. I do believe we should not incorporate a temporary measure with which there is some conflict until a policy is established. I do not see what loss there is to the federal government if the federal public charter is not granted to a public company.

Mr. LESAGE: The mere withdrawal of subclause 2 would become an indication of what would be the policy of the government and that is what we want to avoid. We want to give the federal companies a status equal to that of the provincial companies.

Mr. MACALUSO: It does not mean to say that the laws of the provinces are right.

Mr. LESAGE: I would agree with you.

Mr. MACALUSO: We should not compound something that is probably wrong in the provinces.

Mr. LESAGE: But we cannot work alone in that field because we are representing such a small percentage of the incorporated companies. If we work alone we destroy ourselves.

Mr. MACALUSO: I do not think it is a matter of co-operative federalism.

Mr. GELBER: Subsection 121E which appears on page 34 of the bill says that information should be made available to the shareholders. Is that not correct?

Mr. LESAGE: Yes.

Mr. GELBER: Therefore 121F(2) in no way restricts the information available to the shareholders.

Mr. LESAGE: No.

Mr. GELBER: This answers Mr. Macaluso's point.

Mr. MACALUSO: It did not answer my point.

Mr. MOREAU: Mr. Lesage, there was no such provision in the previous act, was there?

Mr. LESAGE: No, but there was a departmental policy which left this to the discretion of the minister. We find that this is perhaps not a sufficient guarantee to the existing companies that they will not be discriminated against by the department, and it is not a sufficient guarantee for those who want to incorporate that their financial statements will not be disclosed unless there is a general policy established.

Mr. MOREAU: But we have been operating without such a section for 30 years.

Mr. LESAGE: Yes, but if you were in the department you would see the difficulty of holding information if you have only to rely upon ministerial discretion.

Mr. MOREAU: What would you say, Mr. Lesage, if that section were to read that documents filed with the Department of the Secretary of State, pursuant to this section, shall be open for public inspection except in the case where a company has applied before a chief justice. What would you think if it were phrased in that way rather than to make the Secretary of State apply for permission to disclose information? How would you view the onus being put on the company?

Mr. LESAGE: At this time we have approximately 4,000 companies, this means 4,000 applications, before the court of justice.

Mr. MOREAU: I would disagree with that answer because I think the well-informed and progressive company of today relies on full disclosure and full information.

Mr. LESAGE: Of course, I agree with you there.

Mr. MOREAU: I think that a healthy capitalism means a well-informed public and shareholder. It would seem to me that section 121F, written in that way, would be in agreement with section 117 where the onus is put on the company to ask for dispensation to disclose information to their shareholders.

Mr. LESAGE: I would be ready to consider what you say, Mr. Moreau, but I prefer to indicate that the Secretary of State may disclose information and that this should be left to the ministerial discretion unless it is taken to a court of justice. It should be left to the department to a certain extent, and if the department has to disclose the information, it could inform the company. If you do not want us to disclose the information, you can go to a judge. This could be done that way. The procedure would be easier and it would not appear as a statement of policy. That is what you want to avoid, that this subsection be

a statement of policy. It is not intended to be a statement of policy. Maybe your suggestion is the best one, to partly adopt the principle of section 117 so that subsection 121F would not look like a statement of policy.

Mr. MOREAU: You are perhaps quite aware that the Ontario government at least has been asking the Kimber commission to look into these problems. I know submissions have been made on this particular point. Considerable concern has been expressed by a lot of companies about the lack of public information, and I think certainly the Ontario jurisdiction appears to be heading towards greater disclosure. I would hate to see our federal Companies Act moving in the opposite direction.

Mr. LESAGE: We gave the appearance of moving but we are not. If we can satisfy your worry to a great extent by redrafting this section—and you are not the only one to have this worry—then I would agree entirely to a redrafting along the principle of section 117. If you do not mind, we could work this out after the meeting together with Professor Williamson, and this would comprise a similar amendment to section 125A(2). I think there is a lot of merit in the view you have expressed and I think we can work out the wording. Of course we will have to take advice on this because I am only a representative and I cannot change what the government has decided. I will have to discuss this with you and take it to the other officials of the department.

The CHAIRMAN: Are there any further questions on page 34? Any questions on pages 35, 36 or 37?

Mr. LESAGE: Could I say a word on page 37, section 125 which concerns the annual summary that the companies have to make? You will note that we have deleted a number of questions leaving only the essential ones because the subsections we have kept are the only ones which have a practical value. All the other information which was requested under the previous section was, I would say, an undue burden on the companies to disclose details in which no one had any interest. For that reason we have kept it down to what is essential.

Mr. GRAY: Could I go back to page 36 for a moment? Section 123(2) permits the appointment of an employee of a private company under the circumstances in which they find themselves. Is this found in any of the provincial jurisdictions in these terms?

Mr. LESAGE: I think we have taken this from the draft uniform act. I think it comes from other jurisdictions. I do not remember exactly where it comes from. It is not an innovation of the drafters of that bill. This comes from other jurisdictions. We found it very practical and it received unanimous consent that auditors be appointed from among the directors or employees when dealing with small companies.

Mr. GRAY: This section says "upon the unanimous vote of the shareholders of a private company present or represented at the meeting". This is somewhat different from an earlier section. Is not the appointment of an outside auditor a very important protection, especially in a private company?

Mr. LESAGE: Perhaps I could say that the new Manitoba company act has an identical text which says "upon the unanimous vote of the shareholders of a private company." We think that the unanimous vote is usually strong enough. If a person is not there, then it is perhaps because that person is not interested or may not be in a position to sit on the board of directors or to indicate his intention. This would bar the company from taking advantage of that subsection. We think that a unanimous vote passed at a dully convened meeting of shareholders would be sufficient.

Mr. GRAY: Would this not be a question of sending out appropriate material before the actual meeting?

Mr. LESAGE: Anyone who is invited to an annual meeting knows what is going to happen regarding the appointment of auditors. The appointment of auditors and receipt of the auditors' report is a matter which comes at each and every annual meeting.

Mr. GRAY: Yes, I realize that, but is that not different from the question of the appointment of an auditor who may be a director, officer or employee of the company?

Mr. LESAGE: It would be different if we were dealing with a public company, but this exception is made so as to render it easier for the very small companies by permitting them to select an auditor from the directors, officers or employees in that company. There is also an exception here, that this may be the case if this is not a subsidiary company of another company. It is clearly intended only in the case of very small affairs.

The CHAIRMAN: We are now considering page 38.

Mr. LESAGE: When we were before the Senate subsection 4 of section 5 was amended. This morning I have a further amendment to line 26. This is an oversight which we wish to correct because subsection 4 of section 5 was split by the Senaate and paragraphs (*d*), (*e*) and (*f*) were transposed in section 140A, which is a new section. It was therefore necessary to change line 26 to read "(*c*) of subsection (1) of section 140A". This is only a typographical error which we want to correct.

The other important matter on page 38 concerns the dissolution of companies which fail to comply, for three years or more, with the requirement to file their annual summaries. This regards companies which have died a natural death. We will now be in a position to remove them from the list of active companies.

The CHAIRMAN: The amendment you made is in line 26. Does that not read as it is now?

Mr. LESAGE: It will now read "(*c*) of subsection (1) of section 140A" instead of "(*f*) of subsection (4) of section 5".

Mr. MORE: Line 25.

Mr. LESAGE: Line 26.

Mr. MORE: We have two different propositions.

The CHAIRMAN: We already have it.

Mr. LESAGE: It was amended by the printer. It is a clerical error which has been corrected.

Mr. GRAY: This section provides for dissolution of the company by the Secretary of State for failure to file returns, and on page 13 there is provision for surrender of charter.

Mr. LESAGE: Voluntarily.

Mr. GRAY: Yes. I have not seen anything which empowers the Secretary of State to cancel the charter under circumstances similar to those concerning the Hett clinic in Windsor where it is alleged the charter is not being used in a manner consistent with the public interest.

Mr. LESAGE: We will come to that in sections 140A, 145 and 147, where some sections of part I are being made applicable to part II.

The CHAIRMAN: We will proceed to pages 38 and 39. Are there any comments?

Mr. LESAGE: The only comment I have to make is that we were almost the only jurisdiction not providing for amalgamation. We now are providing for amalgamation of companies through a procedure which may be slightly different in its approach to the procedure applicable in Ontario and Quebec, under the draft uniform act, and in many other jurisdictions. However, this was very carefully redrafted, and it permits amalgamation.

The CHAIRMAN: We will move over to page 42.

Mr. LESAGE: In clause 43 we have the concept of new section 140A which provides for the winding up of companies in three specific circumstances:

(*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,

Although the procedure for winding-up under the Winding-up Act appears to be rather strong, it is not left in the hands of the administrative people, but rather to the courts of justice which in every instance will hear evidence when we are going to ask for dissolution in any of the three cases outlined in (*a*), (*b*) and (*c*).

Mr. LAMBERT: Of course, we do not have the whole of the Companies Act before us, but I am wondering, in respect of (*a*) and (*b*) particularly, what are the automatic disabilities under which a company could not be able to maintain an action in court, could not register property in its name, and could not defend an action in court. These are disabilities which are attached to companies which are not in good standing. These three points refer to companies not in good standing with regard to the filing of returns. I have in mind the provisions of the Alberta companies act whereby if you failed to file your annual return and the company has property it wishes to register in the land titles office, it cannot do so until it files its annual return.

Mr. LESAGE: This was the original joint stock company law and this was the Quebec law up until recent years. It was found to be so drastic in respect of the nullity of private contracts, that it was not found advisable to declare in the act a nullity which would affect third parties. Under the sanctions which are provided in section 140A, the matter is left in the hands of the court to decide whether or not there should be a winding-up.

Mr. LAMBERT: I did not introduce the case of a company which by being in default could not act and in respect of which any of its actions were nullities, no; but, rather, the company which could not launch a legal action. The first difficulty is with regard to the issuance of the statement of claim; the company is in default and not able to maintain an action; or, conversely, if it were in default and being sued, indeed it could not file a defence if it were in default. These are effective remedies; they are not drastic ones. All you have to do is file your annual statement.

Mr. LESAGE: I agree, but this would not permit the department to take positive action to dissolve the company. That is what it would need to clear our files and permit the department to go before a court of justice to say that a company must be wound up. If you are the defendant company and you comply, you have to pay the costs, and the department would withdraw the action; if they do not do so, we proceed to the winding up. In the Senate they told us we are asking for a big stick. I think that really is what is needed. There is no other way to have the companies comply.

Mr. LAMBERT: I agree with you there, but I am wondering whether you are being given another stick with which to beat minor offences. This is a wonderful incentive for companies to file their annual returns, and I can assure you it is highly effective and not very costly.

Mr. LESAGE: We have maintained the old provision in subsection (4) of section 125 that we can sue defaulting companies for an offence, but everyone knows that never has been effective; it would cost $200 or $300 for the government to make the investigation and to pay the R.C.M.P. and the agents for the Department of Justice, and so on, to collect the $20 fine and $11 of court fees.

Mr. LAMBERT: I agree with you, and may I commend for your favourable consideration the provisions in the Alberta companies act with regard to, shall we say, earlier action.

Mr. LESAGE: I thank you. That is the first time it has been suggested. When we come in with a revision of the act, this will be considered.

Mr. NOWLAN: It is in the Nova Scotia act as well.

The CHAIRMAN: We will proceed to page 43.

Mr. LESAGE: In section 147 we see that subsection (4) of section 5 of part I applies now to part II. If the corporation exceeds its objects or powers, it now may be wound up. Mr. Gray referred to a Windsor case where at the moment under the act we have no specific authority. This is what is intended by addition of the words in subsection (4) of section 5.

Mr. LAMBERT: This does not say who will authorize whom to play God. You are dealing with situations in which you say the company is not carrying on in an ethical manner, or in the manner for which it was conceived, and therefore the Secretary of State will have power to go before the courts to have it wound up.

Mr. GRAY: I think what Mr. Lambert is saying contains the answer. If he studies the situation to which I referred, he will find it has been alleged that this type of charter can be used to permit the unlawful practice of medicine, possibly gambling operations, and so on. If you look at the report of the Ontario crime commission, you will see in general terms what I am referring to. I say that the protection is alluded to in your own answer because presumably the people have the right to be represented by counsel and presumably there would be the right of appeal, and so on. I think that would provide the necessary protection.

Mr. LAMBERT: Who would motivate the Secretary of State; who would motivate the registrar to advise the Secretary of State that this application should be made?

Mr. GRAY: It is the same type of motivation as under any act; it is either an official of the department who takes the initiative, or under provincial law the administrative authorities, or ordinary citizens.

Mr. LAMBERT: Why not on a petition?

Mr. GRAY: In the first place, this is not likely to happen if we are talking about the same thing. The medical association, for example, is given sanction under a provincial act, and I would think it would be rather peculiar if the provincial attorney general had to make a petition to the Secretary of State for Canada in some way before he could carry out some investigation leading to court proceedings.

Mr. MOREAU: This appears to be quite agreeable to the Secretary of State. He would have the power to refuse an application for a charter or supplementary letters patent. Would you say that if he is granted that power, he should have some power to initiate action against a company?

Mr. LAMBERT: No. I feel the Secretary of State will do it for a frivolous reason. The permission granted to him is a general one. In some ways I agree with Mr. Gray that there must be a remedy, but I would like to see an explanation of how it will work. Obviously, the attorney general of a province and the Secretary of State would co-operate; I am perfectly in agreement with that. In the same way, the College of Physicians and Surgeons might lay a formal complaint before the Secretary of State to initiate certain proceedings. However, I am asking what will the Secretary of State require to motivate him to go into this type of action?

Mr. LESAGE: Sufficient evidence from anyone who had a complaint, any association or any department, whether it be the department of the attorney general of the province or the provincial treasurer, the health department of a

province, or whatever it may be. It may be a municipality also. In some instances we have acted upon requests by a municipality. Ten years ago there was a case in Vancouver of a gambling club. The Vancouver authorities requested we initiate the proceedings, and the proceedings terminated in the cancellation of the charter. However, we were at a disadvantage because we had nothing in the act. We were only at common law instead of having a statutory provision to protect us.

Mr. GRAY: Let me add that the provisions of section 4 are not to permit elaborate or frivolous application. The application can be made by the attorney general of Canada only upon the receipt of the certificate of the Secretary of State setting forth his opinion that any of the circumstances referred to apply to the company in question. I am sure the Secretary of State for Canada and the permanent officials of the department are no less responsible than are those of any provincial department, and even if they act on their initiative after a matter is brought to their attention, even by private citizens, I am sure they will not do it in any frivolous way.

Mr. LESAGE: We cannot act upon a complaint only. The complaint must be accompanied by evidence. The Department of the Secretary of State is not an investigating agency; we cannot investigate our cases ourselves. If there is any private complaint, we will ask for the evidence. In the case of a provincial department or a municipality, there is no difficulty because no such complaint would come to us without the evidence having been prepared in advance by the provincial police or the municipal police. In this case we would have sufficient facts on hand to enable us to ask the attorney general of Canada to proceed. However, if we receive a mere complaint from a person or a group of persons, and if they do not supply us with the necessary evidence, we cannot do anything. Unfortunately, this has happened in a few instances; they do not give us the necessary evidence.

There also is another problem. In so far as the practice of a profession is concerned, we think there are some provincial rights which have to be respected. We do not like to intervene in a field which comes under our Companies Act and which, at the same time, concerns a provincial jurisdiction.

The CHAIRMAN: Page 44.

Mr. LESAGE: The most important clause on page 44 is clause 50 in which we ask for the repeal of Part IV of the Companies Act, but to come into force only by proclamation of the governor in council.

Since 1898 Part IV has regulated the issue of licences to foreign mining companies operating in the Northwest Territories. This was inserted in the Companies Act long before the creation of the Department of Northern Affairs and National Resources which, since its creation, the department of the Secretary of State has continued to operate and is ready still to operate the section. However, this is a matter that concerns the Territories themselves, and we wish to have authority to hand over to that department, when they are administratively ready to take over, a function which is within their own jurisdiction.

Mr. LAMBERT: Clause 47 deals with annual meetings and reports of corporations incorporated under a special act. I take it this is consequent upon some of the observations that have been made in the miscellaneous private bills committee when it has been incorporating various companies. The results of this clause is to retain your contact with companies incorporated by special act.

Mr. LESAGE: That is correct.

May I turn to section 208A? We discussed this earlier; it deals with the bilingual names of corporations incorporated otherwise than by letters patent and gives us authority to change those names without the necessity for the companies concerned to come to parliament for that purpose.

There is an omission on the last page concerning the date of commencement of the amendments, and I wonder if it could not be inserted by the addition of a clause 53. You will appreciate that it is not possible for the department or for the companies to change everything overnight. We had dreamed of March 31, but we think the delay would be too short and that a further delay of three months would be more convenient to all companies.

Mr. LAMBERT: July 1, 1965.

Mr. MOREAU: July 1, 1965; I agree.

Mr. LESAGE: I agree, Mr. Lambert. That is all I have to say.

The CHAIRMAN: Gentlemen, before the committee adjourns may I suggest that we reconvene after orders of the day to start carrying the clauses of the bill?

Thank you, gentlemen. With your indulgence, we will meet here after orders of the day.

TUESDAY, March 9, 1965.

AFTERNOON SITTING

The CHAIRMAN: Will the committee please come to order. If it meets with your approval I shall now begin to call the clauses forthwith.

Clauses 1 to 10 agreed to.

On clause 11—*Definition of "mutual fund share".*

Has everyone received a copy of the proposed amendment?

Mr. MOREAU: There is to be a change in it.

Mr. LESAGE: Yes, following discussion with Prof. Williamson this morning he said that he is entirely satisfied with the splitting of subclause 4 into (*a*) and (*b*), and that (*b*) meets his objection. That is what Mr. Williamson told me this morning, and we went over it on the telephone during the week end. After discussion this morning he said that he was perfectly in agreement with that one, and was satisfied with that clause and with that amendment, and with the amended clause 11 for mutual funds.

The CHAIRMAN: I understand that that one has been circulated, and there is no dispute about it.

Mr. LESAGE: There is no change.

Mr. LAMBERT: I move the amendment as proposed by the registrar.

The CHAIRMAN: Is there any seconder?

Mr. MOREAU: I second the motion.

The CHAIRMAN: Shall the amendment carry?

Agreed.

Shall the clause as amended carry?

Carried.

Clause 11 as amended agreed to.

Clauses 12 to 20 agreed to.

On clause 21—*Cancellation of preferred shares.*

Mr. MOREAU: There is something in 21.

The CHAIRMAN: I understand there are two amendments in 21.

Mr. LESAGE: There are two amendments, one of which we had before, and the new one we had this morning after discussion with Prof. Williamson.

The CHAIRMAN: The first one was line for where he puts the words "section, where pursuant to subsection (1*a*) of section 12—"

Mr. MOREAU: Yes.

The CHAIRMAN: And after line 11:

—of the company shall be thereby decreased; and subsections (1) and (2) of this section and subsection 51 to 58 to not apply.

Mr. MOREAU: I so move.

Mr. LEBLANC: I second the motion.

The CHAIRMAN: Does the amendment carry?
Carried.
Does the clause as amended carry?
Carried.

Clauses 22 to 26 agreed to.

On clause 27—*Purchaser or redemption of its shares by a company.*

Mr. LESAGE: There are two amendments; one is the same that we had previously, and another was discussed with Prof. Williamson this morning.

The CHAIRMAN: The amendments proposed are being distributed now. I think everyone has a copy of the proposed amendments, but we shall wait until someone indicates his intention to move the amendment.

Mr. LAMBERT: I so move.

The CHAIRMAN: It has been moved by Mr. Lambert.

Mr. MOREAU: I second the motion.
Shall the clause as amended carry?
Carried.
Shall the clause as amended carry?
Carried.

Clauses 28 to 38 agreed to.

The CHAIRMAN: We are now on clause 39.

On clause 39—*Books of account and accounting records.*

Mr. LESAGE: I have three amendments. The first I have is at line 44 on page 27. Clause 39 continues over to page 37, a matter of 15 pages.

The CHAIRMAN: On page 27, the amendment is at line 44, and it reads as follows:

—redemption price thereof, and indicating separately any class of shares that is redeemable out of capital.

Mr. MORE: We have not got that one.

The CHAIRMAN: I am sorry. It is being distributed.

Mr. MOREAU: Perhaps we should take up clause 39 subsection by subsection because it is very long.

The CHAIRMAN: All right then. We are now on clause 39 and I shall start in with section 115 on page 22. Does that section carry?
Carried.

Shall section 116 carry?
Carried.

Mr. MOREAU: Clause 117 relates to this. That is the point I would like to clear up; it relates to section 121F.

The CHAIRMAN: This is on page 23, section 117.

Mr. MOREAU: We have here a statement of profit and loss which will be placed before the annual meeting of the shareholders unless and provided that the chief justice or the acting chief justice of the province gives them dispensation. I wonder about this when we go to page 34, section 121F.

Supposing this dispensation was obtained from the chief justice or the acting chief justice of a province concerning the profit and loss statement. I presume this would apply to section 121F, subsection (1), in that it is the same information that is being sought after. That is what I am trying to clear up.

Mr. LESAGE: That is so, you are right.

Mr. MOREAU: I wanted to make sure about this.

Mr. LESAGE: Yes. It seems to me that the dispensation granted in section 117 does not cover the point in 121F.

I do not think so, because in section 117 it covers only one slight point in the financial statement. This is only one object of the type of information required to be disclosed; whereas in 117 (1) you have it subdivided under (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k), and the exception of (a) applies only to what is stated in (a), to the amount of their sales and their gross revenue only, but not to all the financial statements.

Mr. MOREAU: It could cover profit and loss.

Mr. LESAGE: No, it does not apply to profit and loss in (b). The exception is only for the amount of sales or gross revenue which the company may, with permission of the juge, not disclose to the shareholders.

Mr. MOREAU: I was only concerned this morning, when I asked questions concerning 121F, that we were going to make public information which was going to be denied under section 117. It this does not apply in that way, my thoughts on section 121F, subsection (2), are considerably different and I feel that perhaps we should take time on these.

The CHAIRMAN: We are on page 123.

Sections 117 and 118 agreed to.

Mr. LESAGE: There is an amendment to section 119 on page 27 at line 44.

The CHAIRMAN: On page 27 at line 44 there is an amendment. This amendment has been distributed. The amendment is that clause 39 be amended by striking out line 44 on page 27 and substituting therefor the following:

> —redemption price thereof, and indicating separately any class of shares that is redeemable out of capital;

Amendment moved by Mr. More, seconded by Mr. Rynard.

Amendment agreed to.

Section 119 agreed to.

Mr. LESAGE: There is an amendment to section 120. I had to write this amendment by hand.

The CHAIRMAN: The amendment is that lines 37 to 38 on page 29 be deleted and the following substituted:

> —bonuses, fees and other emoluments

Mr. DOUGLAS: You are striking out "contributions to pension funds and other emoluments" and substituting—

The CHAIRMAN: The words "bonuses, fees and other emoluments".

Mr. DOUGLAS: And deleting "registered contributions to pension funds"?

The CHAIRMAN: Yes.

Mr. DOUGLAS: Why?

Mr. LESAGE: This is merely an amendment which is consequential to another amendment which was agreed upon in the Senate. It was an oversight when the bill was recopied that those words were not struck out at this place as they were in another place.

Mr. MOREAU: Would the term "other emoluments" include pension funds?

Mr. LAMBERT: Of course it would. This includes the total remuneration received by the director; it includes salaries, bonuses, fees and other emoluments.

Mr. MOREAU: That is my interpretation.

Mr. DOUGLAS: The original draft requires the pension contribution to be shown separately.

Mr. LESAGE: Yes; the original draft did, and this was taken out by the Senate.

Mr. DOUGLAS: Do you know what reason they gave?

Mr. LESAGE: I cannot remember accurately enough to quote what was said in the Senate.

Mr. MOREAU: As I understand it, the pension remuneration would be included in the total.

Mr. DOUGLAS: It will be included in the total, but will not be segregated.

The CHAIRMAN: Are there any questions before I put the motion?

Amendment moved by Mr. Lambert, and seconded by Mr. Leblanc.

Amendment agreed to.

Sections 120, 121, 121A, 121B, 121C, 121D, 121E agreed to.

Mr. MOREAU: Mr. Chairman, I wish to propose an amendment to section 121F. I move the deletion of subsection (2) entirely.

Mr. LAMBERT: Have you read the proposed amendment?

Mr. MOREAU: Yes. I do not quite agree with it. By this provision which Mr. Lesage kindly has drafted, I thought we might be in the position where we would be disclosing information to the public which had been denied to the shareholders under section 117. This subsection was not in the original bill. I think the trend in the country and in other jurisdictions is the opposite and I do not feel this subsection should be here at all. I so move.

Mr. LEBLANC: I second the motion.

Mr. LAMBERT: I think this completely negates anything that we have provided for in the earlier provision.

The CHAIRMAN: In section 117.

Mr. LAMBERT: In Section 117A. Also, I think, in the appropriate case, there should be an opportunity to go before a chief justice to present the disclosure. It must be noted that subsection (2) as it appears on page 34 is in the negative version. It says those documents shall not be open to the public unless the Secretary of State has the written permission, or words to that effect. However, the amendment proposed by Mr. Lesage says that the documents shall be opened unless permission shall be obtained from the chief justice that they should not be disclosed. This is a horse of an entirely different colour. With the greatest respect, again I feel we must have this safety valve; that is, in the ordinary case where it would be not in the public interest to have the documents open to the public, you would go to a chief justice and state your reasons. Otherwise, there would be nothing to stop documents being examined. Under the proposal by Mr. Moreau, there is nothing that could stop the registrar granting such a request, even though he knew it could be deleterious and contrary to public interest. For this reason I would be opposed to the proposal by Mr. Moreau. While I do not like the original version, I certainly am quite prepared to support the proposal being put forward by Mr. Lesage as an amendment.

The CHAIRMAN: Do you wish to move an amendment to the amendment?

Mr. LAMBERT: I cannot at the moment.

Mr. MOREAU: If I may speak for a moment on this, Mr. Chairman, it seems to me we got along for a good long while without such a section in the act. This is not in our present act. The whole idea that we would certainly be putting limitations on disclosure introduces a new concept into the Companies Act which I do not feel should be there in principle. This after all deals with

public companies. I personally feel that an enlightened company today—and this includes most of our major corporations—relies on disclosure of information to the public and to the shareholders. This is a protection to the companies. I think that when there is insufficient disclosure, the stocks are sometimes underpriced. There are takeover manoeuvres which go on sometimes. I do not feel this really helps the shareholder; on the contrary, in certain instances it may be contrary to the interests of the shareholders. Further, I think we are getting here partly at the problem of insider trading. I think that the Ontario jurisdiction certainly appears to be one of the more important consideration and it seems to be moving in the opposite direction. Every securities exchange commission in the province is moving in that direction, and suddenly we in the federal scene would be moving in the opposite direction. I feel this is contrary to the present trend and contrary to the public interest.

Mr. LAMBERT: And yet, Mr. Chairman, this appears in the revised Companies Act.

Mr. MOREAU: We have not been able to find one that had.

Mr. DOUGLAS: Do I take it that the documents referred to in section 121F, subsection 2 have to do with documents referred to in section 121E, subsection 1?

The CHAIRMAN: Yes.

Mr. DOUGLAS: Those are documents which are mailed to each shareholder, so therefore all you are saying, if the committee accepts Mr. Moreau's amendment, is that none of the documents sent to a shareholder can be withheld, and that they shall be open to the public.

The CHAIRMAN: That is my understanding of it.

Mr. DOUGLAS: It seems to me that if it is information which is given to the shareholders, there is no reason why the public should not have access to it. Already under section 117 certain information may be withheld from the shareholder, if it is confidential information which would harm the competitive position of the companies. That is already being withheld from the shareholder. However, if it goes to the shareholder it ought to be available to the public.

The CHAIRMAN: If there is no more discussion I will put the question on the amendment. Is everyone agreed on the amendment? There is a request for a recorded vote. All those in favour of the amendment? Nine. Contrary? Three.

Amendment agreed to.

Sections 122 to 124 inclusive agreed to.

Shall the clause as amended carry?

Clause agreed to.

Clause 40 agreed to.

On clause 41—*Special returns.*

Mr. MOREAU: I have a comment on section 125A, Mr. Chairman. The consequential amendment of the action we took on section 121F I think applies again in 125A. I do not quite understand the reason for having this section at all.

Mr. LAMBERT: It deals with the private company.

Mr. MOREAU: I wonder what sort of special terms we are dealing with here?

Mr. LESAGE: This section 125A was borrowed from the Ontario Companies Act and was rejected as such in the Senate because the previous text gave authority to the Secretary of State to ask companies for any type of information, and so the private companies when asked by the Secretary of State would have had to disclose more than the public companies. Therefore 125A(1) was

limited to the same disclosure as the public companies, that is to say, to the financial statement. The Secretary of State can ask a private company for its financial statements, that is to say the requirements provided for in sections 115 to 122. Since it is a private company, this subclause 2 was added so as to prevent disclosure of information from the private company by the Secretary of State.

Mr. MOREAU: It seems to me there is a very serious problem involved here regarding the subsidiary company of a corporation which may, under this act, be described as a private company. I feel that this again is not in the public interest. I think it is very important that we do get this disclosure. My remarks are directed primarily at a situation where we have a private company which is a subsidiary of a corporation. I wonder if we could perhaps strike this section out entirely, or alternatively define a private company, as Mr. Gelber suggested. We would then apply the law to a private company which had corporate shareholders. I do not feel we can leave this section in together with 121F because of this conflict between them, that is between a company incorporated in Canada and one which has been incorporated as a private company with corporate shareholders.

Mr. LESAGE: I would rather see this deleted from the act entirely.

The CHAIRMAN: You would prefer to take the whole thing out than to delete subsection 2?

Mr. LAMBERT: I think that would be preferable because, frankly, what Mr. Moreau has done in his original amendment was to create more mischief than he intended to cure. With all due respect to Mr. Moreau, I do not know whether he has foreseen the full implication of his action in the previous amendment and certainly in this suggested removal of subsection 2 of section 125A which would frankly be removing the whole of the protection that is given to private companies in their classification. In other words, the amendment would be trying to do indirectly what you cannot do directly.

Mr. MOREAU: I did not move any amendment, Mr. Lambert. I am quite aware of the problem that exists. I wonder if we could not make a distinction between a private company and a private company that has corporate shareholders. I am quite prepared to go along with the complete deletion of section 125A.

Perhaps we can get at this problem in another way, or by the other bill we have passed, the disclosures act.

Mr. LAMBERT: I cannot understand this predilection for picking on a private company in isolation, a company which has corporate shareholders. I know many private companies which are controlled by other private companies which are perfectly legitimate.

Mr. MOREAU: Then let me say public corporations.

Mr. LAMBERT: That is a different story, and even then I am not too sure that it is necessarily right that just because a company is owned by a public company, ipso facto it should be in a suspect class. I cannot see that.

Mr. MOREAU: I go along with the complete removal of section 125A. What I am aiming at is perhaps better approached by the Corporations and Labour Unions Returns Act. I certainly do not want to create any problems for a private corporation, but I think Mr. Lambert would agree that if there is abuse in the distinction between private companies and public companies it is in the case in which we have public corporations holding shares in a private company. I think perhaps the Corporations and Labour Unions Returns Act would look after the problem. I would certainly go along with the complete deletion of section 125A, and I so move.

The CHAIRMAN: There is a motion that section 125A be deleted; that will include both subsections (1) and (2). Is there a seconder for that?

Mr. DOUGLAS: I second the motion.

Mr. LAMBERT: You want to delete the whole of clause 41?

The CHAIRMAN: Yes.

Mr. LESAGE: Yes, that is far better.

The CHAIRMAN: It has been moved and seconded that clause 41 be deleted.

Mr. BASFORD: I do not see the need to delete it. I do not understand Mr. Moreau's amendment because disclosure of the public company's returns should, I think, be provided for in the act.

Mr. Moreau has cited instances of possible abuse by private companies, and surely section 125A does give some procedure, if there are abuses, to look into them by order of a judge. To cross out the section altogether certainly does not give any protection.

I would not like to see full disclosure of a private company, but here is a method—the decision of a judge—by which those informations can be disclosed.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): I would like to hear Mr. Lesage's viewpoint on this.

Mr. LESAGE: I have very little to say with regard to section 125A. It was first inserted in the bill at the interdepartmental committee stage when, as I told you, we had the advantage of the presence of three solicitors from outside. They were aware of an omnibus clause in the Ontario Act which permitted the department to obtain some information from companies. They asked for that clause to be inserted in the Companies Act as section 125A. At that time I maintained, and I still maintain, that for departmental purposes we do not need it, and we have never needed such an omnibus clause because when we request information from private companies it is in order to issue supplementary letters patent changing or varying the capital stock of those companies. Each and every time we have been given the fullest possible co-operation of the company requesting such changes in its letters patent. When they said, "why don't you put it in your act?" I could not see that it would do any harm, but I could not see any useful purpose in it either.

When the bill reached the Senate they said, "If you're going to obtain that information, then it should be kept confidentially in the department." Here again I could see no objection to keeping it confidential because when we have requested that information from companies we have obtained it on a confidential basis. That method of working has been the same for 96 years and no difficulty has been encountered with it. That is why this afternoon if someone appeared to be unhappy about that part of 125A I could see no objection in having it deleted, because the department will be able to continue and will be able to obtain the same co-operation from companies.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): Is it conceivable that at some time in the future the government might have need of this type of information if they were worried about the takeover of a Canadian company by a United States corporation, for example? Could this information not conceivably be useful to you people if you were requested by some other department of the government to give this information?

Mr. LESAGE: We have never received a request by any other department for the financial position of private companies. This is only a possibility. If the government were to adopt a policy, I think it would result in legislation, and that legislation would cover this point. I do not see any need for it at this moment. I did not see any need for it at the time it was inserted in the bill, and I still maintain the view that it is not necessary and that it can disappear without any damage being done.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): Suppose Mr. Gordon were to be asked in the House of Commons about a proposed takeover of a private company, and suppose he wanted some detail. He would come to you and ask for details. Would this not supply you with a method to obtain the details for the Minister of Finance, whoever he happened to be at the time?

Mr. LESAGE: We could obtain those details for another department, of course; this would be possible. However, so far we have never been asked for such information. If we were asked, we would endeavour to give what we have, and that is all. I do not think foreseeing possible changes in the policy should dictate an amendment in the Companies Act at this moment. When the problem arises, then the government will introduce legislation. So far, we have no problem.

Mr. BASFORD: You see no harm in it being in the act?

Mr. LESAGE: If it is there in full, I see no harm.

Mr. BASFORD: What do you mean by "in full"?

Mr. LESAGE: With subsections (1) and (2); and even without subsection (2) I think the department would not disclose the information to the public. The Secretary of State, as any other mnister, has the right to open or close files to the public. Under section 121F, even if subsection (2) has been deleted, the department can very well keep the files closed upon the ministerial discretion.

Mr. LAMBERT: That is hard.

Mr. LESAGE: But that is the law as it is for all departments; that is the general law. We were better with some clarification. The committee has decided to take it out of 121F, so we are falling back to where we were, but we are not opening any financial statement to the public by taking off section 121F (2); we are doing nothing at all.

Mr. DOUGLAS: But, is it not possible under this act?

Mr. LESAGE: No, it is not possible; it is illegal.

Mr. DOUGLAS: It is illegal to pay a certain amount and obtain this information.

Mr. LESAGE: Mr. Douglas, there is a judgment of the supreme court in this regard, although I do not have the exact reference. It was in respect of a British Columbia case about ten or fifteen years ago, where it was held that it is up to the minister to decide whether such information contained in the departmental files should be disclosed, except in major criminal cases, where the files must be produced because there is a major interest in criminal law. But, this principle outlined by the supreme court does not go any farther than that, and we are still where we were before.

Mr. DOUGLAS: Even with private companies?

Mr. LESAGE: With private and public companies.

Mr. DOUGLAS: I meant to say public companies.

Mr. LESAGE: Even with them, exactly.

Mr. MOREAU: Mr. Lesage, there is nothing in this act which prevents this. Certainly, the information could be made public if the minister decided it should.

Mr. LESAGE: Of course, but if he decides not to, that is another thing.

Mr. MOREAU: But, my point is that the deletion of subsection (2) of 121F did accomplish something, in that the minister can make these documents public. If we left that subsection in he could not. Also, I am opposed to subsection (2) of section 125A. I would prefer to see the whole section go.

Mr. LESAGE: I would too.

Mr. MOREAU: As I said, I would prefer to see the whole section go rather than to recognize this principle as embodied in subsection (2), that the Secretary of State requires permission of a chief justice or acting chief justice to make some of this information public. I think this is contrary to the present trend and I am totally opposed to it. As I said, I would rather see the whole section go.

Mr. LESAGE: I would, too. I would agree with you in that connection.

Mr. LAMBERT: In what respect are you making those remarks?

Mr. MOREAU: Well, securities and exchange commissions are moving in this direction.

Mr. LESAGE: But, Mr. Moreau, that is not the same field. That is where a mistake can be made very easily. It is easy to mix up the concept and the principles of the securities commission legislation and corporate law. Corporate law is one thing and securities commission law is another very different thing. From a constitutional point of view, I do not know whether or not the federal government has authority to enter into the field of securities commissions. Because the federal government has not gone that far. I do not think we, through the Companies Act, can achieve something which other jurisdictions do not exercise. The Companies Act must be at the same level of corporate law as the companies act of the ten other jurisdictions.

Mr. MOREAU: Why?

Mr. LESAGE: Because any company incorporated under the federal companies act is also under the jurisdiction of the securities commission, and they must be kept at the same level. If and when the government decides to change the policy in that regard and go into that field, that will be a different story.

Mr. MOREAU: We are getting to the point of whether or not we should lead or follow the provinces. I think the argument could be used in the provinces that they cannot move until the federal government moves. It is being expressed here that we cannot move until the provinces do. Someone has to take the initiative and I think properly it should be the federal government. That is why I was opposed to subsection (2) of section 121F. I do not accept the view that we cannot do it because other jurisdictions have not done it, particularly when we have gone along without it for thirty or more years. I do not even want to see the principle recognized in subsection (2) of section 125A. As I said, I would rather see the whole section go.

Mr. LESAGE: Mr. Moreau, when you say the federal government should take the lead, there may be something in it, but everyone knows, in respect of corporate law, the federal jurisdiction is not the leader in Canada, so far as the number of companies are concerned. We are only one of ten jurisdictions. If we take the major companies—that is, those reporting under the Corporation and Labour Union Returns Act—from a personal review of our own files I note that there is a little less than 14 per cent incorporated federally, whereas there is 35 per cent incorporated in Ontario, almost 19 per cent in Quebec, 12 per cent in British Columbia and almost 8 per cent in Alberta. Next is Manitoba, with about 4.5 per cent. Those figures may not be accurate although they give us enough information to understand that if we do impose disclosure we are putting our federal companies at a disadvantage; we are discriminating against companies incorporated federally. We would be closing the door on federal incorporations and inviting the business people of the world of finance to go to the provinces for incorporation and, nowhere in their legislation, are they obliged to disclose anything. No other companies act in Canada other than the federal one requires the filing of financial statements. For that reason we have kept them confidential; otherwise, we would be discriminating against our own companies.

Mr. MOREAU: Do you see any adverse effects to the economy if they incorporated in Ontario or Quebec rather than requesting a federal charter? I do not see any difference.

Mr. LESAGE: Well, it is not up to me, as a civil servant, to express views on policy.

Mr. GREENE: Mr. Lesage, if I understand your evidence correctly, your view is that the Companies Act is to define the relationship between the federal incorporating authority and the incorporating body, not the public.

Mr. LESAGE: You are very correct. By definition, the Companies Act is one which relates, first, to the procedure of incorporation and, second, to the relations between the company and its shareholders. It has nothing whatsoever to do with the public generally except for the filing of prospectuses of those companies offering their shares to the public. This is the only exception but it is an exception to the principle behind the Companies Act, and it is the same in the 11 jurisdictions. If the provinces want to break that principle they go through another legislation, through the securities commission, but not through their Companies Act.

Mr. GREENE: In other words, if we feel that there should be more open disclosure of corporate affairs, it should not be done through the Companies Act?

Mr. LESAGE: No, not at all. I feel that it should be done in another statute. That is exactly my view.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): Mr. Lesage, coming back to this question of American takeover of Canadian industry, by leaving this section in, could it be conceivably helpful to the minister seeking information with regard to a private company, or do you feel that this should be handled by separate legislation.

Mr. LESAGE: Separate legislation.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): But at the moment there is not any separate legislation?

Mr. LESAGE: No. It is a matter of government policy whether or not, constitutionally, it has jurisdiction and, although I do not know, I doubt it.

Mr. GREENE: Could this conceivably be of some use to the government if it were seeking information about the status?

Mr. LESAGE: It could be of some use for that purpose; but this is not the purpose for which it was inserted in the bill. I have told you the purpose. It was only to have an omnibus clause, as other jurisdictions have. If this is going to cause more trouble than good I would rather that we continue as we have done in the last 100 years.

Mr. DOUGLAS: I was under the impression, Mr. Lesage, that in a number of provincial jurisdictions under their Companies Act, when dealing with public companies, you are permitted to pay a small fee, in return for which you can have the information which is available regarding that company, such as the names of directors.

Mr. LESAGE: Yes, we have that too.

Mr. DOUGLAS: And the last financial statement filed?

Mr. LESAGE: No. We have the provision with respect to the names and addresses only of the directors. We maintain that by our section 125. This is information which has always been available and will continue to be available under section 125.

Mr. DOUGLAS: But not the financial statement?

Mr. LESAGE: No. Even the draft uniform act, which is going very far in corporate law, does not contemplate the filing of financial statements with the

government authority, because it is not a matter for the Companies Act. This is a matter for the securities commission. It is a matter for other legislation. It is not even contemplated by the 10 jurisdictions and by the draft uniform act. When we were asking for more secrecy on those documents, which we happen to have in our Companies Act, it was only to put those incorporated under the Companies Act on the same level as anyone else in this country. This is all we are asking. We are not asking to hide something from the public.

The CHAIRMAN: You would rather have the whole of section 125A out then?

Mr. LESAGE: Yes.

The CHAIRMAN: It has been moved by Mr. Moreau, seconded by Mr. Douglas, that clause 41 be deleted. If there is no further discussion I will put the question. Have you heard the motion, gentlemen?

Some hon. MEMBER: Would you restate it.

The CHAIRMAN: I do not know whether I should make a comment on the previous amendment. I think the amendment now meets with Mr. Lesage's wishes. However, Mr. Lesage is speaking as a civil servant and therefore expresses no policy. It is moved by Mr. Moreau and seconded by Mr. Douglas that clause 41 be deleted.

Mr. BASFORD: Mr. Lesage informed me that he saw no harm in leaving it in.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): He also indicated that there was a conceivable use for it.

The CHAIRMAN: I do not intend to say anything further on the matter.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): I think, Mr. Chairman, that we should reiterate the fact that it may, conceivably, be of some use to the federal government in determining the status of a company that is threatened by an American takeover. I think for that reason alone we should leave it in.

Mr. DOUGLAS: I think it should also be pointed out as Mr. Moreau said, that under subsection (2) this information could not be given even to another department of the government without the consent of the chief justice.

Mr. MOREAU: Yes. I think that principle is contrary to any principle that should be embodied in any provincial legislation.

Mr. LESAGE: The public does not comprise the other departments.

Mr. MOREAU: I mean there was a statement made earlier that the underlying philosophy of the Companies Act was the relationship between the government and the incorporating people. I think it is time that the law should be changed and that public interest also be considered.

The CHAIRMAN: Do you have a question, Mr. Kindt?

Mr. KINDT: Mr. Chairman, the weight of the evidence seems to be on the side of deletion simply because clause 2 requires the Secretary of State to go outside and receive recommendations from the chief justice. I agree with the gentleman who moved the motion that this clause is foreign to the Companies Act and whoever put it in there, I should think, is in error. As far as I am concerned, I vote for deletion.

The CHAIRMAN: Is there any further discussion? Are you ready for the question? All those in favour of the amendment to delete the whole clause. I declare the amendment carried.

Amendment agreed to.

Mr. KINDT: This means that all of clause 41 is out?

The CHAIRMAN: That is right. Now, subsequently I will have to have a renumbering motion but I will leave this to the end. There may be some other changes so I will withhold that until I run through the rest of the clauses, if I may.

Some hon. MEMBER: We will get this engineered yet.

Clause 42 carried.

On clause 43—*Grounds for winding up company.*

Mr. MOREAU: I have some notation here about the amendment in subsection (*b*) of section 140A.

Mr. LESAGE: There is still 121F, Mr. Moreau. It is only (2) that has disappeared.

Mr. MOREAU: Yes. I think perhaps that is what I was referring to.

Clauses 43 to 52 inclusive agreed to.

Mr. LESAGE: There is the addition of another clause here.

Mr. MOREAU: We are at clause 53: "This act shall come into force on July 1, 1965."

The CHAIRMAN: I am asking for a motion now that present clauses 42 to 52 inclusive be renumbered as 41 to 51.

Mr. MOREAU: I so move.

The CHAIRMAN: It has been seconded by Mr. More.

Motion agreed to.

Mr. MOREAU: You are now referring to clause 52?

The CHAIRMAN: Yes, a new clause 52, that this act shall come in to force on July 1, 1965.

Mr. LEBLANC: Would that not be contrary to clause 50(2) which says that this section shall come into force on a date to be fixed by the governor in council?

Mr. LESAGE: Yes, but I say no because the order in council may only come in five years from now. The governor in council will not be in a position to put into force clause 50 on page 44 before the commencement of this act. It will not be possible for that order in council to be issued before July 1, 1965. That is all it means.

Mr. DOUGLAS: The act comes into effect. This particular clause 50 cannot come into effect except by the governor in council passing an order.

The CHAIRMAN: Is there a mover for new clause 52?

Mr. MOREAU: I so move.

Mr. LEBLANC: I second the motion.

The CHAIRMAN: Seconded by Mr. Leblanc.

Motion agreed to.

Mr. LAMBERT: Before you put the title to the bill I wish to go back to clause 16 on page 12 which we already have adopted. I ask this question by way of information as to what Mr. Lesage would do. In the light of the Bonanza Creek case do you allow a company to carry on business under a name other than its incorporated name?

Mr. LESAGE: No.

Mr. LAMBERT: Even in view of the law in the Bonanza Creek case?

Mr. LESAGE: There is a prohibition in section 22 of the Companies Act which reads as follows:

> The company shall keep its name, the last word of which shall be the word "Limited" or the abbreviation thereof, "Ltd.", painted or affixed, in letters easily legible, in a conspicuous position on the outside of every office or place in which the business of the company is carried on...

So a company must carry on its business under its own name.

Mr. LAMBERT: Oh, that is clear, but I beg to differ with you. While I agree that a company must affix its name to its place of business as its incorporated name, yet it could carry on business, for example, in its invoices, in its day to day relations, in its letterheads and so on, under another name. I think you will find that the Bonanza Creek case does permit this. It is certainly permitted in certain jurisdictions. I have obtained this permission from a number of provincial registrars, because we wanted to use a particular name which was not the registered name. This is a very good point. It may be a related name. For example, instead of saying XYZ limited we call it XY in Canada. That is the name under which it operated. British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario have all agreed to this. This is a point I address to you in your private capacity.

Mr. LESAGE: It is a very interesting point, but this matter was not studied in the bill and there is no amendment to section 22 in the bill itself.

According to our terms of reference we were required to prepare this bill and we were invited to make only the necessary changes. It is true that the terms of reference in the Senate were a little broader, and this accounts for the many amendments in the Senate. But even the Senate did not see fit to change anything in that respect. I would not say that this is the first time I have heard such a suggestion made. However, I shall take note of it and if and when we are asked to prepare a complete revision of the act, this may very well be considered. But at this time I must confess that I am not prepared to discuss such an important point on such short notice.

Mr. LAMBERT: Under clause 3(c) on page 12 there may be a little difficulty in the proposition which I propose. However, I am thinking of the T. Eaton Company of Canada Limited which carries on business under the name of Eaton's, and that sort of thing.

Mr. CAMERON (*High Park*): Do you mean that they are registered under partnership acts?

Mr. LAMBERT: No. I mean a name other than the one under which they are incorporated.

Mr. CAMERON (*High Park*): Companies do that every day.

Mr. LAMBERT: That is another method which Mr. Cameron suggests, by which a corporate body might operate under another name, under the partnership acts.

The CHAIRMAN: Shall the title carry?

Agreed.

Mr. GELBER: Have we passed clause 37 as printed?

The CHAIRMAN: We have passed every clause so far, and we are now down to the title.

Mr. GELBER: I understood Mr. Lesage was going to bring in some change in the wording of clause 37.

Mr. LESAGE: That was only because my copy was not the last edition, I think. That is when we cleared it up. There was a clerical error in my copy.

Mr. GELBER: I am sorry. People are talking around me and I cannot hear the answer.

The CHAIRMAN: We dealt with it this morning, when Mr. Gelber found that the bill distributed to the members as reprinted had an amendment contained in it.

Mr. LESAGE: No, it was not an amendment, it was a correction which was included in my copy.

Mr. GELBER: What is the correction.

The CHAIRMAN: It is at line 26 on page 38.

Mr. LEBLANC: I think it is line 25 of the revised copy.

Mr. LESAGE: It is line 26, but you may have read line 25 in your copy because of the corrections.

The CHAIRMAN: Yes.

Mr. GELBER: I do not have a copy that coincides with the bill.

The CHAIRMAN: At any rate it was dealt with.

Mr. GELBER: Yes, but I brought up the point at an earlier meeting and I understood that they reported this. I was discussing section 37 and subsection 98.

Mr. LESAGE: Oh, yes.

The CHAIRMAN: You are talking about a different amendment, then.

Mr. MOREAU: What page is your amendment on?

Mr. GELBER: It is on page 21, concerning the exclusion of corporations with a single beneficiary owner as long as that owner was not a public corporation. I thought Mr. Lesage was going to draft a slight change which would cut out a lot of paper work.

Mr. LESAGE: No, I do not remember having undertaken to do that.

Mr. GELBER: I think you will find it in the proceedings of an earlier meeting.

Mr. LAMBERT: If that is so it will appear in the proceedings, and by that time an appropriate amendment could be moved in the house and we could go back into full committee.

The CHAIRMAN: Yes. You have a further suggestion put forward by Mr. Lambert. In view of that may I ask if the title shall carry?

Carried.

Shall the bill as amended carry?

Carried.

Shall I report the bill as amended?

Agreed.

Is there a motion that the bill as amended by the committee be reprinted?

Agreed.

Mr. LAMBERT: If there is a question about reprinting, since there have been some amendments, and since some of them have been contrary to what was indicated in the Senate, we are now on a collision course with that eminent body.

Mr. MOREAU: I do not think these same sections will reappear in public.

Mr. LAMBERT: There will have to be some form of negotiation. I do not know whether you want to carry on a further printing and then negotiate.

The CHAIRMAN: It has to be reprinted. Let them look at it and see. I now will receive a motion for adjournment.